



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY MARCH 7, 2013 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 Nix**
- 3. 3-a. New Employees**
 - Cleveland McBride - Water Construction
3-b. Service Recognitions
 - Vincent Krolczyk – Parks Department – 5 years
 - Terry L. Fielder – Sewer Construction Department – 25 years
- 4. Citizens Comments**

CONSENT AGENDA

5. Statutory Consent Agenda

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

- 5-a. Ordinance No. O-13-003 on Its Second Reading Amending Chapter 2, Administration, of the Code of Ordinances of the City of Brenham to Amend Article V, Open Records and Records Management**

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REGULAR AGENDA

6. **Discuss and Possibly Act Upon a Variance Request from Adolph Wehmeyer from Section 23-25(3), Subdivision Ordinance of the Code of Ordinances to Allow the Development of a New Mobile Home Park on Approximately 19.3 Acres Located on FM 389 and Situated Directly West of the Eight Star Corporation's Mobile Home Park (Formerly Known as Wehmeyer Mobile Home Park)** **Page 14 - 29**
7. **Discuss and Possibly Act Upon Acceptance of the Audit from Seidel, Schroeder, & Company for Fiscal Year 2012** **Page 30**
8. **Discuss and Possibly Act Upon a Resolution No. R-13-002 Adopting a Records Management Policy for the City of Brenham** **Page 31 - 40**
9. **Discuss and Possibly Act Upon Resolution No. R-13-003 Authorizing the Abandonment of a Portion of Peabody Street West of Church Street and the Conveyance of 0.038 Acres to Unity Theatre Company, and 0.065 Acres to Heather Van Dyke Thielemann, Trustee, and Retaining 0.085 Acres for a City of Brenham Utility Easement** **Page 41 - 52**
10. **Discuss and Possibly Act Upon an Ordinance on Its First Reading to Repeal Ordinance O-07-009 and Grant a Non-Exclusive Franchise to Budget Roll-Off Service to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits** **Page 53 - 79**
11. **Discuss and Possibly Act Upon an Ordinance on Its First Reading to Repeal Ordinance O-09-008 and Grant a Non-Exclusive Franchise to Brazos Valley Recycling to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits** **Page 80 - 92**
12. **Discuss and Possibly Act Upon an Ordinance on Its First Reading to Grant a Non-Exclusive Franchise to Action Roll-Offs, Inc. to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits** **Page 93 - 106**

CLOSE REGULAR SESSION

WORK SESSION

13. **Discussion and Update on the Brenham Municipal Airport Hangar Project** **Page 107 - 110**
14. **Presentation of the 2012 Annual Report by the Fire Department** **Page 111**
15. **Presentation of the 2012 Annual Report by the Police Department** **Page 112**

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.

16. 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 7, 2013 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 4, 2013 at **12:00 PM**.

Jeana Bellinger, TRMC

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 _____, 2013 at _____ AM PM.

Signature

Title

ORDINANCE NO. O-13-003

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING CHAPTER 2, ADMINISTRATION, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS FOR THE PURPOSE OF REPEALING ARTICLE V, OPEN RECORDS AND RECORDS MANAGEMENT; PROVIDING FOR A NEW ARTICLE V, RECORDS MANGEMENT AND PUBLIC INFORMATION, TO CHAPTER 2; 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, pursuant to Texas Local Government Code, Section 51.001, the City of Brenham (“City”) has the authority to adopt ordinances and regulations that are for good government, peace and order of the City; and

WHEREAS, a Records Management Program is used to reduce the volume of inactive records held in City departments; to develop and maintain an efficient retrieval operation for records; to dispose of records that have expired and are approved for destruction; to maintain security over City records; to maintain a policy for accessibility to confidential records; to identify and protect vital records; and to communicate the need for an effective management program; and

WHEREAS, the City Council of the City of Brenham has determined that the following regulations are necessary and proper in order for the City to properly maintain records and provide public information to its citizens and to implement the authority granted pursuant to Section 552.275, Texas Government Code;

WHEREAS, Section 552.275 of the Texas Government Code allows the City of Brenham to set forth a reasonable limit on the amount of time that City personnel are required to spend producing public information to a requestor, without recovering its costs attributable to that personnel time; and

WHEREAS, the City Council hereby finds that the best interests of the City will be promoted by the enactment of this Ordinance;

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

SECTION 1.

Chapter 2, Article V, Open Records and Records Management, of the Code of Ordinances of the City of Brenham, Texas is hereby repealed.

SECTION 2.

Chapter 2, Article V, of the Code of Ordinances of the City of Brenham is hereby amended to read as follows:

ARTICLE V. RECORDS MANAGEMENT AND PUBLIC INFORMATION

Sec. 2-40.0. Definitions.

Active Records. Those records in current use which must be retained because frequent reference is necessary in the conduct of day-to-day operations.

Criminal Justice Records. All records generated, maintained and/or accessed by the Police Department relating to the report or commission of a criminal offense or other violation law, statute or ordinance, or the arrest of an individual, including but not limited to: offense/incident/accident reports, supporting documents for said reports, criminal history information, criminal intelligence information, fingerprints, “mug” shots and data entered into the computer-aided dispatch system relating to law enforcement activity.

Records Custodian. Director of a City department, or his/her designee who is responsible for ensuring the integrity and safety of the records of the department.

Inactive records. Those records which are seldom referred to but must be retained, temporarily or permanently, because of legal, fiscal, administrative or archival value.

Non-records. All material not usually included within the definition of records, such as unofficial or additional copies of documents that are kept only for convenience or reference, stocks of publications and processed documents, library or museum material intended solely for reference or exhibition and material with short-term value.

Public Information: Information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body and the governmental body owns the information or has a right of access to it. Public information includes information that is maintained in paper, tape, microfilm, video, electronic data held in computer memory as well as other mediums specified under applicable law.

Sec. 2-41.0. Records.

Any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the State of Texas, created or received by local City government offices or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business are hereby declared to be records of the City of Brenham, and shall be created, maintained, and disposed of in accordance with the provisions of this Article and the provisions of applicable state law.

The term does not include:

- (1) Extra identical copies of documents created only for convenience of reference or research by officers or employees of the City of Brenham;
- (2) Notes, journals, calendars, diaries, and similar documents created by an officer or employee of Brenham, for the employee's personal convenience;
- (3) Blank forms;
- (4) Stocks of publications;
- (5) Library and museum materials acquired solely for the purposes of reference or display; or
- (6) Copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552 of the Texas Government Code or other state law.

Sec. 2-41.1. Records declared public property.

All City records as defined herein are hereby declared to be property of the City of Brenham, Texas. No City official or employee has, by virtue of his or her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

Sec. 2-41.2. Records policy.

It is hereby declared to be the policy of the City of Brenham to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and disposition of all City records from their creation to their ultimate disposition.

Sec. 2-42.0. Designation of a Records Management Officer.

The office of the City Secretary is authorized to establish and administer the records management program for the City of Brenham, Texas, pursuant to legal, fiscal, administrative, and archival requirements. The City Secretary or his/her designee is hereby named the Records Management Officer.

As provided by state law, each successive holder of the office shall file his or her name with the director and librarian of the state library within thirty (30) days of the initial designation or of taking up the office, as applicable.

Sec. 2-42.1. Records management plan to be developed; approval of plan; authority of plan.

The Records Management Officer shall develop a records management plan for the City for submission and approval by the City Council. The plan will contain policies and procedures designed to reduce costs and improve the efficiency of recordkeeping, to adequately protect the essential records of the City and to properly preserve those records of the City that are of historical value. The plan must be designed to enable the Records Management Officer to carry out the duties prescribed by state law and this Article effectively.

Once approved by City Council, the records management plan shall be binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees or similar entities of the City; and the records shall be created, maintained, stored, microfilmed or disposed of in accordance with the plan.

The Records Management Officer will implement, but not be limited to, a program to encompass such areas of records management as are required to preserve and keep in order all books, papers, documents, records and files of the City Council and of the executive departments to achieve the following results:

- (1) Release space and reduce the need for storage and filing equipment;
- (2) Establish an efficient retrieval operation for both active and inactive municipal records;
- (3) Provide for routine disposition of paperwork;
- (4) Maintain total security over municipal records;
- (5) Communicate the need of an effective records management program; and
- (6) Secure a central records storage facility which can be operated and maintained by records management staff.

Sec. 2-42.2. Duties of the Records Management Officer.

The Records Management Officer shall have the following duties and others as assigned by the City Council and as provided by state law:

- (1) Prepare and file, as required, with the Texas State Library and Archives Commission the records control schedules being followed by the City;
- (2) Assist in establishing and developing policies and procedures for a records management program for the City, said program shall include basic file management, records disposition policies and procedures;
- (3) Administer the records management program and provide assistance to records custodians for the purposes of reducing the costs and improving the efficiency of recordkeeping;
- (4) In cooperation with records custodians, identify and take adequate steps to preserve City records that are of permanent value;
- (5) In cooperation with records custodians, identify and take adequate steps to protect essential City records;
- (6) In cooperation with records custodians, ensure the maintenance, preservation, and destruction of records is carried out in accordance with the policies outlined in the City's records management program and state law;
- (7) Provide records management advice and assistance to all City offices and departments, by preparation of manuals of procedure and policies and/or by on-site consultation;
- (8) Establish a disaster plan in cooperation with other City officials to insure maximum availability of records;
- (9) Bring to the attention of the City Manager any office not in compliance with state laws, administrative rules, and local ordinances regarding public access to information or protection of privacy;
- (10) Disseminate information concerning state laws, administrative rules, and the policies of the City relating to local government records; and
- (11) In cooperation with records custodians, establish procedures to ensure that the handling of records in any context of the program by the Records Management Officer, or those under the officer's authority, is carried out with due regard for the duties and responsibilities of records custodians that may be imposed by law and the confidentiality of the information in records to which access is restricted by law.

Sec. 2-42.3. Duties of Department Heads.

Each department head shall designate a member of his or her staff to serve as the Records Custodian for the implementation of the records management program in the department. If the Records Management Officer determines that in the best interest of the records management program more than one (1) records custodian should be designated for a department, the department head shall designate the number of records custodians as specified by the Records Management Officer.

Persons designated as the Records Custodian shall be thoroughly familiar with all records created and maintained by the department and shall have full access to all records of the City maintained by the department. In the event of the resignation, retirement, dismissal, or removal by action of the department head of a person designated as a records custodian, the department head shall promptly designate another person to fill the vacancy. A department head may serve as the Records Custodian for his or her department.

Sec. 2-42.4. Duties of the Records Custodian.

In addition to other duties assigned in this Article, the Records Custodian shall:

- (1) Conduct or supervise the conduct of inventories of records in preparation for the development of records control schedules;
- (2) In cooperation with the Records Management Officer coordinate and implement the policies and procedures of the records management program ; and
- (3) Disseminate information to staff concerning the records management program.

Sec. 2-43.0. Records control schedules to be developed; approval; filing with state.

The Records Management Officer, in conjunction with the Texas State Library and Archives Commission, shall prepare records control schedules listing all records created and/or received by a department and the retention period for each record. Records control schedules shall also contain such other information regarding to the disposition of local government records as the records management plan may require.

Each records control schedule shall be monitored and amended as needed by the Records Management Officer on a regular basis to ensure that it is in compliance with records retention schedules issued by the state and that it continues to reflect the recordkeeping procedures and needs of the City.

Sec. 2-43.1. Implementation of records control schedules.

A records control schedule that has been approved and adopted shall be implemented by department heads and records custodians according to the policies and procedures outlined in the records management plan.

A record whose retention period has expired on a records control schedule shall be destroyed unless: (1) there is an open records request is pending for that particular record; (2) the subject matter of the record is related to a pending law suit; or (3) the department head requests in writing to the Records Management Officer that the record be retained for an additional period of time.

Sec. 2-43.2. Destruction of records.

Prior to the destruction of a record under an approved records control schedule, authorization for the destruction must be obtained from the Records Management Officer.

A record that has not yet been listed on an approved records control schedule may be destroyed if its destruction has been approved in the same manner as a record destroyed under an approved schedule and the Records Management Officer has submitted to and received back from the Texas State Library and Archives Commission an approved destruction authorization request.

Sec. 2-44.0. Public Information.

All public records are generally open to citizen inspection and may fall under the Texas Public Information Act. To obtain access to or a copy of a public document, a written request must be made to the Office of the City Secretary. It can be made via letter, fax or email. The requestor must provide sufficient information identifying what record(s) the requestor seeking, and as much information as is needed to locate the record(s). The City may not ask the requestor for what purpose the requestor is seeking the record.

The officer for public information shall promptly produce public information for inspection, duplication, or both on application by any person to the officer. An officer for public information complies with this requirement by: 1) providing the public information for inspection or duplication in the offices of the governmental body; or 2) sending copies of the public information by first class United States mail if the person requesting the information requests that copies be provided and pays the postage and any other applicable charges that the requestor has accrued under state law. If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication. If an officer for public information cannot produce public information for inspection or duplication within ten (10) business days after the date the information is requested, the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

Costs and charges for copies of records, including a requirement for a deposit/bond for payment of costs or a requirement for prepayment of costs, shall be made in accordance with state law. The City may provide a copy of public information without charge or at a reduced charge if the City determines that waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public. Also, if the cost to a governmental body of processing the collection of a charge for providing a copy of public information will exceed the amount of the charge, the governmental body may waive the charge. In the event the City receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under state law, the City must ask for a decision from the Texas Attorney General about whether the information is within an exception provided by law if there has not been a previous determination about whether the information falls within one of the exceptions.

Sec. 2-44.1. Time Limit for Public Information Requests.

The City may establish a reasonable limit on the amount of time spent producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering personnel costs attributable to such requests.

Accordingly, for each twelve month period corresponding with the City's fiscal year (October 1st through September 30th), the City will spend a maximum of thirty-six (36) hours on any one (1) individual requestor. The City may recover personnel time spent, beyond thirty-six (36) hours, on any particular requestor.

In determining whether a time limit applies, any time spent complying with a request for public information submitted in the name of a minor, as defined by Texas Family Code Section 101.003(a), is to be included in the calculation of the cumulative amount of time spent complying with a request for public information by a parent, guardian, or other person who has control of the minor under a court order and with whom the minor resides, unless that parent, guardian, or other person establishes that another person submitted that request in the name of the minor.

Sec. 2-44.2. Written Statement of Personnel Time.

Each time the City complies with a request for public information from a duplicate requestor, it shall provide the requestor with a written statement of the amount of personnel time spent complying with that request and the cumulative amount of time spent complying with requests for public information from that requestor during the applicable 12-month period.

The amount of time spent preparing the written statement cannot be included in the amount of time included in the statement provided to the requestor pursuant to this section.

Sec. 2-44.3. Calculation of Time.

When calculating the amount of time spent complying with a duplicate requestor's public information request, the City may include time spent on locating, compiling and producing the public information, but in accordance with the Texas Administrative Code, Chapter 70, the City may not include time spent on:

- (1) Determining the meaning and/or scope of the request(s);
- (2) Requesting a clarification from the requestor;
- (3) Comparing records gathered from different sources;
- (4) Determining which exceptions to disclosure under Chapter 552 of the Texas Government Code, if any, may apply to information that is responsive to the request(s);
- (5) Preparing the information and/or correspondence required under Section 552.301, 552.303, and 552.305 of the Texas Government Code;
- (6) Reordering, reorganizing, or in any other way bringing information into compliance with well-established and generally accepted information management practices; or
- (7) Providing instruction to, or learning by, employees or agents of the governmental body of new practices, rules, and/or procedures, including the management of electronic records.

Sec. 2-44.4. Estimate of Charges; Notice of Additional Time; Commitment from Requestor.

When the cumulative amount of personnel time spent complying with requests for public information from the same requestor equals or exceeds the established time limit, the City shall provide the requestor with a written estimate of the total cost, including materials, personnel time, and overhead expenses, necessary to comply with the request. The written estimate will be provided to the requestor on or before the 10th day after the date on which the public information was requested.

If the City determines that additional time is required to prepare the written estimate of charges, the City will provide the written estimate of charges as soon as practicable, but on or before the 10th day after the date the City provided the notice to requestor.

If the City provides a requestor with the written estimate of charges, the City is not required to produce public information for inspection or duplication or to provide copies of public information in response to the requestor's request unless on or before the 10th day after the date the City provided the written estimate of charges, the requestor submits a statement in writing to the City in which the requestor commits to pay the lesser of:

- a) The actual costs incurred in complying with the requestor's request, including the cost of materials, personnel time and overhead; or
- b) The amount stated in the written estimate of charges.

If the requestor fails or refuses to submit a written commitment of payment, the requestor is considered to have withdrawn the requestor's pending request for public information.

Sec. 2-44.5. Allowable Charges; cost of copies of public information.

The amount of charges relating to the costs of locating, compiling, and producing the public information shall be calculated and established in accordance with the rules prescribed by the Texas Attorney General under Texas Government Code, Sections 552.262(a) and (b), as may be amended. The City shall charge costs and fees as established in the Texas Public Information Act, Texas Administrative Code and other applicable state law. The costs and fees may include all costs related to reproducing the information, including costs of materials, labor and overhead as authorized by law. The City may also waive costs and fees if the request for records involves the production of ten (10) or fewer standard size copies of information.

Sec. 2-45.0. Exceptions.

In accordance with Texas Government Code, Section 552.275(j), the time limit established herein on the amount of time spent producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering personnel costs attributable to such requests does not apply if the requestor is an individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:

- a) A radio or television broadcast station that holds a broadcast license for an assigned frequency issued by the Federal Communications Commission;
- b) A newspaper that is qualified under Section 2051.044 to publish legal notices or is a free newspaper of general circulation and that is published at least once a week and available and of interest to the general public in connection with the dissemination of news;
- c) A newspaper of general circulation that is published on the internet by a news medium engaged in the business of disseminating news or information to the general public; or
- d) A magazine that is published at least once a week or on the Internet by a news medium engaged in the business of disseminating news or information to the general public.

In accordance with Texas Government Code, Section 552.275(k), the time limit established herein on the amount of time spent producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering personnel costs attributable to such requests does not apply if the requestor is an elected official of the United States, this state, or a political subdivision of this state.

In accordance with Texas Government Code, Section 552.275(l), the time limit established herein on the amount of time spent producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering personnel costs attributable to such requests does not apply if the requestor is a representative of a publicly funded legal services organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code.

Sec. 2-46.0. - 2-49.9. RESERVED.

SECTION 3.
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 4.
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 and clauses and phrases remaining should any provision be declared unconstitutional or invalid.

SECTION 5.
REPEALER

Any other ordinance 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 this the 21st day of February, 2013.

PASSED AND APPROVED on its second reading this the 7th day of March, 2013.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary



AGENDA ITEM 6

DATE OF MEETING: March 7, 2013		DATE SUBMITTED: March 3, 2013	
DEPT. OF ORIGIN: Development Services		SUBMITTED BY: Julie Fulgham	
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 a Variance Request from Adolph Wehmeyer from Section 23-25(3), Subdivision Ordinance of the Code of Ordinances to Allow the Development of a New Mobile Home Park on Approximately 19.3 Acres Located on FM 389 and Situated Directly West of the Eight Star Corporation’s Mobile Home Park (Formerly Known as Wehmeyer Mobile Home Park)			
SUMMARY STATEMENT: Mr. Wehmeyer has submitted a request for a variance from Section 25-23(3) of the Subdivision ordinance to vary from the requirement that a mobile home park has a minimum frontage of 200 feet to allow the development of a mobile home park on Mr. Wehmeyer’s land directly east of the former Wehmeyer Mobile Home Park, with only 131 feet of frontage. This request was tabled at the February 15 th Council meeting.			
Staff has researched the intent of the regulations in which the variance is being sought and could not find anything specific regarding the intent of the regulation. Frontage requirements have a basis on access to public rights-of-ways for minimum frontage regulations and aesthetics and circulation (to prohibit excessive block lengths in urbanized areas) for maximum frontage regulations. However, discussion on the intent or regarding the basis of this requirement in Brenham has not been discovered during the research of City documents.			
Chief Phelps has researched police records regarding accidents near this property and can discuss, in more detail, at the meeting the nature of the accidents; however, there have been two accidents in the past two years in close proximity to the existing manufactured home park adjacent to this property. Mr. William Krueger, representative for Mr. Wehmeyer will be in attendance to provide an update on the TXDOT driveway permit status and access agreements to the existing mobile home documents.			
One final point to consider is the development of a 106 space manufactured home park at this location may saturate the market for this type of housing for the foreseeable future and relieve development pressures that seem to exist based on the number of inquiries the Development Services Department receives regarding manufactured home sites. However, if Council does not feel a manufactured home park at this location is suitable, then the variance should be denied because the proposed park plan meets all other applicable ordinances.			

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. **PROS:** Allows development of affordable housing and initiates annexation of this tract.

B. **CONS:** Creates a large mobile home park that may place a strain on City services.

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Ordinance; (2) Memo from Julie Fulgham, Director of Development Services including proposed park development plan; (3) Request letter from Mr. Adolph Wehmeyer; (4) Memo from City Secretary; and (5) City Council Meeting Minutes from March 5, 1998 Council Meeting

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: See Planning and Zoning Commission Staff Report

APPROVALS: Terry K. Roberts

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 23, SUBDIVISIONS, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, ALLOWING A VARIANCE TO SECTION 23-25(3) TO ALLOW THE DEVELOPMENT OF A MOBILE HOME PARK WITH ONLY 131 FEET OF FRONTAGE, SPECIFICALLY BEING A 19.3 ACRE PORTION OF TRACT 196 OUT OF THE PHILLIP COE SURVEY AND LOCATED ON FM 389 IN WESTERN BRENHAM, TEXAS.

WHEREAS, the City of Brenham has adopted Chapter 23, Subdivisions, of the City of Brenham Code of Ordinances, which regulates the subdivision of land within the City of Brenham; and

WHEREAS, this variance was recommended for approval by the Brenham Planning and Zoning Commission during its regular meeting on February 4, 2013;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF BRENHAM, TEXAS, THAT A VARIANCE TO CHAPTER 23, SUBDIVISIONS, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, BE APPROVED IN THE FOLLOWING MANNER:

SECTION 1. That a variance to Chapter 23, Subdivisions, Section 23-25 Mobile home/manufactured home subdivisions (3) Minimum site size, of the Code of Ordinances of the City of Brenham, Texas, to allow the development of a mobile home park with only 131 feet of frontage instead of the required minimum of 200 feet of frontage, specifically being a 19.3 acre portion of Tract 196 out of the Phillip Coe Survey and located on FM 389 in western Brenham, Texas.

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

PASSED and APPROVED on its first reading this the 21st day of February, 2013.

PASSED and APPROVED on its second reading this the 7th day of March, 2013.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Memorandum



To: Planning and Zoning Commission

From: Julie Fulgham, Director of Development Services

Date: February 4, 2013

Re: Variance to Section 23-25(3) of the Subdivision Ordinance

Mr. Adolph Wehmeyer has submitted a request for a variance from Section 23-25(3) of the Subdivision Ordinance which states the following:

Sec. 23-25. Mobile home/manufactured home subdivisions

(3) Minimum site size. For each mobile home or Manufactured Home Park or subdivision located within the city in areas zoned for such use, a minimum site area of four (4) acres and frontage of no less than two hundred (200) feet or more than four hundred (400) feet shall be provided. In the event that any parcel of land less than five (5) acres within the extraterritorial jurisdiction is to be used for two (2) or more mobile homes or manufactured homes, a plat shall be submitted to the city.

Mr. Wehmeyer is specifically asking for a variance to the requirement that the minimum frontage for a mobile home park be 200 feet. The tract he is hoping to develop as a mobile home park has 131 feet of frontage on FM 389.

The Planning and Zoning Commission is charged with making recommendations to City Council on variances to the Subdivision Ordinance as described in the following section of the Subdivision Ordinance:

Sec. 23-34. Variances

Where in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, the city council may upon recommendation by the planning commission, in specific cases, at a regular meeting of the city council and subject to appropriate conditions and safeguards, authorize, by ordinance, a variance to the subdivision regulations in order to permit reasonable development and improvement of property where the literal enforcement of these regulations would result in an unnecessary hardship. A variance may only be granted by ordinance upon finding that such variance is in accord with the comprehensive plan of the City of Brenham and that the probable effect of such variance will not create adverse impacts in the vicinity. No written public notice shall be required prior to the granting of the variances provided for in this section, except as required by the Texas Open Meetings Law.

The only criteria to take into consideration that is required by the ordinance are that any variances to the subdivision regulations must be in accordance with the City's comprehensive plan. The Comprehensive Plan is a very broad policy document and in this case, the only section staff identified that could be applicable to this variance request is the following:

Manufactured Homes

The City of Brenham Zoning Ordinance provides for manufactured homes only within the R-3 Manufactured Home Residential District. Within the past few years the City has annexed two areas – one to the east by the wastewater treatment plan and the other to the west south of FM 389 – which, will be zoned R-3 Manufactured Home Residential.

Other land uses within the land use section of the Comprehensive Plan have specific areas within the City of Brenham (or ETJ) where they are deemed to be appropriate. No such expansion is outlined for manufactured home parks. In early 2012, the City Council authorized manufactured homes to be placed on individually platted lots within the R-3 zoning district and manufactured homes are no longer restricted solely to manufactured home parks or manufactured home subdivisions on land within an R-3 zoning district. Affordable housing is necessary and could be a consideration in this request; however the zoning amendment I just explained has alleviated some of the barriers to this type of housing product.

Since the ordinance does not explicitly list criteria that should be evaluated when the Commission is asked to consider a variance; staff believes these requests should be based on the community character the Planning and Zoning Commission is striving to achieve. Therefore staff does not have a recommendation to the Planning and Zoning Commission on if the Commission should forward a positive or negative recommendation for this variance to City Council but hopes the information provided in this memo will clarify the ordinance and process that should be followed when considering this recommendation.

Additional information regarding this property is that the property owner has entered into a development agreement with the City of Brenham, as allowed by state law for agricultural exempt properties, during the last annexation proceedings. Development agreements offered during annexation proceedings delays the City from annexing a property until such time that the property develops or the development agreement expires, whichever comes first. Also outlined in this agreement is that if the property owner chooses to develop the property, in addition to that development triggering annexation proceedings, the property owner is also bound to develop the property to the standards outlined in existing City codes and regulations. If this variance is approved, Mr. Wehmeyer must develop the property in accordance with the Subdivision Ordinance (already required since the property is within the City's ETJ) and all other applicable ordinances of the City of Brenham.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 23, SUBDIVISIONS, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, ALLOWING A VARIANCE TO SECTION 23-25(3) TO ALLOW THE DEVELOPMENT OF A MOBILE HOME PARK WITH ONLY 131 FEET OF FRONTAGE, SPECIFICALLY BEING A 19.3 ACRE PORTION OF TRACT 196 OUT OF THE PHILLIP COE SURVEY AND LOCATED ON FM 389 IN WESTERN BRENHAM, TEXAS.

WHEREAS, the City of Brenham has adopted Chapter 23, Subdivisions, of the City of Brenham Code of Ordinances, which regulates the subdivision of land within the City of Brenham; and

WHEREAS, this variance was recommended for approval by the Brenham Planning and Zoning Commission during its regular meeting on February 4, 2013;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF BRENHAM, TEXAS, THAT A VARIANCE TO CHAPTER 23, SUBDIVISIONS, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, BE APPROVED IN THE FOLLOWING MANNER:

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PASSED and APPROVED on its first reading this the 21st day of February, 2013.

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Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC

Memorandum



To: Planning and Zoning Commission

From: Julie Fulgham, Director of Development Services

Date: February 4, 2013

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Mr. Wehmeyer is specifically asking for a variance to the requirement that the minimum frontage for a mobile home park be 200 feet. The tract he is hoping to develop as a mobile home park has 131 feet of frontage on FM 389.

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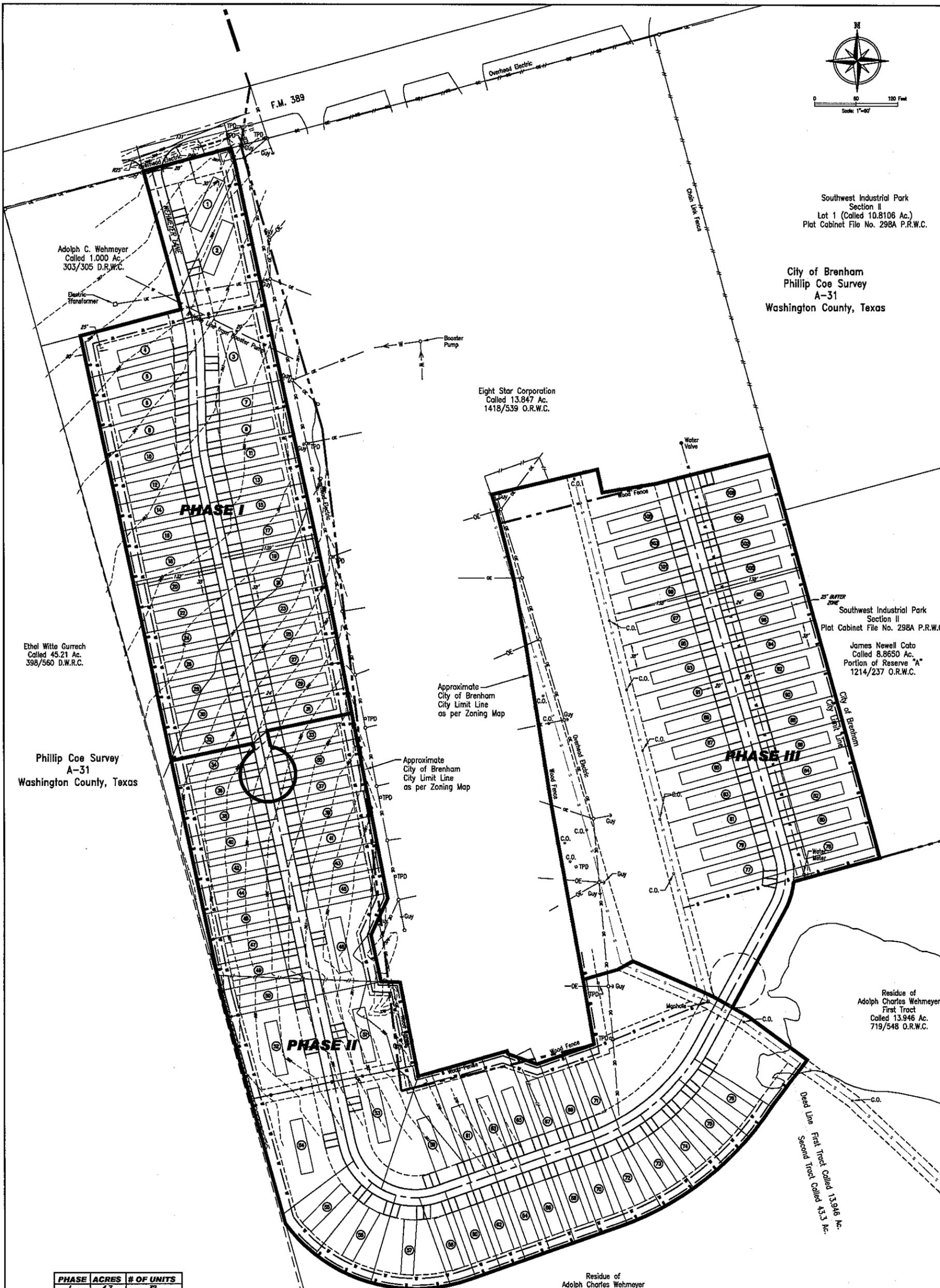
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Additional information regarding this property is that the property owner has entered into a development agreement with the City of Brenham, as allowed by state law for agricultural exempt properties, during the last annexation proceedings. Development agreements offered during annexation proceedings delays the City from annexing a property until such time that the property develops or the development agreement expires, whichever comes first. Also outlined in this agreement is that if the property owner chooses to develop the property, in addition to that development triggering annexation proceedings, the property owner is also bound to develop the property to the standards outlined in existing City codes and regulations. If this variance is approved, Mr. Wehmeyer must develop the property in accordance with the Subdivision Ordinance (already required since the property is within the City's ETJ) and all other applicable ordinances of the City of Brenham.



Southwest Industrial Park
Section II
Lot 1 (Called 10.8106 Ac.)
Plat Cabinet File No. 298A P.R.W.C.

City of Brenham
Phillip Coe Survey
A-31
Washington County, Texas



Adolph C. Wehmeyer
Called 1.000 Ac.
303/305 D.R.W.C.

Eight Star Corporation
Called 13.847 Ac.
1418/539 O.R.W.C.

Ethel Witte Currech
Called 45.21 Ac.
398/560 D.W.R.C.

Phillip Coe Survey
A-31
Washington County, Texas

Southwest Industrial Park
Section II
Plat Cabinet File No. 298A P.R.W.C.

James Newell Cato
Called 8.8650 Ac.
Portion of Reserve "A"
1214/237 O.R.W.C.

Residue of
Adolph Charles Wehmeyer
First Tract
Called 13.946 Ac.
719/548 O.R.W.C.

Residue of
Adolph Charles Wehmeyer
Second Tract
Called 43.3 Ac.
719/548 O.R.W.C.

PHASE	ACRES	# OF UNITS
I	4.7	32
II	7.8	44
III	6.8	30
TOTAL	19.3	106

JC JONES & CARTER, INC.
ENGINEERS-PLANNERS-SURVEYORS
1900 South Bay Street
Brenham, Texas 77833-4249
(979)838-0451
www.jonesandcarter.com
Austin • Brenham • Bryan • Dallas • Houston
Rosenberg • San Antonio • The Woodlands

PRELIMINARY MASTER PLAN OF COUNTRY SIDE MOBILE HOME PARK

JANUARY 25, 2013

Adolph C. Wehmeyer, Sr.
2103 FM 389
Brenham, Texas 77833
979-836-9768 or 979-251-2240

January 25, 2013

Ms. Julie Fulgham, AICP
Director of Development Services
City of Brenham
P.O. Box 1059
Brenham, Texas 77834-1059

Re: Country Side Mobile Home Park
J&C No. B0121-001-00

Dear Ms. Fulgham:

Submitted herewith for review and approval please find the following items:

1. Preliminary Plat of Country Side Mobile Home Park
2. Master Plan for Country Side Mobile Home Park

A variance from Section 23-25(3) of the Subdivision Ordinance is hereby requested. That section requires a minimum frontage of no less than 200 feet. This tract has 131 feet of frontage on FM 389.

Should you have any questions, please contact Wm. R. Krueger, P.E. with Jones & Carter, Inc. or me.

Sincerely,



Adolph C. Wehmeyer, Sr.

P:\PROJECTS\Proposals\2012\Wehmeyer\WehmeyerMobileParkProposal.doc

Enclosures

cc: Mr. Wm. R. Krueger, P.E., RPLS, Vice President Brenham Operations Manager, Jones & Carter, Inc., 1500 South Day Street, Brenham, Texas 77833



To: Julie Fulgham
cc: Terry Roberts
From: Jeana Bellinger
Subject: Research of Mobile Home Subdivision Ordinance
Date: March 4, 2013

As requested by Councilman Goss, Angela and I have done exhaustive research on the history of the 200 to 400 foot frontage requirement currently contained in Section 23-25(3), mobile home/manufactured home subdivisions.

Please see below for a summary of our research:

- According to Municode, Section 23-25(3) was adopted by Council in March 5, 1998. According to the minutes from this meeting, there were four (4) specific issues discussed with Council at that time. The issues were: guarantee of performance, rural streets, easements, and sidewalks. I have attached a copy of the minutes for your review.
- Prior to 1998, there were 9 other revisions to this Chapter, dating all the way back to 1967; however, NONE of them addressed frontage requirements for mobile home/manufactured home subdivisions.
- I also researched files of the former City Attorney, Randy Patterson. Mr. Patterson's files indicate that he used ordinances from four (4) other cities (Georgetown, Pflugerville, Weir, and Sequin) to write the 1998 amendment. I could not find any reference to specific 200 to 400 foot frontage requirements in any of the other ordinances.

It seems to me that the 200 to 400 foot frontage requirements may have been simply an "educated guess" made by staff at the time. That guess could have been based on state law, information from other cities, legal research, land use requirements, zoning, or a host of other things.

If you have any questions or would like to discuss this further, please let me know.

March 5, 1998

The regular meeting of the City Council of the City of Brenham was held this date with Mayor Walter Schwartz, City Manager C. J. Webster, Mayor Pro Tem Andrew Ebel, Councilmembers, Dick Chinnock, Mary Schulte Barnes, John Garnett, and Henry Pettie. Staff members present were Ron Bottoms, Diana Bennett, Doug Baker, Randy Patterson, Angela Hahn, Kyle Dannhaus, Linda Wiesepape, Commander Jay Petrash, Doris Seilheimer, Theresa Wagner, Fire Chief Robert Weiss, Claude Mabry, Rita Jezierski, Sharon Scoggins, Pat Drahen and Debra Brent. Ashley Field and Bud Chambers represented the media. Citizens in attendance were Patricia Giddings, Charlene Kenny. Ron Alfred, Russell Honerkamp, Richard O'Malley and Jon Pledger.

Mayor Schwartz called the meeting to order.

Mayor Pro Tem Andrew Ebel led the invocation and Pledge.

Mayor Schwartz presented the minutes of February 5, 1998 to Council. The minutes were approved with no corrections or alterations noted.

Diana Bennett, Director of Administration introduced two new employees Sharon Scoggins, Utilities Clerk and Claude Mabry, Facility Maintenance Supervisor.

Ron Bottoms introduced Rita Jezierski, Administrative Assistant.

Russell Honerkamp requested a copy of the policy which states that citizens cannot speak on agenda items unless they have signed in prior to the council meeting. Mayor Schwartz advised Mr. Honerkamp that the procedure was established throughout the United States.

Mr. Honerkamp also requested that the policy on attending citizens and their time allotted to speak a maximum of three (3) minutes be changed to read a minimum of three (3) minutes.. Mayor Schwartz advised Mr. Honerkamp that the rules could be suspended to allow a citizen to speak longer.

Mr. Honerkamp wanted to know which portion of the Recreational Facility would the archaeological study be performed on. He wanted to know if the grant funds could only be used on the portion that the study is being done on. Mayor Schwartz informed him that the grant was written to receive funds for this portion of the facility. Mr. Honerkamp again questioned that the \$500,000.00 from the grant would be used on the portion of the Recreational Facility that the archaeological study covers. Mayor Schwartz advised him that he was correct.

Doug Baker recommended Council approve an ordinance on its first reading amending the City of Brenham Subdivision Development Ordinance. The recommended changes were:

1. Guarantee of Performance – Withholding the filing of the final plat of a subdivision until all the improvements are completed. (see ordinance)
2. Rural Streets – open ditches in a subdivision require at least one half acre lots. (see ordinance)
3. Easements - A clarification between drainage easement and a utility easement was inserted. (see ordinance)
4. Sidewalks – The new ordinance requires sidewalks to be constructed in a subdivision near schools, parks and other public places as determined by the planning and zoning commission. (see ordinance)

Russell Honerkamp questioned the size and widths of gates that will be required for access for utility maintenance. He recommended that the required sizes for gates be included in the Ordinance. Doug Baker agreed.

On a motion by Council Member Garnett and a second by Council Member Chinnock, Council approved an Ordinance on its first reading amending the City of Brenham Subdivision Development Ordinance.

Doug Baker requested Council approve a lease agreement with HDL Research Lab, Inc. to lease 8800 square feet of airport land at \$0.08 per square foot for the construction of a private hangar. He reported that the terms and conditions of the lease agreement are the same as the other leases at the airport with minor changes on pages four (4) and nine (9). (see lease)

On a motion by Council Member Chinnock and a second by Mayor Pro Tem Ebel, Council approved a lease agreement with HDL Enterprises for the lease of airport property and the construction of a 50 x 60 Hangar.

Item number three (3) was **tabled**.

Ron Bottoms recommended that Council pass an ordinance that would eliminate the \$100 charge for replacing a water tap that is not meeting city standards due to deterioration. He stated that the City's standard for water flow through a meter is ten gallons per minute minimum, however, some taps are being replaced that do not allow the minimum flow, but the customer is charged \$100. He feels that the City should bear the cost of the tap replacement.

On a motion by Council Member Chinnock and a second by Mayor Pro Tem Ebel, Council approved an ordinance on its first reading amending the Water Rate Tariff to repeal the \$100 fee for tap replacement.

Randy Patterson recommended that Council approve the purchase of a 0.576 acre tract of land from T & L Development and a contract to exchange a 0.576 acre tract of land for an 0.576 acre tract of land to construct a connector street between Old Gun & Rod Road and Market Street. He explained that the purpose of the purchase and exchange of this property is, due to the fact, that the City needs a quarter acre of Mr. Supak's property for construction of the connector street and Mr. Supak wants to maintain a full five acre tract. The purchase of the 0.576 acre will give the City the property necessary for construction and the exchange will allow Mr. Supak to maintain his 5 acre tract.

On a motion by Mayor Pro Tem Ebel and a second by Council Member Hubert, Council approved the purchase of an 0.576 acre tract of land from T & L Development.

On a motion by Mayor Pro Tem Ebel and a second by Council Member Hubert, Council approved of a contract to exchange a certain 0.576 acre tract of land for an 0.576 acre tract of land to construct a connector street between Old Gun & Rod Road with Market Street.

The City Manager commended Doug Baker and Randy Patterson in their efforts and work involved in obtaining this property for the connector street.

Randy Patterson recommended Council approved a resolution in support of State Representative Dan Kubiak's position in conjunction with Texas Department of Transportation and the allocation of funds involving state highway projects. Randy stated that Representative Kubiak feels that dollars should be allocated not on the basis of population but rather on road use.

On a motion by Council Member Chinnock and a second by Council Member Barnes, Council approved of a resolution in support of State Representative, Dan Kubiak's position in conjunction with Texas Department of Transportation and the allocation of funds involving state highway projects.

Russell Honerkamp commented that he felt the purpose of the Resolution was a good idea, but felt Representative Kubiak's name should not have been included in the Resolution.

Kyle Dannhaus presented the recommendations from the Planning and Zoning Commission.

1. Plat amendment for lots 11 and 12 in the Hillside Terrace Subdivision, section 6.
2. Request for a special use permit to build a parking lot at 806 South Park and 102 Dallas.

Kyle advised that a public hearing would be held. Mayor Schwartz stated that he would pass and return to the above items and hold the public hearing.

Diana Bennett recommended the approval of a joint agreement between the City of Brenham and Brenham Independent School District to hold early voting at a central location, being at the Washington County Court House.

On a motion by Mayor Pro Tem Ebel and a second by Council Member Chinnock, Council approved of a joint agreement between the City of Brenham, and Brenham Independent School District to hold early voting at a central location being at the Washington County Court House.

Russell Honerkamp agreed that this was a good idea.

The City Manager reported to Council that Robert Mekeska was the only recommendation given to him by the School District and the County Judge as a representative on the Tax Appraisal Board.

On a motion by Mayor Pro Tem Ebel and a second by Council Member Barnes, Council approved of the appointment of Robert Mekeska as representative to the Tax Appraisal Board. Council Member Chinnock opposed the appointment.

Council Member Chinnock's reasons for opposition to the appointment were that he didn't think that two persons from a medium size small company should sit on the same board and he doesn't feel that an elected official that is setting tax rates should sit on the Board of Directors of an appraisal district.

Council Member Garnett stated that the Appraisal District does not set tax rates, they only set the values of the property.

Mayor Schwartz replied to Council Member Garnett that when you change the appraisal rate you in fact change the amount of taxes that an individual will pay.

Russell Honerkamp agreed with Council Member Chinnock.

The motion carried.

Meeting adjourned.

Public hearing opened.

Kyle Dannhaus informed Council that St. Mary's Catholic Church is planning to expand their parking lot. Kyle recommended that Council approve a special use permit to construct their parking lot at 806 South Park and 102 Dallas Street.

Mayor Schwartz asked if there were any citizens that wanted to comment.

Russell Honerkamp felt that the public wasn't provided sufficient information on the project.
Meeting adjourned.

Formal Session re-opened.

On a motion by Council Member Hubert and a second by Council Member Barnes, Council approved a plat amendment for lots eleven (11) and twelve (12), in the Hillside Terrace Subdivision, Section 6.

On a motion by Mayor Pro Tem Ebel and a second by Council Member Hubert, Council approved a special used permit to build a parking lot at 806 South Park and 102 Dallas Street.

Administrative Reports

C. J. Webster reported that the Mayor's Task Force on Juvenile Crime will have their first meeting on March 16, 1998.

Diana Bennett gave an update on the warrant letters that were sent out last week and informed Council that as of March 11, approximately \$8,000 had been collected.

The Fire Chief announced that on Sunday the new fire truck would be dedicated and that four firemen are attending fire training at Texas A & M.

Ken Maxwell reported that officers will begin training on the defibrillators March 9, 1998, and that Lillian Wright was promoted to Systems Manager at the Police Department.

Kyle Dannhaus reported that the City was approved for the AWOS Grant and that O'Malley Engineers submitted the final plans on the new Recreational Facility for review. The parking lot at the Recreational Facility is nearing completion. A meeting with the Aquatic Consultant has been set for March 31, 1998, at 4:00.

Elected Officials Report

Council Member Pettie announced that he had received several calls from citizens regarding cats running loose in their neighborhood at night.

Angela Hahn advised Mr. Pettie that an ordinance is being created to help curb the problem.

Council Member Chinnock complemented Doug Baker for the complete information he furnished Council regarding the Subdivision Ordinance.

Meeting Adjourned



AGENDA ITEM 7

DATE OF MEETING: March 7, 2013		DATE SUBMITTED: February 18, 2013
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 2012		
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. 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, 2012. At Thursday's council meeting, Michele Kwiatkowski, audit partner with Seidel, Schroeder & Company, will present the annual audit. 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		
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 2012		
APPROVALS: Carolyn D. Miller		



AGENDA ITEM 8

DATE OF MEETING: March 7, 2013	DATE SUBMITTED: March 4, 2013	
DEPT. OF ORIGIN: City Secretary	SUBMITTED BY: Jeana Bellinger	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Resolution No. R-13-002 Adopting a Records Management Policy for the City of Brenham		
SUMMARY STATEMENT: The State of Texas Local Government Act requires all cities to establish and implement a Records Management Program. In 1996, the City adopted the records control schedules of the Texas State Library and Archives Commission and it is those schedules the City currently uses. The Records Management Policy will be used as a tool to assist all City departments in maintaining records as outlined in the Records Management Program		
A complete copy of the Records Management Policy is not included in the agenda packet. However, a bound copy of the policy will be distributed to the Mayor and Council at the meeting.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Resolution No. R-13-002; (2) City of Brenham's Records Management Policy; (3) Certification of Records Destruction Form; and (4) Request to Destroy Records that do not Appear on Approved Retention Schedules		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve Resolution No. R-13-002 adopting a Records Management Policy for the City of Brenham.		
APPROVALS: Terry K. Roberts		

RESOLUTION NO. R-13-002

A RESOLUTION OF THE CITY OF BREHMAM, TEXAS ADOPTING A RECORDS MANAGEMENT POLICY FOR THE CITY OF BRENHAM

WHEREAS, Article III, Section 21 of the City of Brenham Charter designates the City Secretary to be responsible for all original documents and records of the governing body; and

WHEREAS, The State of Texas Local Government Act requires all cities to establish and implement a Records Management Program; and

WHEREAS, the City of Brenham’s Records Management Program operates under Chapter 2, Article 5 of the Code of Ordinances and establishes the Office of the City Secretary as the Records Management Officer for the City; and

WHEREAS, in 1996, the City adopted the records control schedules of the Texas State Library and Archives Commission and it is those schedules the City currently uses; and

WHEREAS, the Records Management Policy will be used as a tool to assist all City departments in maintaining records as outlined in the Records Management Program;

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

Section 1: The City of Brenham Records Management Policy attached hereto as “Exhibit A” is hereby adopted as the records management policy of the City of Brenham effective March 7, 2013.

Section 2: This Resolution shall take effect immediately upon its passage.

APPROVED on this _____ day of _____, 2013.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary



CITY OF BRENHAM
RECORDS MANAGEMENT
POLICY

*Adopted by Council
March 7, 2013*

Records Management Program

The State of Texas Local Government Act which became effective September 1, 1989 required all cities to establish and implement a Records Management Program.

The City of Brenham's Records Management Program ("Program") operates under Chapter 2, Article 5 of the Code of Ordinances and establishes the Office of the City Secretary as the Records Management Officer for the City. In 1996, the City adopted the records control schedules of the Texas State Library and Archives Commission and it is those schedules that the City uses currently.

The purpose of a Records Management Program is to:

- Reduce the volume of inactive records held in city departments;
- Develop and maintain an efficient retrieval operation for all records;
- Dispose of records that have expired and are approved for destruction;
- Maintain security over city records;
- Maintain a policy for accessibility to confidential records;
- Identify and protect vital records; and
- Communicate the need for an effective records management program.

Definitions

Records Management Officer: The City Secretary, as required in Section 21 of the City of Brenham's Charter and Chapter 2, Article 5 of the Code of Ordinances.

Records Custodian: A representative from each department that will coordinate with the Records Management Officer and Records Coordinator the records to be maintained in their department.

Local Government Record: Any document, paper, letter, book, map photography, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form, or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

Active use records: Records that are held by each department and shall be stored in areas that is easily accessible for day to day operations. They are records that are usually no more than two years old.

Semi-active records: Records that are needed or referred to less frequently, for example, only once a month, but must be retained according to legal minimum retention has been met. Once a record has served its purpose for the operation of the office, the record is ready for final disposition. Some records may be destroyed AFTER meeting the authorized minimum retention; and other records must be retained indefinitely (as permanent documents) when they have historical value, or archival value.

Vital records: Vital records are those that are essential to resume business or continue an organization, to recreate an agency's financial or legal position, or to preserve the rights of employees and citizens. Records series commonly regarded as vital have been so designated. These designations are made by the records management officer in each agency. Records series unique to the agency may be considered vital records, even if not so considered by another agency.

Permanent Records: A record that possesses enduring legal, fiscal or administrative value and must be preserved permanently by the agency.

Non-records: Records that are unofficial and kept only for convenience or reference, stocks of publications and processed documents, and library material intended solely for reference or exhibition. Non-records do not furnish information on organization, function, policy, procedure, operation or other activities and are retained in addition to the official copy. Some examples are: duplicate copies of memos and letter, obsolete blank forms; surplus copies of publications; circulars or bulletins; notes used as reminders; telephone messages; convenience files (working papers); "tickler files. Copies of records that are classified as "timely" may be disposed of when superseded by a new version or voided because they have outlived their usefulness

Records Management Policy

The City of Brenham's Records Management Policy ("Policy") shall be used as a tool to assist each department in maintaining records as outlined in the City's records management program.

Each department shall keep their own records and work closely with the City Secretary's Office to insure consistency in procedures and uniformity of supplies used in the program.

The City Secretary, as the Records Management Officer ("RMO"), has administrative authority over the records Program and each Department Director is responsible for the records within their department.

The City's records retention schedules, and any updates, will be supplied by the City Secretary's Office. These schedules will enable each department to comply with their department's needs regarding destruction and storage of records. A records retention center has been established in the first floor vault at City Hall to store all permanent and original records and those records which preserve the history of Brenham.

Duties of Records Custodian (RC)

Each Director shall designate a Records Custodian for their department that will coordinate with the Records Management Officer the records to be maintained within their department. The Records Custodian will coordinate and implement the policies and procedures of the Program and will disseminate information to their department heads and employees.

The RMO, or her designee, will assist and supervise the initial departmental inventory of records and assist the Custodian's in establishing and maintaining filing systems, standards and procedures for proper record keeping. The RMO, or his/her designee, shall be familiar with all records created and maintained by each department and shall have full access to all departmental records.

Disposition of Records

In accordance with the City of Brenham's Program, the following procedures shall be followed when purging files or destroying records of any kind:

- Departments may purge their files of the non-records WITHOUT consulting with the RMO.
- Records Custodians must check retention schedules PRIOR TO destroying any other records.
 - If the records to be destroyed are unscheduled records, the Custodian must complete a *Request to Destroy Records that do not Appear on Approved Retention Schedules Form* (Exhibit A) and forward it to the RMO for approval. These records cannot be destroyed until authorized by the RMO.
 - If the records to be destroyed are scheduled records, the Records Custodian must complete a *Certification of Records Destroyed Form* (Exhibit B) and forward it to the RMO.

Public Information

Most records maintained by the City are open to citizen inspection and may fall under the Texas Public Information Act. Local government records are defined by the Act as information "collected, assembled, or maintained...by a governmental body" or for such a body if it "owns...or has a right of access to" the information.

To obtain access to or a copy of a local government record a written request must be made to the Office of the City Secretary. It can be made via letter, fax or email. The requestor must provide sufficient information identifying what record(s) the requestor seeking, and as much information as is needed to locate the record(s). The City may not ask the requestor for what purpose the requestor is seeking the record.

If the requested information is not available due to destruction of the record, the City Secretary's Office must be able to provide evidence of its destruction. Therefore, the City Secretary's Office will maintain the original *Request to Destroy Records that do not Appear on Approved Retention Schedules* and the *Certification of Records Destroyed* logs as mandated in the City's Charter and for the purpose of responding to requests for information that fall under the under the Texas Public Information Act.

Records Management Forms

REQUEST TO DESTROY RECORDS THAT DO NOT APPEAR ON APPROVED RETENTION SCHEDULES

REQUEST MUST BE SUBMITTED TO, AND APPROVED BY, THE OFFICE OF THE CITY SECRETARY PRIOR TO DESTRUCTION OF ANY RECORDS.

DEPARTMENT _____

NAME AND TITLE _____

CERTIFICATIONS: Check Appropriate Box

- I hereby certify that the records to be disposed of are correctly listed below, that the destruction of the records is not prohibited by Local Government Code Section 202.002, and that their disposal will be carried out in accordance with Local Government Code Section 202.003.
- I hereby certify that the records listed below have been microfilmed in strict accordance with Local Government Code Chapter 204, and the rules adopted under it. The destruction of the original records will be carried out in accordance with Local Government Code Section 202.003 and the microfilm copy will be maintained as the original records.

SIGNATURE _____ **DATE** _____

RECORD NUMBER	RECORD SERIES TITLE	INCLUSIVE DATES	QUANTITY IN CUBIC FT

- The destruction of the records listed above is approved.
- The destruction of the records listed above is approved subject to the conditions of the attached letter.
- The destruction of the records listed above is NOT approved.

OFFICE OF CITY SECRETARY

Signature _____
Title _____
Date _____



AGENDA ITEM 9

DATE OF MEETING: March 7, 2013	DATE SUBMITTED: March 4, 2013	
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 checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Resolution No. R-13-003 Authorizing the Abandonment of a Portion of Peabody Street West of Church Street and the Conveyance of 0.038 Acres to Unity Theatre Company, and 0.065 Acres to Heather Van Dyke Thielemann, Trustee, and Retaining 0.085 Acres for a City of Brenham Utility Easement		
SUMMARY STATEMENT: This is a small section of Peabody adjacent to the Unity Theatre. The City has no further need to maintain a public roadway on this section and therefore Staff recommends the abandonment of this property. The adjacent property owners were contacted and the property would be recommended to be conveyed according to the attached surveys and deeds. The City will retain an easement on the portion of the property for electric, gas and sewer.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
<p>A. PROS: Use of the property will be consistent with the ownership of the property; maintenance of property will transfer to new property owners</p> <p>B. CONS: None</p>		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Resolution No. R-13-003		
FUNDING SOURCE (Where Applicable): N/A		

RECOMMENDED ACTION: Approve Resolution No. R-13-003 authorizing the abandonment of a portion of Peabody Street West of Church Street and the conveyance of 0.038 acres to Unity Theatre Company, and 0.065 acres to Heather Van Dyke Thielemann, Trustee, and retaining 0.085 acres for a City of Brenham Utility Easement

APPROVALS: Kyle Dannhaus

RESOLUTION NO. R-13-003

A RESOLUTION AUTHORIZING THE ABANDONMENT OF A PORTION OF PEABODY STREET WEST OF CHURCH STREET; RETAINING 0.085 ACRES FOR A CITY OF BRENHAM UTILITY EASEMENT; AUTHORIZING THE CONVEYANCE OF 0.038 ACRES TO UNITY THEATRE COMPANY AND 0.065 ACRES TO HEATHER VAN DYKE THIELEMANN, TRUSTEE; AND AUTHORIZING THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTATION.

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

PART 1: That the following described portion of Peabody Street, including any improvements thereon, being the 225.17 foot portion of Peabody Street immediately west of Church Street, as further described in Exhibit "A," attached hereto and made a part of this resolution for all purposes, be, and the same is hereby ABANDONED, VACATED, and CLOSED insofar as the right, title or easement of the public is concerned.

PART 2: That said portion of Peabody Street described in Exhibit "A" is not needed for public purposes and it is in the public interest of the City of Brenham, Texas, to abandon said described portion of Peabody Street.

PART 3: That the City hereby reserves a public utility easement located within that portion of the Peabody Street so abandoned, said utility easement being the same 0.085 acre utility easement described in Exhibit "B" attached hereto and made a part of this resolution for all purposes.

PART 4: That the abandonment provided for herein shall extend only to the public right, title, and easement in and to the tracts of land described in Part 1 of this Resolution, and shall be construed only to that interest the governing body of the City of Brenham may legally and lawfully abandon, and excepting therefrom the reservations in favor of the City contained herein.

PART 5: That the City Council does hereby authorize the Mayor to take any appropriate action and execute any and all documents necessary to abandon, vacate and close said described portion of Peabody Street as authorized by this Resolution.

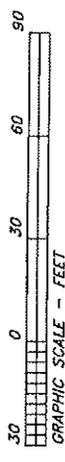
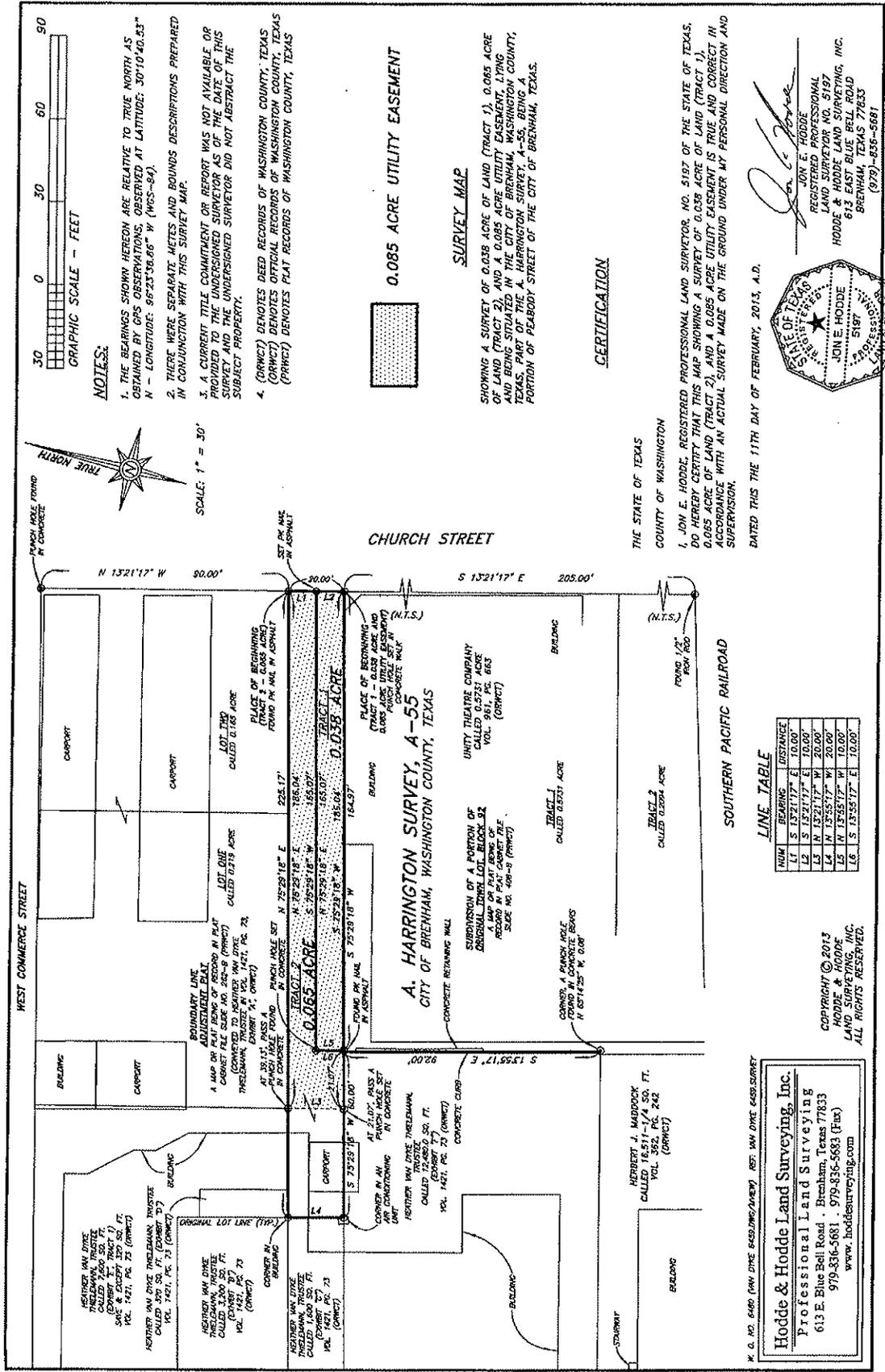
PART 6: That the City Council does hereby authorize and direct the Mayor to convey by Deed Without Warranty all of the interest of the City of Brenham in and to the said 0.038 acre portion of Peabody Street described in Exhibit “C” to the Unity Theatre Company. Further, that the City Council does hereby authorize and direct the Mayor to convey by Deed Without Warranty all of the interest of the City of Brenham in and to the said 0.065 acre portion of Peabody Street described in Exhibit “D” to Heather Van Dyke Thielemann, Trustee.

RESOLVED this 7th day of March, 2013.

Milton Y. Tate, Jr., Mayor
City of Brenham

ATTEST:

Jeana Bellinger, TRMC
City Secretary



NOTES:

1. THE BEARINGS SHOWN HEREON ARE RELATIVE TO TRUE NORTH AS OBTAINED BY GPS OBSERVATIONS, OBSERVED AT LATITUDE: 30°10'40.83" N - LONGITUDE: 96°23'58.66" W (NAD83-84).
2. THERE WERE SEPARATE METES AND BOUNDS DESCRIPTIONS PREPARED IN CONJUNCTION WITH THIS SURVEY MAP.
3. A CURRENT TITLE COMMITMENT OR REPORT WAS NOT AVAILABLE, OR PROVIDED TO THE UNDERSIGNED SURVEYOR AS OF THE DATE OF THIS SURVEY AND THE UNDERSIGNED SURVEYOR DID NOT ABSTRACT THE SUBJECT PROPERTY.
4. (ORMC) DENOTES DEED RECORDS OF WASHINGTON COUNTY, TEXAS (ORMC) DENOTES OFFICIAL RECORDS OF WASHINGTON COUNTY, TEXAS (PRMC) DENOTES PLAT RECORDS OF WASHINGTON COUNTY, TEXAS

SCALE: 1" = 30'

0.085 ACRE UTILITY EASEMENT

SURVEY MAP

SHOWING A SURVEY OF 0.038 ACRE OF LAND (TRACT 1), 0.085 ACRE OF LAND (TRACT 2), AND A 0.085 ACRE UTILITY EASEMENT, LYING AND BEING SITUATED IN THE CITY OF BRENHAM, WASHINGTON COUNTY, TEXAS, PART OF THE A. HARRINGTON SURVEY, A-55, BEING A PORTION OF PEABODY STREET OF THE CITY OF BRENHAM, TEXAS.

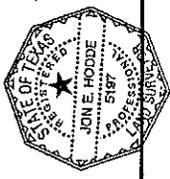
CERTIFICATION

THE STATE OF TEXAS
COUNTY OF WASHINGTON

I, JON E. HODDE, REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 5197 OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS MAP SHOWING A SURVEY OF 0.038 ACRE OF LAND (TRACT 1), 0.085 ACRE OF LAND (TRACT 2), AND A 0.085 ACRE UTILITY EASEMENT IS TRUE AND CORRECT IN ACCORDANCE WITH AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY PERSONAL DIRECTION AND SUPERVISION.

DATED THIS THE 11TH DAY OF FEBRUARY, 2013, A.D.

Jon E. Hodde
JON E. HODDE
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5197
HODDE & HODDE LAND SURVEYING, INC.
813 EAST BLUE BELL ROAD
BREHMAN, TEXAS 77833
(979)-836-5681



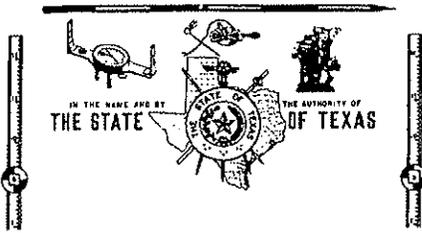
LINE TABLE

NUM	BEARING	DISTANCE
L1	S 13°21'17" E	10.00'
L2	S 13°21'17" E	10.00'
L3	N 13°21'17" W	20.00'
L4	N 13°21'17" W	20.00'
L5	N 13°21'17" W	10.00'
L6	S 13°21'17" E	10.00'

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H. G. RD. 640 (RAW DIVE BASIN/DIVISION) REF: VAN DIVE 640 SURVEY

Hodde & Hodde Land Surveying, Inc.
Professional Land Surveying
613 E. Blue Bell Road, Brenham, Texas 77833
979-836-5681, 979-836-5683 (FAX)
www.hoddesurveying.com



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EXHIBIT

"B"

Page 1 of 2

W. O. No. 6480

THE STATE OF TEXAS

COUNTY OF WASHINGTON

CITY OF BRENHAM, TEXAS

SURVEYOR'S LEGAL DESCRIPTION

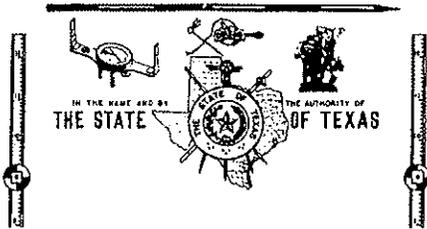
0.085 ACRE UTILITY EASEMENT

All that certain easement tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas, part of the A. Harrington Survey, A-55, being a portion of Peabody Street of the City of Brenham, Texas, and being more fully described by metes and bounds as follows, To-Wit:

BEGINNING at a punch hole set in concrete at the intersection of the West right of way line of Church Street with the South right of way line of said Peabody Street for the Southeast corner hereof, being the Southeast corner of a 0.038 acre tract (Tract 1) surveyed this date out of said Peabody Street to be conveyed to Unity Theatre Company, being the Northeast corner of Tract 1, called 0.5731 acre of the Subdivision of a portion of Original Town Lot, Block 92, as recorded in Plat Cabinet File Slide No. 408-B, in the Plat Records of Washington County, Texas, being the same land conveyed to Unity Theatre Company in Volume 961, Page 663, in the Official Records of Washington County, Texas, a 1/2 inch iron rod found for the Southeast corner of Tract 2, called 0.2094 acre of said Subdivision of a portion of said Original Town Lot, Block 92, being at the intersection of the West right of way line of said Church Street with the North right of way line of the Southern Pacific Railroad bears S 13°21'17" E 205.00 feet;

THENCE along the South line hereof and of said 0.038 acre tract (Tract 1) surveyed this date, being along a portion of a South line of a 0.065 acre tract (Tract 2) surveyed this date out of said Peabody Street to be conveyed to Heather Van Dyke Thielemann, being along the South right of way line of said Peabody Street, being along a North line of said Tract 1, called 0.5731 acre of said Subdivision of a portion of Original Town Lot, Block 92, and being along a portion of the North line of the Heather Van Dyke Thielemann, Trustee tract called 12,480.0 square feet (Exhibit "F") as described in the deed from Lewis Edward Van Dyke and spouse, Sally Stuckert Van Dyke to Heather Van Dyke Thielemann, Trustee, dated December 7, 2012, as recorded in Volume 1421, Page 73, in said Official Records of Washington County, Texas, S 75°29'18" W at 164.97 feet pass a PK nail found in asphalt for a Northwest corner of said Tract 1, called 0.5731 acre, being the Southwest corner of said 0.038 acre tract surveyed this date, being a Southeast corner of said 0.065 acre tract surveyed this date, also being the Northeast corner of said Heather Van Dyke Thielemann, Trustee tract called 12,480.0 square feet, and at a total distance of 186.04 feet to a punch hole set in concrete for the Southwest corner hereof, being on the South right of way line of said Peabody Street, being on a South line of said 0.065 acre tract surveyed this date, also being on the North line of said Thielemann tract called 12,480.0 square feet;

Sheet No. 1 of 2



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EXHIBIT
"B"

Page 2 of 2

THENCE along the West line hereof, N 13°21'17" W 20.00 feet to a punch hole found in concrete on the North right of way line of said Peabody Street for the Northwest corner hereof, being the Southwest corner of Lot One (called 0.219 acre), as shown on the Boundary Line Adjustment Plat to revise the division line of a portion of Lot 2A and Lot 3A, Block 86, Original Town Tract, a map or plat being of record in Plat Cabinet File Slide No. 262-B in said Plat Records of Washington County, Texas, common with the Southeast corner of the Heather Van Dyke Thielemann, Trustee tract called 7,600 square feet (Exhibit "E", Tract 1), save & except 320 square feet, as described in said Volume 1421, Page 73, said Lot One (called 0.219 acre) and Lot Two (called 0.165 acre) of said Boundary Line Adjustment Plat being the same land conveyed to Heather Van Dyke Thielemann, Trustee as Exhibit "A" in said Volume 1421, Page 73, in said Official Records;

THENCE along the North line hereof, being along a portion of the North line of said 0.065 acre tract surveyed this date, being along the North right of way line of said Peabody Street, also being along the South line of said Lot One (called 0.219 acre) and said Lot Two (called 0.165 acre) of said Boundary Line Adjustment Plat, N 75°29'18" E 186.04 feet to a PK nail found in asphalt for the Northeast corner hereof and of said 0.065 acre tract surveyed this date, being at the intersection of the West right of way line of said Church Street with the North right of way line of said Peabody Street, also being the Southeast corner of said Lot Two (called 0.165 acre) of said Boundary Line Adjustment Plat, a punch hole found in concrete at the intersection of the West right of way line of said Church Street with the South right of way line of West Commerce Street for the Northeast corner of said Lot Two (called 0.165 acre) bears N 13°21'17" W 90.00 feet;

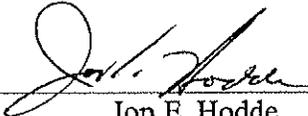
THENCE along the East line hereof, being along the West right of way line of said Church Street, being along the East line of said 0.038 acre tract surveyed this date, also being along an East line of said 0.065 acre tract surveyed this date, S 13°21'17" E 20.00 feet to the place of beginning and containing 0.085 acre of land.

The bearings stated herein are relative to True North as obtained by GPS Observations, observed at Latitude: 30°10'40.53" N – Longitude: 96°23'38.86" W (WGS-84).

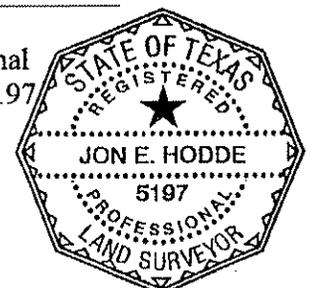
There was a separate survey map prepared in conjunction with this metes and bounds description.

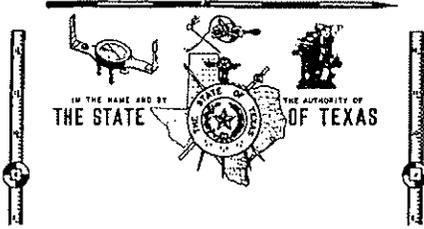
I, Jon E. Hodde, Registered Professional Land Surveyor No. 5197 of the State of Texas, do hereby certify that the foregoing description describing a 0.085 acre utility easement is true and correct in accordance with an actual survey made on the ground under my personal direction and supervision.

Dated this the 11th day of February, 2013, A. D.



Jon E. Hodde
Registered Professional
Land Surveyor No. 5197





**HODDE & HODDE
LAND SURVEYING, INC.**

Registered Professional Land Surveying

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W. O. No. 6480

THE STATE OF TEXAS

CITY OF BRENHAM, TEXAS

COUNTY OF WASHINGTON

TO

UNITY THEATRE COMPANY

SURVEYOR'S LEGAL DESCRIPTION

0.038 ACRE (TRACT 1)

All that certain tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas, part of the A. Harrington Survey, A-55, being a portion of Peabody Street of the City of Brenham, Texas, and being more fully described by metes and bounds as follows, To-Wit:

BEGINNING at a punch hole set in concrete at the intersection of the West right of way line of Church Street with the South right of way line of Peabody Street for the Southeast corner hereof, being the Northeast corner of Tract 1, called 0.5731 acre of the Subdivision of a portion of Original Town Lot, Block 92, as recorded in Plat Cabinet File Slide No. 408-B, in the Plat Records of Washington County, Texas, as conveyed to Unity Theatre Company in Volume 961, Page 663, in the Official Records of Washington County, Texas, also being the southeast corner of a 0.085 acre utility easement surveyed this date, a 1/2 inch iron rod found for the Southeast corner of Tract 2, called 0.2094 acre of the Subdivision of a portion of said Original Town Lot, Block 92, being at the intersection of the West right of way line of said Church Street with the North right of way line of the Southern Pacific Railroad bears S 13°21'17" E 205.00 feet;

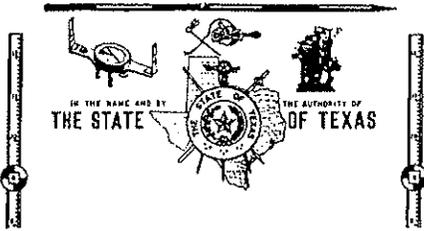
THENCE along the South right of way line of said Peabody Street for the South line hereof and the South line of said 0.085 acre utility easement surveyed this date, being along a North line of said Tract 1, called 0.5731 acre of said Subdivision of a portion of Original Town Lot, Block 92, S 75°29'18" W 164.97 feet to a PK nail found in asphalt on the South right of way line of said Peabody Street for the Southwest corner hereof, common with a Southeast corner of a 0.065 acre tract (Tract 2) surveyed this date, being the Northeast corner of the Heather Van Dyke Thielemann, Trustee tract called 12,480.0 square feet (Exhibit "F"), as described in the deed from Lewis Edward Van Dyke and spouse, Sally Stuckert Van Dyke to Heather Van Dyke Thielemann, Trustee, dated December 7, 2012, as recorded in Volume 1421, Page 73, in said Official Records of Washington County, Texas, being a Northwest corner of said Tract 1, called 0.5731 acre, the Southeast corner of said Thielemann, Trustee tract, called 12,480.0 square feet, common with an interior corner of said Tract 1, called 0.5731 acre bears S 13°55'17" E 92.00 feet, from which a punch hole found in concrete bears N 65°14'25" W 0.08 feet;

EXHIBIT

"C"

Sheet No. 1 of 2

Page 1 of 2



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THENCE along the West line hereof, N 13°55'17" W 10.00 feet to a punch hole set in concrete in the center of said Peabody Street for the Northwest corner hereof, being an interior corner of said 0.065 acre tract (Tract 2) surveyed this date;

THENCE along the center of said Peabody Street for the North line hereof, being along a south line of said 0.065 acre tract (Tract 2) surveyed this date, N 75°29'18" E 165.07 feet to a PK nail set in asphalt at the intersection of the center of Peabody Street with the West right of way line of said Church Street for the Northeast corner hereof, being a Southeast corner of said 0.065 acre tract (Tract 2) surveyed this date, also being on the East line of said 0.085 acre utility easement surveyed this date;

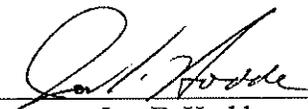
THENCE along the West right of way line of said Church Street for the East line hereof, also being along a portion of the East line of said 0.085 acre utility easement surveyed this date, S 13°21'17" E 10.00 feet to the place of beginning and containing 0.038 acre of land.

The bearings stated herein are relative to True North as obtained by GPS Observations, observed at Latitude: 30°10'40.53" N – Longitude: 96°23'38.86" W (WGS-84).

There was a separate survey map prepared in conjunction with this metes and bounds description.

I, Jon E. Hodde, Registered Professional Land Surveyor No. 5197 of the State of Texas, do hereby certify that the foregoing description describing 0.038 acre of land is true and correct in accordance with an actual survey made on the ground under my personal direction and supervision.

Dated this the 11th day of February, 2013, A. D.



 Jon E. Hodde
 Registered Professional
 Land Surveyor No. 5197

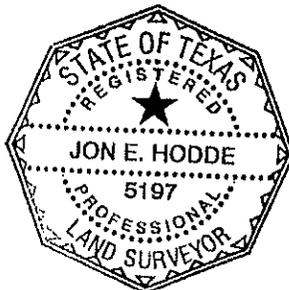
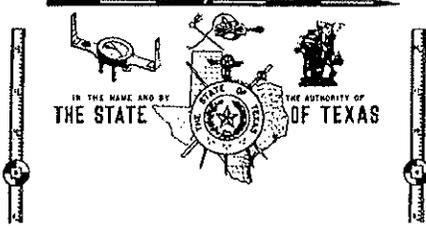


EXHIBIT
 "C"

Page 2 of 2



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THE STATE OF TEXAS

CITY OF BRENHAM, TEXAS

COUNTY OF WASHINGTON

TO

HEATHER VAN DYKE
THIELEMANN, TRUSTEE

SURVEYOR'S LEGAL DESCRIPTION

0.065 ACRE (TRACT 2)

All that certain tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas, part of the A. Harrington Survey, A-55, being a portion of Peabody Street of the City of Brenham, Texas, and being more fully described by metes and bounds as follows, To-Wit:

BEGINNING at a PK nail set in asphalt at the intersection of the West right of way line of Church Street with the North right of way line of said Peabody Street for the Northeast corner hereof and of a 0.085 acre utility easement surveyed this date, being the Southeast corner of the called 0.165 acre tract (Lot Two), as shown on the Boundary Line Adjustment Plat to revise the division line of a portion of Lot 2A and Lot 3A, Block 86, Original Town Tract, a map or plat being of record in Plat Cabinet File Slide No. 262-B in the Plat Records of Washington County, Texas, said Lot One and Lot Two of said Boundary Line Adjustment Plat being the same land described as Exhibit "A" in the deed from Lewis Edward Van Dyke and spouse, Sally Stuckert Van Dyke to Heather Van Dyke Thielemann, Trustee, dated December 7, 2012, as recorded in Volume 1421, Page 73, in the Official Records of Washington County, Texas, a punch hole found in concrete at the intersection of the West right of way line of Church Street with the South right of way line of West Commerce Street for the Northeast corner of said 0.165 acre (Lot Two) of said Boundary Line Adjustment Plat bears N 13°21'17" W 90.00 feet;

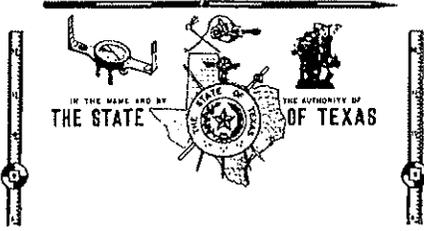
THENCE along an East line hereof, being a portion of the East line of said 0.085 acre utility easement surveyed this date, S 13°21'17" E 10.00 feet to the center of said Peabody Street for a Southeast corner hereof, common with the Northeast corner of a 0.038 acre tract (Tract 1) surveyed this date out of said Peabody Street;

THENCE along the center of said Peabody Street for a South line hereof, being the North line of said 0.038 acre tract (Tract 1) surveyed this date, S 75°29'18" W 165.07 feet to an interior corner hereof, being the Northwest corner of said 0.038 acre tract (Tract 1);

EXHIBIT
"D"

Sheet No. 1 of 3

Page 1 of 3



HODDE & HODDE
LAND SURVEYING, INC.
Registered Professional Land Surveying
613 E. Blue Bell Road
Brenham, Texas 77833-2411

OFFICE PHONE: (979) 836-5681
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www.hoddesurveying.com

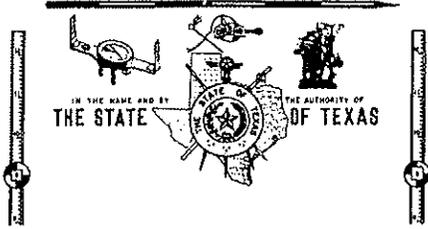
THENCE along the West line of said 0.038 acre tract (Tract 1) surveyed this date for an East line hereof, S 13°55'17" E 10.00 feet to a PK nail found in asphalt on the South right of way line of said Peabody Street for a Southeast corner hereof, being the Northeast corner of the Heather Van Dyke Thielemann, Trustee tract called 12,480.0 square feet (Exhibit "F") as described in said deed recorded in Volume 1421, Page 73, in said Official Records, being a Northwest corner of Tract 1, called 0.5731 acre of said Subdivision of a portion of Original Town Lot, Block 92, being the same land conveyed to Unity Theatre Company in Volume 961, Page 663, in said Official Records, also being the Southwest corner of said 0.038 acre tract (Tract 1) surveyed this date, the Southeast corner of said Heather Van Dyke Thielemann, Trustee tract, called 12,480.0 square feet, common with an interior corner of said Tract 1, called 0.5731 acre, Plat Cabinet File Slide No. 408-B, bears S 13°55'17" E 92.00 feet, from which a punch hole found in concrete bears N 65°14'25" W 0.08 feet;

THENCE along the South right of way line of said Peabody Street for a South line hereof, being along a portion of the South line of said 0.085 acre utility easement surveyed this date, being along a portion of the North line of said Heather Van Dyke Thielemann, Trustee tract, called 12,480.0 square feet, S 75°29'18" W, at 21.07 feet pass a punch hole set in concrete for the Southwest corner of said 0.085 acre utility easement, and at a total distance of 60.00 feet to a corner in an air conditioning unit for the Southwest corner hereof, being the Southwest corner of said Peabody Street, being the Southeast corner of the Heather Van Dyke Thielemann, Trustee tract called 1,600 square feet (Exhibit "C") as described in Volume 1421, Page 73, in said Official Records, also being on the North Line of said Heather Van Dyke Thielemann, Trustee tract called 12,480.0 square feet, Volume 1421, Page 73;

THENCE along the West line of said Peabody street for the West line hereof, also being along the East line of said Thielemann, Trustee tract called 1,600 square feet, N 13°55'17" W 20.00 feet to a corner in building for the Northwest corner hereof, being the Southeast corner of the Heather Van Dyke Thielemann, Trustee tract called 3,200 square feet (Exhibit "B") as described in Volume 1421, Page 73, in said Official Records, being the Northeast corner of said Heather Van Dyke Thielemann, Trustee tract called 1,600 square feet, also being the Southwest corner of the Heather Van Dyke Thielemann, Trustee tract called 320 square feet (Exhibit "D") as described in Volume 1421, Page 73, in said Official Records;

THENCE along the North right of way line of said Peabody street for the North line hereof, being partially along the North line of said 0.085 acre utility easement surveyed this date, being along the South line of said Heather Van Dyke Thielemann, Trustee tract called 320 square feet (Exhibit "D"), being along a South line of the Heather Van Dyke Thielemann, Trustee tract called 7,600 square feet (Exhibit "E", Tract 1) save & except 320 square feet, as described in Volume 1421, Page 73, in said Official Records, also being along the South line of Lot One (called 0.219 acre) and along the South Line of said Lot Two (called 0.165 acre) of said Boundary Line Adjustment Plat,

EXHIBIT
"D"



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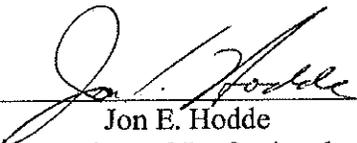
recorded in Plat Cabinet File Slide No. 262-B, in said Plat Records of Washington County, Texas, N 75°29'18" E, at 39.13 feet pass a punch hole found in concrete for the Southwest corner of said Lot One called 0.219 acre, common with the Southeast corner of said Heather Van Dyke Thielemann, Trustee tract called 7,600 square feet (Exhibit "E"), Volume 1421, Page 73, also being the Northwest corner of said 0.085 acre utility easement surveyed this date, also being on the North right of way line of said Peabody Street, and at a total distance of 225.17 feet to the place of beginning and containing 0.065 acre of land.

The bearings stated herein are relative to True North as obtained by GPS Observations, observed at Latitude: 30°10'40.53" N – Longitude: 96°23'38.86" W (WGS-84).

There was a separate survey map prepared in conjunction with this metes and bounds description.

I, Jon E. Hodde, Registered Professional Land Surveyor No. 5197 of the State of Texas, do hereby certify that the foregoing description describing 0.065 acre of land is true and correct in accordance with an actual survey made on the ground under my personal direction and supervision.

Dated this the 11th day of February, 2013, A. D.



Jon E. Hodde
Registered Professional
Land Surveyor No. 5197

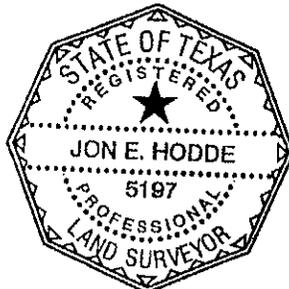


EXHIBIT
"D"



AGENDA ITEM 10

DATE OF MEETING: March 7, 2013	DATE SUBMITTED: March 4, 2013	
DEPT. OF ORIGIN: City Secretary	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 to Repeal Ordinance O-07-009 and Grant a Non-Exclusive Franchise to Budget Roll-Off Service to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits		
SUMMARY STATEMENT: At the October 4, 2012 council meeting, a sanitation franchise agreement was approved by Council for Texas Disposal Systems. At that meeting Public Works Director, Dane Rau, advised Council that the term of the sanitation franchise with Texas Disposal was only for 180 days because staff was in the process of reviewing the current sanitation franchise ordinance and would be bringing back an updated ordinance within the 180 days.		
<p>The past few weeks I have been working with Dane Rau and the City Attorney to update the city’s sanitation franchise ordinance. A redlined version of the current ordinance, showing all of the recommended staff changes, is included in this packet for your review. While some of the changes are strictly grammatical and/or spelling corrections, there are few significant ones that I would like to bring to your attention:</p> <ul style="list-style-type: none"> ➤ <u>Section 5 - Rates to be Charged:</u> Requires that any time a franchise holder changes their prices, and the prices are agreed to by their customers, the holder must provide the City with a copy of their rates. ➤ <u>Section 6 - Payments to the City:</u> Moved the payment due date back to the 25th of the month. Clarified how payments will be handled if the 25th falls on a holiday or week-end. ➤ <u>Section 7 - Access to Records & Reporting:</u> The city is subject to the Texas Public Information Act and, if we receive a request for information related to possible trade secrets and/or certain commercial or financial information, the City will notify the holder as outlined in the Act. ➤ <u>Section 8 – Placement of Containers:</u> Wording was added to this Section to allow the city to charge a franchise holder for any damage done to the city streets. ➤ <u>Section 14 – Interruption of Service or Default:</u> This section protects the franchise holder from being in default of the ordinance if they cancel a customer’s service due to non-payment. It also gives the holder 72-hours to respond to any interruption of service claims. ➤ <u>Section 24 – Term of Agreement:</u> This section clarifies the termination language and sets an effective date that corresponds with the City’s fiscal year (October 1 to September 30). 		

Budget Roll-Off Service has had a franchise to provide roll-off containers within the city limits since May, 2007. They average about \$1,573 a year in franchise taxes. This ordinance will get Budget Roll-Off Service on the same expiration date as all other sanitation franchise holders (October 1 thru September 30).

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS:

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) A redlined version of the current sanitation franchise ordinance indicating all the recommended changes; and (2) a draft of a new Ordinance.

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve an Ordinance on its first reading to repeal Ordinance O-07-009 and grant a non-exclusive franchise to Budget Roll-Off Service to operate a roll-off container service for residents, businesses, and industries inside Brenham city limits

APPROVALS: Terry K. Roberts

ORDINANCE NO. _____

AN ORDINANCE GRANTING _____ ITS SUCCESSORS AND ASSIGNS, A FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF BRENHAM FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF COLLECTING SOLID WASTE FROM COMMERCIAL, RESIDENTIAL AND INDUSTRIAL SITES USING ROLL-OFF CONTAINERS AND/OR COMMERCIAL COMPACTORS; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR PERIOD OF GRANT; FOR ASSIGNMENT; FOR METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INVALIDITY.

WHEREAS, the City of Brenham, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham may, by ordinance and charter, grant franchises to other entities for the use of public streets, alleys and thoroughfares within the corporate limits of CITY and for the collection and disposal of solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection and disposal of certain solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham hereinafter referred to as "CITY" desires to grant this franchise to _____, under the terms of this Agreement as set out below.

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

**SECTION 1.
DEFINITIONS**

Agreement. This contract between the City of Brenham and for the provision of certain roll-off container and/or commercial compactor service within the corporate limits of the City of Brenham under certain terms and conditions set out herein.

City of Brenham. Also referred to as "CITY" in this Agreement.

City Council. Also referred to as "COUNCIL" denoting the governing body of the City of Brenham.

Customers. Those industrial, residential, and/or commercial premises located within the CITY that generates solid waste requiring collection using roll-off containers and/or commercial compactors.

Solid Waste. All putrescible and nonputrescible solid, semi-solid, and liquid wastes, including residential, industrial, commercial and municipal garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes.

Roll-Off Containers. A type of solid waste industry container that is loaded by a winch truck. Also referred to as "container".

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Commercial Compactor. A type of solid waste industry container that is loaded by a winch truck and compacts solid waste. Also referred to as "compactor".

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_____ Herein after referred to as _____ as "_____". The party contracting with the CITY for roll-off container and/or commercial compactor service, which contains demolition/construction debris or solid waste.

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**SECTION 2.
GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED**

For and in consideration of the compliance by _____ with the covenants and conditions herein set forth, and the Charter, Ordinances and Regulations of the City governing the collection and disposal of solid waste, CITY hereby grants to _____ a non-exclusive franchise for use of designated public streets, alleys and thoroughfares within the corporate limits of City for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and/or commercial compactors from commercial, residential and industrial sites within the jurisdictional limits of CITY, as approved by the City Manager or his designee.

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**SECTION 3.
AUTHORITY FOR TO PROVIDE SERVICE**

CITY hereby grants to _____ the privilege to collect from commercial, residential, and industrial customers within the City limits solid waste using roll-off containers and/or commercial compactors only.

**SECTION 4.
DISPOSAL SITE TO BE USED**

Unless approved otherwise in writing by the CITY, _____ shall utilize any Type I permitted landfill that _____ deems appropriate and is authorized for disposal of all solid waste, which is collected by _____ from within the corporate limits of the CITY.

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**SECTION 5.
RATES TO BE CHARGED**

A written Schedule of Rates that _____ shall charge for the aforementioned services shall be provided to each customer, and such Schedule of Rates may be revised periodically as agreed by _____ and its customers, _____ shall immediately provide the CITY with copies of any and all revised Schedule of Rates documents,

Deleted: Attached hereto as Exhibit "A" and incorporated herein by reference is the

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Deleted: and must be submitted to and approved by the City Council upon each revision and will be attached to the original franchise agreement.

**SECTION 6.
PAYMENTS TO CITY**

For and in consideration of the use of designated streets, alleys, and thoroughfares as well as in consideration of the covenants and agreements contained herein, _____ agrees and shall pay to CITY upon acceptance of this Agreement and thereafter during the term hereof, a sum equivalent to five percent (5%) of _____ monthly gross revenues generated from _____ provision of solid waste roll-off container collection services within the CITY excluding actual landfill tipping charges.

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Any revenue received by _____ in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into _____ monthly gross revenue. Said payment shall be paid monthly to the City of Brenham Attn: City Secretary and must be received by the CITY no later than the twenty-fifth (25th) day of the month following the end of the previous month. If the payment due date falls on a Saturday, Sunday or other holiday designated by the CITY, the payment must be received by the CITY on the next regular business day.

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Payments received by the CITY after the due date shall be assessed a ten percent (10%) penalty on the outstanding franchise fee amount owed under this Section.

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Failure by _____ to pay amounts due under this Agreement, after written notice by CITY, shall constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM), and/or any other remedy available to the CITY in law or equity.

SECTION 7. ACCESS TO RECORDS & REPORTING

CITY shall have access to _____ records, billing records of those customers served by _____ and all papers relating to this Agreement and the operation of solid waste roll-off container collection and disposal services within the CITY. Access by CITY to _____ records shall be provided to CITY within ten (10) business days, after written notice to _____ during normal business hours.

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The following records and reports shall be filed quarterly with the City Secretary or his/her designee:

A. Reports of all complaints, investigations, and actions taken by _____ with regard to services provided pursuant to this Agreement.

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- Deleted: and
- Deleted: received

B. A listing of all _____ accounts served and monthly revenue derived from roll-off containers placed in the CITY under the terms of this Agreement. The reports should include: a unique customer identification or account number, frequency of pick-up, size of container and monthly charges.

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- Deleted: name, address

The CITY is subject to the Texas Public Information Act ("Act"). Generally, the Act requires the release of requested information by the CITY, but there are exceptions. If the requested information meets the criteria outlined in the exceptions, the CITY may decline to release the information for the purpose of requesting a decision from the Texas Attorney General's Office. The Act excepts from public disclosure trade secrets and certain commercial or financial information. The Act states the CITY may withhold:

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A. A trade secret obtained from a person and privileged or confidential by statute or judicial decision; or

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B. Commercial or financial information for which it is determined based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

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Pursuant to Section 552.305 of the Act, the CITY is obligated to make a good faith attempt to contact third parties who have a trade secret interest or a commercial financial interest in the information that's been requested so that the third party has an opportunity to submit reasons to the Texas Attorney General's Office why the information should be withheld or released.

The CITY will comply with Section 552.305 of the Act with regard to any requests for records concerning _____ that invoke Section 552.305.

**SECTION 8.
PLACEMENT OF CONTAINERS**

All roll-off containers and/or compactors placed for service within CITY shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall _____ place containers on public streets, alleys and/or thorough fares without the prior written approval of the CITY. CITY reserves the right to specify to _____ the exact location of any roll-off container(s) it places for service in CITY.

_____ agrees and acknowledges that it shall be liable for any and all damages it causes to any public street, alley and/or thorough fare, and associated improvements and _____ will pay CITY's entire construction costs and other expenses associated with repairing and/or replacing the damaged public street, alley and/or through fare, and associated improvements.

**SECTION 9.
CONTAINER MAINTENANCE**

_____ agrees to properly maintain as necessary, including but not limited to cleaning and painting, all roll-off containers placed for service within CITY.

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**SECTION 10.
COMPLAINTS REGARDING SERVICE/SPILLAGE**

_____ shall receive and directly respond to any complaints pertaining to service from their roll-off containers and/or compactor customers located within CITY. However, any such complaints received by CITY shall be forwarded to _____ within twenty four (24) hours of their receipt by CITY. _____ shall respond to all complaints within twenty four (24) hours of receiving notice of such complaint from CITY and shall report to CITY as to the action taken. Failure by _____ to respond and report to CITY on action taken within this twenty four (24) hour period may subject _____ to a \$25.00 per incident charge from CITY payable with the next payment due to CITY under Section 6 of this Agreement.

_____ agrees that during transport all vehicles used by _____ in the removal of solid waste shall be properly covered to prevent spillage, blowing, or scattering of refuse onto public streets or properties adjacent thereto. All equipment necessary for the performance of this Agreement shall be in good condition and repair. A standby vehicle shall always be available. _____ vehicles shall at all times be clearly marked with _____ name in letters not less than three (3) inches in height.

**SECTION 11.
OBEISANCE OF LAWS**

_____ agrees that it shall comply with all laws, policies, rules and regulations of the United States, State of Texas, and CITY. All collections made hereunder shall be made by _____ without unnecessary noise, disturbance, or commotion.

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SECTION 12.

UNDERSTANDINGS PERTAINING TO NON-EXCLUSIVITY

It is understood by and between the parties that this Agreement executed by and between the parties on the ____ day of _____, 20____, constitutes the only agreement between the parties. It is further understood and agreed that there are no other agreements between these parties with regard to the disposal of commercial, industrial or residential solid waste in the CITY using roll-off containers/compactors and that this Agreement does not authorize _____ to utilize the streets, alleys or public ways to dispose of commercial, industrial, or residential solid waste other than demolition and construction debris. Both parties agree and understand that nothing in this Agreement conveys to _____ an exclusive franchise for the services described in this Agreement and that this Agreement is non-exclusive.

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**SECTION 13.
OWNERSHIP OF MATERIALS COLLECTED**

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Nothing herein shall create or be construed to convey any title to CITY of any solid waste collected pursuant to the provisions of this agreement.

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**SECTION 14.
INTERRUPTION OF SERVICE OR DEFAULT**

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A. Termination of Service. In the event that _____ terminates service to any customer with the CITY limits for cause, _____ must notify the CITY through certified mail within forty-eight (48) hours of termination and state the cause of such termination.

B. Excessive Interruption in Service. If the interruption in service continues for a period of seventy-two (72) hours or more, then it may constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM).

**SECTION 15.
FAILURE TO PERFORM**

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It is expressly understood and agreed by the parties that if at any time _____ shall fail to perform any of the terms, covenants, or conditions herein set forth, CITY may after a hearing as described herein, revoke and cancel the Agreement by and between the parties and said Agreement shall be null and void. Upon the determination by the staff of CITY that a hearing should be held before the City Council, CITY shall mail notice of the hearing to _____, at the address designated herein or at such address as may be designated from time to time, by registered or certified mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council and _____ shall be allowed to present evidence and given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the CITY.

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**SECTION 16.
INDEMNIFICATION**

In the event CITY is damaged due to the act, omission, mistake, fault or default of _____, then _____ shall indemnify and hold CITY harmless for such damage.

_____ is to indemnify and hold CITY harmless for any disposal of any prohibited material whether intentional or inadvertent.

_____ shall indemnify and hold CITY harmless from any and all injuries to or claims of adjacent property owners caused by _____, its agents, employees, and representatives.

_____ agrees to and shall indemnify and hold harmless CITY, its officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the work done by _____ under this Agreement, regardless of whether such injuries, death or damages are caused in whole or in part by the negligence, including but not limited to the contractual comparative negligence, concurrent negligence or gross negligence, of CITY.

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SECTION 17. INSURANCE

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_____ shall procure and maintain at its sole cost and expense for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by _____, its agents, representatives, volunteers, employees or subcontractors.

_____ 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 _____ insurance and shall not contribute to it.

_____ shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

Certificates of Insurance and endorsements shall be furnished to CITY and approved by CITY before work commences.

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A. STANDARD INSURANCE POLICIES REQUIRED

1. Commercial General Liability Policy
2. Automobile Liability Policy
3. Worker's Compensation Policy

B. GENERAL REQUIREMENTS APPLICABLE TO ALL POLICIES

1. General Liability and Automobile Liability insurance shall be written by a carrier with a better rating in accordance with the current Best Key Rating Guide.
2. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
3. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
4. Claims Made Policies will not be accepted.
5. The CITY, its officials, employees and volunteers are to be added as "Additional Insured" to the General Liability and the Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officials, employees or volunteers.
6. A Waiver of Subrogation in favor of the CITY, with respect to the General Liability, Automobile Liability, and Workers' Compensation insurance must be included.
7. 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.
8. Upon request, certified copies of all insurance policies shall be furnished to the CITY.

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C. COMMERCIAL GENERAL LIABILITY

1. Minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.
2. No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

D. AUTOMOBILE LIABILITY

1. Minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.

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E. WORKERS' COMPENSATION

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1. Employer's Liability limits of \$500,000/\$500,000/ \$500,000 are required.

F. CERTIFICATES OF INSURANCE

- 1. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:
 - a. The company is licensed and admitted to do business in the State of Texas.
 - b. The insurance set forth by the insurance company are underwritten on forms which have been approved by the Texas Department of Insurance or ISO.
 - c. Sets forth all endorsements as required above and insurance coverage's as previously set forth herein.
 - d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the CITY.
 - e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

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**SECTION 18,
ASSIGNMENT**

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This Agreement and the rights and obligations contained herein may not be assigned by _____ without the specific prior written approval of the City Council. Any assignment by _____ without prior written approval of the City Council shall be null and void.

**SECTION 19,
SAFETY**

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_____ shall perform the collection in accordance with applicable laws, codes, ordinances and regulations of the United States, State of Texas, Washington County, and CITY, and in compliance with OSHA and other laws as they apply to its employees. It is the intent of the parties that the safety precautions are a part of the collection techniques for which _____ is solely responsible. In the carrying on of the work herein provided for, _____ shall use all proper skill and care, and _____ shall exercise all due and proper precautions to prevent injury to any property, person or persons. _____ assumes responsibility and liability and hereby agrees to indemnify the CITY, from any liability caused by _____ failure to comply with applicable federal, state or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.

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**SECTION 20,
AD VALOREM TAXES**

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_____ agrees to render all personal property utilized in its solid waste operation services to Washington County Appraisal District so that said personal property will be the subject of ad valorem taxation for the benefit of CITY.

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**SECTION 21,
NOTICES**

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All notices required under the terms of this Agreement to be given by either party to the other shall be in writing, and unless otherwise specified in writing by the respective parties, shall be sent to the parties at the addresses following:

City of Brenham _____
P.O. Box 1059 _____
Brenham, Texas 77834 _____
ATTN: City Secretary **ATTN:** _____

All notices shall be deemed to have been properly served only if sent by **certified mail**, to the person(s) at the address designated as above provided, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

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**SECTION 22,
AMENDMENTS**

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It is hereby understood and agreed by the parties to this Agreement that no alternation or variation to the terms of this Agreement shall be made unless made in writing, approved by both parties, and attached to this Agreement to become a part hereof.

**SECTION 23,
SEVERABILITY**

Deleted: 2

If any section, sentence, clause or paragraph of this Agreement is for any reason held to be invalid or illegal, such invalidity shall not affect the remaining portions of the Agreement.

SECTION 24.
TERM OF AGREEMENT

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The term of this Agreement shall be effective, beginning on the ____ day of _____, 20____, being the date of acceptance by _____
and shall terminate on September 30, 2014.

Deleted: for a period of two (2) years

Thereafter, this Agreement shall automatically renew annually for a subsequent one (1) year terms beginning on October 1 and terminating on the following September 30 unless either party gives written notice of non-renewal by certified mail no later than sixty (60) days prior to the then current termination date. Further, either party may terminate this Agreement without cause at any time by providing the other party with sixty (60) days written notice of termination by certified mail. This section is not intended, nor shall this section be construed, to limit or prohibit a party's ability to terminate this Agreement as otherwise provided in this Agreement.

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Deleted: and shall continue in full effect upon the expiration of (2) years unless

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Deleted: If the two (2) years expired and this Agreement was automatically renewed, termination by either party may only be proper upon written notice by registered or certified mail within sixty (60) days prior to the intended termination date.

SECTION 25.
ACCEPTANCE OF AGREEMENT

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That _____ shall have sixty (60) days from and after the final passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary, and upon such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its acceptance, and shall effectuate and make binding the agreement provided by the terms hereof.

SECTION 26.
AUTHORIZATION TO EXECUTE

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The parties signing this Agreement shall provide adequate proof of their authority to execute this Agreement. This Agreement shall inure to the benefit and is binding upon the parties hereto and their respective successors or assigns, but shall not be assignable by either party without the written consent of the other party.

SECTION 27.
PUBLIC MEETING

Deleted: 6

Deleted: HEARING

It is hereby found and determined that the meeting(s) at which this Ordinance was considered were open to the public, as required by Chapter 551, Texas Government Code, and that advance public notice of time, place, and purpose of said meetings was given in accordance with law.

PASSED and APPROVED on its first reading this ____ day of _____, 2013.

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PASSED and APPROVED on its second reading this ____ day of _____, 2013.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary

ORDINANCE NO. _____

AN ORDINANCE GRANTING BUDGET ROLL-OFF SERVICE, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF BRENHAM FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF COLLECTING SOLID WASTE FROM COMMERCIAL, RESIDENTIAL AND INDUSTRIAL SITES USING ROLL-OFF CONTAINERS AND/OR COMMERCIAL COMPACTORS; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR PERIOD OF GRANT; FOR ASSIGNMENT; FOR METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INVALIDITY.

WHEREAS, the City of Brenham, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham may, by ordinance and charter, grant franchises to other entities for the use of public streets, alleys and thoroughfares within the corporate limits of CITY and for the collection and disposal of solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection and disposal of certain solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham hereinafter referred to as “CITY” desires to grant this franchise to BUDGET ROLL-OFF SERVICE, under the terms of this Agreement as set out below.

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

SECTION 1. DEFINITIONS

Agreement. This contract between the City of Brenham and for the provision of certain roll-off container and/or commercial compactor service within the corporate limits of the City of Brenham under certain terms and conditions set out herein.

City of Brenham. Also referred to as "CITY" in this Agreement.

City Council. Also referred to as "COUNCIL" denoting the governing body of the City of Brenham.

Customers. Those industrial, residential, and/or commercial premises located within the CITY that generates solid waste requiring collection using roll-off containers and/or commercial compactors.

Solid Waste. All putrescible and nonputrescible solid, semi-solid, and liquid wastes, including residential, industrial, commercial and municipal garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes.

Roll-Off Containers. A type of solid waste industry container that is loaded by a winch truck. Also referred to as "container".

Commercial Compactor. A type of solid waste industry container that is loaded by a winch truck and compacts solid waste. Also referred to as "compactor".

Budget Roll-Off Service. Herein-after referred to as "BUDGET ROLL-OFF SERVICE". The party contracting with the CITY for roll-off container and/or commercial compactor service, which contains demolition/construction debris or solid waste.

SECTION 2. GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED

For and in consideration of the compliance by BUDGET ROLL-OFF SERVICE with the covenants and conditions herein set forth, and the Charter, Ordinances and Regulations of the City governing the collection and disposal of solid waste, CITY hereby grants to BUDGET ROLL-OFF SERVICE a non-exclusive franchise for use of designated public streets, alleys and thoroughfares within the corporate limits of City for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and/or commercial compactors from commercial, residential and industrial sites within the jurisdictional limits of CITY, as approved by the City Manager or his designee.

**SECTION 3.
AUTHORITY FOR TO PROVIDE SERVICE**

CITY hereby grants to BUDGET ROLL-OFF SERVICE the privilege to collect from commercial, residential, and industrial customers within the City limits solid waste using roll-off containers and/or commercial compactors only.

**SECTION 4.
DISPOSAL SITE TO BE USED**

Unless approved otherwise in writing by the CITY, BUDGET ROLL-OFF SERVICE shall utilize any Type I permitted landfill that BUDGET ROLL-OFF SERVICE deems appropriate and is authorized for disposal of all solid waste, which is collected by BUDGET ROLL-OFF SERVICE from within the corporate limits of the CITY.

**SECTION 5.
RATES TO BE CHARGED**

A written Schedule of Rates that BUDGET ROLL-OFF SERVICE shall charge for the aforementioned services shall be provided to each customer, and such Schedule of Rates may be revised periodically as agreed by and its customers. BUDGET ROLL-OFF SERVICE shall immediately provide the CITY with copies of any and all revised Schedule of Rates documents.

**SECTION 6.
PAYMENTS TO CITY**

For and in consideration of the use of designated streets, alleys, and thoroughfares as well as in consideration of the covenants and agreements contained herein, BUDGET ROLL-OFF SERVICE agrees and shall pay to CITY upon acceptance of this Agreement and thereafter during the term hereof, a sum equivalent to five percent (5%) of BUDGET ROLL-OFF SERVICE monthly gross revenues generated from BUDGET ROLL-OFF SERVICE provision of solid waste roll-off container collection services within the CITY excluding actual landfill tipping charges.

Any revenue received by BUDGET ROLL-OFF SERVICE in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into BUDGET ROLL-OFF SERVICE monthly gross revenue. Said payment shall be paid monthly to the City of Brenham Attn: City Secretary and must be received by the CITY no later than the twenty-fifth (25th) day of the month following the end of the previous month. If the payment due date falls on a Saturday, Sunday or other holiday designated by the CITY, the payment must be received by the CITY on the next regular business day.

Payments received by the CITY after the due date shall be assessed a ten percent (10%) penalty on the outstanding franchise fee amount owed under this Section.

Failure by BUDGET ROLL-OFF SERVICE to pay amounts due under this Agreement, after written notice by CITY, shall constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM), and/or any other remedy available to the CITY in law or equity.

SECTION 7. ACCESS TO RECORDS & REPORTING

CITY shall have access to BUDGET ROLL-OFF SERVICE's records, billing records of those customers served by BUDGET ROLL-OFF SERVICE and all papers relating to this Agreement and the operation of solid waste roll-off container collection and disposal services within the CITY. Access by CITY to BUDGET ROLL-OFF SERVICE's records shall be provided to CITY within ten (10) business days, after written notice to BUDGET ROLL-OFF SERVICE during normal business hours.

The following records and reports shall be filed quarterly with the City Secretary or his/her designee:

- A. Reports of all complaints, investigations, and actions taken by BUDGET ROLL-OFF SERVICE with regard to services provided pursuant to this Agreement.
- B. A listing of all BUDGET ROLL-OFF SERVICE accounts served and monthly revenue derived from roll-off containers placed in the CITY under the terms of this Agreement. The reports should include: a unique customer identification or account number, frequency of pick-up, size of container and monthly charges.

The CITY is subject to the Texas Public Information Act ("Act"). Generally, the Act requires the release of requested information by the CITY, but there are exceptions. If the requested information meets the criteria outlined in the exceptions, the CITY may decline to release the information for the purpose of requesting a decision from the Texas Attorney General's Office. The Act excepts from public disclosure trade secrets and certain commercial or financial information. The Act states the CITY may withhold:

- A. A trade secret obtained from a person and privileged or confidential by statute or judicial decision; or
- B. Commercial or financial information for which it is determined based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Pursuant to Section 552.305 of the Act, the CITY is obligated to make a good faith attempt to contact third parties who have a trade secret interest or a commercial financial interest in the information that's been requested so that the third party has an opportunity to submit reasons to the Texas Attorney General's Office why the information should be withheld or released.

The CITY will comply with Section 552.305 of the Act with regard to any requests for records concerning BUDGET ROLL-OFF SERVICE that invoke Section 552.305.

**SECTION 8.
PLACEMENT OF CONTAINERS**

All roll-off containers and/or compactors placed for service within CITY shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall BUDGET ROLL-OFF SERVICE place containers on public streets, alleys and/or thorough fares without the prior written approval of the CITY. CITY reserves the right to specify to BUDGET ROLL-OFF SERVICE the exact location of any roll-off container(s) it places for service in CITY.

BUDGET ROLL-OFF SERVICE agrees and acknowledges that it shall be liable for any and all damages it causes to any public street, alley and/or thorough fare, and associated improvements and BUDGET ROLL-OFF SERVICE will pay CITY's entire construction costs and other expenses associated with repairing and/or replacing the damaged public street, alley and/or through fare, and associated improvements.

**SECTION 9.
CONTAINER MAINTENANCE**

BUDGET ROLL-OFF SERVICE__ agrees to properly maintain as necessary, including but not limited to cleaning and painting, all roll-off containers placed for service within CITY.

**SECTION 10.
COMPLAINTS REGARDING SERVICE/SPILLAGE**

BUDGET ROLL-OFF SERVICE shall receive and directly respond to any complaints pertaining to service from their roll-off containers and/or compactor customers located within CITY. However, any such complaints received by CITY shall be forwarded to BUDGET ROLL-OFF SERVICE within twenty four (24) hours of their receipt by CITY. BUDGET ROLL-OFF SERVICE shall respond to all complaints within twenty four (24) hours of receiving notice of such complaint from CITY and shall report to CITY as to the action taken. Failure by BUDGET ROLL-OFF SERVICE to respond and report to CITY on action taken within this twenty four (24) hour period may subject BUDGET ROLL-OFF SERVICE to a \$25.00 per incident charge from CITY payable with the next payment due to CITY under Section 6 of this Agreement.

BUDGET ROLL-OFF SERVICE agrees that during transport all vehicles used by BUDGET ROLL-OFF SERVICE in the removal of solid waste shall be properly covered to prevent spillage, blowing, or scattering of refuse onto public streets or properties adjacent thereto. All equipment necessary for the performance of this Agreement shall be in good condition and repair. A standby vehicle shall always be available. BUDGET ROLL-OFF SERVICE vehicles shall at all times be clearly marked with BUDGET ROLL-OFF SERVICE name in letters not less than three (3) inches in height.

**SECTION 11.
OBEISANCE OF LAWS**

BUDGET ROLL-OFF SERVICE agrees that it shall comply with all laws, policies, rules and regulations of the United States, State of Texas, and CITY. All collections made hereunder shall be made by BUDGET ROLL-OFF SERVICE without unnecessary noise, disturbance, or commotion.

**SECTION 12.
UNDERSTANDINGS PERTAINING TO NON-EXCLUSIVITY**

It is understood by and between the parties that this Agreement executed by and between the parties on the ____ day of _____, 20____, constitutes the only agreement between the parties. It is further understood and agreed that there are no other agreements between these parties with regard to the disposal of commercial, industrial or residential solid waste in the CITY using roll-off containers/compactors and that this Agreement does not authorize BUDGET ROLL-OFF SERVICE to utilize the streets, alleys or public ways to dispose of commercial, industrial, or residential solid waste other than demolition and construction debris. Both parties agree and understand that nothing in this Agreement conveys to BUDGET ROLL-OFF SERVICE an exclusive franchise for the services described in this Agreement and that this Agreement is non-exclusive.

**SECTION 13.
OWNERSHIP OF MATERIALS COLLECTED**

Nothing herein shall create or be construed to convey any title to CITY of any solid waste collected pursuant to the provisions of this agreement.

**SECTION 14.
INTERRUPTION OF SERVICE OR DEFAULT**

A. Termination of Service. In the event that BUDGET ROLL-OFF SERVICE terminates service to any customer with the CITY limits for cause, BUDGET ROLL-OFF SERVICE must notify the CITY through certified mail within forty-eight (48) hours of termination and state the cause of such termination.

B. Excessive Interruption in Service. If the interruption in service continues for a period of seventy-two (72) hours or more, then it may constitute a Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM).

SECTION 15.
FAILURE TO PERFORM

It is expressly understood and agreed by the parties that if at any time BUDGET ROLL-OFF SERVICE shall fail to perform any of the terms, covenants, or conditions herein set forth, CITY may after a hearing as described herein, revoke and cancel the Agreement by and between the parties and said Agreement shall be null and void. Upon the determination by the staff of CITY that a hearing should be held before the City Council, CITY shall mail notice of the hearing to BUDGET ROLL-OFF SERVICE, at the address designated herein or at such address as may be designated from time to time, by registered or certified mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council and BUDGET ROLL-OFF SERVICE shall be allowed to present evidence and given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the CITY.

SECTION 16.
INDEMNIFICATION

In the event CITY is damaged due to the act, omission, mistake, fault or default of BUDGET ROLL-OFF SERVICE, then BUDGET ROLL-OFF SERVICE shall indemnify and hold CITY harmless for such damage.

BUDGET ROLL-OFF SERVICE is to indemnify and hold CITY harmless for any disposal of any prohibited material whether intentional or inadvertent.

BUDGET ROLL-OFF SERVICE shall indemnify and hold CITY harmless from any and all injuries to or claims of adjacent property owners caused by BUDGET ROLL-OFF SERVICE, its agents, employees, and representatives.

BUDGET ROLL-OFF SERVICE agrees to and shall indemnify and hold harmless CITY, its officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the work done by BUDGET ROLL-OFF SERVICE under this Agreement, regardless of whether such injuries, death or damages are caused in whole or in part by the negligence, including but not limited to the contractual comparative negligence, concurrent negligence or gross negligence, of CITY.

SECTION 17. INSURANCE

BUDGET ROLL-OFF SERVICE shall procure and maintain at its sole cost and expense for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by BUDGET ROLL-OFF SERVICE, its agents, representatives, volunteers, employees or subcontractors.

BUDGET ROLL-OFF SERVICE 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 BUDGET ROLL-OFF SERVICE insurance and shall not contribute to it.

BUDGET ROLL-OFF SERVICE shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

Certificates of Insurance and endorsements shall be furnished to CITY and approved by CITY before work commences.

A. STANDARD INSURANCE POLICIES REQUIRED

1. Commercial General Liability Policy
2. Automobile Liability Policy
3. Worker's Compensation Policy

B. GENERAL REQUIREMENTS APPLICABLE TO ALL POLICIES

1. General Liability and Automobile Liability insurance shall be written by a carrier with a better rating in accordance with the current Best Key Rating Guide.
2. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
3. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
4. Claims Made Policies will not be accepted.
5. The CITY, its officials, employees and volunteers are to be added as "Additional Insured" to the General Liability and the Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officials, employees or volunteers.

6. A Waiver of Subrogation in favor of the CITY with respect to the General Liability, Automobile Liability, and Workers' Compensation insurance must be included.
7. 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.
8. Upon request, certified copies of all insurance policies shall be furnished to the CITY.

C. COMMERCIAL GENERAL LIABILITY

1. Minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.
2. No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

D. AUTOMOBILE LIABILITY

1. Minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.

E. WORKERS' COMPENSATION

1. Employer's Liability limits of \$500,000/\$500,000/ \$500,000 are required.

F. CERTIFICATES OF INSURANCE

1. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:
 - a. The company is licensed and admitted to do business in the State of Texas.
 - b. The insurance set forth by the insurance company are underwritten on forms which have been approved by the Texas Department of Insurance or ISO.
 - c. Sets forth all endorsements as required above and insurance coverage's as previously set forth herein.
 - d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the CITY.
 - e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

**SECTION 18.
ASSIGNMENT**

This Agreement and the rights and obligations contained herein may not be assigned by BUDGET ROLL-OFF SERVICE without the specific prior written approval of the City Council. Any assignment by BUDGET ROLL-OFF SERVICE without prior written approval of the City Council shall be null and void.

**SECTION 19.
SAFETY**

BUDGET ROLL-OFF SERVICE shall perform the collection in accordance with applicable laws, codes, ordinances and regulations of the United States, State of Texas, Washington County, and CITY and in compliance with OSHA and other laws as they apply to its employees. It is the intent of the parties that the safety precautions are a part of the collection techniques for which BUDGET ROLL-OFF SERVICE is solely responsible. In the carrying on of the work herein provided for, BUDGET ROLL-OFF SERVICE shall use all proper skill and care, and BUDGET ROLL-OFF SERVICE shall exercise all due and proper precautions to prevent injury to any property, person or persons. BUDGET ROLL-OFF SERVICE assumes responsibility and liability and hereby agrees to indemnify the CITY from any liability caused by BUDGET ROLL-OFF SERVICE failure to comply with applicable federal, state or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.

**SECTION 20.
AD VALOREM TAXES**

BUDGET ROLL-OFF SERVICE agrees to render all personal property utilized in its solid waste operation services to Washington County Appraisal District so that said personal property will be the subject of ad valorem taxation for the benefit of CITY.

**SECTION 21.
NOTICES**

All notices required under the terms of this Agreement to be given by either party to the other shall be in writing, and unless otherwise specified in writing by the respective parties, shall be sent to the parties at the addresses following:

City of Brenham
P.O. Box 1059
Brenham, Texas 77834
ATTN: City Secretary

BUDGET ROLL-OFF SERVICE

ATTN: _____

All notices shall be deemed to have been properly served only if sent by certified mail, to the person(s) at the address designated as above provided, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

**SECTION 22.
AMENDMENTS**

It is hereby understood and agreed by the parties to this Agreement that no alternation or variation to the terms of this Agreement shall be made unless made in writing, approved by both parties, and attached to this Agreement to become a part hereof.

**SECTION 23.
SEVERABILITY**

If any section, sentence, clause or paragraph of this Agreement is for any reason held to be invalid or illegal, such invalidity shall not affect the remaining portions of the Agreement.

**SECTION 24.
TERM OF AGREEMENT**

The term of this Agreement shall be effective beginning on the _____ day of _____, 20____, being the date of acceptance by BUDGET ROLL-OFF SERVICE and shall terminate on September 30, 2014.

Thereafter, this Agreement shall automatically renew annually for a subsequent one (1) year terms beginning on October 1 and terminating on the following September 30 unless either party gives written notice of non-renewal by certified mail no later than sixty (60) days prior to the then current termination date. Further, either party may terminate this Agreement without cause at any time by providing the other party with sixty (60) days written notice of termination by certified mail. This section is not intended, nor shall this section be construed, to limit or prohibit a party's ability to terminate this Agreement as otherwise provided in this Agreement.

**SECTION 25.
ACCEPTANCE OF AGREEMENT**

That BUDGET ROLL-OFF SERVICE shall have sixty (60) days from and after the final passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary, and upon such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its acceptance, and shall effectuate and make binding the agreement provided by the terms hereof.

SECTION 26.
AUTHORIZATION TO EXECUTE

The parties signing this Agreement shall provide adequate proof of their authority to execute this Agreement. This Agreement shall inure to the benefit and is binding upon the parties hereto and their respective successors or assigns, but shall not be assignable by either party without the written consent of the other party.

SECTION 27.
PUBLIC MEETING

It is hereby found and determined that the meeting(s) at which this Ordinance was considered were open to the public, as required by Chapter 551, Texas Government Code, and that advance public notice of time, place, and purpose of said meetings was given in accordance with law.

PASSED and APPROVED on its first reading this ____ day of _____, 2013.

PASSED and APPROVED on its second reading this ____ day of _____, 2013.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary



AGENDA ITEM 11

DATE OF MEETING: March 7, 2013	DATE SUBMITTED: March 4, 2013	
DEPT. OF ORIGIN: City Secretary	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 to Repeal Ordinance O-09-008 and Grant a Non-Exclusive Franchise to Brazos Valley Recycling to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits		
SUMMARY STATEMENT: Brazos Valley Recycling has had a franchise to provide roll-off containers within the city limits since May, 2009. They average about \$488 a year in franchise taxes. This ordinance will get Brazos Valley Recycling on the same expiration date as all other sanitation franchise holders (October 1 thru September 30).		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) A draft Ordinance.		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve an Ordinance on its first reading to repeal Ordinance O-09-008 and grant a non-exclusive franchise to Brazos Valley Recycling to operate a roll-off container service for residents, businesses, and industries inside Brenham city limits		
APPROVALS: Terry K. Roberts		

ORDINANCE NO. _____

AN ORDINANCE GRANTING BRAZOS VALLEY RECYCLING, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF BRENHAM FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF COLLECTING SOLID WASTE FROM COMMERCIAL, RESIDENTIAL AND INDUSTRIAL SITES USING ROLL-OFF CONTAINERS AND/OR COMMERCIAL COMPACTORS; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR PERIOD OF GRANT; FOR ASSIGNMENT; FOR METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INVALIDITY.

WHEREAS, the City of Brenham, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham may, by ordinance and charter, grant franchises to other entities for the use of public streets, alleys and thoroughfares within the corporate limits of CITY and for the collection and disposal of solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection and disposal of certain solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham hereinafter referred to as “CITY” desires to grant this franchise to BRAZOS VALLEY RECYCLING, under the terms of this Agreement as set out below.

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

SECTION 1. DEFINITIONS

Agreement. This contract between the City of Brenham and for the provision of certain roll-off container and/or commercial compactor service within the corporate limits of the City of Brenham under certain terms and conditions set out herein.

City of Brenham. Also referred to as "CITY" in this Agreement.

City Council. Also referred to as "COUNCIL" denoting the governing body of the City of Brenham.

Customers. Those industrial, residential, and/or commercial premises located within the CITY that generates solid waste requiring collection using roll-off containers and/or commercial compactors.

Solid Waste. All putrescible and nonputrescible solid, semi-solid, and liquid wastes, including residential, industrial, commercial and municipal garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes.

Roll-Off Containers. A type of solid waste industry container that is loaded by a winch truck. Also referred to as "container".

Commercial Compactor. A type of solid waste industry container that is loaded by a winch truck and compacts solid waste. Also referred to as "compactor".

Brazos Valley Recycling. Herein-after referred to as "BRAZOS VALLEY RECYCLING". The party contracting with the CITY for roll-off container and/or commercial compactor service, which contains demolition/construction debris or solid waste.

SECTION 2. GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED

For and in consideration of the compliance by BRAZOS VALLEY RECYCLING with the covenants and conditions herein set forth, and the Charter, Ordinances and Regulations of the City governing the collection and disposal of solid waste, CITY hereby grants to BRAZOS VALLEY RECYCLING a non-exclusive franchise for use of designated public streets, alleys and thoroughfares within the corporate limits of City for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and/or commercial compactors from commercial, residential and industrial sites within the jurisdictional limits of CITY, as approved by the City Manager or his designee.

**SECTION 3.
AUTHORITY FOR TO PROVIDE SERVICE**

CITY hereby grants to BRAZOS VALLEY RECYCLING the privilege to collect from commercial, residential, and industrial customers within the City limits solid waste using roll-off containers and/or commercial compactors only.

**SECTION 4.
DISPOSAL SITE TO BE USED**

Unless approved otherwise in writing by the CITY, BRAZOS VALLEY RECYCLING shall utilize any Type I permitted landfill that BRAZOS VALLEY RECYCLING deems appropriate and is authorized for disposal of all solid waste, which is collected by BRAZOS VALLEY RECYCLING from within the corporate limits of the CITY.

**SECTION 5.
RATES TO BE CHARGED**

A written Schedule of Rates that BRAZOS VALLEY RECYCLING shall charge for the aforementioned services shall be provided to each customer, and such Schedule of Rates may be revised periodically as agreed by and its customers. BRAZOS VALLEY RECYCLING shall immediately provide the CITY with copies of any and all revised Schedule of Rates documents.

**SECTION 6.
PAYMENTS TO CITY**

For and in consideration of the use of designated streets, alleys, and thoroughfares as well as in consideration of the covenants and agreements contained herein, BRAZOS VALLEY RECYCLING agrees and shall pay to CITY upon acceptance of this Agreement and thereafter during the term hereof, a sum equivalent to five percent (5%) of BRAZOS VALLEY RECYCLING monthly gross revenues generated from BRAZOS VALLEY RECYCLING provision of solid waste roll-off container collection services within the CITY excluding actual landfill tipping charges.

Any revenue received by BRAZOS VALLEY RECYCLING in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into BRAZOS VALLEY RECYCLING monthly gross revenue. Said payment shall be paid monthly to the City of Brenham Attn: City Secretary and must be received by the CITY no later than the twenty-fifth (25th) day of the month following the end of the previous month. If the payment due date falls on a Saturday, Sunday or other holiday designated by the CITY, the payment must be received by the CITY on the next regular business day.

Payments received by the CITY after the due date shall be assessed a ten percent (10%) penalty on the outstanding franchise fee amount owed under this Section.

Failure by BRAZOS VALLEY RECYCLING to pay amounts due under this Agreement, after written notice by CITY, shall constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM), and/or any other remedy available to the CITY in law or equity.

**SECTION 7.
ACCESS TO RECORDS & REPORTING**

CITY shall have access to BRAZOS VALLEY RECYCLING's records, billing records of those customers served by BRAZOS VALLEY RECYCLING and all papers relating to this Agreement and the operation of solid waste roll-off container collection and disposal services within the CITY. Access by CITY to BRAZOS VALLEY RECYCLING's records shall be provided to CITY within ten (10) business days, after written notice to BRAZOS VALLEY RECYCLING during normal business hours.

The following records and reports shall be filed quarterly with the City Secretary or his/her designee:

- A. Reports of all complaints, investigations, and actions taken by BRAZOS VALLEY RECYCLING with regard to services provided pursuant to this Agreement.
- B. A listing of all BRAZOS VALLEY RECYCLING accounts served and monthly revenue derived from roll-off containers placed in the CITY under the terms of this Agreement. The reports should include: a unique customer identification or account number, frequency of pick-up, size of container and monthly charges.

The CITY is subject to the Texas Public Information Act ("Act"). Generally, the Act requires the release of requested information by the CITY, but there are exceptions. If the requested information meets the criteria outlined in the exceptions, the CITY may decline to release the information for the purpose of requesting a decision from the Texas Attorney General's Office. The Act excepts from public disclosure trade secrets and certain commercial or financial information. The Act states the CITY may withhold:

- A. A trade secret obtained from a person and privileged or confidential by statute or judicial decision; or
- B. Commercial or financial information for which it is determined based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Pursuant to Section 552.305 of the Act, the CITY is obligated to make a good faith attempt to contact third parties who have a trade secret interest or a commercial financial interest in the information that's been requested so that the third party has an opportunity to submit reasons to the Texas Attorney General's Office why the information should be withheld or released.

The CITY will comply with Section 552.305 of the Act with regard to any requests for records concerning BRAZOS VALLEY RECYCLING that invoke Section 552.305.

**SECTION 8.
PLACEMENT OF CONTAINERS**

All roll-off containers and/or compactors placed for service within CITY shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall BRAZOS VALLEY RECYCLING place containers on public streets, alleys and/or thoroughfares without the prior written approval of the CITY. CITY reserves the right to specify to BRAZOS VALLEY RECYCLING the exact location of any roll-off container(s) it places for service in CITY.

BRAZOS VALLEY RECYCLING agrees and acknowledges that it shall be liable for any and all damages it causes to any public street, alley and/or thoroughfare, and associated improvements and BRAZOS VALLEY RECYCLING will pay CITY's entire construction costs and other expenses associated with repairing and/or replacing the damaged public street, alley and/or thoroughfare, and associated improvements.

**SECTION 9.
CONTAINER MAINTENANCE**

BRAZOS VALLEY RECYCLING__ agrees to properly maintain as necessary, including but not limited to cleaning and painting, all roll-off containers placed for service within CITY.

**SECTION 10.
COMPLAINTS REGARDING SERVICE/SPILLAGE**

BRAZOS VALLEY RECYCLING shall receive and directly respond to any complaints pertaining to service from their roll-off containers and/or compactor customers located within CITY. However, any such complaints received by CITY shall be forwarded to BRAZOS VALLEY RECYCLING within twenty four (24) hours of their receipt by CITY. BRAZOS VALLEY RECYCLING shall respond to all complaints within twenty four (24) hours of receiving notice of such complaint from CITY and shall report to CITY as to the action taken. Failure by BRAZOS VALLEY RECYCLING to respond and report to CITY on action taken within this twenty four (24) hour period may subject BRAZOS VALLEY RECYCLING to a \$25.00 per incident charge from CITY payable with the next payment due to CITY under Section 6 of this Agreement.

BRAZOS VALLEY RECYCLING agrees that during transport all vehicles used by BRAZOS VALLEY RECYCLING in the removal of solid waste shall be properly covered to prevent spillage, blowing, or scattering of refuse onto public streets or properties adjacent thereto. All equipment necessary for the performance of this Agreement shall be in good condition and repair. A standby vehicle shall always be available. BRAZOS VALLEY RECYCLING vehicles shall at all times be clearly marked with BRAZOS VALLEY RECYCLING name in letters not less than three (3) inches in height.

**SECTION 11.
OBEISANCE OF LAWS**

BRAZOS VALLEY RECYCLING agrees that it shall comply with all laws, policies, rules and regulations of the United States, State of Texas, and CITY. All collections made hereunder shall be made by BRAZOS VALLEY RECYCLING without unnecessary noise, disturbance, or commotion.

**SECTION 12.
UNDERSTANDINGS PERTAINING TO NON-EXCLUSIVITY**

It is understood by and between the parties that this Agreement executed by and between the parties on the ____ day of _____, 20____, constitutes the only agreement between the parties. It is further understood and agreed that there are no other agreements between these parties with regard to the disposal of commercial, industrial or residential solid waste in the CITY using roll-off containers/compactors and that this Agreement does not authorize BRAZOS VALLEY RECYCLING to utilize the streets, alleys or public ways to dispose of commercial, industrial, or residential solid waste other than demolition and construction debris. Both parties agree and understand that nothing in this Agreement conveys to BRAZOS VALLEY RECYCLING an exclusive franchise for the services described in this Agreement and that this Agreement is non-exclusive.

**SECTION 13.
OWNERSHIP OF MATERIALS COLLECTED**

Nothing herein shall create or be construed to convey any title to CITY of any solid waste collected pursuant to the provisions of this agreement.

**SECTION 14.
INTERRUPTION OF SERVICE OR DEFAULT**

A. Termination of Service. In the event that BRAZOS VALLEY RECYCLING terminates service to any customer with the CITY limits for cause, BRAZOS VALLEY RECYCLING must notify the CITY through certified mail within forty-eight (48) hours of termination and state the cause of such termination.

B. Excessive Interruption in Service. If the interruption in service continues for a period of seventy-two (72) hours or more, then it may constitute a Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM).

SECTION 15.
FAILURE TO PERFORM

It is expressly understood and agreed by the parties that if at any time BRAZOS VALLEY RECYCLING shall fail to perform any of the terms, covenants, or conditions herein set forth, CITY may after a hearing as described herein, revoke and cancel the Agreement by and between the parties and said Agreement shall be null and void. Upon the determination by the staff of CITY that a hearing should be held before the City Council, CITY shall mail notice of the hearing to BRAZOS VALLEY RECYCLING, at the address designated herein or at such address as may be designated from time to time, by registered or certified mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council and BRAZOS VALLEY RECYCLING shall be allowed to present evidence and given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the CITY.

SECTION 16.
INDEMNIFICATION

In the event CITY is damaged due to the act, omission, mistake, fault or default of BRAZOS VALLEY RECYCLING, then BRAZOS VALLEY RECYCLING shall indemnify and hold CITY harmless for such damage.

BRAZOS VALLEY RECYCLING is to indemnify and hold CITY harmless for any disposal of any prohibited material whether intentional or inadvertent.

BRAZOS VALLEY RECYCLING shall indemnify and hold CITY harmless from any and all injuries to or claims of adjacent property owners caused by BRAZOS VALLEY RECYCLING, its agents, employees, and representatives.

BRAZOS VALLEY RECYCLING agrees to and shall indemnify and hold harmless CITY, its officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the work done by BRAZOS VALLEY RECYCLING under this Agreement, regardless of whether such injuries, death or damages are caused in whole or in part by the negligence, including but not limited to the contractual comparative negligence, concurrent negligence or gross negligence, of CITY.

SECTION 17. INSURANCE

BRAZOS VALLEY RECYCLING shall procure and maintain at its sole cost and expense for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by BRAZOS VALLEY RECYCLING, its agents, representatives, volunteers, employees or subcontractors.

BRAZOS VALLEY RECYCLING 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 BRAZOS VALLEY RECYCLING insurance and shall not contribute to it.

BRAZOS VALLEY RECYCLING shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

Certificates of Insurance and endorsements shall be furnished to CITY and approved by CITY before work commences.

A. STANDARD INSURANCE POLICIES REQUIRED

1. Commercial General Liability Policy
2. Automobile Liability Policy
3. Worker's Compensation Policy

B. GENERAL REQUIREMENTS APPLICABLE TO ALL POLICIES

1. General Liability and Automobile Liability insurance shall be written by a carrier with a better rating in accordance with the current Best Key Rating Guide.
2. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
3. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
4. Claims Made Policies will not be accepted.
5. The CITY, its officials, employees and volunteers are to be added as "Additional Insured" to the General Liability and the Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officials, employees or volunteers.

6. A Waiver of Subrogation in favor of the CITY with respect to the General Liability, Automobile Liability, and Workers' Compensation insurance must be included.
7. 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.
8. Upon request, certified copies of all insurance policies shall be furnished to the CITY.

C. COMMERCIAL GENERAL LIABILITY

1. Minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.
2. No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

D. AUTOMOBILE LIABILITY

1. Minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.

E. WORKERS' COMPENSATION

1. Employer's Liability limits of \$500,000/\$500,000/ \$500,000 are required.

F. CERTIFICATES OF INSURANCE

1. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:
 - a. The company is licensed and admitted to do business in the State of Texas.
 - b. The insurance set forth by the insurance company are underwritten on forms which have been approved by the Texas Department of Insurance or ISO.
 - c. Sets forth all endorsements as required above and insurance coverage's as previously set forth herein.
 - d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the CITY.
 - e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

**SECTION 18.
ASSIGNMENT**

This Agreement and the rights and obligations contained herein may not be assigned by BRAZOS VALLEY RECYCLING without the specific prior written approval of the City Council. Any assignment by BRAZOS VALLEY RECYCLING without prior written approval of the City Council shall be null and void.

**SECTION 19.
SAFETY**

BRAZOS VALLEY RECYCLING shall perform the collection in accordance with applicable laws, codes, ordinances and regulations of the United States, State of Texas, Washington County, and CITY and in compliance with OSHA and other laws as they apply to its employees. It is the intent of the parties that the safety precautions are a part of the collection techniques for which BRAZOS VALLEY RECYCLING is solely responsible. In the carrying on of the work herein provided for, BRAZOS VALLEY RECYCLING shall use all proper skill and care, and BRAZOS VALLEY RECYCLING shall exercise all due and proper precautions to prevent injury to any property, person or persons. BRAZOS VALLEY RECYCLING assumes responsibility and liability and hereby agrees to indemnify the CITY from any liability caused by BRAZOS VALLEY RECYCLING failure to comply with applicable federal, state or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.

**SECTION 20.
AD VALOREM TAXES**

BRAZOS VALLEY RECYCLING agrees to render all personal property utilized in its solid waste operation services to Washington County Appraisal District so that said personal property will be the subject of ad valorem taxation for the benefit of CITY.

**SECTION 21.
NOTICES**

All notices required under the terms of this Agreement to be given by either party to the other shall be in writing, and unless otherwise specified in writing by the respective parties, shall be sent to the parties at the addresses following:

City of Brenham
P.O. Box 1059
Brenham, Texas 77834
ATTN: City Secretary

BRAZOS VALLEY RECYCLING

ATTN: _____

All notices shall be deemed to have been properly served only if sent by certified mail, to the person(s) at the address designated as above provided, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

**SECTION 22.
AMENDMENTS**

It is hereby understood and agreed by the parties to this Agreement that no alternation or variation to the terms of this Agreement shall be made unless made in writing, approved by both parties, and attached to this Agreement to become a part hereof.

**SECTION 23.
SEVERABILITY**

If any section, sentence, clause or paragraph of this Agreement is for any reason held to be invalid or illegal, such invalidity shall not affect the remaining portions of the Agreement.

**SECTION 24.
TERM OF AGREEMENT**

The term of this Agreement shall be effective beginning on the _____ day of _____, 20____, being the date of acceptance by BRAZOS VALLEY RECYCLING and shall terminate on September 30, 2014.

Thereafter, this Agreement shall automatically renew annually for a subsequent one (1) year terms beginning on October 1 and terminating on the following September 30 unless either party gives written notice of non-renewal by certified mail no later than sixty (60) days prior to the then current termination date. Further, either party may terminate this Agreement without cause at any time by providing the other party with sixty (60) days written notice of termination by certified mail. This section is not intended, nor shall this section be construed, to limit or prohibit a party's ability to terminate this Agreement as otherwise provided in this Agreement.

**SECTION 25.
ACCEPTANCE OF AGREEMENT**

That BRAZOS VALLEY RECYCLING shall have sixty (60) days from and after the final passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary, and upon such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its acceptance, and shall effectuate and make binding the agreement provided by the terms hereof.

SECTION 26.
AUTHORIZATION TO EXECUTE

The parties signing this Agreement shall provide adequate proof of their authority to execute this Agreement. This Agreement shall inure to the benefit and is binding upon the parties hereto and their respective successors or assigns, but shall not be assignable by either party without the written consent of the other party.

SECTION 27.
PUBLIC MEETING

It is hereby found and determined that the meeting(s) at which this Ordinance was considered were open to the public, as required by Chapter 551, Texas Government Code, and that advance public notice of time, place, and purpose of said meetings was given in accordance with law.

PASSED and APPROVED on its first reading this ____ day of _____, 2013.

PASSED and APPROVED on its second reading this ____ day of _____, 2013.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary



AGENDA ITEM 12

DATE OF MEETING: March 7, 2013		DATE SUBMITTED: March 4, 2013
DEPT. OF ORIGIN: City Secretary		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 to Grant a Non-Exclusive Franchise to Action Roll-Off, Inc. to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits		
SUMMARY STATEMENT: On February 25, 2013 we received a letter from Action Roll-Off, Inc. requesting to do business within the City of Brenham. Action Roll-Offs is located in Hempstead and has been in business since 2007. They have never had a franchise in Brenham.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Letter from Action Roll-Offs; and (2) a draft Ordinance		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve an Ordinance on its first reading to grant a non-exclusive franchise to Action Roll-Offs, Inc. to operate a roll-off container service for residents, businesses, and industries inside Brenham city limits		
APPROVALS: Terry K. Roberts		

ORDINANCE NO. _____

AN ORDINANCE GRANTING ACTION ROLL-OFFS, INC., ITS SUCCESSORS AND ASSIGNS, A FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF BRENHAM FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF COLLECTING SOLID WASTE FROM COMMERCIAL, RESIDENTIAL AND INDUSTRIAL SITES USING ROLL-OFF CONTAINERS AND/OR COMMERCIAL COMPACTORS; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR PERIOD OF GRANT; FOR ASSIGNMENT; FOR METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INVALIDITY.

WHEREAS, the City of Brenham, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham may, by ordinance and charter, grant franchises to other entities for the use of public streets, alleys and thoroughfares within the corporate limits of CITY and for the collection and disposal of solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection and disposal of certain solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham hereinafter referred to as “CITY” desires to grant this franchise to ACTION ROLL-OFFS, INC., under the terms of this Agreement as set out below.

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

SECTION 1. DEFINITIONS

Agreement. This contract between the City of Brenham and for the provision of certain roll-off container and/or commercial compactor service within the corporate limits of the City of Brenham under certain terms and conditions set out herein.

City of Brenham. Also referred to as "CITY" in this Agreement.

City Council. Also referred to as "COUNCIL" denoting the governing body of the City of Brenham.

Customers. Those industrial, residential, and/or commercial premises located within the CITY that generates solid waste requiring collection using roll-off containers and/or commercial compactors.

Solid Waste. All putrescible and nonputrescible solid, semi-solid, and liquid wastes, including residential, industrial, commercial and municipal garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes.

Roll-Off Containers. A type of solid waste industry container that is loaded by a winch truck. Also referred to as "container".

Commercial Compactor. A type of solid waste industry container that is loaded by a winch truck and compacts solid waste. Also referred to as "compactor".

Action Roll-Offs, Inc. Herein-after referred to as "ACTION ROLL-OFFS, INC.". The party contracting with the CITY for roll-off container and/or commercial compactor service, which contains demolition/construction debris or solid waste.

SECTION 2. GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED

For and in consideration of the compliance by ACTION ROLL-OFFS, INC. with the covenants and conditions herein set forth, and the Charter, Ordinances and Regulations of the City governing the collection and disposal of solid waste, CITY hereby grants to ACTION ROLL-OFFS, INC. a non-exclusive franchise for use of designated public streets, alleys and thoroughfares within the corporate limits of City for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and/or commercial compactors from commercial, residential and industrial sites within the jurisdictional limits of CITY, as approved by the City Manager or his designee.

**SECTION 3.
AUTHORITY FOR TO PROVIDE SERVICE**

CITY hereby grants to ACTION ROLL-OFFS, INC. the privilege to collect from commercial, residential, and industrial customers within the City limits solid waste using roll-off containers and/or commercial compactors only.

**SECTION 4.
DISPOSAL SITE TO BE USED**

Unless approved otherwise in writing by the CITY, ACTION ROLL-OFFS, INC. shall utilize any Type I permitted landfill that ACTION ROLL-OFFS, INC. deems appropriate and is authorized for disposal of all solid waste, which is collected by ACTION ROLL-OFFS, INC. from within the corporate limits of the CITY.

**SECTION 5.
RATES TO BE CHARGED**

A written Schedule of Rates that ACTION ROLL-OFFS, INC. shall charge for the aforementioned services shall be provided to each customer, and such Schedule of Rates may be revised periodically as agreed by and its customers. ACTION ROLL-OFFS, INC. shall immediately provide the CITY with copies of any and all revised Schedule of Rates documents.

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PAYMENTS TO CITY**

For and in consideration of the use of designated streets, alleys, and thoroughfares as well as in consideration of the covenants and agreements contained herein, ACTION ROLL-OFFS, INC. agrees and shall pay to CITY upon acceptance of this Agreement and thereafter during the term hereof, a sum equivalent to five percent (5%) of ACTION ROLL-OFFS, INC. monthly gross revenues generated from ACTION ROLL-OFFS, INC. provision of solid waste roll-off container collection services within the CITY excluding actual landfill tipping charges.

Any revenue received by ACTION ROLL-OFFS, INC. in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into ACTION ROLL-OFFS, INC. monthly gross revenue. Said payment shall be paid monthly to the City of Brenham Attn: City Secretary and must be received by the CITY no later than the twenty-fifth (25th) day of the month following the end of the previous month. If the payment due date falls on a Saturday, Sunday or other holiday designated by the CITY, the payment must be received by the CITY on the next regular business day.

Payments received by the CITY after the due date shall be assessed a ten percent (10%) penalty on the outstanding franchise fee amount owed under this Section.

Failure by ACTION ROLL-OFFS, INC. to pay amounts due under this Agreement, after written notice by CITY, shall constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM), and/or any other remedy available to the CITY in law or equity.

SECTION 7. ACCESS TO RECORDS & REPORTING

CITY shall have access to ACTION ROLL-OFFS, INC.'s records, billing records of those customers served by ACTION ROLL-OFFS, INC. and all papers relating to this Agreement and the operation of solid waste roll-off container collection and disposal services within the CITY. Access by CITY to ACTION ROLL-OFFS, INC.'s records shall be provided to CITY within ten (10) business days, after written notice to ACTION ROLL-OFFS, INC. during normal business hours.

The following records and reports shall be filed quarterly with the City Secretary or his/her designee:

- A. Reports of all complaints, investigations, and actions taken by ACTION ROLL-OFFS, INC. with regard to services provided pursuant to this Agreement.
- B. A listing of all ACTION ROLL-OFFS, INC. accounts served and monthly revenue derived from roll-off containers placed in the CITY under the terms of this Agreement. The reports should include: a unique customer identification or account number, frequency of pick-up, size of container and monthly charges.

The CITY is subject to the Texas Public Information Act ("Act"). Generally, the Act requires the release of requested information by the CITY, but there are exceptions. If the requested information meets the criteria outlined in the exceptions, the CITY may decline to release the information for the purpose of requesting a decision from the Texas Attorney General's Office. The Act excepts from public disclosure trade secrets and certain commercial or financial information. The Act states the CITY may withhold:

- A. A trade secret obtained from a person and privileged or confidential by statute or judicial decision; or
- B. Commercial or financial information for which it is determined based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Pursuant to Section 552.305 of the Act, the CITY is obligated to make a good faith attempt to contact third parties who have a trade secret interest or a commercial financial interest in the information that's been requested so that the third party has an opportunity to submit reasons to the Texas Attorney General's Office why the information should be withheld or released.

The CITY will comply with Section 552.305 of the Act with regard to any requests for records concerning ACTION ROLL-OFFS, INC. that invoke Section 552.305.

**SECTION 8.
PLACEMENT OF CONTAINERS**

All roll-off containers and/or compactors placed for service within CITY shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall ACTION ROLL-OFFS, INC. place containers on public streets, alleys and/or thorough fares without the prior written approval of the CITY. CITY reserves the right to specify to ACTION ROLL-OFFS, INC. the exact location of any roll-off container(s) it places for service in CITY.

ACTION ROLL-OFFS, INC. agrees and acknowledges that it shall be liable for any and all damages it causes to any public street, alley and/or thorough fare, and associated improvements and ACTION ROLL-OFFS, INC. will pay CITY's entire construction costs and other expenses associated with repairing and/or replacing the damaged public street, alley and/or thorough fare, and associated improvements.

**SECTION 9.
CONTAINER MAINTENANCE**

ACTION ROLL-OFFS, INC. agrees to properly maintain as necessary, including but not limited to cleaning and painting, all roll-off containers placed for service within CITY.

**SECTION 10.
COMPLAINTS REGARDING SERVICE/SPILLAGE**

ACTION ROLL-OFFS, INC. shall receive and directly respond to any complaints pertaining to service from their roll-off containers and/or compactor customers located within CITY. However, any such complaints received by CITY shall be forwarded to ACTION ROLL-OFFS, INC. within twenty four (24) hours of their receipt by CITY. ACTION ROLL-OFFS, INC. shall respond to all complaints within twenty four (24) hours of receiving notice of such complaint from CITY and shall report to CITY as to the action taken. Failure by ACTION ROLL-OFFS, INC. to respond and report to CITY on action taken within this twenty four (24) hour period may subject ACTION ROLL-OFFS, INC. to a \$25.00 per incident charge from CITY payable with the next payment due to CITY under Section 6 of this Agreement.

ACTION ROLL-OFFS, INC. agrees that during transport all vehicles used by ACTION ROLL-OFFS, INC. in the removal of solid waste shall be properly covered to prevent spillage, blowing, or scattering of refuse onto public streets or properties adjacent thereto. All equipment necessary for the performance of this Agreement shall be in good condition and repair. A standby vehicle shall always be available. ACTION ROLL-OFFS, INC. vehicles shall at all times be clearly marked with ACTION ROLL-OFFS, INC. name in letters not less than three (3) inches in height.

**SECTION 11.
OBEISANCE OF LAWS**

ACTION ROLL-OFFS, INC. agrees that it shall comply with all laws, policies, rules and regulations of the United States, State of Texas, and CITY. All collections made hereunder shall be made by ACTION ROLL-OFFS, INC. without unnecessary noise, disturbance, or commotion.

**SECTION 12.
UNDERSTANDINGS PERTAINING TO NON-EXCLUSIVITY**

It is understood by and between the parties that this Agreement executed by and between the parties on the ____ day of _____, 20____, constitutes the only agreement between the parties. It is further understood and agreed that there are no other agreements between these parties with regard to the disposal of commercial, industrial or residential solid waste in the CITY using roll-off containers/compactors and that this Agreement does not authorize ACTION ROLL-OFFS, INC. to utilize the streets, alleys or public ways to dispose of commercial, industrial, or residential solid waste other than demolition and construction debris. Both parties agree and understand that nothing in this Agreement conveys to ACTION ROLL-OFFS, INC. an exclusive franchise for the services described in this Agreement and that this Agreement is non-exclusive.

**SECTION 13.
OWNERSHIP OF MATERIALS COLLECTED**

Nothing herein shall create or be construed to convey any title to CITY of any solid waste collected pursuant to the provisions of this agreement.

**SECTION 14.
INTERRUPTION OF SERVICE OR DEFAULT**

A. Termination of Service. In the event that ACTION ROLL-OFFS, INC. terminates service to any customer with the CITY limits for cause, ACTION ROLL-OFFS, INC. must notify the CITY through certified mail within forty-eight (48) hours of termination and state the cause of such termination.

B. Excessive Interruption in Service. If the interruption in service continues for a period of seventy-two (72) hours or more, then it may constitute a Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM).

SECTION 15.
FAILURE TO PERFORM

It is expressly understood and agreed by the parties that if at any time ACTION ROLL-OFFS, INC. shall fail to perform any of the terms, covenants, or conditions herein set forth, CITY may after a hearing as described herein, revoke and cancel the Agreement by and between the parties and said Agreement shall be null and void. Upon the determination by the staff of CITY that a hearing should be held before the City Council, CITY shall mail notice of the hearing to ACTION ROLL-OFFS, INC., at the address designated herein or at such address as may be designated from time to time, by registered or certified mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council and ACTION ROLL-OFFS, INC. shall be allowed to present evidence and given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the CITY.

SECTION 16.
INDEMNIFICATION

In the event CITY is damaged due to the act, omission, mistake, fault or default of ACTION ROLL-OFFS, INC., then ACTION ROLL-OFFS, INC. shall indemnify and hold CITY harmless for such damage.

ACTION ROLL-OFFS, INC. is to indemnify and hold CITY harmless for any disposal of any prohibited material whether intentional or inadvertent.

ACTION ROLL-OFFS, INC. shall indemnify and hold CITY harmless from any and all injuries to or claims of adjacent property owners caused by ACTION ROLL-OFFS, INC., its agents, employees, and representatives.

ACTION ROLL-OFFS, INC. agrees to and shall indemnify and hold harmless CITY, its officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the work done by ACTION ROLL-OFFS, INC. under this Agreement, regardless of whether such injuries, death or damages are caused in whole or in part by the negligence, including but not limited to the contractual comparative negligence, concurrent negligence or gross negligence, of CITY.

SECTION 17. INSURANCE

ACTION ROLL-OFFS, INC. shall procure and maintain at its sole cost and expense for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by ACTION ROLL-OFFS, INC., its agents, representatives, volunteers, employees or subcontractors.

ACTION ROLL-OFFS, INC. 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 ACTION ROLL-OFFS, INC. insurance and shall not contribute to it.

ACTION ROLL-OFFS, INC. shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

Certificates of Insurance and endorsements shall be furnished to CITY and approved by CITY before work commences.

A. STANDARD INSURANCE POLICIES REQUIRED

1. Commercial General Liability Policy
2. Automobile Liability Policy
3. Worker's Compensation Policy

B. GENERAL REQUIREMENTS APPLICABLE TO ALL POLICIES

1. General Liability and Automobile Liability insurance shall be written by a carrier with a better rating in accordance with the current Best Key Rating Guide.
2. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
3. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
4. Claims Made Policies will not be accepted.
5. The CITY, its officials, employees and volunteers are to be added as "Additional Insured" to the General Liability and the Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officials, employees or volunteers.

6. A Waiver of Subrogation in favor of the CITY with respect to the General Liability, Automobile Liability, and Workers' Compensation insurance must be included.
7. 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.
8. Upon request, certified copies of all insurance policies shall be furnished to the CITY.

C. COMMERCIAL GENERAL LIABILITY

1. Minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.
2. No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

D. AUTOMOBILE LIABILITY

1. Minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.

E. WORKERS' COMPENSATION

1. Employer's Liability limits of \$500,000/\$500,000/ \$500,000 are required.

F. CERTIFICATES OF INSURANCE

1. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:
 - a. The company is licensed and admitted to do business in the State of Texas.
 - b. The insurance set forth by the insurance company are underwritten on forms which have been approved by the Texas Department of Insurance or ISO.
 - c. Sets forth all endorsements as required above and insurance coverage's as previously set forth herein.
 - d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the CITY.
 - e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

**SECTION 18.
ASSIGNMENT**

This Agreement and the rights and obligations contained herein may not be assigned by ACTION ROLL-OFFS, INC. without the specific prior written approval of the City Council. Any assignment by ACTION ROLL-OFFS, INC. without prior written approval of the City Council shall be null and void.

**SECTION 19.
SAFETY**

ACTION ROLL-OFFS, INC. shall perform the collection in accordance with applicable laws, codes, ordinances and regulations of the United States, State of Texas, Washington County, and CITY and in compliance with OSHA and other laws as they apply to its employees. It is the intent of the parties that the safety precautions are a part of the collection techniques for which ACTION ROLL-OFFS, INC. is solely responsible. In the carrying on of the work herein provided for, ACTION ROLL-OFFS, INC. shall use all proper skill and care, and ACTION ROLL-OFFS, INC. shall exercise all due and proper precautions to prevent injury to any property, person or persons. ACTION ROLL-OFFS, INC. assumes responsibility and liability and hereby agrees to indemnify the CITY from any liability caused by ACTION ROLL-OFFS, INC. failure to comply with applicable federal, state or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.

**SECTION 20.
AD VALOREM TAXES**

ACTION ROLL-OFFS, INC. agrees to render all personal property utilized in its solid waste operation services to Washington County Appraisal District so that said personal property will be the subject of ad valorem taxation for the benefit of CITY.

**SECTION 21.
NOTICES**

All notices required under the terms of this Agreement to be given by either party to the other shall be in writing, and unless otherwise specified in writing by the respective parties, shall be sent to the parties at the addresses following:

City of Brenham
P.O. Box 1059
Brenham, Texas 77834
ATTN: City Secretary

ACTION ROLL-OFFS, INC.

ATTN: _____

All notices shall be deemed to have been properly served only if sent by certified mail, to the person(s) at the address designated as above provided, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

**SECTION 22.
AMENDMENTS**

It is hereby understood and agreed by the parties to this Agreement that no alternation or variation to the terms of this Agreement shall be made unless made in writing, approved by both parties, and attached to this Agreement to become a part hereof.

**SECTION 23.
SEVERABILITY**

If any section, sentence, clause or paragraph of this Agreement is for any reason held to be invalid or illegal, such invalidity shall not affect the remaining portions of the Agreement.

**SECTION 24.
TERM OF AGREEMENT**

The term of this Agreement shall be effective beginning on the _____ day of _____, 20____, being the date of acceptance by ACTION ROLL-OFFS, INC. and shall terminate on September 30, 2014.

Thereafter, this Agreement shall automatically renew annually for a subsequent one (1) year terms beginning on October 1 and terminating on the following September 30 unless either party gives written notice of non-renewal by certified mail no later than sixty (60) days prior to the then current termination date. Further, either party may terminate this Agreement without cause at any time by providing the other party with sixty (60) days written notice of termination by certified mail. This section is not intended, nor shall this section be construed, to limit or prohibit a party's ability to terminate this Agreement as otherwise provided in this Agreement.

**SECTION 25.
ACCEPTANCE OF AGREEMENT**

That ACTION ROLL-OFFS, INC. shall have sixty (60) days from and after the final passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary, and upon such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its acceptance, and shall effectuate and make binding the agreement provided by the terms hereof.

SECTION 26.
AUTHORIZATION TO EXECUTE

The parties signing this Agreement shall provide adequate proof of their authority to execute this Agreement. This Agreement shall inure to the benefit and is binding upon the parties hereto and their respective successors or assigns, but shall not be assignable by either party without the written consent of the other party.

SECTION 27.
PUBLIC MEETING

It is hereby found and determined that the meeting(s) at which this Ordinance was considered were open to the public, as required by Chapter 551, Texas Government Code, and that advance public notice of time, place, and purpose of said meetings was given in accordance with law.

PASSED and APPROVED on its first reading this ____ day of _____, 2013.

PASSED and APPROVED on its second reading this ____ day of _____, 2013.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary

ACTION

Roll-Offs, Inc.

February 25, 2013

Cory Crockett
Action Roll-Offs, Inc.
P. O. Box 1414
Hempstead, TX 77445

City Secretary
P O Box 1059
Brenham, TX 77834

Re: Permission to Operate and Provide Dumpsters in the City Limits of Brenham

To Whom it May Concern,

Action Roll-Offs, Inc. would like to provide dumpsters within the city limits of Brenham Texas. We have been in business since 2007, and in good standing in all aspects of our business. We are located in Hempstead Texas located in the same location since inception. Please let us know what information you need from us to proceed with this process.

Sincerely,

Cory Crockett
Vice President
(979)826-2815



AGENDA ITEM 13

DATE OF MEETING: March 7, 2013		DATE SUBMITTED: March 4, 2013
DEPT. OF ORIGIN: Administration		SUBMITTED BY: Grant Lischka
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: Discussion and Update on the Brenham Municipal Airport Hangar Project		
<p>SUMMARY STATEMENT: The City was approached by three individuals wanting to build box hangars at the south end of the runway. All of these hangars need access. We met with TxDOT about using our Non-Primary Entitlement Funds (NPE) as a possible funding source for the access for these hangars. The City currently has \$450,000 of NPE funds “banked” with an additional \$150,000 anticipated in August, for a total of \$600,000. During the discussions with TxDOT, they felt that a better use of our NPE funds would be for the City of Brenham to construct another row of T-hangars. TxDOT suggested that access to the box hangars and T-hangars would be put into their Capital Improvement Program (CIP) Grant.</p> <p>Working with TxDOT, a project scope was determined (a layout can be found in the attached exhibit) with a preliminary project estimate of \$1,695,000. The City’s \$600,000 in NPE funds would be used with the remainder coming from CIP funding. The City would be responsible for approximately \$169,500 (10% of the project costs). TxDOT plans to take the project to the Transportation Commission for their approval in early May. The Engineering Consultant will then be selected and the project will begin. We are very optimistic about construction beginning in the late summer.</p> <p>Since beginning this project, 2-3 additional persons have expressed interested in building box hangars. We will be talking to TxDOT in the future about funding possibilities for these hangars as well.</p>		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: (1) Exhibit showing locations of proposed work; and (2) Breakdown of costs from TxDOT – Aviation Division.		

FUNDING SOURCE (Where Applicable): The General Fund 5 days of R&R (renovations and replacements).
Current total is \$178,183.

RECOMMENDED ACTION: Discussion Only

APPROVALS: Terry K. Roberts



Construct South
Hangar Access Taxiway

Brenham Airport 11R
Brenham, Texas

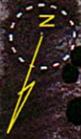
Relocate
Cross Taxiway

Widen
H-A-T

Construct North
T-Hangar Access Taxiway

10 Unit T-Hangar

Vault



AVIATION CAPITAL IMPROVEMENT PROGRAM

Locations, Projects, and Costs

FEDERAL & STATE FY 2013

Federal FY 2013 (October 2012 - September 2013)/State FY 2013 (September 2012 - August 2013)

Texas Department of Transportation -- Aviation Division
February 25, 2013

City & Airport	Project Status & Description	Project Costs		
		Total	Federal	State Local
BRENHAM	<u>Project Status:</u> 2013-0001			
<u>BRENHAM MUNI</u>	<u>DRAFT</u>			
	Construct North Hangar Access Taxiway	420,000	378,000	0 42,000
	Construct 10 Unit T-Hangar	530,000	477,000	0 53,000
	Contingency, RPR, Admitt for Taxiway and Hangar Project	140,000	126,000	0 14,000
	Engineering and Design for Taxiway and Hangar Project	140,000	126,000	0 14,000
	Construct Cross Taxiway (standards)	40,000	36,000	0 4,000
	Widen Hangar Access Taxiway	75,000	67,500	0 7,500
	Construct South Hangar Access Taxiway	330,000	297,000	0 33,000
	Construct New Electrical Vault	20,000	18,000	0 2,000
Project Totals:		\$ 1,695,000	\$ 1,525,500	\$ 0 \$ 169,500



AGENDA ITEM 14

DATE OF MEETING: March 7, 2013	DATE SUBMITTED: February 18, 2013	
DEPT. OF ORIGIN: Fire Department	SUBMITTED BY: Ricky Boeker	
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 2012 Annual Report by the Fire 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 2012 Fire 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):		
ATTACHMENTS: N/A		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: N/A		
APPROVALS: Terry K. Roberts		



AGENDA ITEM 15

DATE OF MEETING: March 7, 2013	DATE SUBMITTED: February 18, 2013	
DEPT. OF ORIGIN: Police Department	SUBMITTED BY: Rex Phelps	
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 2012 Annual Report by the Police 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 2012 Police 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):		
ATTACHMENTS: NA		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: NA		
APPROVALS: Terry K. Roberts		