



**NOTICE OF A REGULAR MEETING  
THE BRENHAM CITY COUNCIL  
THURSDAY MAY 2, 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 – Councilmember Herring**
- 3. 3-a. New Employees**
  - John Bellinger – Water Construction**3-b. Service Recognitions**
  - Norma Rodriguez – 5 years
  - Jamie Maurer – 10 years
- 4. Proclamation**
  - **Municipal Secretaries Week – May 5–11, 2013**
  - **Arson Prevention Week – May 5–11, 2013**
- 5. Citizens Comments**

**Page 1**  
**Page 2**

**CONSENT AGENDA**

**6. 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.

- 6-a. Discuss and Possibly Act Upon Ordinance No. O-13-009 on Its Second Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; Amending the Official Zoning Map to Grant a Specific Use Permit at 704 Durden Street (Legal Description Being Block 8, Lot 3 of the Durden Courts Addition in the City of Brenham, Washington County, Texas), to Allow an Auxiliary Church Use on the Property Page 3-4**
  
- 6-b. Discuss and Possibly Act Upon Ordinance No. O-13-010 on Its Second Reading to Repeal Ordinance O-12-025 and Grant a Non-Exclusive Franchise to Texas Disposal Systems, Inc. to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits Page 5-17**
  
- 6-c. Discuss and Possibly Act Upon Ordinance No. O-13-011 on Its Second Reading to Approve a Variance 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 18**

#### **WORK SESSION**

- 7. Presentation of the 2012 Municipal Court Statistics Page 19-20**

#### **REGULAR AGENDA**

- 8. Discuss and Possibly Act Upon Resolution R-13-005 Authorizing the Submission of a Grant Application for the 2013 Bulletproof Vest Partnership through the Bureau of Justice Assistance for the Brenham Police Department and Authorize the Mayor to Execute Any Necessary Documentation Page 21-22**
  
- 9. Discuss and Possibly Act Upon Change Order No. 1 and Final Payment to Kieschnick General Contractors for the 2012 Valmont Water System Improvement Project and Authorize the Mayor to Execute Any Necessary Documentation Page 23-36**

10. **Discuss and Possibly Act Upon Resolution No. R-13-006 Authorizing Execution of an Agreement with TxDOT for the Temporary Closure of State Right-of-Way in Connection with the 2013 Downtown Summer Concert Series (Hot Nights, Cool Tunes) to be Held on July 6, 13, 20, and 27, 2013** **Page 37-49**
  
11. **Discuss and Possibly Act Upon a Request for a Noise Variance in Connection with Hot Nights, Cool Tunes Summer Concert Series to be Held from 4:00 P.M. to 11:00 P.M. on July 6, 13, 20, and 27, 2013** **Page 50-52**

## **EXECUTIVE SESSION**

12. **Section 551.072 – Deliberation Regarding Real Property – Discussion Concerning Possible Acceptance of Property for Future Park Purposes** **Page 53**

## **RE-OPEN REGULAR AGENDA**

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

13. **Administrative/Elected Officials Report**

## **Adjourn**

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

***CERTIFICATION***

I certify that a copy of the May 2, 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 April 29, 2013 at ***11:25 A.M.***

***Amanda Klehm***

Deputy City Secretary

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 at \_\_\_\_\_ AM PM.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

# PROCLAMATION

**WHEREAS**, Municipal Clerks serve as the professional link between the citizens, the local governing bodies and agencies of governments at other levels; and

**WHEREAS**, Municipal Clerks strive to improve the administration of their duties through participation in education programs, seminars, workshops and annual meetings; and

**WHEREAS**, The functions of the Clerk require a thorough knowledge of law procedure, administration and interpersonal relationships; their responsibilities include ordinance and resolutions development, administering elections and maintaining vital records, including Council agendas and minutes; and

**WHEREAS**, It is right and just that the City Council join together with the residents of Brenham to commend the people who fulfill the role of Municipal Clerk and applaud their dedication and professionalism;

Now, THEREFORE I, Milton Y. Tate Jr., Mayor of the City of Brenham, Texas do Hereby Proclaim May 5- 11 as

## MUNICIPAL CLERKS WEEK

In Witness, Whereof, I have set my hand and affixed the Seal of Brenham.

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Milton Y. Tate Jr., Mayor  
City of Brenham

## PROCLAMATION

- WHEREAS,** Fires set deliberately can rob communities of their most valuable assets – lives and property; between 2008-2010 there were an estimated 16,800 intentionally set fires in residential buildings, with an estimated 280 deaths, 775 injuries and almost \$600 million in property loss; and
- WHEREAS,** The FBI reported there were over 43,000 arsons involving single occupancy and other residential structure which accounted for over 29 percent of the total number of arson offenses; and
- WHEREAS,** Home structure fires account for 60 percent of all intentional structure fires and 95 percent of associated civilian deaths; and
- WHEREAS,** Fire prevention programs aimed at children are designed to educate the youth on the dangers of fire and the destruction arson causes; and
- WHEREAS,** It is right and just for the City Council and the residents of Brenham to join together to pledge our support to the Brenham Fire Department in their efforts to educate our community about the dangers of fire and the devastation arson causes;

Now, THEREFORE I, Milton Y. Tate Jr., Mayor of the City of Brenham, Texas do Hereby Proclaim the May 5-11, 2013 as

### **Arson Awareness Week – Reducing Residential Arson**

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Milton Y. Tate Jr., Mayor  
City of Brenham

**ORDINANCE NO. O-13-009**

**AN ORDINANCE AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AMENDING THE OFFICIAL ZONING MAP TO GRANT A SPECIFIC USE PERMIT FOR AUXILIARY CHURCH USES LOCATED WITHIN THE EXISTING RESIDENCE AT 704 DURDEN STREET AND SPECIFICALLY BEING LOT 3 IN BLOCK 8 OF THE DURDEN COURTS ADDITION TO THE CITY OF BRENHAM, WASHINGTON COUNTY, TEXAS.**

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

**WHEREAS**, Appendix A – “Zoning” of the City of Brenham Code of Ordinance authorizes the City Council to grant specific use permits for specific uses within the various zoning districts; and

**WHEREAS**, this amendment was recommended for approval by the Brenham Planning and Zoning Commission during its regular meeting on April 1, 2013;

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

*SECTION 1.* That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map of the City of Brenham is hereby amended to grant a specific use permit for auxiliary church uses located within the existing residence at 704 Durden Street and specifically being Lot 3 in Block 8 of the Durden Courts Addition to the City Brenham, Washington County Texas and placing the following conditions on the specific use permit:

1. To protect and maintain the established building line and neighborhood character, parking shall be prohibiting within the front yard of this property as part of this specific use permit;
2. Signage shall be limited to a 1 foot x 2 foot maximum square-foot non-illuminated sign;
3. The exterior of the home shall not be altered substantially to reflect a use that is not single-family residential. Allowed modifications shall be limited to handicapped accessibility required modifications and allowed signage.
4. That the auxiliary uses within this permit do not include shelters; and
5. A 6-foot privacy fence shall be constructed on the eastern property line.

**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 18<sup>th</sup> day of April, 2013.

**PASSED and APPROVED** on its second reading this the 2<sup>nd</sup> day of May, 2013.

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Milton Y. Tate, Jr.  
Mayor

**ATTEST:**

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Jeana Bellinger, TRMC  
City Secretary

**ORDINANCE NO. O-13-010**

**AN ORDINANCE GRANTING TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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".

*Texas Disposal Systems, Inc.* Herein-after referred to as "TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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. Ordinance No. O-12-025 related to the prior franchise granted to TEXAS DISPOSAL SYSTEMS, INC. is hereby repealed.

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

CITY hereby grants to TEXAS DISPOSAL SYSTEMS, 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, TEXAS DISPOSAL SYSTEMS, INC. shall utilize any Type I permitted landfill that TEXAS DISPOSAL SYSTEMS, INC. deems appropriate and is authorized for disposal of all solid waste, which is collected by TEXAS DISPOSAL SYSTEMS, INC. from within the corporate limits of the CITY.

**SECTION 5.  
RATES TO BE CHARGED**

A written Schedule of Rates that TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. and its customers. TEXAS DISPOSAL SYSTEMS, INC. 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, TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. monthly gross revenues generated from TEXAS DISPOSAL SYSTEMS, INC. provision of solid waste roll-off container collection services within the CITY excluding actual landfill tipping charges.

Any revenue received by TEXAS DISPOSAL SYSTEMS, INC. in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into TEXAS DISPOSAL SYSTEMS, 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 (25<sup>th</sup>) 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. records, billing records of those customers served by TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. records shall be provided to CITY within ten (10) business days, after written notice to TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. with regard to services provided pursuant to this Agreement.
- B. A listing of all TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. the exact location and time period allowed for placement of any roll-off container(s) it places for service in CITY.

TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. 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**

TEXAS DISPOSAL SYSTEMS, 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**

TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. within twenty four (24) hours of their receipt by CITY. TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. to respond and report to CITY on action taken within this twenty four (24) hour period may subject TEXAS DISPOSAL SYSTEMS, INC. to a \$25.00 per incident charge from CITY payable with the next payment due to CITY under Section 6 of this Agreement.

TEXAS DISPOSAL SYSTEMS, INC. agrees that during transport all vehicles used by TEXAS DISPOSAL SYSTEMS, 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. TEXAS DISPOSAL SYSTEMS, INC. vehicles shall at all times be clearly marked with TEXAS DISPOSAL SYSTEMS, INC.'s name in letters not less than three (3) inches in height.

**SECTION 11.  
OBEISANCE OF LAWS**

TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. terminates service to any customer with the CITY limits for cause, TEXAS DISPOSAL SYSTEMS, 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 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC., then TEXAS DISPOSAL SYSTEMS, INC. shall indemnify and hold CITY harmless for such damage.

TEXAS DISPOSAL SYSTEMS, INC. is to indemnify and hold CITY harmless for any disposal of any prohibited material whether intentional or inadvertent.

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

TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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**

TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC., its agents, representatives, volunteers, employees or subcontractors.

TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. insurance and shall not contribute to it.

TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. without the specific prior written approval of the City Council. Any assignment by TEXAS DISPOSAL SYSTEMS, INC. without prior written approval of the City Council shall be null and void.

### **SECTION 19. SAFETY**

TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, INC. is solely responsible. In the carrying on of the work herein provided for, TEXAS DISPOSAL SYSTEMS, INC. shall use all proper skill and care, and TEXAS DISPOSAL SYSTEMS, INC. shall exercise all due and proper precautions to prevent injury to any property, person or persons. TEXAS DISPOSAL SYSTEMS, INC. assumes responsibility and liability and hereby agrees to indemnify the CITY from any liability caused by TEXAS DISPOSAL SYSTEMS, 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**

TEXAS DISPOSAL SYSTEMS, 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

TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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 TEXAS DISPOSAL SYSTEMS, 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 18<sup>th</sup> day of April, 2013.

**PASSED and APPROVED** on its second reading this 2<sup>nd</sup> day of May, 2013.

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Milton Y. Tate, Jr.  
Mayor

**ATTEST:**

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Jeana Bellinger, TRMC  
City Secretary

**ORDINANCE NO. 0-13-011**

**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 APPROXIMATELY 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 approximately 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 18<sup>th</sup> day of April, 2013.

**PASSED and APPROVED** on its second reading this the 2<sup>nd</sup> day of May, 2013.

\_\_\_\_\_  
Milton Y. Tate, Jr.  
Mayor

**ATTEST:**

\_\_\_\_\_  
Jeana Bellinger, TRMC



**AGENDA ITEM 7**

<b>DATE OF MEETING:</b> May 2, 2013		<b>DATE SUBMITTED:</b> April 1, 2013	
<b>DEPT. OF ORIGIN:</b> Municipal Court		<b>SUBMITTED BY:</b> Rhonda Kuehn	
<b>MEETING TYPE:</b>		<b>CLASSIFICATION:</b>	
<input checked="" type="checkbox"/> REGULAR		<input type="checkbox"/> PUBLIC HEARING	
<input type="checkbox"/> SPECIAL		<input type="checkbox"/> CONSENT	
<input type="checkbox"/> EXECUTIVE SESSION		<input type="checkbox"/> REGULAR	
		<input checked="" type="checkbox"/> WORK SESSION	
<b>ORDINANCE:</b>			
<input type="checkbox"/> 1 <sup>ST</sup> READING			
<input type="checkbox"/> 2 <sup>ND</sup> READING			
<input type="checkbox"/> RESOLUTION			
<b>AGENDA ITEM DESCRIPTION:</b> Presentation of the 2012 Municipal Court Statistics			
<b>SUMMARY STATEMENT:</b> The Municipal Court statistics will be discussed and presented by Municipal Court Administrator Rhonda Kuehn.			
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>			
<b>A. PROS:</b>			
<b>B. CONS:</b>			
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>			
<b>ATTACHMENTS:</b> (1) Municipal Court Statistics			
<b>FUNDING SOURCE (Where Applicable):</b>			
<b>RECOMMENDED ACTION:</b> N/A			
<b>APPROVALS:</b> Carolyn D. Miller			

MUNICIPAL COURT STATISTICS				
	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>
Total Cases Filed	<u>8601</u>	<u>7838</u>	<u>7347</u>	<u>7906</u>
<b>Traffic Misdemeanors</b>				
Non-Parking	5,138	5,174	3,842	4,544
Parking	454	55	64	44
Dispositions Prior to Trial	2,824	2,800	2,476	2,425
Dispositions at Trial	88	95	93	155
Cases Dismissed	2,670	2,808	1,646	706
<b>Non-Traffic Misdemeanors</b>				
State Law	2,842	2,492	3,336	3,213
City Ordinance	167	117	105	105
Dispositions Prior to Trial	1,269	1,152	1,847	1,867
Dispositions at Trial	102	132	173	201
Cases Dismissed	232	243	312	412
Juvenile Activity	218	226	223	213
Warrants Issued	806	1,849	2,858	963
Total Revenue Collected	\$ 1,090,569	\$ 1,172,525	\$ 1,214,732	\$ 1,121,043
Total Remitted to State	\$ 422,383	\$ 412,989	\$ 353,415	\$ 297,787
General Gov't Revenues	\$ 668,186	\$ 759,536	\$ 861,317	\$ 823,256



**AGENDA ITEM 8**

<b>DATE OF MEETING:</b> May 2, 2013		<b>DATE SUBMITTED:</b> April 25, 2013
<b>DEPT. OF ORIGIN:</b> Administration		<b>SUBMITTED BY:</b> Angela Hahn
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Possibly Act Upon Resolution R-13-005 Authorizing the Submission of a Grant Application for the 2013 Bulletproof Vest Partnership through the Bureau of Justice Assistance for the Brenham Police Department and Authorize the Mayor to Execute Any Necessary Documentation		
<b>SUMMARY STATEMENT:</b> The Bulletproof Vest Partnership (BVP), created by the Bulletproof Vest Partnership Grant Act of 1998 is a U.S. Department of Justice initiative designed to provide a critical resource to state and local law enforcement. The grant funding will reimburse up to \$3,049.80 for the purchase of bulletproof vests.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b>		
<b>B. CONS:</b>		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		
<b>ATTACHMENTS</b> (1) Resolution No. R-13-005		
<b>FUNDING SOURCE (Where Applicable):</b>		
<b>RECOMMENDED ACTION:</b> Approve a Resolution R-13-005 authorizing the submission of a Grant Application for the 2013 Bulletproof Vest Partnership through the Bureau of Justice Assistance for the Brenham Police Department in the amount of \$6, 099.60 and authorize the Mayor to execute any necessary documentation		
<b>APPROVALS:</b> Terry K. Roberts		

## **RESOLUTION NO. R-13-005**

### **A RESOLUTION OF THE CITY OF BRENHAM, TEXAS APPROVING THE SUBMITTAL OF A GRANT APPLICATION TO THE UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS BULLETPROOF VEST PARTNERSHIP FOR 2013;**

**WHEREAS,** The Bulletproof Vest Partnership (BVP), created by the Bulletproof Vest Partnership Grant Act of 1998 is a unique U.S. Department of Justice initiative designed to provide a critical resource to state and local law enforcement; and

**WHEREAS,** Based on data collected and recorded by Bureau of Justice Assistance staff, in FY 2012, protective vests were directly attributable to saving the lives of at least 33 law enforcement and corrections officers in 20 different states; and

**WHEREAS,** The BVP is a reimbursable grant program which will compensate the City for half of the vests purchased for the Brenham Police Department; the total amount requested in the grant application is \$6,099.60 for the purchase of 10 vests;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BRENHAM, TEXAS** that the Mayor is authorized to execute all documents necessary for the submission of the grant application to OJP for the 2013 Bulletproof Vest Partnership

PASSED and APPROVED this the \_\_\_\_\_ day of May, 2013.

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

ATTEST:

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Jeana Bellinger, TRMC  
City Secretary



## AGENDA ITEM 9

<b>DATE OF MEETING:</b> May 2, 2013	<b>DATE SUBMITTED:</b> April 23, 2013	
<b>DEPT. OF ORIGIN:</b> Public Utilities	<b>SUBMITTED BY:</b> Lowell Ogle	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Possibly Act Upon Change Order No. 1 and Final Payment to Kieschnick General Contractors for the 2012 Valmont Water System Improvement Project and Authorize the Mayor to Execute Any Necessary Documentation		
<b>SUMMARY STATEMENT:</b> Kieschnick General Contractors has completed work to extend a 12” water main from Industrial Blvd into the Valmont property as well as installing some infrastructure within their property. The project also included extending a 12 inch water main down Salem Road to Highway 36 South. The project did have (2) change orders. Change Order No. 1 for supplemental insurance that ultimately was not needed and Change Order No. 2 which was a reconciliation. Both were reductions. The total project came in \$8,378.35 under the original bid amount.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b> A. PROS: B. CONS:		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		
<b>ATTACHMENTS:</b> (1) Progress Payment No. 3 (Final), (2) Construction Progress Report No. 3 (Final), (3) Change Order No. 2(Reconciliation), (4) Affidavit of Bills Paid, (5) Affidavit of Guarantee, (6) Certificate of Substantial Completion; and (7) Certificate of Acceptance		
<b>FUNDING SOURCE (Where Applicable):</b>		
<b>RECOMMENDED ACTION:</b> Approve Change Order No. 1 and Final Payment to Kieschnick General Contractors for the 2012 Valmont Water System Improvement Project and authorize the Mayor to execute any necessary documentation		
<b>APPROVALS:</b> Terry K. Roberts		

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

PROGRESS PAYMENT NO. 3 (FINAL)

CONTRACT TIME - 120 CALENDAR DAYS (REVISED TO 86 IN CHANGE ORDER 2)

OWNER: City of Brenham, P.O. Box 1059, Brenham, TX 77834

PROJECT: Valmont Water System Improvements

JOB NO.: B0039-021-00

CONTRACTOR: Kieschnick General Contractors, P.O. Box 200, Wellborn, TX 77881

	FROM	TO	USED
ORIGINAL	23-Dec-12	22-Apr-13	120 Calendar Days
REVISED	23-Dec-12	19-Mar-13	86 Calendar Days
THIS EST.	01-Feb-13	19-Mar-13	46 Calendar Days

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	THIS ESTIMATE		PREVIOUS ESTIMATE		TOTAL TO DATE		REMARKS
					QUANTITY	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	
	<b>BASE BID</b>										
	<b>Valmont</b>										
1.	Mobilization, including bonds, insurance, move-in, move-out and related work.	L.S.	1	\$15,000.00	10%	\$1,500.00	90%	\$13,500.00	100%	\$15,000.00	100.0%
2.	Storm Water Pollution Prevention Plan, issue and/or post all required notices; pay all required permit fees; perform all required inspections; maintain all required records; install, maintain and remove all necessary erosion control measures; reestablish vegetation on all disturbed areas.	L.S.	1	\$1,500.00	30%	\$450.00	70%	\$1,050.00	100%	\$1,500.00	100.0%
3.	Site preparation, including erection, maintenance and removal of barricades, signs and traffic control devices; perform all required clearing and grubbing; perform all required demolition; dispose of all cleared and/or demolished materials. ***Change Order No. 2	Sta.	55.87	\$80.00	(3.27)	(\$261.60)	59.14	\$4,731.20	55.87	\$4,469.60	100.0%
4.	12" AWWA C-900, Class 150 PVC water line, including tracer wire. ***Change Order No. 2	L.F.	3,171	\$30.00	29	\$870.00	3,142	\$94,260.00	3,171	\$95,130.00	100.0%
5.	12" AWWA C-900, Class 150 PVC water line, including tracer wire, by bore. ***Change Order No. 2	L.F.	34	\$75.00	0	\$0.00	34	\$2,550.00	34	\$2,550.00	100.0%
6.	12" AWWA C-900, Class 150 PVC water line, including tracer wire, encased in 20" diameter steel casing (0.344" minimum wall thickness) by bore.	L.F.	50	\$185.00	0	\$0.00	50	\$9,250.00	50	\$9,250.00	100.0%
7.	8" AWWA C-900, Class 150 PVC water line, including tracer wire. ***Change Order No. 2	L.F.	2,431	\$22.00	0	\$0.00	2,431	\$53,482.00	2,431	\$53,482.00	100.0%

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

PROGRESS PAYMENT NO. 3 (FINAL)

CONTRACT TIME - 120 CALENDAR DAYS (REVISED TO 86 IN CHANGE ORDER 2)

OWNER: City of Brenham, P.O. Box 1059, Brenham, TX 77834

PROJECT: Valmont Water System Improvements

JOB NO.: B0039-021-00

CONTRACTOR: Kieschnick General Contractors, P.O. Box 200, Wellborn, TX 77881

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					QUANTITY	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	
8.	8" AWWA C-900, Class 150 PVC water line, including tracer wire, by bore. ***Change Order No. 2	L.F.	184	\$55.00	0	\$0.00	184	\$10,120.00	184	\$10,120.00	100.0%
9.	12" gate valve and valve box.	Ea.	6	\$1,750.00	0	\$0.00	6	\$10,500.00	6	\$10,500.00	100.0%
10.	8" gate valve and valve box.	Ea.	6	\$1,000.00	0	\$0.00	6	\$6,000.00	6	\$6,000.00	100.0%
11.	6" gate valve and valve box.	Ea.	2	\$850.00	0	\$0.00	2	\$1,700.00	2	\$1,700.00	100.0%
12.	2" automatic flush valve assembly.	Ea.	2	\$3,500.00	0	\$0.00	2	\$7,000.00	2	\$7,000.00	100.0%
13.	2" air release valve assembly.	Ea.	1	\$1,500.00	0	\$0.00	1	\$1,500.00	1	\$1,500.00	100.0%
14.	6" fire hydrant assembly.	Ea.	4	\$3,100.00	0	\$0.00	4	\$12,400.00	4	\$12,400.00	100.0%
15.	Rotate existing 6" fire hydrant.	Ea.	1	\$200.00	1	\$200.00	0	\$0.00	1	\$200.00	100.0%
16.	Make a wet connection to an existing 8" waterline.	Ea.	1	\$1,250.00	1	\$1,250.00	0	\$0.00	1	\$1,250.00	0.0%
17.	Make a wet connection to an existing 6" waterline.	Ea.	4	\$800.00	4	\$3,200.00	0	\$0.00	4	\$3,200.00	100.0%
18.	Ductile iron fittings. ***Change Order No. 2	Ton	2.6305	\$4,500.00	(0.0495)	(\$222.75)	2.6800	\$12,060.00	2.6305	\$11,837.25	100.0%
19.	One (1) 20' joint of 6" ASTM D2241 SDR 26 PVC sanitary sewer line centered on water line. ***Change Order No. 2	Ea.	0	\$750.00	0	\$0.00	0	\$0.00	0	\$0.00	0.0%
20.	Repair existing 6" gravel base.	L.F.	10	\$50.00	0	\$0.00	10	\$500.00	10	\$500.00	100.0%
21.	Repair existing 8" cement stabilized base. ***Change Order No. 2	L.F.	1,682	\$8.00	1,682	\$13,456.00	0	\$0.00	1,682	\$13,456.00	0.0%
22.	Repair existing 6" concrete pavement. ***Change Order No. 2	L.F.	0	\$50.00	0	\$0.00	0	\$0.00	0	\$0.00	0.0%
Subtotal Valmont (Item Nos. 1-22)							\$20,441.65	\$240,603.20		\$261,044.85	

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

PROGRESS PAYMENT NO. 3 (FINAL)

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OWNER: City of Brenham, P.O. Box 1059, Brenham, TX 77834

PROJECT: Valmont Water System Improvements

JOB NO.: B0039-021-00

CONTRACTOR: Kieschnick General Contractors, P.O. Box 200, Wellborn, TX 77881

FROM

TO

USED

ORIGINAL 23-Dec-12

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120 Calendar Days

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19-Mar-13

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THIS EST. 01-Feb-13

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					QUANTITY	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	
	<b>Salem Road</b>										
23.	Mobilization, including bonds, insurance, move-in, move-out and related work.	L.S.	1	\$7,500.00	10%	\$750.00	90%	\$6,750.00	100%	\$7,500.00	100.0%
24.	Storm Water Pollution Prevention Plan, issue and/or post all required notices; pay all required permit fees; perform all required inspections; maintain all required records; install, maintain and remove all necessary erosion control measures; reestablish vegetation on all disturbed areas.	L.S.	1	\$1,500.00	30%	\$450.00	70%	\$1,050.00	100%	\$1,500.00	100.0%
25.	Site preparation, including erection, maintenance and removal of barricades, signs and traffic control devices; perform all required clearing and grubbing; perform all required demolition; dispose of all cleared and/or demolished materials. ***Change Order No. 2	Sta.	26.95	\$150.00	0.15	\$22.50	26.80	\$4,020.00	26.95	\$4,042.50	100.0%
26.	12" AWWA C-900, Class 150 PVC water line, including tracer wire. ***Change Order No. 2	L.F.	2,680	\$30.00	(17)	(\$510.00)	2,697	\$80,910.00	2,680	\$80,400.00	100.0%
27.	12" gate valve and valve box.	Ea.	3	\$1,750.00	0	\$0.00	3	\$5,250.00	3	\$5,250.00	100.0%
28.	10" gate valve and valve box.	Ea.	1	\$1,500.00	0	\$0.00	1	\$1,500.00	1	\$1,500.00	100.0%
29.	6" pressure reducing/sustaining valve assembly.	Ea.	1	\$5,000.00	1	\$5,000.00	0	\$0.00	1	\$5,000.00	100.0%
30.	Remove and salvage existing 10" check valve assembly and 2" automatic flush valve.	Ea.	1	\$1,500.00	1	\$1,500.00	0	\$0.00	1	\$1,500.00	100.0%
31.	6" fire hydrant assembly.	Ea.	4	\$3,000.00	0	\$0.00	4	\$12,000.00	4	\$12,000.00	100.0%
32.	Make a wet connection to an existing 10" waterline.	Ea.	4	\$1,500.00	3	\$4,500.00	1	\$1,500.00	4	\$6,000.00	100.0%

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

PROGRESS PAYMENT NO. 3 (FINAL)

CONTRACT TIME - 120 CALENDAR DAYS (REVISED TO 86 IN CHANGE ORDER 2)

OWNER: City of Brenham, P.O. Box 1059, Brenham, TX 77834

PROJECT: Valmont Water System Improvements

JOB NO.: B0039-021-00

CONTRACTOR: Kieschnick General Contractors, P.O. Box 200, Wellborn, TX 77881

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					QUANTITY	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	
33.	Ductile iron fittings. ***Change Order No. 2	Ton	0.8825	\$4,000.00	(0.0005)	(\$2.00)	0.8830	\$3,532.00	0.8825	\$3,530.00	100.0%
34.	1" long polyethylene water service line by bore, including connection to existing water main line and meter.	Ea.	2	\$1,250.00	2	\$2,500.00	0	\$0.00	2	\$2,500.00	100.0%
35.	Repair existing 8" cement stabilized base.	L.F.	89	\$10.00	89	\$890.00	0	\$0.00	89	\$890.00	100.0%
	Subtotal Salem Road (Item Nos. 23-35)					\$15,100.50		\$116,512.00		\$131,612.50	
	Total Base Bid (Item Nos. 1-35)					\$35,542.15		\$357,115.20		\$392,657.35	
	<b><u>SUPPLEMENTAL BID ITEM</u></b>										
S1.	Increase insurance coverage to include a general liability limit of \$2,000,000 per occurrence and a \$4,000,000 aggregate and an excess umbrella liability minimum of \$5,000,000, each occurrence, aggregate. ***Change Order No. 1	L.S.	0	\$1,500.00	0%	\$0.00	0%	\$0.00	0%	\$0.00	0.0%

JONES & CARTER, INC.  
 1500 SOUTH DAY ST.  
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PROGRESS PAYMENT NO. 3 (FINAL)

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					QUANTITY	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	
						<u>Valmont</u>		<u>Salem Road</u>		<u>Total Project</u>	
	CHANGE ORDER PLUS/MINUS										
	Change Order No. 1					(\$1,500.00)		\$0.00		(\$1,500.00)	
	Change Order No. 2					(\$6,598.85)		(\$279.50)		(\$6,878.35)	
	TOTAL CONTRACT MODIFICATIONS					(\$8,098.85)		(\$279.50)		(\$8,378.35)	
	Subtotal (Line Items)					\$261,044.85		\$131,612.50		\$392,657.35	
	Materials on Hand					\$0.00		\$0.00		\$0.00	
	Subtotal (Materials on Hand/Line Items)					\$261,044.85		\$131,612.50		\$392,657.35	
	Less Retainage (0%)					\$0.00		\$0.00		\$0.00	
	Total					\$261,044.85		\$131,612.50		\$392,657.35	
	Less Previous Estimates					\$233,736.77		\$111,792.20		\$345,528.97	
	Due this Estimate					\$27,308.08		\$19,820.30		\$47,128.38	
	Orig. Contract Amount					\$269,143.70		\$131,892.00		\$401,035.70	
	Contract Modifications					(\$8,098.85)		(\$279.50)		(\$8,378.35)	
	Total Contract Amount					\$261,044.85		\$131,612.50		\$392,657.35	
	Construction Remaining					\$0.00		\$0.00		\$0.00	
	Amount Approved					\$27,308.08		\$19,820.30		\$47,128.38	
	% Complete					100%		100%		100%	

CERTIFIED AS CORRECT PAYMENT DUE

APPROVED BY CONTRACTOR

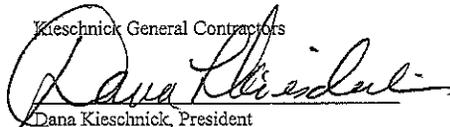
APPROVED BY OWNER

Jones & Carter, Inc.

Kieschnick General Contractors

City of Brenham







Wm. R. Krueger, P.E., Vice President  
 Date: 3/19/2013

Dana Kieschnick, President  
 Date: 3/19/2013

Lowell Ogle, Jr., Director of Public Utilities  
 Date: 3/19/2013

April 10, 2013

Construction Progress Report No. 3 (Final)  
Period From February 1, 2013 to March 19, 2013

Construction of the Valmont Water System Improvements

- A. Contractor: Kieschnick General Contractors
- B. Contract Date: November 16, 2012
- C. Authorization to Proceed: December 13, 2012
- D. Contract Time: 120 Calendar Days (Revised to 86 in Change Order No. 2)
- E. Contract Time Used: 86 Calendar Days

I. General

The Contractor completed installation of 12-inch PVC water line, rotated a fire hydrant, made wet connections, and repaired existing 8-inch cement stabilized base at the Valmont portion of the project. The Contractor installed a 6-inch pressure reducing/sustaining valve and 1-inch long polyethylene water service line, removed and salvaged existing 10-inch check valve assembly and 2-inch automatic flush valve, made wet connections, and repaired existing 8-inch cement stabilized base at the Salem Road portion of the project.

II. Change Orders

Change Order No. 2 (Reconciliation) was issued on March 19, 2013 to reconcile to final contract quantities and time.

III. Completion Report

	<u>Valmont</u>	<u>Salem Road</u>	<u>Total Project</u>
Actual Cost as of This Report	\$261,044.85	\$131,612.50	\$392,657.35
Less Retainage (0%)	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
Total Amount as of This Report	\$261,044.85	\$131,612.50	\$392,657.35
Less Previous Progress Payments	<u>\$233,736.77</u>	<u>\$111,792.20</u>	<u>\$345,528.97</u>
Amount Due This Report	\$27,308.08	\$19,820.30	\$47,128.38
Orig. Contract Amount	\$269,143.70	\$131,892.00	\$401,035.70
Contract Modifications	<u>(\$8,098.85)</u>	<u>(\$279.50)</u>	<u>(\$8,378.35)</u>
Total Contract Amount	\$261,044.85	\$131,612.50	\$392,657.35
Construction Remaining	\$0.00	\$0.00	\$0.00
% Complete	100%	100%	100%

IV. Frequency of Observation

- A. Field Representative - Periodically, Multiple Visits per Week
- B. Engineer Observation - Once Weekly

V. Problems

No problems this report.

AUSTIN DALLAS  
HOUSTON BRENHAM  
SAN ANTONIO ROSENBERG  
COLLEGE STATION THE WOODLANDS

Texas Board of Professional Engineers Registration No. F-439

**CHANGE ORDER NO. 2 (RECONCILIATION)**

DATE: MARCH 19, 2013

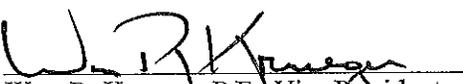
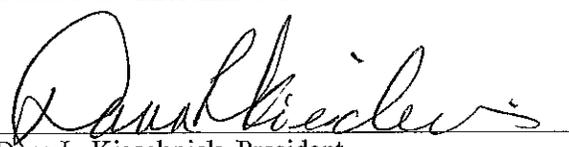
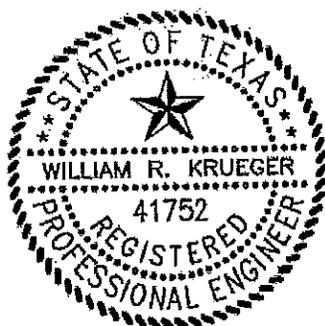
<b>Project:</b> Valmont Water System Improvements	<b>J&amp;C Job No.:</b> B0039-021-00
<b>Owner:</b> City of Brenham P.O. Box 1059, Brenham, TX 77834	<b>Contractor:</b> Kieschnick General Contractors P.O. Box 200, Wellborn, TX 77881

**Description of Changes:** To eliminate bore under electrical transformer on Base Line B; to eliminate bore under concrete driveway on Base Line E; to eliminate installation of pressure rated sanitary sewer pipe; and to change 256 LF of 8" water line incorrectly tabulated as 12" water line.

**Reason for Changes:** To reconcile to final contract quantities and time.

**Change in Contract price and time summary:**

	<u>COST</u>	<u>TIME</u>
<b>Original Contract:</b>	\$401,035.70	120 Calendar Days
<b>Net previous change(s):</b>	-\$1,500.00	0 Calendar Days
<b>Contract prior to this change order:</b>	\$399,535.70	120 Calendar Days
<b>Net decrease from this change order:</b>	-\$6,878.35	-34 Calendar Days
<b>Revised Contract Amount:</b>	\$392,657.35	86 Calendar Days
<b>Cumulative % Change in Contract:</b>	-2.09 %	-28 %

<p><b>RECOMMENDED BY:</b> Jones &amp; Carter, Inc.</p> <p> Wm. R. Krueger, P.E., Vice Resident 3/19/2013 Date</p>	<p><b>ACCEPTED BY:</b> Contractor: Kieschnick General Contractors</p> <p> Dana L. Kieschnick, President 3/19/2013 Date</p>
	<p><b>APPROVED BY:</b> Owner: City of Brenham</p> <p>_____ Milton Y. Tate, Jr., Mayor 3/19/2013 Date</p>

Enclosure: Attachment No. 1

**Construction of the City of Brenham  
Valmont Water System Improvements  
J&C No. B0039-021-00**

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

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Revised Unit Price</u>	<u>Bid Quantity</u>	<u>Revised Quantity</u>	<u>Previous Amount</u>	<u>Revised Amount</u>	<u>Net Change</u>
<u>Valmont</u>									
3.	Site preparation, including erection, maintenance and removal of barricades, signs and traffic control devices; perform all required clearing and grubbing; perform all required demolition; dispose of all cleared and/or demolished materials.	Sta.	\$80.00	\$80.00	59.14	55.87	\$4,731.20	\$4,469.60	(\$261.60)
4.	12" AWWA C-900, Class 150 PVC water line, including tracer wire.	L.F.	\$30.00	\$30.00	3,405	3,171	\$102,150.00	\$95,130.00	(\$7,020.00)
5.	12" AWWA C-900, Class 150 PVC water line, including tracer wire, by bore.	L.F.	\$75.00	\$75.00	54	34	\$4,050.00	\$2,550.00	(\$1,500.00)
7.	8" AWWA C-900, Class 150 PVC water line, including tracer wire.	L.F.	\$22.00	\$22.00	2,175	2,431	\$47,850.00	\$53,482.00	\$5,632.00
8.	8" AWWA C-900, Class 150 PVC water line, including tracer wire, by bore.	L.F.	\$55.00	\$55.00	230	184	\$12,650.00	\$10,120.00	(\$2,530.00)
18.	Ductile iron fittings.	Ton	\$4,500.00	\$4,500.00	2.5410	2.6305	\$11,434.50	\$11,837.25	\$402.75
19.	One (1) 20' joint of 6" ASTM D2241 SDR 26 PVC sanitary sewer line centered on water line.	Ea.	\$750.00	\$750.00	1	0	\$750.00	\$0.00	(\$750.00)
21.	Repair existing 8" cement stabilized base.	L.F.	\$8.00	\$8.00	1,691	1,682	\$13,528.00	\$13,456.00	(\$72.00)
22.	Repair existing 6" concrete pavement.	L.F.	\$50.00	\$50.00	10	0	\$500.00	\$0.00	(\$500.00)
Subtotal Valmont									(\$6,598.85)

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Revised Unit Price</u>	<u>Bid Quantity</u>	<u>Revised Quantity</u>	<u>Previous Amount</u>	<u>Revised Amount</u>	<u>Net Change</u>
<u>Salem Road</u>									
25.	Site preparation, including erection, maintenance and removal of barricades, signs and traffic control devices; perform all required clearing and grubbing; perform all required demolition; dispose of all cleared and/or demolished materials.	Sta.	\$150.00	\$150.00	26.80	26.95	\$4,020.00	\$4,042.50	\$22.50
26.	12" AWWA C-900, Class 150 PVC water line, including tracer wire.	L.F.	\$30.00	\$30.00	2,690	2,680	\$80,700.00	\$80,400.00	(\$300.00)
33.	Ductile iron fittings.	Ton	\$4,000.00	\$4,000.00	0.8830	0.8825	\$3,532.00	\$3,530.00	(\$2.00)
Subtotal Salem Road									(\$279.50)
NET DECREASE IN CONTRACT PRICE									(\$6,878.35)

AFFIDAVIT  
OF  
BILLS PAID

STATE OF TEXAS §

COUNTY OF BRAZOS §

Before me, a Notary Public in and for the State of Texas, on this day personally appeared Dana L. Kieschnick, President of Kieschnick General Contractors, well known to me to be the person making this affidavit, who, being by me first duly sworn and deposed did say:

I am Dana L. Kieschnick, President of Kieschnick General Contractors and have personal knowledge of the matter stated in this affidavit. Kieschnick General Contractors has paid all of the labor and material costs in connection with construction for the City of Brenham known as the Valmont Water System Improvements, J&C No. B0039-021-00, and as of this date, there are no unpaid bills for labor performed upon or materials or supplies delivered to or used in connection with such job.

This affidavit is made in connection with Progress Payment No. 3 (Final) under the contract between the City of Brenham and Kieschnick General Contractors and with the knowledge that it will be relied upon in making such payment and that such payment would not be made except upon the truth of the matter contained in this affidavit.

DATE: 04/08/2013

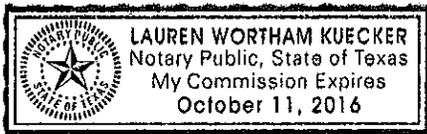
By: *Dana L. Kieschnick*  
Dana L. Kieschnick, President

STATE OF TEXAS §

COUNTY OF BRAZOS §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 8<sup>th</sup> day of April,  
A.D., 2013.



*Lauren Kuecker*  
Notary Public Signature

(Notary Seal)

AFFIDAVIT  
OF  
GUARANTEE

STATE OF TEXAS §

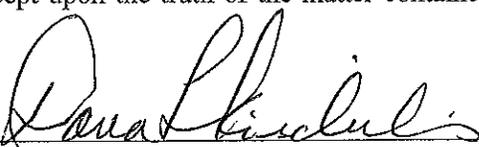
COUNTY OF BRAZOS §

Before me, a Notary Public in and for the State of Texas, on this day personally appeared Dana L. Kieschnick, President of Kieschnick General Contractors, well known to me to be the person making this affidavit, who, being by me first duly sworn and deposed did say:

I am Dana L. Kieschnick, President of Kieschnick General Contractors and have personal knowledge of the matter stated in this affidavit. Kieschnick General Contractors does hereby give notice to the Owner, the City of Brenham, that work for the Owner, known as the Valmont Water System Improvements, J&C No. B0039-021-00 has been substantially completed. In accordance with the provisions of General Condition 5.07, Guarantee, of the General Conditions, Kieschnick General Contractors does hereby guarantee all of the work under the contract for a period of one (1) year to be free from faulty materials and improper workmanship in every particular, and against injury from proper and usual wear; and agrees to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials due to such required replacement or recompletion of all work under this contract, as evidenced by the Engineer's Certificate of Substantial Completion.

This affidavit is made in connection with the final payment under the contract between the City of Brenham and Kieschnick General Contractors and with the knowledge that it will be relied upon in making such payment and that such payment would not be made except upon the truth of the matter contained in this affidavit.

Date: 04/08/2013

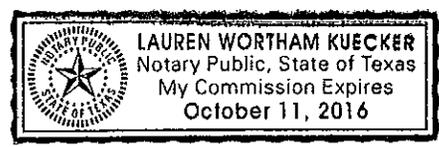
By:   
Dana L. Kieschnick, President

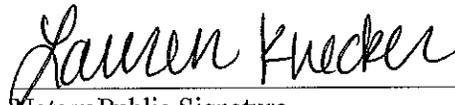
STATE OF TEXAS §

COUNTY OF BRAZOS §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 8<sup>th</sup> day of April,  
A.D., 2013.



  
Notary Public Signature

(Notary Seal)

**CERTIFICATE OF SUBSTANTIAL COMPLETION FOR  
CONSTRUCTION OF THE  
CITY OF BRENHAM, TEXAS  
VALMONT WATER SYSTEM IMPROVEMENTS**

March 19, 2013

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

**CONTRACTOR:** Mrs. Dana Kieschnick  
President  
Kieschnick General Contractors  
P.O. Box 200  
Wellborn, Texas 77881

**CONTRACT:** City of Brenham  
Valmont Water System Improvements  
J&C No. B0039-021-00

Dear Mayor Tate and Mrs. Kieschnick:

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

J&C recommends that the **OWNER** issue the **CONTRACTOR** a Certificate of Acceptance of the Work, and that final payment be made to the **CONTRACTOR**. J&C also recommends that the Contractor's guarantee period of one (1) year begin on March 19, 2013.

Very truly yours,



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

WRK/ebr

P:\PROJECTS\B0039-Brenham\021 Valmont Water Ext\Construction\Letters\Closing Documents.doc

 **JONES & CARTER, INC.**  
ENGINEERS • PLANNERS • SURVEYORS  
*Texas Board of Professional Engineers Registration No. F-439*  
1500 South Day Street, Brenham, Texas 77833  
(979) 836-6631, Fax: (979) 836-5686



March 19, 2013

Mrs. Dana Kieschnick  
President  
Kieschnick General Contractors  
P.O. Box 200  
Wellborn, Texas 77881

Re: CERTIFICATE OF ACCEPTANCE  
City of Brenham  
Valmont Water System Improvements  
J&C No. B0039-021-00

Dear Mrs. Kieschnick:

This is to certify that the City of Brenham accepts the subject project on the basis of the Certificate of Substantial Completion issued by our engineers, Jones & Carter, Inc., and understands that a guarantee shall cover a period of one (1) year beginning on March 19, 2013.

Very truly yours,

Milton Y. Tate, Jr.  
Mayor



**AGENDA ITEM 10**

<b>DATE OF MEETING:</b> May 2, 2013		<b>DATE SUBMITTED:</b> April 22, 2013
<b>DEPT. OF ORIGIN:</b> Administration		<b>SUBMITTED BY:</b> Amanda Klehm
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Possibly Act Upon Resolution No. R-13-006 Authorizing Execution of an Agreement with TXDOT for the Temporary Closure of State Right-of-Way in Connection with the 2013 Downtown Summer Concert Series (Hot Nights, Cool Tunes) to be Held on July 6, 13, 20, and 27, 2013		
<b>SUMMARY STATEMENT:</b> The Downtown Summer Concert Series (Hot Nights, Cool Tunes) is sponsored by Main Street Brenham. These are free concerts for the public. This year's concerts will be held on July 6, 13, 20, and 27, 2013 from 7:00 pm – 11:00 pm. One lane of Alamo Street will be closed between Austin Street and Market Street from 4:30pm – 11:30pm. Food and beverage booths and kids' activities will be set up along the street as well as classic car cruise-in with people sitting and enjoying the entertainment.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
A. PROS:		
B. CONS:		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b> N/A		
<b>ATTACHMENTS:</b> (1) Resolution R-13-006; (2) Agreement with TxDOT for the Temporary Closure of State Right-of-Way; and (3) Application for Event Permit		
<b>FUNDING SOURCE (Where Applicable):</b> N/A		
<b>RECOMMENDED ACTION:</b> Approve Resolution No. R-13-006 authorizing execution of an Agreement with TxDOT for the Temporary Closure of State Right-of-Way in connection with the 2013 Downtown Summer Concert Series (Hot Nights, Cool Tunes) to be held on July 6, 13, 20, and 27, 2013		
<b>APPROVALS:</b> Terry K. Roberts		

**RESOLUTION R-13-006**

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

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

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

**WHEREAS**, the City Council of the City of Brenham has considered the foregoing and the aforesaid agreement and have agreed to be bound by the provisions thereof for the purpose of closing said streets for the 2012 Downtown Summer Concert Series (Hot Nights, Cool Tunes) to be held on July 7, July 14, July 21, and July 28, 2012.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS**, the Mayor of Brenham, acting on behalf of the City Council of the City of Brenham is hereby authorized to execute the attached agreement with the Texas Department of Transportation in connection with the closure of a portion of the state highway system within the City of Brenham associated with the 2012 Downtown Summer Concert Series (Hot Nights, Cool Tunes). This resolution is effective upon its adoption.

PASSED AND APPROVED this the \_\_\_\_\_ of May, 2013.

\_\_\_\_\_  
Milton Y. Tate, Jr., Mayor  
City of Brenham, Texas

ATTEST:

\_\_\_\_\_  
Jeana Bellinger, TRMC  
City Secretary

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT FOR THE TEMPORARY CLOSURE OF STATE RIGHT OF WAY**

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

**W I T N E S S E T H**

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

**WHEREAS**, the local government has requested the temporary closure of Alamo Street (Business 290) for the purpose of the 2013 Downtown Summer Concert Series (Hot Nights, Cool Tunes), from 2:30 pm to 11:30 pm on July 6, 13, 20, and 27, 2013 as described in the attached "Exhibit A," hereinafter identified as the "Event;" and

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

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

**WHEREAS**, on the 2<sup>nd</sup> day of May, 2013, the Brenham City Council passed Resolution/ Ordinance No. R-13-006, attached hereto and identified as "Exhibit B," establishing that the Event serves a public purpose and authorizing the local government to enter into this agreement with the State; and

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

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

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

**A G R E E M E N T**

**Article 1. CONTRACT PERIOD**

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

**Article 2. EVENT DESCRIPTION**

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

**Article 3. OPERATIONS OF THE EVENT**

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

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

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

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

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

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

**G.** The local government hereby assures the State that there will be appropriate passage allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the local government's traffic control plan.

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

#### **Article 4. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this agreement, all documents prepared by the local government will remain the property of the local government. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use.

#### **Article 5. TERMINATION**

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

- (1) By mutual written agreement and consent of both parties.
- (2) By the State upon determination that use of the State's right of way is not feasible or is not in the best interest of the State and the traveling public.
- (3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.
- (4) By satisfactory completion of all services and obligations as set forth herein.

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

#### **Article 6. DISPUTES**

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

#### **Article 7. RESPONSIBILITIES OF THE PARTIES**

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

**Article 8. INSURANCE**

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

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

**Article 9. AMENDMENTS**

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

**Article 10. COMPLIANCE WITH LAWS**

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

**Article 11. LEGAL CONSTRUCTION**

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

**Article 12. NOTICES**

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

<b>Local Government:</b>	<b>State:</b>
Milton Y. Tate, Jr. , Mayor City of Brenham P.O. Box 1059 Brenham, Texas 77834-1059	Texas Department of Transportation  <u>Catherine Hejl, P.E.</u> <u>District Engineer</u> <u>1300 North Texas Avenue</u> <u>Bryan, Texas 77803-2760</u>

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

**Article 13. SOLE AGREEMENT**

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

**IN TESTIMONY WHEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

**THE CITY OF BRENHAM**

Executed on behalf of the local government by:

By \_\_\_\_\_ Date \_\_\_\_\_  
City Official

Typed or Printed Name and Title: Milton Y. Tate, Jr.  
Mayor

**THE STATE OF TEXAS**

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

By \_\_\_\_\_ Date \_\_\_\_\_  
District Engineer

## Exhibit A

This request is for closure of Alamo Street from Market Street to Austin Street as follows: \_\_\_\_\_

One lane of Alamo Street from Park Street to Market Street closed at 2:30 pm; Both lanes of Alamo Street from Austin Street to Market Street closed at 4:30pm

\_\_\_\_\_ on July 6, 13, 20, and 27, 2013 \_\_\_\_\_

### Date and Time of Closure

One lane of Alamo Street from Park Street to Market Street to be closed from 2:30 p.m. until 11:30 p.m. then both lanes of Alamo Street from Austin Street to Market Street to be closed from 4:30 pm to 11:30 pm on July 6, 13, 20, and 27, 2013

All streets will be barricaded with traffic control devices and will be staffed with personnel from the Brenham Police Department.

The proposed activity that requires these street closures is the

2013 Downtown Summer Concert Series (Hot Nights, Cool Tunes) \_\_\_\_\_

**Exhibit B**

**RESOLUTION R-13-006**

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

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

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

**WHEREAS**, the City Council of the City of Brenham has considered the foregoing and the aforesaid agreement and have agreed to be bound by the provisions thereof for the purpose of closing said streets for the 2012 Downtown Summer Concert Series (Hot Nights, Cool Tunes) to be held on July 7, July 14, July 21, and July 28, 2012.

**NOW, THEREFORE, BE IT RESOLVED** BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, the Mayor of Brenham, acting on behalf of the City Council of the City of Brenham is hereby authorized to execute the attached agreement with the Texas Department of Transportation in connection with the closure of a portion of the state highway system within the City of Brenham associated with the 2012 Downtown Summer Concert Series (Hot Nights, Cool Tunes). This resolution is effective upon its adoption.

PASSED AND APPROVED this the \_\_\_\_\_ of May, 2013.

\_\_\_\_\_  
Milton Y. Tate, Jr., Mayor  
City of Brenham, Texas

ATTEST:

\_\_\_\_\_  
Jeana Bellinger, TRMC  
City Secretary

## Exhibit C

The Downtown Summer Concert Series (Hot Nights, Cool Tunes) is sponsored by Main Street Brenham. These are free concerts for the public with food and beverage booths, kid's activities as well as a classic car cruise-in. People will bring their lawn chairs and set them up in the street and enjoy the fellowship and entertainment. This year's concerts will be held on July 6, 13, 20, and 27, 2013. One lane of Alamo Street between Park Street and Market Street will be closed beginning at 2:30 pm then both lanes of Alamo Street will be closed between Austin Street and Market Street from 4:30 pm to 11:30 pm.

APPLICATION FOR EVENT PERMIT (WITH STREET CLOSURES)

- 1. Name of sponsoring organization: Main Street Brenham
- 2. Name of individual making application on behalf of sponsoring organization: Jennifer Eckermann
- 3. Proposed date(s) of event: July 6, July 13, July 20, July 27
- 4. Purpose of the event: summer concert series
- 5. Proposed street closures for the event: Alamo Street from Austin to Market at 4:30 pm; one lane (right), starting @ Park Street @ 3:00 pm.
- 6. Proposed times of street closures (allowing for assembly/set-up and breakdown/cleanup):  
 Proposed closure date and time: July 6, July 13, July 20, July 27 @ 4:30 pm  
 Closure requested until: 11:30 pm (or until stage is removed)
- 7. Event start date and time: July 6, July 13, July 20, July 27 @ 7:00 pm
- 8. Event termination date and time: July 6, July 13, July 20, July 27 @ 10:45 pm
- 9. Describe types of activities planned (entertainment, food booths, theme of items for sale, etc):  
entertainment; food & beverage booths; kids activities; car cruise-in.
- 10. Estimated attendance (event organizers and spectators): 2,000/evening
- 11. Special Requests and/or additional information peculiar to this event: We will need Park Street, between Main + Alamo; and Baylor, between Alamo & Commerce, closed @ 2:45 pm.

Jennifer Eckermann  
Name of Applicant (typed or printed)

Jennifer Eckermann  
Applicant or Authorized Person's Signature

Date: 4-12-13

979.337.7384  
Telephone Number

**EVENT PERMIT (WITH STREET CLOSURES)**

1. Street Closure Times: Beginning at July 6, July 13, July 20, July 27 @ 4:30pm  
 (Date and time)  
 Ending at July 6, July 13, July 20, July 27 @ 11:30pm (or until  
 (Date and time) stage is removed)

2. Street Closings:  
Alamo Street from Austin to Market @ 4:30pm  
Alamo Street from Park to St. Charles @ 3:00pm  
Park Street from Main to Alamo @ 2:45pm  
Baylor Street from Commerce to Alamo @ 2:45pm  
 \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_  
 \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_

Exceptions/additional information: \_\_\_\_\_

3. Event set-up times: From 3:00pm to 7:00pm  
 4. Event start time: 7:00pm  
 5. Event closing time: 10:30pm - 11:00pm  
 6. Breakdown/cleanup: From 10:30pm to 11:30pm (or until stage removed)  
 7. Permittee agrees to advise all participants (other than the general public), either orally or by written notice, of the terms and conditions of the ordinance and permit prior to the commencement of such event.

CITY OF BRENHAM

By: \_\_\_\_\_  
Director of Public Works

Jennifer Eckermann  
Applicant

Date: \_\_\_\_\_

Date: 4-12-13

CITY STAFF REVIEW

Date received: \_\_\_\_\_

\*\*\*\*\*

APPROVED/DENIED: APPROVED

Date: 4-13-2013

\_\_\_\_\_  
Chief of Police

City support requirements and rates, if any: \_\_\_\_\_

\_\_\_\_\_

Comments: \_\_\_\_\_

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APPROVED/DENIED:

Date: \_\_\_\_\_

\_\_\_\_\_  
Chief of Fire Department

City support requirements and rates, if any: \_\_\_\_\_

\_\_\_\_\_

Comments: \_\_\_\_\_

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APPROVED/DENIED:

Date: \_\_\_\_\_

\_\_\_\_\_  
Traffic Operations

City support requirements and rates, if any: \_\_\_\_\_

\_\_\_\_\_

Comments: \_\_\_\_\_

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## AGENDA ITEM 11

<b>DATE OF MEETING:</b> May 2, 2013	<b>DATE SUBMITTED:</b> April 22, 2013	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Amanda Klehm	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Possibly Act Upon a Request for a Noise Variance in Connection with Hot Nights, Cool Tunes Summer Concert Series to be Held from 4:00 P.M. to 11:00 P.M. on July 6, 13, 20, and 27, 2013		
<b>SUMMARY STATEMENT:</b> Main Street Brenham submitted a request for a variance to the Noise Ordinance for the 4-night concert series this year. The dates and times include Saturday, July 6; Saturday, July 13; Saturday, July 20; and Saturday, July 27, 2013; from 2:30 p.m. (when sound set-up begins) until 11:30 p.m. when clean-up is through. There will be a free concert, children's activities, food and beverage sales, and a classic car cruise-in.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
A. PROS:		
B. CONS:		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b> N/A		
<b>ATTACHMENTS:</b> (1) Noise Variance Request		
<b>FUNDING SOURCE (Where Applicable):</b> N/A		
<b>RECOMMENDED ACTION:</b> Approve a request for a noise variance in connection with Hot Nights, Cool Tunes Summer Concert Series to be held from 4:00 P.M. to 11:00 P.M. on July 6, 13, 20, and 27, 2013		
<b>APPROVALS:</b> Terry K. Roberts		

NOISE VARIANCE REQUEST

Application Fee \$10.00

1. Name of sponsoring organization: Main Street Brenham

2. Name and address of individual making application on behalf of sponsoring organization: Jennifer Eckermann, P.O. Box 1059; Brenham, 77834

3. Purpose of the Event: Summer concert series

4. Location of Event: Downtown Brenham - on the square

5. Date of the event: July 6, July 13, July 20, July 27

6. Time of Event: 7:00 pm - 10:30 pm

7. Event Set-up: From: 3:00 pm To: 7:00 pm

Event Clean-up: From: 10:30 pm To: 11:30 pm (or until stage is removed)

8. You are required to describe the following:

a) Types of Activities Planned and any additional information specific to this event: free entertainment; food and beverage vendors; kid activities; classic car cruise-in

b) Bands/Musical Instruments: one band each night - 4-10 members

c) Sound amplification equipment: yes

d) Cleanup provisions: work with city departments

Jennifer Eckermann  
Name of Applicant (Printed or Typed)

Date: 4-12-13

Jennifer Eckermann  
Applicant or Authorized Person's Signature

Phone: 979-251-4905

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

CITY STAFF REVIEW

Date received: \_\_\_\_\_

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APPROVED

DENIED

Date: 4-18-2013

Rex Phelps, Chief of Police

Comments/Reason for Denial:

\_\_\_\_\_  
\_\_\_\_\_

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APPROVED

DENIED

Date: 4-18-2013

Ricky Boeker, Chief of Fire Department

Comments/Reason for Denial: \_\_\_\_\_

\_\_\_\_\_

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Noise Variance Approved by the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Milton Y. Tate, Jr., Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Jeana Bellinger, City Secretary

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## AGENDA ITEM 12

<b>DATE OF MEETING:</b> May 2, 2013	<b>DATE SUBMITTED:</b> April 26, 2013	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Terry K. Roberts	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input checked="" type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Section 551.072 – Deliberation Regarding Real Property – Discussion Concerning Possible Acceptance of Property for Future Park Purposes		
<b>SUMMARY STATEMENT:</b> Executive Session Discussion.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b>		
<b>B. CONS:</b>		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		
<b>ATTACHMENTS:</b> None.		
<b>FUNDING SOURCE (Where Applicable):</b>		
<b>RECOMMENDED ACTION:</b> Discussion Only		
<b>APPROVALS:</b> Terry K. Roberts		