



**NOTICE OF A REGULAR MEETING  
THE BRENHAM CITY COUNCIL  
THURSDAY JULY 11, 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 Williams**
- 3. 3-a. New Employees**
  - David Andras – Police Department
  - David Webb – Police Department**3-b. Service Recognitions**
  - Kyle Koehne – Parks Department – 10 years
  - Michael Davis – Police Department – 20 years
  - Carl Wiesepape – Police Department – 25 years
  - Paul Kasprowicz – Electric Department – 35 years
- 4. Citizens Comments**

**CONSENT AGENDA**

**5. Statutory Consent Agenda**

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

- 5-a. Minutes from the June 6, 2013, June 6, 2013 Special Meeting, and June 20, 2013 City Council Meetings** **Pages 1-26**
- 5-b. Discuss and Possibly Act Upon Ordinance No. O-13-012 on Its Second Reading Amending Chapter 8, Fire Protection and Prevention, of the Code of Ordinances of the City of Brenham, Texas by Amending Article IV, Substandard Buildings and Structures** **Pages 27-46**

**5-c. Discuss and Possibly Act Upon Ordinance No. O-13-013 on Its Second Reading Prohibiting Turns Into and Left Turns Out of the Connector Driveway of Alton Elementary School** **Pages 47-50**

**5-d. Discuss and Possibly Act Upon Ordinance No. O-13-014 on Its Second Reading Amending Chapter 6, Buildings and Structures, of the Code of Ordinances of the City of Brenham to Amend Article X, Swimming Pools** **Page 51**

#### **WORK SESSION**

**6. Discuss and Review the FY2012-13 Second Quarter Financial Report** **Pages 52-75**

#### **REGULAR AGENDA**

**7. Discuss and Possibly Act Upon RFP No. 13-008 for Bank Depository Services and Authorize the Mayor to Execute any Necessary Documentation** **Pages 76-86**

**8. Discuss and Possibly Act Upon an Audit Engagement Letter from Seidel, Schroeder & Company to Perform an Audit for the Fiscal Year Ending September 30, 2013 and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 87-95**

**9. Discuss and Possibly Act Upon an Ordinance on Its First Reading to Repeal Ordinance O-07-014 and Grant a Non-Exclusive Franchise to Texas Commercial Waste to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits** **Pages 96-130**

**10. Discuss and Possibly Act Upon an Ordinance on Its First Reading to Repeal Ordinance O-07-015 and Grant a Non-Exclusive Franchise to Allied Waste Management to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits** **Pages 131-166**

**11. Discuss and Possibly Act Upon Change Order No. 1 and Authorize Final Payment to Hubco, Inc. for the 2012 Collector Street HMA Overlay Project and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 167-174**

**12. Discuss and Possibly Act Upon Approval of Resolution No. R-13-011 Adopting an Incentive Grant Reimbursement Program** **Pages 175-187**

**13. Discuss and Possibly Act Upon an Ordinance on its First Reading Authorizing the Abandonment of the Unimproved Right-of-Way as Shown on the Ewing Subdivision Plat and Located Near the Intersection of Old Chappell Hill Road and Carrington Lane in Brenham, Texas** **Pages 188-193**

**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.

#### 14. 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 July 11, 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 July 8, 2013 at *12:20 PM*.

*Amanda Kfehm*

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

## **Brenham City Council Minutes**

A regular meeting of the Brenham City Council was held on June 6, 2013 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

### Members present:

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

### Members absent:

None

### Others present:

City Manager Terry K. Roberts, Assistant City Manager Kyle Dannhaus, City Attorney Cary Bovey, Deputy City Secretary Amanda Klehm, Chief Financial Officer Carolyn Miller, Stacy Hardy, Jamie Maurer, Kaci Konieczny, Wende Ragonis, Susan Nienstedt, Christi Korth, Kristi Jackson, Fire Chief Ricky Boeker, Deputy Chief Alan Finke, Doug Maurer, Greg Nienstedt, Jerred Eschete, Police Chief Rex Phelps, Kim Hodde, Public Works Director Dane Rau, Casey Redman, Public Utilities Lowell Ogle, Wanda Kramer, Debbie Gaffey, Alton Sommerfield, Gary Jeter, Kevin Boggus, Angela Hahn, Janie Mehrens, Kyle Branham, Pam Ruenke, Stephen Draehn, Mandy Hodde, and Grant Lischka

### Citizens present:

C.H. Harvey, Jennifer Schroeder, Casey Acker, Dorothy Morgan, Marjorie Stark, Clint Kolby, Judy Hyman, and Page Michel

### Media Present:

Arthur Hahn, Brenham Banner Press; Frank Wagner, KWHI

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

**3. 3-a. New Employees**

- Cynthia Longhofer – Accounting Manager
- William DeWayne Lucius – Maintenance Superintendent
- Russell Phelps – Electric Apprentice Lineworker
- Brooke Ripple – Telecommunications Operator Trainee
- Kaitlin Long - Telecommunications Operator Trainee
- Shannon Selden - Telecommunications Operator Trainee

**3-b. Service Recognitions**

- Kyle J. Branham – 5 years
- Victorino A. Ortiz – 10 years
- Brett R. Schroeder – 10 years
- Gloria G. Nix – 15 years

**3-c. Awards**

- Wanda Kramer – 2013 Tyler Public Sector Excellence Award for Local Government Division

**4. Citizens Comments**

There were no citizen comments.

**CONSENT AGENDA**

**5. Statutory Consent Agenda**

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

**5-a. Minutes from the May 14, 2013 and May 16, 2013 City Council Meetings**

A motion was made by Councilmember Barnes-Tilley and seconded by Mayor Pro Tem Nix to approve the Statutory Consent Agenda Item 5-a. minutes from the May 14, 2013 and May 16, 2013 City Council Meetings.

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

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

## REGULAR AGENDA

### 6. Discuss and Possibly Act Upon the Election by Council of Mayor Pro Tem

Councilmember Weldon Williams nominated Gloria Nix for Mayor Pro Tem.

A motion was made by Councilmember Williams and seconded by Councilmember Herring to appoint Gloria Nix to serve as Mayor Pro Tem.

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

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

### 7. Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Brenham and Washington County for Animal Control Services and Authorize the Mayor to Execute Any Necessary Documentation

Mayor Tate stated the proposal from the County came on Tuesday after the City's agenda was already posted; therefore, the City cannot discuss the County's proposal. Tate advised the County's proposal caught the City by surprise and the agenda was not able to be changed at that date to allow for discussion.

City Manager Terry Roberts presented this item. Roberts stated the animal control services fees as stated in the Interlocal Agreement are \$65.00 for each animal control call and \$175.00 for each animal bite call. Roberts explained the Interlocal Agreement is for 18 months from July 1, 2013 – December 31, 2014 with a provision for termination of the agreement by either party with 120 day notice without cause. Roberts reminded Council that they removed the free three calls in December from the previous agreement with the County.

A motion was made by Councilmember Herring and seconded by Councilmember Ebel to approve an Interlocal Agreement between the City of Brenham and Washington County for animal control services for \$65.00 for animal control and \$175.00 for bite cases and authorize the Mayor to execute any necessary documentation.

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

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

**8. Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Brenham and Washington County for Animal Shelter Services and Authorize the Mayor to Execute Any Necessary Documentation**

City Manager Terry Roberts presented this item. Roberts stated the animal shelter fee as stated in the Interlocal Agreement is \$103.00 for each animal. Roberts explained the calculations to arrive at the fee included the shelter budget with offset revenue and the City applied the percentage of animals surrendered to the shelter that were from the County with the average of the last three years, which equaled forty-four percent of the net budget. Roberts explained the Interlocal Agreement is for 18 months from July 1, 2013 – December 31, 2014 with a provision for termination of the agreement by either party with 120 day notice without cause. Roberts stated the agreement states both parties must meet once before June 30, 2014 to discuss extension or new agreement before the December 31, 2014 deadline.

A motion was made by Councilmember Barnes-Tilley and seconded by Mayor Pro Tem Nix to approve an Interlocal Agreement between the City of Brenham and Washington County for animal shelter services for \$103.00 per animal and authorize the Mayor to execute any necessary documentation.

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

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

**9. Discuss and Possibly Act Upon a Resolution No. R-13-009 Supporting the Construction of a New Regional (Brenham-Washington County) Animal Shelter Facility**

Police Chief Rex Phelps and City Manager Terry Roberts presented this item. Phelps stated the Animal Shelter building is on its last leg and due to the age and viability; it will not meet the State's requirements or the community's expectations. Phelps explained the donor has offered \$500,000.00 towards a new Animal Shelter facility and the Animal Shelter Task Force has pledged to raise \$500,000.00; therefore, half of the cost of the new shelter facility will be donated. The donor asks that the City and County match the donor and fundraising. The donor would like the City and County to show their commitment to the project; therefore, a Resolution is being recommended today for Council's commitment to the new shelter facility.

Councilmember Goss states this is a joint project promoted by the donor, who is asking for equal shares from the City and County. Goss states that currently we are basing the cost on the number of animals brought into the shelter per year, but Goss requested the City changes the amount to be equal shares from both entities. Goss states this is a joint venture and has nothing to do with operations, so each entity should be equally responsible for the cost of the facility at \$500,000.00 each.

Councilmember Barnes-Tilley states she appreciates Councilmember Goss' recommendation because this is a joint facility and she supports his recommendation.

Mayor Pro Tem Nix questions what happens regarding the Donor's monetary offer if the County does not participate in the construction of the new facility? Roberts explains the Resolution states if the County does not participate, the City will bring a new Resolution for the Council's consideration. Phelps explains that he is not sure regarding the Donor's monetary offer in that scenario.

A motion was made by Councilmember Williams and seconded by Councilmember Barnes-Tilley to approve Resolution No R-13-009 supporting the construction of a new regional (Brenham-Washington County) animal shelter facility with the changes requested by Councilmember Goss in the amount of \$500,000.00.

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

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

**10. Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Brenham and Washington County for Fire Protection and Fire Rescue Services and Authorize the Mayor to Execute Any Necessary Documentation**

City Manager Terry Roberts presented this item. Roberts explained the fees for fire services are not annual, but based on a per run cost and each run is different, so the cost will vary per run. Roberts explained that there are three types of fire calls: rescue, structure/house fires, and grass fires. The cost for rescue call is \$732.00 per run. The cost for structure/house fire call is \$600.00 per run. The cost for grass fire call is \$501.00 per run. Roberts stated the fees do not include standby.

Councilmember Goss recommended the fees be changes from a per run basis to a per hour per call basis. Goss stated the Brenham Fire Department was on scene this past Sunday for 3 hours out in the County on a call where, according to the new fee schedule, the City would only be reimbursed for one hour of service. Mayor Tate explained most calls are under or at an hour; therefore, he doesn't think changing to an hourly rate will produce more revenue.

Councilmember Herring questioned Fire Chief Ricky Boeker on the average time on scene for fire calls. Boeker stated the average fire call is 52 minutes on scene. Councilmember Goss questioned how many calls are over an hour? Boeker referred to the statistics presented in the packet: sixty-two (62) calls were 45 minutes or less, twenty (20) calls were 45 minutes to an hour, and twenty-seven (27) calls were more than an hour. Boeker stated the average \$603.00 per run is about 25% of the total average calls in the City and the County, which would equal the County paying an average of \$65,000.00 per year for fire service based on the fee schedule.

Fire Chief Ricky Boeker stated the fees changed because the City increased by \$120.00 for volunteer equipment and insurance cost, which is a change from ten to twenty percent. The twenty percent was determined by the average of calls in the last five years outside the City limits.

Councilmember Goss questioned Boeker regarding how much time has to pass at a call before they have to back fill the station. Boeker stated there are four guys at the station at a time and if only one person at the station, they will call in an off duty officer to help cover the station.

Councilmember Barnes-Tilley stated it seemed the City and County were close to coming to an agreement before the County proposal was introduced. Citizen C.H. Harvey stated a volunteer is a volunteer. Harvey stated the more volunteers that are at the scene, the more risk is involved. Boeker stated that when they get on the scene, they do not have volunteers standing around. Boeker stated everyone is hurting for people because fires can wear out people fast. Harvey states it seems to him that the City is nickel and diming the matter and micromanaging especially if both parties were close to an agreement. Harvey stated he supports the City and their proposal.

A motion was made by Councilmember Herring and seconded by Councilmember Ebel to approve an Interlocal Agreement between the City of Brenham and Washington County for fire protection and fire rescue services as presented in ILA documentation and authorize the Mayor to execute any necessary documentation.

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

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

**11. Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Brenham and Washington County for Library Services at the Nancy Carol Roberts Memorial Library and Authorize the Mayor to Execute Any Necessary Documentation**

City Manager Terry Roberts presented this item. Roberts stated the State of Texas currently recognizes the library as a City-County Library, but the County is only providing \$30,000.00 toward the O&M Budget, which equates to 7% of the total budget. Roberts explained that the consensus of the Council is that this amount is not sufficient and, with half the card holders from the County, the County should pay 50% of the total budget.

Mayor Tate questioned the significance of accreditation. Administrative Services Manager Wende Ragonis stated accreditation conveys prestige and opens up the possibility of grants and access to databases for research and references. Ragonis stated currently the library has not met its accreditation requirements because they fell short of money spent due to the lack of a head librarian, but they plan to appeal for next year. Ragonis explained if the City accepts any money from the County, they will have to serve the entire population.

Councilmember Barnes-Tilley questioned the difference between Regional Library and City Library in regards to accreditation. Barnes-Tilley stated if City only, the library will serve 15,000 citizens, but if Regional (City-County) Library, the library will serve 33,000 citizens. Ragonis stated if the library reverts to City only, then they can reduce cost in regards to staff, training, and circulation material due to the smaller constituency they would be required to serve in accordance with the State.

Councilmember Herring questioned how the move to City Library would impact the database for clientele? Ragonis stated the change would impact Tech Share and would decline if the library cannot meet accreditation. Ragonis is going tomorrow to appeal regarding accreditation.

A motion was made by Councilmember Williams and seconded by Councilmember Goss to approve an Interlocal Agreement between the City of Brenham and Washington County for library services at the Nancy Carol Roberts Memorial Library with each entity providing half the cost of O&M budget and authorize the Mayor to execute any necessary documentation.

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

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

**12. Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Brenham and Washington County Related to the Operation of and Improvements to Linda Anderson Park and Authorize the Mayor to Execute Any Necessary Documentation**

City Manager Terry Roberts presented this item. Roberts stated they are not recommending an increase in cost of operating Linda Anderson Park; therefore, the County contribute of \$35,000.00 will remain the same.

A motion was made by Councilmember Barnes-Tilley and seconded by Councilmember Ebel to approve an Interlocal Agreement between the City of Brenham and Washington County related to the operation of and improvements to Linda Anderson Park as presented and authorize the Mayor to execute any necessary documentation.

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

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

**13. Discuss and Possibly Act Upon Resolution No. R-13-010 Amending the Thoroughfare Plan Map Within the City of Brenham's Envision 2020 Comprehensive Plan**

City Engineer Grant Lischka presented this item. Lischka stated the Resolution was brought back to Council after the three (3) changes suggested by Council at the two (2) previous work sessions have been made to the Thoroughfare Plan.

A motion was made by Councilmember Goss and seconded by Councilmember Williams to approve Resolution No. R-13-010 amending the Thoroughfare Plan Map within the City of Brenham's Envision 2020 Comprehensive Plan.

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

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

**14. Discuss and Possibly Act Upon Bid #13-007 for Bulk Water Treatment Chemicals and Authorize the Mayor to Execute Any Necessary Documentation**

Public Utilities Director Lowell Ogle presented this item. Ogle handed out a revised Memo with corrections to the bid award name and recommended action. Ogle stated the bid for bulk water treatment chemicals is for a year contract and is an annual bid.

A motion was made by Councilmember Goss and seconded by Councilmember Herring to approve Bid #13-007 for bulk water treatment chemicals and award the annual contract to Brenntag Southwest for liquid aluminum sulfate in the amount of \$194.45/dry ton, General Chemical for caustic soda in the amount of \$251.80/liquid ton and award the annual contract to AOC Praxair for chlorine in the amount of \$0.26525 per lb and authorize the Mayor to execute any necessary documentation.

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

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

**15. Discuss and Possibly Act Upon a Vocational Work Contract Between the City of Brenham and the Brenham State Supported Living Center, a Department of Aging and Disability Services (DADS) Facility, for Litter Management Services and Authorize the Mayor to Execute Any Necessary Documentation**

Public Works Director Dane Rau presented this item. Rau stated the City of Brenham has contracted with the Brenham State Supported Living Center to help manage litter in City Parks. Rau stated this agreement is a renewal of those services in which clients assist the City of Brenham on a daily basis to manage litter throughout the 7 parks and numerous facilities.

Rau explained currently the State Supported Living Center conducts this service daily for 8 hours utilizing 5 clients, 1 Supervisor, and 1 Monitor. Rau stated a litter sweep of each park is conducted and all trash barrels are bagged, emptied, and new bags are placed in the barrels. Rau explained for the last 5 years these services cost approximately \$1800 per month; however, with this renewal the State Supported Living Center is asking for an additional increase of \$400 a mo. which would put the service at \$2,200 per month.

Rau stated the term of this agreement is for 60 months to begin on the date executed and shall remain in effect until August 31, 2014 with automatic renewals for four (4) additional one (1) year periods. Rau explained the total project is \$132,000 paid at a rate of \$2,200 per month.

A motion was made by Councilmember Herring and seconded by Mayor Pro Tem Nix to approve a Vocational Work Contract between the City of Brenham and the Brenham State Supported Living Center, a Department of Aging and Disability Services (DADS) Facility, for litter management services as presented in the packet with increase for period of five (5) years and authorize the Mayor to execute any necessary documentation.

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

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

Citizen C.H. Harvey addressed Council stating they entered into an agreement with him, which is not being honored on the City's part. Harvey stated he is not opposed to the obligation to provide for projects, but, in exchange, the City needs to go to the voters prior to spending funds on streets as promised. Harvey stated he has not requested a Freedom of Information Request, but he will if he is forced to. Harvey stated the City should honor the solemn promises made to him by the City because Harvey has kept up his end of the deal. Harvey stated before the City goes too far with this, they need to think before proceeding forward [with spending more money on streets without taking it to the voters]. Harvey stated the Certificates of Obligation need to go to the voters to ask for bonds. Harvey stated the City officials are Servants, not Masters. Harvey stated the City has not heard the last of him on this matter.

Council adjourned into Special Executive Session with BCDC at 2:21pm.

## **EXECUTIVE SESSION**

### **2. Texas Government Code Section 551.072 – Deliberation Regarding Real Property – Discussion and Deliberation Concerning Possible Acquisition and Development of Real Property for Future Park Land**

Executive Session adjourned at 3:23pm.

## **RE-OPEN REGULAR SESSION**

## **WORK SESSION**

### **16. Discussion and Presentation on Possible FY2013-14 City Street Improvement Program**

Public Works Director Dane Rau and City Engineer Grant Lischka presented this item. Lischka stated an inventory of the City's streets is currently being performed by Staff to establish the current condition of the City's approximately 81 miles of streets and to help in developing a reconstruction and maintenance program.

Lischka stated the last street inventory was performed in 2006 and identified streets that were in need of reconstruction, overlays, seal coating, patching, crack sealing and other general maintenance. Lischka explained the streets were broken into four categories based on their condition: good (20%), satisfactory (25%), fair (35%), and poor (20%).

Rau explained that while the City has been actively reconstructing streets, a robust maintenance program has not been implemented in order to preserve newly reconstructed streets and to extend the life of existing streets, which has led to a continued deterioration of the street system. Rau stated maintenance items include: crack sealing, seal coating, slurry seal, overlay, overcoat, base failure repair, pot holes, utility patches and other general items.

Rau explained that currently, the Street Department performs "spot" reconstruction out of their maintenance budget (a recent example is Jefferson Street), but, while this has allowed the City to reconstruct a small number of street sections every year (usually less than 1 mile), it has pulled money away from the maintenance budget that should be spent on pavement maintenance.

Rau explained in the past, the City has utilized private contractors and City personnel to perform reconstruction and maintenance projects, but if a program was implemented that used City personnel, additional equipment would need to be purchased. Council would like to begin a maintenance program, but that would mean the City loses one (1) mile of street reconstruction a year.

## 17. Administrative/Elected Officials Report

City Manager Terry Roberts reported on the following:

- Council Meetings
  - June 20, 2013
  - July 11, 2013
  - July 18, 2013
- At the June 20, 2013, Council will need to make decisions on the Interlocal Agreements with the County regarding Animal Control & Fire Services to know how to proceed forward
- At this point, the City does not have anything official from the County regarding their proposal.

The meeting was adjourned.

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Milton Y. Tate, Jr.  
Mayor

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Amanda Klehm  
Deputy City Secretary

## **Brenham City Council Minutes**

A special joint meeting of the Brenham City Council and the Brenham Community Development Corporation was held on June 6, 2013 beginning at 2:30 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

### Members present:

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

### Members absent:

None

### Others present:

City Manager Terry Roberts, Assistant City Manager Kyle Dannhaus, City Attorney Cary Bovey, Deputy City Secretary Amanda Klehm, Paula Shields, Chief Financial Officer Carolyn Miller, Stacy Hardy, Jamie Maurer, Fire Chief Ricky Boeker, Public Works Director Dane Rau, Leslie Kelm, Casey Redman, and Grant Lischka

### BCDC Members present:

Darrell Blum, Atwood Kenjura, Bill Betts, John Hasskarl, David Cone, Charles Moser, and John Barkman

### Media Present:

None

### **1. Call Meeting to Order**

Mayor Tate began Executive Session at 2:33pm.

## **EXECUTIVE SESSION**

### **2. Texas Government Code Section 551.072 – Deliberation Regarding Real Property – Discussion and Deliberation Concerning Possible Acquisition and Development of Real Property for Future Park Land**

Discussion only. No action taken.

Executive Session adjourned at 3:23pm.

The meeting was adjourned.

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Milton Y. Tate, Jr.  
Mayor

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Amanda Klehm  
Deputy City Secretary

## **Brenham City Council Minutes**

A regular meeting of the Brenham City Council was held on June 20, 2013 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

### Members present:

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

### Members absent:

None

### Others present:

City Manager Terry Roberts, Assistant City Manager Kyle Dannhaus, City Attorney Cary Bovey, Deputy City Secretary Amanda Klehm, Stacy Hardy, Kaci Konieczny, Fire Chief Ricky Boeker, Deputy Fire Chief Alan Finke, Police Chief Rex Phelps, Development Services Director Julie Fulgham, Allen Jacobs, Kim Hodde, Public Works Director Dane Rau, Public Utilities Director Lowell Ogle, Stephen Draehn, Pam Ruemke, Angela Hahn, Janie Mehrens, Randall Spradlin, and Grant Lischka

### Citizens present:

Jay Petrash, Kirk Hanath, Dorothy Morgan, Don Voelter, Joy Fuchs, Mary Whigham, Leonard Addicks, Angela Knauss, and Marlene Schumake

### Media Present:

Arthur Hahn, Brenham Banner Press; Frank Wagner, KWHI

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – Mayor Pro Tem Nix**

**3. Proclamation**

➤ **The C. C. & Sadie Smith Family Reunion**

Mayor Tate read a proclamation designating Saturday, June 22, 2013 as The C.C. & Sadie Smith Family Reunion Day. The Proclamation was accepted by Councilmember Andrew Ebel on behalf of his wife's family.

**4. Citizens Comments**

There were no citizen comments.

**CONSENT AGENDA**

**5. Statutory Consent Agenda**

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

**5-a. Minutes from the May 23, 2013 and May 30, 2013 City Council Meetings**

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Williams to approve the Statutory Consent Agenda Item 5-a. Minutes from the May 23, 2013 and May 30, 2013 City Council Meetings.

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

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

## REGULAR AGENDA

### **6. Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 8, Fire Protection and Prevention, of the Code of Ordinances of the City of Brenham, Texas by Amending Article IV, Substandard Buildings and Structures**

Development Services Director Julie Fulgham presented this item. Fulgham explained the amendments were a comprehensive re-write of the Substandard Building Ordinance in order to outline and become compliant with state regulations. Fulgham stated this revised Ordinance allows the City to comply with state law requirements.

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Herring to approve an Ordinance on its first reading amending Chapter 8, Fire Protection and Prevention, of the Code of Ordinances of the City of Brenham, Texas by amending Article IV, Substandard Buildings and Structures.

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

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

### **7. Discuss and Possibly Act Upon a Recommendation for Appointment to the Building and Standards Commission**

Development Services Director Julie Fulgham presented this item. Fulgham handed out the applications for the reappointments for three (3) commissioners. Fulgham stated this Commission is required to have five (5) commissioners. The Commission currently has three (3) commissioners that need to be reappointed and two (2) persons who would like to be appointed to the Commission. The two (2) new Commissioners are Jason Kiemsteadt and Lloyd Pieper. The three (3) Commissioners who need to be reappointed are Johnny Andrade, Walt Edmonds, and Stoney Lacina.

A motion was made by Councilmember Ebel and seconded by Councilmember Barnes-Tilley to appoint Jason Kiemsteadt and Lloyd Pieper to the Building and Standards Commission and reappoint the three (3) Commissioners.

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

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

**8. Discuss and Possibly Act Upon an Ordinance on Its First Reading Prohibiting Turns Into and Left Turns Out of the Connector Driveway of Alton Elementary School**

City Engineer Grant Lischka presented this item. Lischka stated the Ordinance will grant law enforcement officers the ability to enforce the Ordinance and write tickets for violations regarding the left turn only out of the connector driveway of Alton Elementary School.

A motion was made by Councilmember Herring and seconded by Councilmember Barnes-Tilley to approve an Ordinance on its first reading prohibiting turns into and left turns out of the connector driveway of Alton Elementary School.

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

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

**9. Discuss and Possibly Act Upon Approval of a Ground Space Lease Agreement with Michele Bright dba Bright Star Aviation, LLC for Hangar Space at the Brenham Municipal Airport**

Planning Technician Kim Hodde presented this item. Hodde stated this is a standard ground space lease agreement for hangar space at the Brenham Municipal Airport. Hodde explained Michele Bright wants to construct a 70x80 hangar (5,600 sq. ft.) at the airport along with the area behind her hangar, which is otherwise unusable. Hodde stated with the standard 10 feet on each side plus the additional 110 feet on the rear side, the lease space will be 18,000 square feet (90x200) at \$0.08 cents per square foot.

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Williams to approve the ground space lease agreement with Michele Bright dba Bright Star Aviation, LLC for hangar space at the Brenham Municipal Airport.

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

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

**10. Discuss and Possibly Act Upon Approval of a Ground Space Lease Agreement with A.J. Foyt for Hangar Space at the Brenham Municipal Airport**

Planning Technician Kim Hodde presented this item. Hodde stated this is a standard ground space lease agreement for hangar space at the Brenham Municipal Airport. Hodde explained A.J. Foyt wants to construct a 110x120 hangar (13,200 sq. ft.) at the airport. Hodde stated with the standard 10 feet on each side plus 10 feet on the rear side, the lease space will be 16,900 square feet (130x130).at \$0.08 cents per square foot.

A motion was made by Councilmember Williams and seconded by Councilmember Goss to approve the ground space lease agreement with A.J. Foyt for hangar space at the Brenham Municipal Airport.

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

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

**11. Discuss and Possibly Act Upon Approval of a Ground Space Lease Agreement with Richardson & Dunn dba J&S Water Wells for Hangar Space at the Brenham Municipal Airport**

Planning Technician Kim Hodde presented this item. Hodde stated this is a standard ground space lease agreement for hangar space at the Brenham Municipal Airport. Hodde explained John Richardson wants to construct a 64x60 hangar (3,840 sq. ft.) at the airport. Hodde stated with the standard 10 feet on the east side and the rear, plus an additional 35 feet on the west side, the lease space will be 9,520 square feet (119x80) at \$0.08 cents per square foot.

A motion was made by Councilmember Barnes-Tilley and seconded by Mayor Pro Tem Nix to approve the ground space lease agreement with Richardson & Dunn dba J&S Water Wells for hangar space at the Brenham Municipal Airport.

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

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

**12. Discuss and Possibly Act Upon Approval of Two (2) Ground Space Lease Agreements with John Richardson dba JR Leasing for Hangar Space at the Brenham Municipal Airport**

Planning Technician Kim Hodde presented this item. Hodde stated this is a standard ground space lease agreement for two hangar spaces at the Brenham Municipal Airport. Hodde explained for Lease #1 - John Richardson wants to construct a 50x60 hangar (3,000 sq. ft.) at the airport. Hodde stated with the standard 10 feet on each side, the lease space will be 5,600 square feet (70x80) at \$0.08 cents per square foot. Hodde explained for Lease #2 - John Richardson wants to construct a second 50x60 hangar (3,000 sq. ft.) at the airport. Hodde stated with the standard 10 feet on each side, the lease space will be 5,600 square feet (70x80) at \$0.08 cents per square foot.

A motion was made by Councilmember Herring and seconded by Councilmember Ebel to approve two (2) ground space lease agreements with John Richardson dba JR Leasing for hangar space at the Brenham Municipal Airport.

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

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

**13. Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 6, Buildings and Structures, Article X, Swimming Pools, Section 6-145 of the Code of Ordinances of the City of Brenham**

Development Services Director Julie Fulgham presented this item. Fulgham explained the amendments were made to clarify swimming pool regulations and alleviate any confusing or unspecific language in the Ordinance. Fulgham stated the amendments are standard and remove all of the other references to other sections within the Ordinance and outline all of the regulations in one place.

A motion was made by Councilmember Herring and seconded by Councilmember Ebel to approve an Ordinance on its first reading amending Chapter 6, Buildings and Structures, Article X, Swimming Pools, Section 6-145 of the Code of Ordinances of the City of Brenham.

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

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

**14. Discuss and Possibly Act Upon Change Order No. 2, Change Order No. 3 (Reconciliation), and Final Payment to Supak Construction, Inc. for the 2012 Water Distribution System Improvements and Authorize the Mayor to Execute Any Necessary Documentation**

Public Utilities Director Lowell Ogle presented this item. Ogle handed out a revised agenda item form with the corrected recommendation. Ogle stated Supak Construction, Inc. has completed work to replace sections of water lines. Ogle explained Change Order No. 2 was to pay for the addition of a fire hydrant on Longhofer and to relocate a hydrant on South Day Street that needed moving to allow room to replace the lead, gate valve, and valve box, which was \$2,000.

Ogle stated Change Order No. 3 (reconciliation) included an additional 140 feet of 6” PVC to tie in to existing lines, some additional services that were installed and additional pavement repair due to the increased footages, which was \$10,412.00. Ogle stated the construction portion of the project totaled \$349,283.00 including the change orders.

A motion was made by Councilmember Barnes-Tilley and seconded by Councilmember Williams to approve Change Order No.2 in the amount of \$2,000, Change Order No. 3 in the amount of \$10,412 and approve final payment to Supak Construction, Inc. in the amount of \$34,928.30 for work completed on the 2012 Water Distribution System Improvements Project.

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

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

**15. Discuss and Possibly Act Upon Resolution No. R-13-011 Regarding the Gas Fund and Maintenance of Cash Reserves**

Public Utilities Director Lowell Ogle presented this item. Ogle stated the City is a charter member of the Joint Gas Purchase Contract with Municipal Gas Acquisition and Supply Corporation. Ogle stated the contract is administered by Municipal Energy Resources Corporation (MERC). Ogle explained during 2008 when the cost of natural gas rose exponentially, MERC adopted internal policies to address financial risk to protect the 74 municipal customers in the Joint Gas Purchase Program. Ogle stated they feel that all the municipal customers have joint responsibility for the Program and should maintain reserves sufficient to minimize the risk. Ogle explained until recently, compliance with these policies was not enforced by MERC, however, their private “A” stable bond rating could be affected if member cities do not comply. Ogle stated as of September 30, 2012, the Gas Fund unrestricted cash balance was \$668,729, which is below the requirement of \$850,000. Ogle stated the City explained that cash reserves were used for the AMR meter replacement; however, MERC is looking at the City’s ability to have unrestricted cash on hand to pay our gas supplier.

A motion was made by Councilmember Herring and seconded by Councilmember Barnes-Tilley to approve Resolution No. R-13-011 Regarding the Gas Fund and Maintenance of Cash Reserves.

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

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

**16. Discuss and Possibly Act Upon Washington County’s Proposal to Operate Emergency Communications (as well as EMS and Jail) in Exchange for the City of Brenham Providing Animal Control Services, Animal Shelter Services, Fire Protection and Fire Rescue Services, and Library Services at the Nancy Carol Roberts Memorial Library Under a Comprehensive Interlocal Agreement and Potentially Discuss Other Current Interlocal Agreements Between Washington County and the City of Brenham and Authorize the Mayor to Execute Any Necessary Documentation, If Needed**

City Manager Terry Roberts presented this item. Roberts stated the City would like to consider the County’s offer. Roberts explained that Staff will work with the County to come up with a detailed proposal for Council’s consideration. Mayor Tate stated that from his discussion with Judge Brieden, he believes that the County wants to sit down with the City and go over the details of the County’s proposal. Tate stated one of the Commissioners brought the proposal to the Commissioners Court because they felt like the battle would be ongoing every year and this would be a possible solution to the continuous yearly problem. Tate explained the County proposes they take over Communication and run it as a department like EMS and the two entities call it even regarding providing services to the residents of the City and County. Tate states it would be a disservice to the citizens not to sit down with the County and discuss the details of the proposal.

Councilmember Barnes-Tilley stated the City has been very open to where the City is headed and what the City passed regarding ILAs is a good compromise with the County in her opinion. Barnes-Tilley stated due to the timing issue, she says it’s hard to consider a proposal so quickly. Barnes-Tilley explains she is frustrated with the lack of detail and the proposal coming out of nowhere. Barnes-Tilley is comfortable exploring the option but not to accept because she feels that the ILAs that were passed two weeks ago were a good compromise for both parties.

Councilmember Goss states he wants a detailed report outlining the operations, support, and funding of the proposal before the Council will sit down and discuss the proposal. Goss states over the last eight (8) years that he has served on Council, the County always states they do not have funds to participate in the costs of services to the County residents so the City sucks it up and continues to provide the services to all residents, but now the County wants to take over a \$1.2 million dollar operation.

Councilmember Williams states the County has had the time to build up EMS and it runs well, but Communications is the same, but to hand over will be collateral damage and the City must consider the offer because it is reasonable; however, the City needs more detail on how it will be run and how the County plans to take over Communications. Williams states the County cannot run the same operation with less money without sacrificing service. Williams states his constituents have suggested the City and County use arbitration to settle the differences.

Councilmember Ebel states the City will need to look at the offer as a service to its constituents because the City does not know what the proposal is.

Councilmember Herring states he was not crazy about the proposal in the beginning, but he wants to look at it further. Herring explains, however, that he wants the County to go with the 18 month ILAs the City approved two weeks prior as a counter offer to the County's proposal.

A motion was made by Mayor Tate and seconded by Councilmember Ebel to consider the offer of the County and instruct the Staff to work with the County representatives to come up with a detailed proposal in connection with our exchange of these services.

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

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

**17. Discuss and Possibly Act Upon the following Interlocal Agreements Between the City of Brenham and Washington County Related to: Animal Control Services, Animal Shelter Services, Fire Protection and Fire Rescue Services, Library Services at the Nancy Carol Roberts Memorial Library, and Operation of and Improvements to Linda Anderson Park and Authorize the Mayor to Execute Any Necessary Documentation**

City Manager Terry Roberts presented this item. Roberts stated this item is to discuss how the City would like to move forward with the current ILA agreements that are set to expire on June 30, 2013. Roberts stated that the City can let them expire or extend them until the City has had time to evaluate the County's proposal.

Councilmember Goss stated the City is on schedule for ILAs and if the County doesn't agree, then the process of unwinding the agreements will begin on July 1<sup>st</sup>.

Councilmember Barnes-Tilley states she would like to see the County accept the 18 month agreements and grant a 30 day extension on the current agreements for the County to react.

A motion was made by Mayor Tate and seconded by Councilmember Ebel to extend the June 6<sup>th</sup> agreements for 90 days with effective date of October 1, 2013 and the existing agreements to continue in the interim.

Mayor Pro Tem Nix questions what the motion means. Mayor Tate explains the 90 day extension will give the City time to look at the proposal and to come to agreement with County. Councilmember Herring states that he is leaning toward 30 day extension instead of 90 day extension. Councilmember Barnes-Tilley agrees with Councilmember Herring that the extension period should be 30 days instead of 90.

Mayor Tate called for a vote. The motion passed with a 4-3 vote, with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
<b>Councilmember Mary E. Barnes-Tilley</b>	<b>No</b>
Councilmember Andrew Ebel	Yes
<b>Councilmember Danny Goss</b>	<b>No</b>
<b>Councilmember Keith Herring</b>	<b>No</b>
Councilmember Weldon Williams	Yes

## **WORK SESSION**

### **18. Discussion and Presentation on a Downtown Incentive Grant Policy**

Main Street Manager Jennifer Eckermann presented this item. Eckermann stated the Main Street Board is requesting adoption of an Incentive Reimbursement Grant Policy that would make funds available for building and site improvements in the National Register District area. Eckermann explained the program would benefit the City of Brenham by making Downtown more attractive, increasing the economic vitality of the buildings, increasing sales tax and property values while preserving and enhancing Brenham's architectural and cultural history.

### **19. Administrative/Elected Officials Report**

City Manager Terry Roberts reported on the following:

- There was a handout laid around the Dias regarding the dates for the Legislative Session and Council Photo.
- Budget Workshops are scheduled for July 17<sup>th</sup>, 18<sup>th</sup>, and 19<sup>th</sup>

The meeting was adjourned.

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Milton Y. Tate, Jr.  
Mayor

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Amanda Klehm  
Deputy City Secretary

**ORDINANCE NO. O-13-012**

**AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING ARTICLE IV, SUBSTANDARD BUILDINGS OR STRUCTURES, IN CHAPTER 8 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE REGULATION OF SUBSTANDARD BUILDINGS OR STRUCTURES WITHIN THE CITY LIMITS OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A SEVERABILITY, REPEALER AND SAVINGS CLAUSE; AND PROVIDING FOR PROPER NOTICE AND OPEN MEETINGS**

**WHEREAS**, pursuant to Texas Local Government Code, Section 51.001, the City has the authority to adopt ordinances and regulations that are for good government, peace and order of the City; and

**WHEREAS**, as a home-rule municipality, Texas Local Government Code, Section 51.072 confirms that the City has the full power of local self-government; and

**WHEREAS**, Article IV, Substandard Buildings or Structures, in Chapter 8, Fire Protection and Prevention, of the City of Brenham’s Code of Ordinances shall be repealed and replaced; and

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

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

**SECTION 1.**

Article IV, Substandard Buildings or Structures; in Chapter 8, Fire Protection and Prevention, of the Code of Ordinances of the City of Brenham, Texas is hereby repealed.

**SECTION 2.**

Chapter 8, Fire Protection and Prevention, of the Code of Ordinances of the City of Brenham shall be amended to read as follows:

## **ARTICLE IV. - SUBSTANDARD BUILDINGS OR STRUCTURES**

### **DIVISION 1. GENERAL PROVISIONS**

#### **Sec. 8-50. Purpose of chapter.**

- (a) The purpose of this chapter is to protect the health, safety and welfare of the citizens of the City of Brenham by establishing standards for the identification, abatement and/or removal of substandard buildings or structures.
- (b) This chapter is hereby declared to be remedial and shall be constructed to secure the beneficial interests and purposes thereof--which are public safety, health and general welfare--through structural strength, stability, sanitation, adequate light and ventilation, and safety to life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of buildings, structures or premises.

#### **Sec. 8-51. Scope of chapter.**

The provisions of this chapter shall apply to all unsafe buildings or structures, as herein defined, and shall apply equally to new and existing conditions.

#### **Sec. 8-52. Building and Standards Commission.**

- (a) There is hereby created a Building and Standards Commission to hear and determine cases concerning alleged violations of this chapter. The Commission shall consist of a panel composed of five (5) members, with terms of office of two (2) years. The panel shall include a plumber and electrician licensed by the State of Texas as well as a general contractor by trade. All members shall reside in the City of Brenham, unless a licensed tradesman required above cannot be recruited to serve, then such person may reside within Washington County. Each member shall hold office for a period of two (2) years, or until a successor is appointed, unless a vacancy is created in the member's office by resignation, removal, or death. As near as practical, they shall be qualified in one or more of the fields of fire prevention, building construction, sanitation, health or public safety.
- (b) In addition to said five (5) members, the Fire Marshal, Building Official and Health Inspector of the City of Brenham shall be ex officio, nonvoting members of said Building and Standards Commission. Any City employee in the respective department or division of the City, who shall be designated by the City Manager, shall be authorized to act as substitute for the respective superior of their respective department or division as ex officio member of said Commission. It shall be the duty of the ex officio members of such Commission to assist the Building Official in inspecting all buildings or structures reported to be or believed to be substandard buildings and to present a report of such inspection to the Building and Standards Commission.

- (c) Three (3) members of the Building and Standards Commission shall constitute a quorum. In varying the application of any provision of this chapter or in modifying an order of the Building Official, affirmative votes of not less than three (3) members shall be required. A Commission member shall not act in a case in which he has a conflict of interest as defined by applicable law.
- (d) The City Council may remove a Commission member for cause on a written charge. Before a decision regarding removal is made, the City Council must hold a public hearing on the matter if requested by the Commission member subject to the removal action.
- (e) A vacancy on the Building and Standards Commission shall be filled for the unexpired term.
- (f) The City Council may appoint two (2) alternate members of the Commission who shall serve in the absence of one or more regular members when requested to do so by the Mayor or City Manager. Alternate members serve for the same period and are subject to removal in the same manner as regular members. A vacancy is filled in the same manner as a vacancy among the regular members.
- (g) The Building and Standards Commission may establish rules and regulations for its own procedures not inconsistent with the provisions of this chapter. Each year, the Building and Standards Commission shall appoint a chairperson from among its members to preside over meetings of the Commission. The Commission shall also appoint a vice chairperson to perform the functions and duties in the event the chairperson is unable or refuses to perform the functions and duties of the office. The Commission shall meet as determined by the chairperson.

**Sec. 8-53. Alterations, repairs or rehabilitation work.**

- (a) Alterations, repairs or rehabilitation work may be made to any existing building without requiring the building to comply with all the requirements of the building code of the City of Brenham, Texas; provided, that the alteration, repair or rehabilitation work conforms to the requirements of the building code for new construction. The Building Official shall determine, subject to appeal to the Building and Standards Commission, the extent, if any, to which the existing building shall be made to conform to the requirements of the building code of the City for new construction.
- (b) Alterations, repairs or rehabilitation work shall not cause an existing building to become a substandard building as defined in Section 8-71 of this chapter.
- (c) If the occupancy classification of an existing building is changed, the building shall be made to conform to the requirements of the building code of the City for the new occupancy classification as established by the Building Official.

(d) Repairs and alterations, not covered by the preceding paragraphs of this section, restoring a building to its condition previous to damage or deterioration, or altering it in conformity with the provisions of this chapter or in such manner as will not extend or increase an existing nonconformity or hazard, may be made with the same kind of materials as those of which the building is constructed; but not more than twenty-five (25) percent of the roof covering a building shall be replaced in any period of twelve (12) months unless the entire roof covering is made to conform with the requirements of the building code of the City for new buildings.

**Sec. 8-54. Special historic buildings or districts.**

The provisions of this chapter relating to the construction, alteration, repair, enlargement, restoration, relocation, or moving buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local jurisdiction as historic buildings or structures when such buildings or structures are judged by the Building Official to be safe and in the public interest of health, safety and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving of buildings within fire districts.

**Sec. 8-55. Maintenance.**

All buildings or structures, both existing and new, and all parts thereof, shall be maintained in a safe and sanitary condition. All devices or safeguards which are required by the building code of the City in a building when erected, altered or repaired shall be maintained in good working order. The owner shall be responsible for the maintenance of buildings and structures.

**Sec. 8-56. Enforcement officer.**

The provisions of this chapter shall be enforced by the Building Official of the City of Brenham, Texas.

**Sec. 8-57. Restrictions on employees.**

An officer or employee of the City connected with the enforcement of this chapter, except one whose only connection is as a member of the Building and Standards Commission, shall not have a financial interest in the furnishing of labor, material or appliances for the construction, alteration, demolition, repair or maintenance of a building, or in the making of plans or of specifications therefor, unless he is the owner of such building. Such officer or employee shall not engage in any work which is inconsistent with his duties or with the interests of the City.

**Sec. 8-58. Records of enforcement officer.**

The Building Official shall keep, or cause to be kept, a record of the business of the City related to the enforcement of this chapter. Such records shall be open to public inspection.

**Sec. 8-59. Powers and duties of the enforcement officer.**

- (a) The Building Official or his authorized representative may enter any building, structure or premises at all reasonable times to make an inspection or enforce any of the provisions of this chapter. When entering a building, structure or premise that is occupied, the Building Official shall first identify himself, present proper credentials and request entry. If the building, structure or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge of the building and demand entry. If entry is refused, the Building Official or his authorized representative shall have recourse to every remedy provided by law to secure entry.
- (b) The Building Official, the Fire Marshal and other authorized representatives are hereby authorized to make such inspections and to take such actions as may be required to enforce the provisions of this chapter.
- (c) Any requirement necessary for the strength or stability of an existing or proposed building or structure or for the safety or health of the occupants thereof, not specifically covered by this chapter shall be determined by the Building Official.
- (d) The Building Official shall be an ex officio member of the Building and Standards Commission, act as secretary and shall make a detailed record of all its proceedings, which shall set forth the reasons for its decisions, the vote of each member participating therein, the absence of a member and any failure of a member to vote.

**Sec. 8-60. Liability.**

Any officer or employee of the City of Brenham, Texas, or member of the Building and Standards Commission, charged with the enforcement of this chapter, acting for the applicable governing body in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties.

**Sec. 8-61. Validity.**

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this chapter.

**Secs. 8-62--8-69. RESERVED.**

## DIVISION 2. DEFINITIONS AND STANDARDS

### **Sec. 8-70. General definitions.**

For the purposes of this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:

*Building* or *Structure* means any structure for the support, shelter or enclosure of persons, animals, chattels or property of any kind which has enclosing walls for fifty (50) percent of its perimeter. The term "building" shall be construed as if followed by the words "or part thereof." For the purpose of this chapter, each portion of a building separated from other portions by a fire wall shall be considered as a separate building or means that which is built or constructed, a building of any kind, or any pieces of work artificially built up or composed of parts joined together in some definite manner. Structure and Building may be used interchangeably or as separate definitions.

*Occupant* means any person as owner, tenant, licensee, trespasser or other person in the exclusive or partial possession or living upon the premises.

*Owner* means a person claiming, or in whom is vested, the ownership, dominion or title of real property, including, but not limited to: the holder of fee simple title; the holder of a life estate; the holder of a recorded leasehold estate for an initial term of five (5) years or more; the buyer in a recorded contract for deed; and/or a mortgagee, receiver, executor or trustee in control of real property; but not including the holder of a leasehold estate or tenancy for an initial term of less than five (5) years.

*Premises* means a lot, plot or parcel of land, including but not limited to any buildings and structures thereon.

### **Sec. 8-71. Substandard buildings designated.**

Any building, structure, or portion thereof, including but not limited to any dwelling unit, guest room or suite of rooms, or the premises on which the same is located in which there exists any of the following listed in conditions to an extent that endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof, as determined by the Building Official, shall be deemed and is hereby declared to be a substandard building:

(a) *Inadequate sanitation.* Inadequate sanitation shall include, but not be limited to, the following:

- (1) Lack of or improper water closet, lavatory, bathtub or shower in a dwelling unit.
- (2) Lack of or improper water closets, lavatories, and bathtubs or showers per number of guests in a hotel.
- (3) Lack of or improper kitchen sink.
- (4) Lack of hot and cold running water to plumbing fixtures in a hotel.

- (5) Lack of hot and cold running water to plumbing fixtures in a dwelling unit.
- (6) Lack of adequate heating facilities.
- (7) Lack, or improper operation, of required ventilating equipment.
- (8) Lack of minimum amounts of natural light and ventilation required by this chapter.
- (9) Lack of required electrical lighting.
- (10) Dampness of habitable rooms.
- (11) Infestation of insects, vermin or rodents as determined by the Building Official.
- (12) General dilapidation or improper maintenance.
- (13) Lack of connection to required sewage disposal system.
- (14) Lack of adequate garbage and rubbish storage and removal facilities as determined by the Building Official.
- (15) Lack of sanitary, interior wall covering.

(b) *Structural hazards.* Structural hazards shall include, but not be limited to, the following:

- (1) Deteriorated or inadequate foundations.
- (2) Defective or deteriorated flooring or floor supports.
- (3) Flooring or floor supports of insufficient size to carry imposed loads with safety.
- (4) Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration.
- (5) Members of walls, partitions or other vertical supports that are of insufficient size to carry imposed loads with safety.
- (6) Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split, or buckle due to defective material or deterioration.
- (7) Members of ceilings, roofs, ceiling and roof supports or other horizontal members that are of insufficient size to carry imposed loads with safety.
- (8) Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration.
- (9) Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.
- (10) Any condition wherein a building, structure or portion thereof has been damaged by fire, flood, earthquake, wind or other cause to the extent that the structural integrity of the buildings or structures is less than it was prior to the damage and is less than the minimum requirement established by the building code of the City.
- (11) Any condition wherein any exterior appendages or portion of a building or structure are not securely fastened, attached or anchored such that it is capable of resisting wind, seismic or similar loads.

- (12) Any condition wherein any building, structure or portion thereof as a result of decay, deterioration, or dilapidation is likely to fully or partially collapse.
- (c) *Hazardous wiring.* All wiring except that which conforms with all applicable laws in effect at the time of installation and which has been maintained in good condition and is being used in a safe manner.
- (d) *Hazardous plumbing.* All plumbing except that which conforms with all applicable laws in effect at the time of installation and which has been maintained in good condition and which is free of cross-connections and siphonage between fixtures.
- (e) *Hazardous mechanical equipment.* All mechanical equipment, including but not limited to vents, except that which conforms to all applicable laws in effect at the time of installation and which has been maintained in good and safe condition.
- (f) *Faulty weather protection.* Weather protection which shall include, but not be limited to, the following:
- (1) Deteriorated, crumbling or loose plaster.
  - (2) Deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors, including broken windows or doors.
  - (3) Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering.
  - (4) Broken, rotted, split or buckled exterior wall coverings or roof coverings.
  - (5) Lack of adequate insulation in ceilings.
  - (6) Lack of adequate insulation in exterior walls. Provided, however, double wall construction which was in compliance with this chapter at the time of original construction shall be deemed adequate for purposes of this chapter; otherwise, insulating material will be required.
- (g) *Fire hazard.* Any building or portion thereof, device, apparatus, equipment, combustible waste or vegetation which, in the opinion of the Chief of the Fire Department or his deputy, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.
- (h) *Faulty materials of construction.* All materials of construction except those which are specifically allowed or approved by this chapter and the building code, and which have been adequately maintained in good and safe condition.
- (i) *Hazardous or insanitary premises.* Those premises on which any accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials and similar materials or conditions constitute fire, health or safety hazards.

- (j) *Inadequate maintenance.* Any building or portion thereof which is determined to be an unsafe building in accordance with any City ordinance.
- (k) *Inadequate exits.* All buildings or portion thereof not provided with adequate exit facilities as required by City ordinance except those buildings or portion thereof whose exit facilities conform with all applicable laws at the time of their construction and which have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy. When an unsafe condition exists through lack of, or improper location of, exits, additional exits may be required to be installed.
- (l) *Inadequate fire protection or firefighting equipment.* All buildings or portions thereof which are not provided with a fire-resistive construction or fire extinguishing systems or equipment required by this chapter or the building code, except those buildings or portions thereof which conform with all applicable laws at the time of their construction and whose fire-resistive integrity and fire extinguishing systems or equipment have been maintained and approved in relation to any increase in occupant load, alteration or addition or any change in occupancy.
- (m) *Improper occupancy.* All buildings or portions thereof occupied for living, sleeping, cooking or dining purposes which were not designed or intended to be used for such occupancy.

**Sec. 8-72. Tense, gender and number.**

Words used in the present tense include the future. Words in the masculine gender include the feminine and neuter. Words in the feminine and neuter gender include the masculine. The singular number includes the plural and the plural number includes the singular.

**Secs. 8-73--8-79. Reserved.**

DIVISION 3. INSPECTION; NOTICE OF SUBSTANDARD BUILDING; HEARING

**Sec. 8-80. Abatement of substandard buildings.**

All buildings or portions thereof which are determined to be substandard buildings, as defined in this chapter, are hereby declared to be a hazard to the health, safety and welfare of the citizens, and shall be abated by repair, vacation, rehabilitation, demolition or removal in accordance with the procedures specified in this chapter, by prosecution in municipal court, or as otherwise allowed by law or equity.

**Sec. 8-81. Inspection.**

The Building Official shall inspect or cause to be inspected any building, structure or portion thereof which is or may be a substandard building.

**Sec. 8-82. Action required.**

After the Building Official has inspected or caused to be inspected a building, structure or portion thereof and has determined that such building, structure or portion thereof is a substandard building, he shall initiate proceedings to cause the abatement of the unsafe condition by repair, vacation, demolition or combination thereof.

**Sec. 8-83. Emergency procedure for abating substandard building.**

- (a) When it shall appear that a building or structure in the City of Brenham is a substandard building under the terms of this chapter and that such building or structure or the manner of its use constitutes an immediate and serious danger to life or property, the condition shall be deemed a condition justifying the use of emergency measures, and the Building and Standards Commission, or a majority of the Building and Standards Commission, may, with the consent and approval of the City Manager, order any of the following emergency measures to be taken:
- (1) Immediate vacation of such building, structure and/or adjoining buildings or structures;
  - (2) Vacation of the danger area around such building or structure;
  - (3) Such emergency shoring-up and bracing of walls, roofs and supports as are required to render such building or structure safe;
  - (4) The destruction of such walls, roofs, and supports or the entire structure or so much thereof as cannot be braced or made secure with safety; or
  - (5) Posting of notices on or near such building or structure, or buildings or structures, notifying the public of such orders and ordering all persons to keep out of such building, buildings, structures or structure and the areas of danger surrounding it or them.
- (b) When any of the above-mentioned measures are ordered to be taken, notice of such order shall be given as follows:
- (1) Such order shall be directed to the owner of such substandard building or structure, or the owner's authorized representative, if the same shall be known. Where notification can be accomplished without increasing the danger to life or property, notice shall be given by personal service on the owner of the building or structure, or the owner's representative or by certified mail, return receipt requested;
  - (2) In the event that such notification would create such a delay as would materially increase the danger of life or property, then such notice need not be given.

**Sec. 8-84. Standard procedure for abating substandard building.**

(a) When it appears that a building or structure in the City of Brenham is a substandard building, but that no necessity exists for instituting emergency procedures under Section 8-83 of this chapter, the Building Official shall prepare and issue a notice of substandard building directed to the owner, mortgagee, registered agent or any lienholder of the building or structure found using a search of real property records of Washington County, Appraisal District Records of Washington County, Records of the Secretary of State, Assumed Name Records of Washington County, City of Brenham Tax Records, and City of Brenham Utility Records. The notice shall contain, but not be limited to, the following information:

- (1) The street address or legal description of the building, structure or premises.
- (2) A statement indicating the building or structure has been declared a substandard building by the Building Official, and a detailed report documenting the conditions determined to have rendered the building or structure a substandard building under the provisions of this chapter.
- (3) The action required to be taken as determined by the Building Official.
- (4) A notice of the date, place and time that the notice of substandard building is set for public hearing before the Building and Standards Commission. The hearing notice shall include, but not be limited to, the following information:

*"You are hereby notified that on the \_\_\_\_ day of \_\_\_\_\_20\_\_\_\_, at \_\_\_\_ o'clock in the \_\_\_\_\_, at \_\_\_\_\_, a hearing will be held before the Building and Standards Commission to consider the Notice of Substandard Building of the Building Official regarding the property located at \_\_\_\_\_. You may choose to be represented by counsel. You may present evidence and will be given an opportunity to cross-examine all witnesses. You may request the issuance of subpoenas to compel witnesses to appear and for the production of other supporting data or documentation by filing a written request therefor with the Building and Standards Commission."*

- (5) A notice providing as follows:

*"According to the Real Property Records of Washington County, you own or claim an interest in the real property described in this notice. If you no longer own or claim an interest in the property, you must execute an affidavit stating that you no longer own or claim an interest in the property and stating the name and last known address of the person who acquired the property or an interest in the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to the Building Official of the City of Brenham not later than the 10th day after the date that you receive this notice. If you do not send the affidavit, it will be presumed, pursuant to TEX. LOCAL GOV'T CODE ANN. § 54.005, as amended, that you own or claim an interest in the property described in this notice, even if you do not."*

- (b) The notice of substandard building and all attachments thereto shall be personally delivered or mailed to any owner, mortgagee and lienholder of record, and posted on the premises in a conspicuous location on or before the 10th day before the date of the hearing before the Commission panel. In addition, the notice must be published in a newspaper of general circulation in the City of Brenham on one occasion on or before the 10th day before the date fixed for the hearing.
- (c) The notice of substandard building shall be either personally delivered or mailed by certified mail, postage prepaid, return receipt requested, to each person at the last known address of the person. If addresses are not available on any person required to be notified of the substandard building proceeding, the notice addressed to such person shall be mailed to the address of the building or structure involved in the proceedings. The failure of any person to receive notice shall not invalidate any proceedings under this chapter. Notification by certified or registered mail as herein described shall be effective on the date the notice was received as indicated on the return receipt. When the City mails a notice in accordance with this chapter to a property owner, mortgagee, lienholder, or registered agent and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered on the third (3<sup>rd</sup>) day (excluding Sundays) occurring after the date the notice was mailed.
- (d) The Building Official shall file notice of a substandard building proceeding before the Building and Standards Commission in the Official Public Records of Real Property of Washington County. The notice must contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the instruments on file in the office of the county clerk, a legal description of the affected property, and a description of the proceeding. The filing of the notice is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice and constitutes notice of the proceeding on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice.

**Sec. 8-85. Hearings before the Building and Standards Commission.**

- (a) Failure of any person to appear at the hearing set in accordance with the provisions of this chapter shall constitute a waiver of that person's right to a hearing on the notice of substandard building.
- (b) The hearing shall offer all interested persons reasonable opportunity to be heard.
- (c) A person may appear at the hearing in person or through an attorney or other designated representative.

(d) The Building and Standards Commission, after hearing evidence from each interested party present, may:

- (1) Find that the building or structure is not a substandard building and refer the matter to the Building Official for further appropriate action;
- (2) Grant a variance in order to avoid the imposition of an unreasonable hardship;
- (3) In the case of a single-family dwelling occupied by the owner, where the health, safety and welfare of other persons will not be affected, grant an exception to any provision of this chapter to avoid the imposition of an unreasonable hardship;
- (4) Find that the building or structure is a substandard building and order the repair or other suitable remedy within a specified period of time and/or demolition of the structure if the repair and other suitable remedies are not timely effected; or
- (5) Order the demolition of the building or structure within a specified period of time.

**Sec. 8-86. Order of Building and Standards Commission.**

(a) The final decision of the Building and Standards Commission shall be in writing and contain all findings of fact.

(b) After receipt of all competent evidence presented at a hearing, if the Building and Standards Commission shall find a building or structure to be a substandard building, the Building and Standards Commission shall enter its written order containing, but not limited to, the following information:

- (1) The street address or legal description of the building, structure or premises.
- (2) A statement indicating the building or structure has been declared a substandard building by the Building and Standards Commission, and an account giving the conditions determined to have rendered the building or structure a substandard building under the provisions of this chapter.
- (3) The action required to be taken as determined by the Building and Standards Commission.
  - a. If the building or structure is to be repaired, the notice shall require that all necessary permits be secured and the work commenced within sixty (60) days and continued to completion within such time as the Building and Standards Commission determines. The notice shall also indicate the degree to which the repairs must comply with the provisions of the building code of the City.
  - b. If the building or structure is to be demolished, the notice shall require that the premises be vacated within sixty (60) days, that all required permits for demolition be secured, and that the demolition be completed within such time as determined reasonable by the Building and Standards Commission.

- (4) A statement of additional reasonable time for the ordered action to be taken by a mortgagee or lienholder in the event the owner fails to timely take the ordered action.
  - (5) A statement advising that if the required action is not commenced within or completed by the time specified, the building will be ordered vacated and posted to prevent further occupancy until the work is completed, and the Building Official may cause the work to be done and all costs incurred charged against the premises and/or the owner.
  - (6) A statement advising that any owner, lienholder, or mortgagee of record may appeal the order by the Building and Standards Commission to District Court; and that such petition shall be in writing in the form specified by this chapter and shall be filed with the District Court within thirty (30) calendar days after the date a copy of the final decision of the Commission panel is personally delivered or mailed by first class mail with certified return receipt requested, or delivered by the United States Postal Service using signature confirmation service. In the event no timely appeal is filed in District Court, the order of the Building and Standards Commission is, in all respects, final and binding, and the failure to appeal in the time specified will constitute a waiver of all rights to an appeal.
- (c) The final order of the Building and Standards Commission shall be served on all persons entitled to receive the notice of substandard building in the proceeding, and shall be served on such parties in the same manner specified for service of the notice of substandard building in Section 8-84 of this chapter. In addition, an abbreviated copy of the order shall be published one time in a newspaper of general circulation in the City of Brenham within ten (10) calendar days after the date of the delivery or mailing of the copy, including the street address or legal description of the property; the date of the hearing, a brief statement indicating the results of the order, and instructions stating where a complete copy of the order may be obtained. Further, a copy of the order shall be filed in the office of the City Secretary.

**Sec. 8-87. Recording.**

- (a) A record shall be made of all hearings and proceedings. The method of recording shall be designated by the Building and Standards Commission.
- (b) The record of any hearing may, upon payment of the prescribed fees, be made available to any person on request.

**Sec. 8-88. Reasonable dispatch.**

The Building and Standards Commission shall proceed with reasonable dispatch to conclude any matter before it, with due regard to the convenience and necessity of the parties involved.

**Sec. 8-89. Subpoenas.**

- (a) The Building and Standards Commission may obtain the issuance and service of subpoenas for the attendance of witnesses or the production of evidence at the hearings. Subpoenas may be issued upon the request of any member of the Building and Standards Commission or of an interested party.
- (b) The issuance and service of subpoenas shall be in accordance with established law.
- (c) Any person who refuses without legal excuse to respond to any subpoena lawfully issued and served may be prosecuted to the extent established by law.

**Sec. 8-90. Procedural rules.**

- (a) Hearings shall not be required to be conducted in accordance with the Texas Rules of Civil Procedure or the Texas Rules of Evidence.
- (b) The Building and Standards Commission may grant continuance for good cause.

**Sec. 8-91. Evidence.**

- (a) In any proceedings under this chapter any member of the Building and Standards Commission shall have the power to administer oaths and affirmations and to certify official acts.
- (b) Oral evidence shall be taken only on oath or affirmation.
- (c) Relevant evidence shall be admitted if it is the type on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil courts.

**Sec. 8-92. Inspections.**

The Building and Standards Commission may inspect any building, structure or premises involved in the proceeding during the course of the hearing, provided the following are complied with:

- (1) Notice of such inspection is given to the parties prior to making the inspection;
- (2) The parties are allowed to be present during the inspection; and
- (3) The Commission shall state for the record, upon completion of the inspection, the facts observed and any conclusions drawn therefrom.

**Sec. 8-93. Recording of notice.**

If the notice is not complied with nor an appeal filed within the allotted time, the Building Official shall file in the office of the County Clerk of Washington County a certificate describing the premises, certifying that the building or structure is a substandard building and that the owner of record and any mortgagee or lienholders have been served, and stating the restrictions on the disposal of premises set out in Section 8-94 of this chapter. This certificate shall remain on file until such time as the conditions rendering the building or structure a substandard building have been abated. At such time, the Building Official shall file a new certificate indicating that corrective action has been taken and the building or structure is no longer a substandard building.

**Sec. 8-94. Restriction on the disposal of premises.**

No owner of any building or structure upon whom a notice has been served that violations of this chapter exist in such building or structure or on its premises shall sell, transfer, grant, mortgage, lease or otherwise dispose of such premises until compliance with such notice or order has been secured, or until such owner shall have furnished to the purchaser, transferee, grantee, mortgagee or lessee who is affected by the violations a true copy of such notice or order and at the same time shall have given adequate notification to the Building Official of his intent to enter into such transaction, including supplying the name and address of the person to whom the sale, transfer, grant, mortgage or lease is proposed. A purchaser who has been informed of the existence of any notice or order pursuant to this chapter shall be bound thereby.

DIVISION 4. APPEALS

**Sec. 8-95. Requirements for appeal.**

- (a) Any owner, lienholder, or mortgagee of record jointly or severally aggrieved by any decision of the Building and Standards Commission may present a petition to a District Court, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within thirty (30) calendar days after the date a copy of the final decision of the Commission panel is personally delivered, mailed by first class mail with certified return receipt requested, or delivered by the United States Postal Service using signature confirmation service to the owner, lienholder, or mortgagee.
- (b) On presentation of the petition, the court may allow a writ of certiorari directed to the Building and Standards Commission to review its decision and shall prescribe in the writ the time, which may not be less than ten (10) days, within which a return on the writ must be made and served on the relator or the relator's attorney. The Commission panel may not be required to return the original papers acted on by it. It is sufficient for the Commission panel to return certified or sworn copies of the papers or of parts of the papers as may be called for by the writ. The return must concisely set forth other facts as may be pertinent and material to show the grounds for the decision appealed from and shall be verified.

**Sec. 8-96. Staying of order under appeal.**

The allowance of the writ by the District Court does not stay proceedings on the decision appealed from.

**Sec. 8-97. Procedural and evidentiary rules.**

The District Court's review shall be limited to a hearing under the substantial evidence rule. The court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.

**Sec. 8-98. Costs of appeal.**

- (a) If the decision of the Building and Standards Commission is affirmed or not substantially reversed but only modified, the District Court shall allow to the City all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those items, which may be entered against the property owners as well as all persons found to be in occupation of the property subject to the proceedings before the Building and Standards Commission.

**Secs. 8-99.–8-100. Reserved.**

DIVISION 5. ENFORCEMENT

**Sec. 8-101. Failure to commence work.**

- (a) Whenever the required repair, vacation or demolition is not commenced within thirty (30) days after the effective date of any order, the building, structure or premises shall be posted as follows:

UNSAFE BUILDING  
DO NOT OCCUPY

It shall be punishable by law to occupy this building or remove or deface this Notice  
(Specify the applicable ordinance and the penalty for violation thereof)

Building Official  
City of Brenham

- (b) Subsequent to posting the building, the Building Official may cause the building to be repaired to the extent required to render it safe, or if the notice required demolition, to cause the building or structure to be demolished and all debris removed from the premises. The cost of repair or demolition shall constitute a lien on the premises as provided in this chapter.

- (c) Any monies received from the sale of a building or from the demolition thereof, over and above the cost incurred, shall be paid to the owner of record or other persons lawfully entitled thereto.

**Sec. 8-102. Extension of time.**

The Building Official may approve one or more extensions of time as he may determine to be reasonable to complete the required repair or demolition. Such requests for extensions shall be made in writing stating the reasons therefor. If the extensions of time, in total, exceed one hundred twenty (120) days, they must also be approved by the Building and Standards Commission which may act without further public hearing.

**Sec. 8-103. Assessment of expenses.**

In any case where the Building and Standards Commission orders a substandard building or structure repaired or demolished and cleared or removed, and the owner of any such premises or building or structure which is a substandard building fails to correct, remedy or remove such condition, and the owner, or duly authorized representative of the owner, shall have exhausted his rights and remedies under this chapter, the commission may order such work or make such improvements as are necessary to correct, remedy or remove such conditions, or cause the same to be done, and pay therefor, and charge the expenses incurred thereby to the owner of such lot or premises. Such expense shall be assessed against the lot or real property upon which work was done, the improvements made or the demolishing, cleaning or removal of substandard buildings or structures accomplished. The performance of such work by the City or the ordering of same by the Building and Standards Commission shall not relieve such person from prosecution for failure to comply with the notice.

**Sec. 8-104. Lien for expenses.**

- (a) Whenever any work is done or improvements are made or any substandard building or structure is repaired, demolished, cleared or removed by the city under the provisions of this chapter, the Building Official, on behalf of the City, shall file a statement of the expenses incurred thereby with the County Clerk. Such statement shall give the name and address of the owner, if it can be determined with a reasonable effort, the legal description of the affected property, the amount of such expenses, the date or dates on which the work was done, or the expenses incurred, and the costs of demolishing, cleaning, repairing or removing the conditions or substandard building and structure and the amount of expenses then due. When this statement is filed with the County Clerk, the City of Brenham shall have a lien on the lot or real estate upon which the work was done, or improvements made, or repairs made, or substandard buildings repaired, removed or demolished and cleared to secure the expenses thereof unless the property is homestead protected by the Texas Constitution.

If notice is given and the opportunity to repair, remove or demolish the building is afforded to each mortgagee and lienholder, the lien of the City is a privileged lien, subordinate only to taxes and all previously recorded bona fide mortgage liens attached to the property. The City's lien is superior to any previously recorded judgment liens. The amount of the City's lien shall bear interest at the rate of ten percent (10%) per annum from the date the statement was filed with the County Clerk. For any such expenditure, expense and interest suit may be instituted against the owner or owners. The statement of expenses for repairs or demolition made herein and filed with the County Clerk, or a certified copy thereof, shall be prima facie proof of the amount expended for such work, improvements, repairs, demolition, clearance or removal.

- (b) In any judicial proceeding regarding the enforcement of the City's rights under this section, the prevailing party is entitled to recover reasonable attorney's fees.
- (c) A lien acquired by the City under this chapter for repair expenses may not be foreclosed if the property upon which the repairs were made is occupied as a residential homestead by a person sixty-five (65) years of age or older.

**Sec. 8-105. Penalties.**

A person commits an offense punishable in accordance with Section 1-5 of the Code of Ordinances if:

- (a) The person fails or refuses to respond to the direction of an order of the Building Official or Building and Standards Commission after that order becomes final;
- (b) The person shall obstruct or interfere with the implementation of any action required by the final order of the Building Official or the Building and Standards Commission after that order becomes final; or
- (c) The person willfully refuses to leave or fails to leave a building or structure which has been ordered vacated under the provisions of this chapter.

**Secs. 8-106--8-109. Reserved.**

**SECTION 3.**  
**SAVINGS CLAUSE**

All provisions of any ordinance, resolution or other action of the City in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances, resolutions or other actions shall remain in full force and effect.

**SECTION 4.**  
**SEVERABILITY**

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

**SECTION 5.**  
**REPEALER**

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

**SECTION 6.**  
**EFFECTIVE DATE**

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

**SECTION 7.**  
**PROPER NOTICE AND MEETINGS**

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

**PASSED AND APPROVED** on its first reading this the \_\_\_\_ day of May, 2013.

**PASSED AND APPROVED** on its second reading this the \_\_\_\_ day of May, 2013.

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

**ATTEST:**

\_\_\_\_\_  
Amanda Klehm  
Deputy City Secretary

**ORDINANCE NO. O-13-013**

**AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, PROHIBITING VEHICLES FROM MAKING TURNS INTO AND LEFT TURNS OUT OF THE CONNECTOR DRIVEWAY OF ALTON ELEMENTARY SCHOOL, SAID CONNECTOR DRIVEWAY BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT “A” AND SITUATED AT THE SOUTHERN BOUNDARY OF THE CITY OF BRENHAM WATER TREATMENT PLANT PREMISES, AND EXITING ONTO SOUTH AUSTIN STREET; PROVIDING A PENALTY FOR VIOLATING THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE; REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, in order to enhance, promote, and protect the health, safety, and general welfare of the citizens of Brenham, Texas, the City Council has determined that it is necessary to prohibit turns into and left turns out of the connector driveway of Alton Elementary School, as described in Exhibit “A,” and situated at the southern boundary of the City of Brenham Water Treatment Plant premises and exiting onto South Austin Street;

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

**SECTION 1.** It shall be unlawful for the operator of any vehicle to make a left turn onto South Austin Street while exiting from the connector driveway situated at the west end of Alton Elementary School and along the southern boundary of the City of Brenham Water Treatment Plant premises. All vehicles leaving said driveway must turn right when entering South Austin Street. It shall also be unlawful for the operator of any vehicle to make a left or right turn from South Austin Street to enter said driveway of Alton Elementary School.

**SECTION 2.** The City Manager or his designee is hereby authorized and directed to place appropriate signs giving notice of the turning regulations provided for in this Ordinance. Any person who disobeys the directions of any such sign commits a violation of this Ordinance.

**SECTION 3.** Penalty. That any person, firm or corporation, violating Section 1 hereof, shall be fined in a sum not less than \$1.00 and not more than \$500.00, plus court costs.

**SECTION 4.** Cumulative Effect. This Ordinance shall be cumulative of all laws of the State of Texas and the United States governing the subject matter of this Ordinance, including without limitation, the Texas Transportation Code, now existing or as hereafter amended.

**SECTION 5.** Repeal. All ordinances in conflict with this Ordinance or inconsistent with the provisions of same are hereby repealed to the extent necessary to give this Ordinance full force and effect.

**SECTION 6.** Severability. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

**SECTION 7.** Effective Date. This Ordinance shall be effective from and after its passage, approval and adoption on second reading, and its publication as may be required by applicable law.

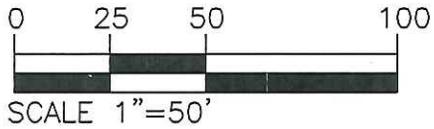
**PASSED and APPROVED** on its first reading this the \_\_\_\_\_ day of \_\_\_\_\_,  
2013.

**PASSED and APPROVED** on its second reading this the \_\_\_\_\_ day of \_\_\_\_\_,  
2013.

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

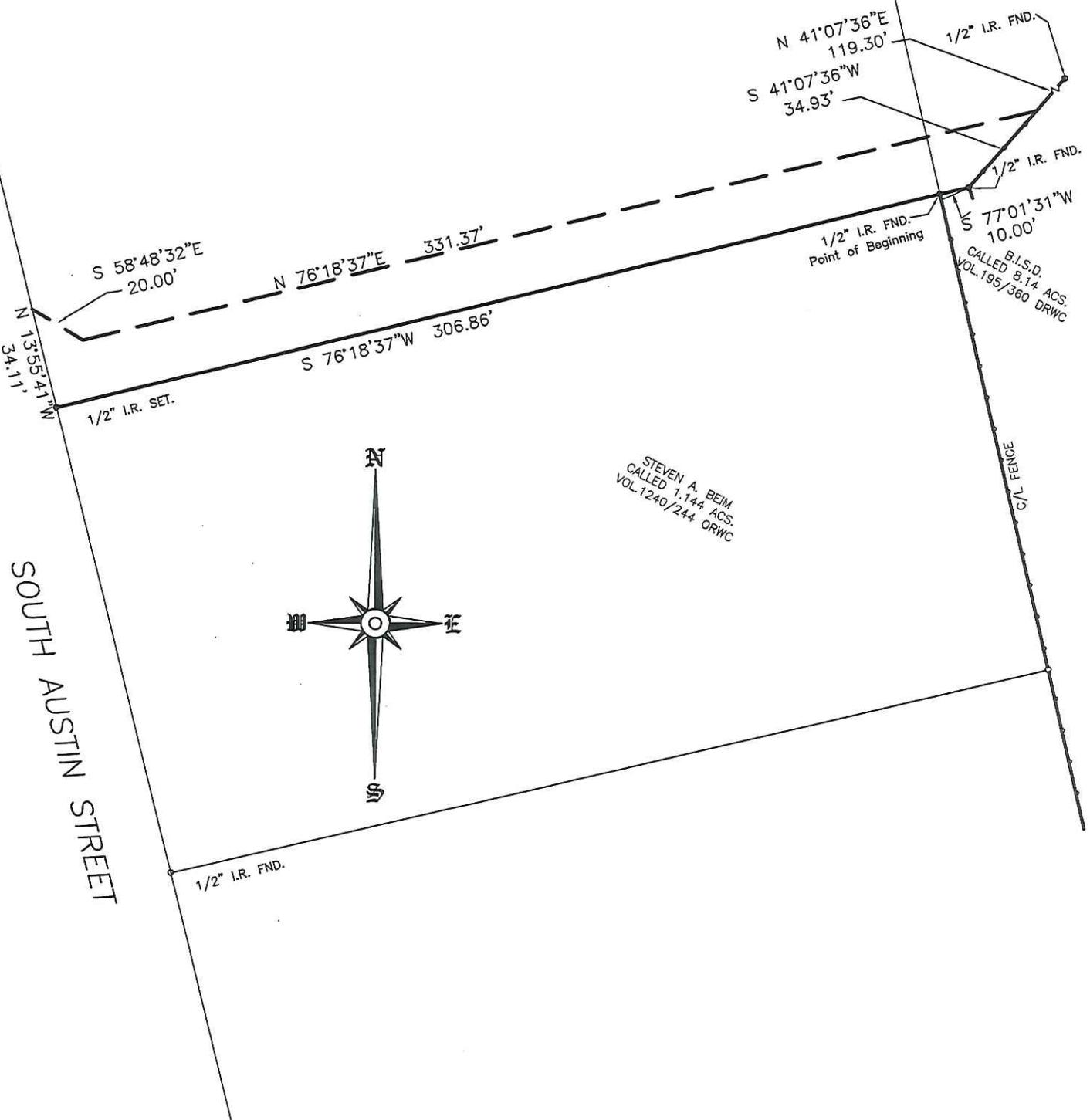
**ATTEST:**

\_\_\_\_\_  
Amanda Klehm  
Deputy City Secretary



CITY OF BRENHAM  
WATER TREATMENT PLANT  
VOL.37/593 DRWC

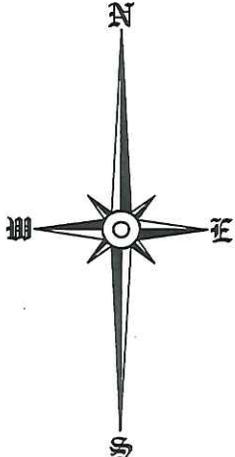
CITY OF BRENHAM  
CALLED 0.268 AC.  
VOL.1193/586 ORWC



STEVEN A. BEIM  
CALLED 1.144 ACS.  
VOL.1240/244 ORWC

B.I.S.D.  
CALLED 8.14 ACS.  
VOL.195/360 DRWC

SOUTH AUSTIN STREET



NOTES:

1. Bearings are based on Geodetic North as determined from GPS observations.
2. All set corners are marked by 1/2 inch iron rods with a cap stamped "RPLS 4705".
3. This survey is valid only if it bears the seal and original signature of the surveyor.
4. This plat is accompanied by a description of even date herewith.

The information shown on this plat is based on a survey performed on the ground under my supervision and completed June 12, 2013. It is my professional opinion that this map represents the facts as found.

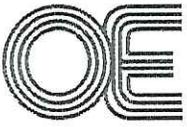
*Robert C. Schmidt*  
Robert C. Schmidt, RPLS  
Texas Registered Professional  
Land Surveyor No. 4705



**EXHIBIT "A"**  
1 of 2

PLAT SHOWING AN EASEMENT OUT OF A TRACT CONVEYED TO THE CITY OF BRENHAM BY DEED RECORDED IN VOLUME 37, PAGE 593 DEED RECORDS OF WASHINGTON COUNTY AND A CALLED 0.268 ACRE TRACT CONVEYED BY DEED RECORDED IN VOLUME 1193, PAGE 586 OFFICIAL RECORDS OF WASHINGTON COUNTY CITY OF BRENHAM WASHINGTON COUNTY, TEXAS

**O'MALLEY ENGINEERS**  
203 S. JACKSON ST. BRENHAM, TEXAS  
(979) 836-7937 FAX (979) 836-7936



STATE OF TEXAS )  
COUNTY OF WASHINGTON)

EASEMENT

ALL THAT CERTAIN tract or parcel of land out of a tract conveyed to City of Brenham by deed recorded in Volume 37, Page 593, Deed Records of Washington County, Texas (DRWC) and a called 0.268 acre tract conveyed to City of Brenham by deed recorded in Volume 1193, Page 586, DRWC. Said easement being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found at the northeast corner of a called 1.144 acre tract conveyed to Steven A. Beim by deed recorded in Volume 1240, Page 244 DRWC, being a southeast corner of said City of Brenham tract and the south corner of said City of Brenham called 0.268 acre tract;

THENCE along the north line of said Beim tract and the south line of said City of Brenham tract, South 76°18'37" West, a distance of 306.86 feet to a 1/2" iron rod set for the northwest corner of said Beim tract, the southwest corner of the herein described tract and being in the east right of way line of South Austin Street;

THENCE with the east right of way of South Austin Street and the west line of said City of Brenham tract, North 13°55'41" West, a distance of 34.11 feet to a point;

THENCE severing said City of Brenham tract, South 58°48'32" East, a distance of 20.00 feet to a point;

THENCE North 76°18'37" East , a distance of 331.37 feet to a point on the southeast line of said City of Brenham called 0.268 acre tract, from which a 1/2" iron rod found for the northeast corner of said City of Brenham called 0.268 acre tract bears North 41°07'36" East, a distance of 119.30 feet;

THENCE with the southeast line of said City of Brenham called 0.268 acre tract, South 41°07'36" West, a distance of 34.93 feet to a 1/2" iron rod found for the southeast corner of said City of Brenham called 0.268 acre tract;

THENCE with the south line of said City of Brenham called 0.268 acre tract, South 77°01'31" West, a distance of 10.00 feet to the PLACE OF BEGINNING.

Notes:

1. Bearings are based on Geodetic North as determined from GPS observations.
2. This survey is valid only if it bears the seal and original signature of the surveyor.
3. This description is accompanied by a plat of even date herewith.

June 12, 2013.

Robert C. Schmidt  
Robert C. Schmidt, TX RPLS No. 4705



**EXHIBIT** "A"  
2 of 2

**ORDINANCE NO. O-13-014**

**AN ORDINANCE AMENDING SECTION 6-145, CONSTRUCTION REQUIRMENTS WITHIN CHAPTER 6, BUILDINGS AND STRUCTURES, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, PROVIDING FOR REGULATIONS RELATED TO THE CONSTRUCTION OF SWIMMING POOLS.**

**BE IT ORDAINED BY THE CITY OF BRENHAM, TEXAS, THAT SECTION 6-145, CONSTRUCTION REQUIRMENTS WITHIN CHAPTER 6, BUILDINGS AND STRUCTURES OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, BE AMENDED IN THE FOLLOWING MANNER:**

*SECTION 1.* That Section 6-145, Construction Requirements, within Chapter 6, Buildings and Structures, of the Code of Ordinances of the City of Brenham, Texas, is hereby amended as follows:

**Sec. 6-145. Construction requirements.**

(a) All pools located, erected, enlarged, or constructed within the City of Brenham shall conform to the following requirements:

1. A minimum five-foot (5') rear and side yards is required;
2. A minimum twenty-five foot (25') front yard and a fifteen foot (15') side yard on corner lots is required, or pools must be located behind the established building lines of the principle structure located on the lot, whichever distance is greater;
3. Pools must be a minimum of five feet (5') from any structure to allow access for emergency rescue operations; and
4. All measurements are taken from the outermost edge of the pool coping.

(b) Any connection to the city's sewer system shall include a suitable gap or backflow prevention device to prevent contamination of the pool by the sewer.

(c) Gaseous chlorination system shall not be used as a disinfection method for pool waters. The building inspector shall recommend a proper disinfectant.

(d) Any connection to the city's potable water system shall be protected by a suitable air gap or approved backflow prevention device.

*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 \_\_\_\_\_ day of June, 2013.

**PASSED and APPROVED** on its second reading this the \_\_\_\_\_ day of July, 2013.

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

ATTEST:

\_\_\_\_\_  
Amanda Klehm  
Deputy City Secretary



**AGENDA ITEM 6**

<b>DATE OF MEETING:</b> July 11, 2013		<b>DATE SUBMITTED:</b> July 2, 2013	
<b>DEPT. OF ORIGIN:</b> Finance		<b>SUBMITTED BY:</b> Carolyn D. Miller	
<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> Discuss and Review FY2012-13 Second Quarter Financial Report.			
<b>SUMMARY STATEMENT:</b> See attached Financial Performance Report and Financial Statements for General Fund and Five Utility Funds.			
<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.) FY2012-13 Second Quarter Financial Report from CFO; (2.) Financial Performance Reports for General Fund; (3.) Financial Performance Reports for Electric Fund; (4.) Financial Performance Reports for Gas Fund; (5.) Financial Performance Reports for Water Fund; (6.) Financial Performance Reports for Wastewater Fund; and (7.) Financial Performance Reports for Sanitation Fund.			
<b>FUNDING SOURCE (Where Applicable):</b>			
<b>RECOMMENDED ACTION:</b> Discussion Only			
<b>APPROVALS:</b> Terry K. Roberts			



**MEMORANDUM**

To: Mayor, Council and City Manager

From: Carolyn D. Miller  
Chief Financial Officer *CM*

Subject: FY2012-13 Second Quarter Financial Report

Date: July 2, 2013

The Finance Division is pleased to provide financial performance reports for the quarter ended March 31, 2013. The General Fund and the five major utility funds are presented in the usual format which includes a comparison of the 2<sup>nd</sup> quarter actual versus the prior year and a comparison to budget.

For the second quarter, the City experienced favorable performance in the General, Electric, Gas and Sanitation Funds. The Water and Wastewater Fund posted net losses for the quarter due to primarily to lower utility revenues.

**FINANCIAL PERFORMANCE SUMMARY**

Fund	2nd QTR Actual Performance		
	Revenues	Expenditures	Net Revenues
General Fund	\$ 7,613,380	\$ 7,424,353	\$ 189,027
Electric Fund	10,672,689	10,390,773	281,916
Gas Fund	1,648,490	1,568,244	80,246
Water Fund	2,322,032	2,419,021	(96,989)
Wastewater Fund	1,750,586	1,781,810	(31,224)
Sanitation Fund	1,613,830	1,550,898	62,932

**GENERAL FUND**

The second quarter performance for the General Fund posted net revenues of \$189,027 with property taxes being the only revenue source ahead. As you recall, we projected a 10% growth in sales tax and we are on track with budget. Due to lower utility fund revenues, the franchise tax paid to the General Fund is behind budgeted levels as are Municipal Court fees and fines.

Operating expenditures were \$353,811 favorable to budget and specific categories are detailed below:

- Personnel is under budget due primarily to vacant positions in Streets, Parks, Communications and Police Department;
- Services are under budget due to lower electrical costs for city departments, lower fleet rentals, and timing differences for service contracts.
- The Sundry category is under budget due to lower property and liability insurance costs from TML intergovernmental risk pool. As noted in the annual renewal, the City of Brenham's contribution is estimated to decrease by \$20,687 in FY13.

**ELECTRIC FUND**

The Electric Fund had favorable net revenues of \$281,916 for the second quarter. During the second quarter, revenues were behind budget but expenditures were also behind. The revenue components show distribution revenues (customer and wire charges) behind budget and the generation revenue [excluding the due from (to) customers] is also behind budget. Most of the unfavorable revenue was due to lower kWh sales which were running about 11.2 million below budget estimates based on LCRA forecasts.

Operating expenditures in the Electric Fund were below budget by \$877,411. Over 65% was due to lower purchase costs [due to lower consumption] and about 11% was due to lower distribution costs, primarily caused by personnel turnover and lower capital spending. With reduced electric revenues, the franchise tax paid to the General Fund was also less this quarter.

**GAS FUND**

For the second quarter, the Gas Fund posted favorable net revenues of \$80,246, which can be directly attributable to higher prices for natural gas. While gas sales of 237,646 mcf were close to budget projections, the price per mcf exceeded the budget estimates resulting in favorable revenues.

As you would expect, operating expenditures were also ahead of budget by \$181,271 primarily due to higher gas prices per mcf. The actual purchase price of \$3.6855/mcf exceeded budget forecast of \$3.0601/mcf creating \$170,538 in higher purchase costs. Higher gas utility revenues translate to higher franchise taxes paid to the General Fund. AMR meter costs were also ahead of budget this quarter.

**WATER FUND**

The Water Fund experienced unfavorable net revenues of (\$96,989) for the second quarter due to lower water consumption; although this performance is negative it is ahead of the budgeted loss of (\$146,818). Water consumption was down 18 million gallons or 5% over the prior year and 13 million or 2% below budget forecast. Franchise taxes paid to the General Fund for the six months ended March 31, 2013 is at budgeted levels. Operating expenditures in the Water Fund were below budget; however the Salem Road capital project was running about \$27,006 thru March ahead of budget.

### **WASTEWATER FUND**

Net revenues for the Wastewater Fund were at an unfavorable level of (\$31,224). Utility revenues were behind the budget forecast by (\$122,890) due to lower volumes of sewage being processed across all rate classes and also reflect a decrease in the average residential customer billing rate. The revenue shortfall was more than offset by favorable expenditure budget variances of \$71,320. Operating expenditures were favorable due to personnel turnover; the AMR meter project expenditures were lower; and reduced shared service department costs resulted in lower transfer-out.

### **SANITATION FUND**

The combined operations of the Sanitation Fund posted favorable net revenues of \$62,932 for the second quarter. In the Sanitation Fund, operating resources are derived from four business units: Residential Collections, Collection Station, Transfer Station and Recycling Center.

- Overall, second quarter revenues were 4% below budget projections. All business units lagged except Transfer Station which was 8% higher than budget. Collection Station revenue is behind due to the loss of Premier Metal scale revenue and due to lower traffic/volumes, and the Recycling Center revenue is behind due to a drop in card board prices.
- Overall, Sanitation Fund expenditures were under budget. In looking at Exhibit F, two business units experienced favorable variances. Expenditures are higher in the Transfer Station operation due to increased vehicle maintenance and fuel costs for additional trips to the landfill. Expenditures in the Recycling Center operation are higher due to land purchase from Woodson Lumber.

### **CONCLUSION**

As noted in the opening paragraph, the City experienced favorable performance in the General, Electric, Gas and Sanitation Funds with the Water and Wastewater Funds posting net losses due to lower utility revenues. In the remaining months of the fiscal year, we will closely monitor fund performance and reduce expenditures to mitigate any negative impact.

After you have reviewed this quarterly financial performance report, should you have any questions or comments prior to the council meeting, please do not hesitate to contact Terry Roberts, Kyle Dannhaus, Lowell Ogle, Debbie Gaffey or me directly.

*NOTE: The financial performance reports for the General Fund and five utility funds are attached to this memorandum, and are an integral part of the quarterly financial performance report.*

**GENERAL FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT A**

**TOTAL OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE		YTD BUD FY13	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>REVENUES</b>						
3,287,967	3,394,704	106,737	PROPERTY TAX	3,344,429	3,394,704	50,275
(1,705,377)	(1,621,778)	83,599	- DEFERRED PROP TAX (1)	(1,597,760)	(1,621,778)	(24,018)
2,018,760	2,205,121	186,360	SALES TAX (2)	2,207,498	2,205,121	(2,378)
1,198,901	1,177,049	(21,852)	UTILITIES FRANCHISE TAX	1,257,685	1,177,049	(80,636)
277,114	261,865	(15,249)	OTHER TAXES	282,437	261,865	(20,572)
5,077,365	5,416,960	339,594	<b>SUBTOTAL TAXES</b>	5,494,289	5,416,960	(77,329)
504,055	355,380	(148,675)	LICENSES, PERMITS & FEES	502,556	355,380	(147,176)
139,841	107,780	(32,061)	MISCELLANEOUS	98,524	107,780	9,256
43,875	43,988	113	AQUATICS	46,712	43,988	(2,724)
15,692	15,074	(617)	ANIMAL CONTROL	16,962	15,074	(1,888)
5,780,828	5,939,182	158,354	<b>TOTAL REVENUES</b>	6,159,043	5,939,182	(219,862)
1,421,650	1,463,095	41,445	<b>TRANSFERS-IN</b>	1,665,126	1,463,095	(202,031)
189,301	211,103	21,802	<b>INTERLOCAL AGREEMENTS</b>	187,044	211,103	24,059
7,391,779	7,613,380	221,601	<b>TOTAL OP RESOURCES</b>	8,011,213	7,613,380	(397,833)

(1) Approximately 96% of property tax revenue is collected in the second quarter. A portion is deferred to cover operating expenditures later in the year.

(2) Reflects October 2012 to March 2013 sales tax collected in December 2012 to May 2013.

**EXHIBIT B**

**TOTAL USES OF OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE		YTD BUD FY13	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>EXPENDITURES</b>						
6,808,891	7,121,891	(313,001)	OPERATING DEPTS	7,475,702	7,121,891	353,811
110,022	290,192	(180,170)	NON-DEPT DIRECT	112,250	290,192	(177,942)
4,415	5,796	(1,381)	NON-DEPT MISC (3)	0	5,796	(5,796)
6,923,328	7,417,879	(494,551)	<b>TOTAL EXPENDITURES</b>	7,587,952	7,417,879	170,073
0	6,474	(6,474)	<b>TRANSFERS-OUT</b>	22,079	6,474	15,605
6,923,328	7,424,353	(501,025)	<b>TOTAL USES OP RESOURCES</b>	7,610,030	7,424,353	185,677

(3) Excludes uncollectible accounts.

**GENERAL FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT C**

**NET REVENUES**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		BUD FY13	ACT FY13	VARIANCE
7,391,779	7,613,380	221,601	<b>TOTAL OP RESOURCES</b>	8,011,213	7,613,380	(397,833)
6,923,328	7,424,353	(501,025)	<b>TOTAL USES OP RESOURCES</b>	7,610,030	7,424,353	185,677
468,451	189,027	(279,424)	<b>NET REVENUES</b>	401,183	189,027	(212,156)

**EXHIBIT D**

**UNRESTRICTED FUND BALANCE**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		BUD FY13	ACT FY13	VARIANCE
3,300,733	3,564,464	263,731	<b>BEGINNING BALANCE (4)</b>	3,564,464	3,564,464	0
468,451	189,027	(279,424)	NET REVENUES	401,183	189,027	(212,156)
8,250	0	(8,250)	NON-BUDGET/CAFR ADJS	0	0	0
3,777,434	3,753,491	(23,943)	<b>ENDING BALANCE</b>	3,965,647	3,753,491	(212,156)

(4) Beginning unrestricted fund balance for FY12 excludes \$535,918 tracked in other governmental funds.

**EXHIBIT E**

**DAYS COVERAGE**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		BUD FY13	ACT FY13	VARIANCE
			<b>CALCULATION</b>			
5,780,828	5,939,182	158,354	REVENUES	6,159,043	5,939,182	(219,862)
189,301	211,103	21,802	INTERLOCAL AGREEMENTS	187,044	211,103	24,059
5,970,129	6,150,285	180,156	TOTAL RESOURCES	6,346,087	6,150,285	(195,802)
32,713	33,700	987	RESOURCES PER DAY (365) (5)	34,773	33,700	(1,073)
3,777,434	3,753,491	(23,943)	ACTUAL RESERVES	3,965,647	3,753,491	(212,156)
2,944,173	3,033,017	88,844	90-DAY POLICY	3,129,577	3,033,017	(96,560)
833,261	720,474	(112,787)	<b>EXCESS/(SHORTFALL)</b>	836,069	720,474	(115,596)
115	111	(4)	<b>DAYS COVERAGE</b>	114	111	(3)

(5) Annualized

**GENERAL FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT F**

**DEPARTMENT EXPENDITURES BY CATEGORY**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD BUD FY13	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>EXPENSE CATEGORY</b>					
4,726,934	4,911,349	(184,415)	5,140,513	4,911,349	229,164
445,959	425,805	20,154	442,909	425,805	17,104
274,824	403,798	(128,974)	408,774	403,798	4,976
854,960	915,457	(60,498)	1,030,706	915,457	115,249
38,161	113,729	(75,568)	62,080	113,729	(51,649)
465,082	351,753	113,329	390,720	351,753	38,967
6,805,921	7,121,891	(315,971)	7,475,702	7,121,891	353,811

**EXHIBIT G**

**DEPARTMENT EXPENDITURES BY DEPARTMENT**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD BUD FY13	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>DEPARTMENT</b>					
444,736	480,833	(36,097)	536,056	480,833	55,224
113,189	144,529	(31,340)	147,718	144,529	3,189
108,154	86,444	21,710	92,976	86,444	6,532
90,555	65,358	25,197	60,372	65,358	(4,986)
304,960	281,855	23,104	310,849	281,855	28,993
370,537	409,396	(38,859)	456,582	409,396	47,186
113,508	122,228	(8,721)	132,550	122,228	10,322
577,529	657,739	(80,210)	680,436	657,739	22,697
484,178	510,308	(26,130)	576,050	510,308	65,743
200,515	187,221	13,295	209,831	187,221	22,610
51,874	37,037	14,836	50,688	37,037	13,651
117,025	90,146	26,879	86,009	90,146	(4,137)
181,512	275,178	(93,666)	276,295	275,178	1,117
558,170	680,447	(122,277)	682,261	680,447	1,814
1,598,079	1,660,037	(61,958)	1,726,555	1,660,037	66,518
701,026	715,102	(14,076)	718,068	715,102	2,966
132,412	146,840	(14,427)	144,397	146,840	(2,443)
175,436	186,834	(11,398)	184,022	186,834	(2,812)
202,079	143,150	58,929	139,677	143,150	(3,473)
280,449	241,209	39,239	264,309	241,209	23,100
6,805,921	7,121,891	(315,971)	7,475,702	7,121,891	353,811

**GENERAL FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT H**

**CAPITAL EXPENDITURE DETAIL**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD BUD FY13	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>ITEM</b>					
460	0	460	0	0	0
3,594	0	3,594	0	0	0
2,401	0	2,401	0	0	0
2,624	0	2,624	0	0	0
27,142	0	27,142	0	0	0
1,440	0	1,440	0	0	0
500	0	500	0	0	0
0	5,474	(5,474)	0	5,474	(5,474)
0	832	(832)	0	832	(832)
0	8,900	(8,900)	0	8,900	(8,900)
0	3,717	(3,717)	4,500	3,717	783
0	6,180	(6,180)	0	6,180	(6,180)
0	3,896	(3,896)	0	3,896	(3,896)
0	960	(960)	0	960	(960)
0	16,955	(16,955)	17,500	16,955	545
0	4,480	(4,480)	4,500	4,480	20
0	8,816	(8,816)	9,000	8,816	184
0	4,608	(4,608)	4,000	4,608	(608)
0	282	(282)	0	282	(282)
0	30,422	(30,422)	0	30,422	(30,422)
0	2,054	(2,054)	7,200	2,054	5,146
0	3,359	(3,359)	3,400	3,359	42
0	1,748	(1,748)	0	1,748	(1,748)
0	5,053	(5,053)	0	5,053	(5,053)
38,161	107,734	(69,574)	50,100	107,734	(57,634)

**EXHIBIT I**

**CAPITAL EXPENDITURE DETAIL - FUND 236 EQUIPMENT FUND**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD BUD FY13	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>ITEM</b>					
195,245	0	195,245	0	0	0
42,657	0	42,657	0	0	0
175,049	186,209	(11,160)	200,000	186,209	13,791
0	23,466	(23,466)	25,000	23,466	1,534
412,951	209,675	203,276	225,000	209,675	15,325

**ELECTRIC FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT A**

**TOTAL OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS PRIOR YEAR		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>DISTRIBUTION REVENUES</b>					
622,654	619,919	(2,736)	639,744	619,919	(19,826)
1,965,883	1,952,370	(13,513)	2,121,405	1,952,370	(169,035)
309,228	301,998	(7,230)	306,779	301,998	(4,781)
13,539	13,390	(148)	12,282	13,390	1,108
(34,426)	16,125	50,551	11,000	16,125	5,125
2,876,878	2,903,802	26,923	3,091,210	2,903,802	(187,408)
<b>GENERATION REVENUES</b>					
9,473,566	9,430,251	(43,315)	10,239,495	9,430,251	(809,244)
(1,183,203)	(566,571)	616,632	(719,405)	(566,571)	152,834
(1,124,180)	(1,317,067)	(192,887)	(1,397,695)	(1,317,067)	80,628
0	0	0	0	0	0
7,166,183	7,546,613	380,430	8,122,395	7,546,613	(575,782)
10,043,061	10,450,414	407,353	11,213,605	10,450,414	(763,190)
221,884	222,275	391	263,223	222,275	(40,948)
10,264,945	10,672,689	407,744	11,476,827	10,672,689	(804,138)

(1) The City over recovers through revenues in the Fall/Winter/Spring and under recovers in the Summer.

**EXHIBIT B**

**TOTAL USES OF OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS PRIOR YEAR		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>DISTRIBUTION EXPENDITURES</b>					
1,504,057	1,304,577	199,480	1,400,472	1,304,577	95,895
273,214	2,420	270,794	0	2,420	(2,420)
765,654	747,983	17,671	812,206	747,983	64,223
5,579	5,579	0	4,782	5,579	(797)
1,160	1,200	(40)	1,200	1,200	0
8,062	8,112	(50)	10,000	8,112	1,888
2,557,726	2,069,871	487,855	2,228,661	2,069,871	158,790
<b>GENERATION EXPENDITURES</b>					
7,197,244	7,544,430	(347,187)	8,120,014	7,544,430	575,584
7,197,244	7,544,430	(347,187)	8,120,014	7,544,430	575,584
749,708	776,472	(26,764)	919,510	776,472	143,038
10,504,678	10,390,773	113,904	11,268,185	10,390,773	877,411

(2) This project is monitored in Fund 108 but is an expenditure of the Electric Fund.

(3) Excludes depreciation but includes uncollectible accounts.

**ELECTRIC FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT C**

**NET REVENUES**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
(208,672)	279,734	488,406	<b>DISTRIBUTION NET REVENUES</b>	206,262	279,734	73,472
(31,061)	2,182	33,243	<b>GENERATION NET REVENUES</b>	2,381	2,182	(198)
(239,733)	281,916	521,649	<b>TOTAL NET REVENUES</b>	208,643	281,916	73,273

**EXHIBIT D**

**WORKING CAPITAL BALANCE**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
6,313,055	6,631,950	318,895	<b>BEGINNING BALANCE</b>	6,631,950	6,631,950	0
(239,733)	281,916	521,649	<b>NET REVENUES</b>	208,643	281,916	73,273
0	0	0	<b>CAFR ADJ</b>	0	0	0
6,073,322	6,913,866	840,544	<b>ENDING BALANCE</b>	6,840,593	6,913,866	73,273

**EXHIBIT E**

**DEPARTMENT EXPENDITURES BY CATEGORY**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
			<b>EXPENSE CATEGORY</b>			
795,867	804,169	(8,302)	<b>PERSONNEL</b>	885,741	804,169	81,572
70,252	69,799	452	<b>SUPPLIES</b>	72,099	69,799	2,300
45,005	48,921	(3,916)	<b>MAINTENANCE</b>	60,140	48,921	11,219
213,835	172,416	41,419	<b>SERVICES</b>	143,645	172,416	(28,771)
349,173	183,064	166,110	<b>CAPITAL (SEE EXHIBIT I)</b>	199,779	183,064	16,715
29,926	26,208	3,718	<b>SUNDRY</b>	39,069	26,208	12,861
1,504,057	1,304,577	199,480	<b>TOTAL DEPT EXPENDITURES</b>	1,400,472	1,304,577	95,895

**ELECTRIC FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT F**

**DEPARTMENT EXPENDITURES BY DEPARTMENT**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	DEPARTMENT	YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
249,224	219,702	29,522	DEPT 132 - UTILITY BILLING	261,074	219,702	41,372
272,030	307,948	(35,918)	DEPT 160 - PUBLIC UTILITIES	333,611	307,948	25,664
982,803	776,927	205,876	DEPT 161 - ELECTRIC	805,787	776,927	28,859
1,504,057	1,304,577	199,480	<b>TOTAL DEPT EXPENDITURES</b>	1,400,472	1,304,577	95,895

**EXHIBIT G**

**AMR METER PROJECT**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE		YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
4,113	6,941	2,828	# OF AMR METERS	6,986	6,941	(45)
2,790	0	(2,790)	# OF NON-AMR METERS	0	0	0
6,903	6,941	38	TOTAL # OF METERS	6,986	6,941	(45)
59.58%	100.00%	40.42%	AMR % OF METERS	100.00%	100.00%	0.00%

**ELECTRIC FUND  
2ND QUARTER PERFORMANCE**



EXHIBIT H

**CAPITAL EXPENDITURE DETAIL**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
0	1,974	(1,974)	DEPT 160 - SCADA ADDIN PHASE 4	9,800	1,974	7,826
11,892	0	11,892	DEPT 160 - SCADA SERVER	0	0	0
0	2,599	(2,599)	DEPT 161 - ACSR CUTTER	3,000	2,599	401
0	666	(666)	DEPT 161 - DIE BOX	1,499	666	833
0	3,592	(3,592)	DEPT 161 - CRIMP TOOL	4,500	3,592	908
3,762	0	3,762	DEPT 161 - SCALE	0	0	0
1,296	0	1,296	DEPT 161 - DOLLIE	0	0	0
1,795	0	1,795	DEPT 161 - AUGER	0	0	0
1,434	0	1,434	DEPT 161 - INS ADAPTER	0	0	0
5,995	0	5,995	DEPT 161 - BREAKAWAY REEL	0	0	0
3,894	0	3,894	DEPT 161 - CABLE LOCATOR	0	0	0
1,281	0	1,281	DEPT 161 - INS ADAPTERS	0	0	0
0	29,367	(29,367)	DEPT 161 - FORD 250 TRUCK	32,000	29,367	2,633
10,304	8,020	2,284	DEPT 161 - WIRELESS MESH	10,000	8,020	1,980
10,184	0	10,184	2-2003 ELECTRIC METER CANS	0	0	0
0	2,060	(2,060)	61C-14 AUTO CAPACITOR BANKS	2,100	2,060	40
4,285	0	4,285	61C-15 UPGRADE BLUE BELL FEEDER	0	0	0
0	773	(773)	61C-19 SYSTEM PROTECTION	800	773	27
34,112	17,379	16,733	61C-21 ANNUAL POLE CHGOUT	13,300	17,379	(4,079)
0	8,866	(8,866)	61C-28 WALNUT HILL UPGRADE	8,500	8,866	(366)
97,072	36,084	60,988	61C-37 ANNUAL SVC REPLACEMENTS	42,400	36,084	6,317
11,177	7,590	3,587	61C-38 ANNUAL NEW SVC INSTALLS	19,480	7,590	11,890
135	107	28	61C-42 ANNUAL NEW ST LIGHTS	3,000	107	2,893
3,268	0	3,268	61C-43 ANNUAL REPLACE ST LTS	0	0	0
19,887	2,691	17,197	61C-56 WOODBRIDGE SUB	2,500	2,691	(191)
53,744	33,332	20,411	61C-57 BLUE BELL FEEDER RECON	32,300	33,332	(1,032)
5,504	288	5,216	61C-58 BLINN SVC IMPROVEMENT	500	288	212
19,292	0	19,292	61C-59 NEW SVC VALMONT	0	0	0
4,744	0	4,744	61C-60 577 BRIDGE PROJECT	0	0	0
31,823	0	31,823	61C-61 2012 MAIN FEEDER PROJ	0	0	0
12,295	0	12,295	61C-63 ST JOSEPH CLINIC	0	0	0
0	20,639	(20,639)	61C-65 PADMOUNT SWITCH GEAR	12,000	20,639	(8,639)
0	2,065	(2,065)	61C-66 BLINN POLE BREAKER	100	2,065	(1,965)
0	4,282	(4,282)	61C-70 BRENHAM CLINIC	1,000	4,282	(3,282)
0	691	(691)	61C-74 BLUEBELL COLD STORAGE	1,000	691	309
349,173	183,064	166,110	TOTAL	199,779	183,064	16,715

**GAS FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT A**

**TOTAL OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)	YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE	ACT FY13B	ACT FY13	VARIANCE
<b>DISTRIBUTION REVENUES</b>					
653,704	670,703	16,999	683,149	670,703	(12,446)
275	323	48	350	323	(27)
10,532	8,472	(2,059)	6,600	8,472	1,872
664,510	679,498	14,988	690,099	679,498	(10,600)
<b>UTILITY REVENUES</b>					
<b>INTEREST EARNED</b>					
<b>OTHER REVENUE</b>					
<b>SUBTOTAL DISTRIBUTION REV</b>					
<b>COMMODITY REVENUES</b>					
1,870,617	1,953,450	82,833	1,955,193	1,953,450	(1,743)
(1,021,357)	(984,458)	36,898	(1,169,624)	(984,458)	185,166
849,261	968,992	119,731	785,569	968,992	183,423
<b>SUBTOTAL COMMODITY REV</b>					
1,513,771	1,648,490	134,719	1,475,667	1,648,490	172,823
<b>TOTAL OPERATING RESOURCES</b>					

**EXHIBIT B**

**TOTAL USES OF OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)	YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE	ACT FY13B	ACT FY13	VARIANCE
<b>DISTRIBUTION EXPENDITURES</b>					
222,001	234,912	(12,910)	245,784	234,912	10,872
99,895	53,162	46,733	0	53,162	(53,162)
105,208	114,778	(9,570)	102,810	114,778	(11,968)
1,186	1,186	0	1,017	1,186	(169)
(9)	(796)	787	0	(796)	796
428,281	403,242	25,039	349,611	403,242	(53,631)
<b>SUBTOTAL DISTRIBUTION EXP</b>					
<b>COMMODITY EXPENDITURES</b>					
826,414	945,573	(119,159)	775,035	945,573	(170,538)
826,414	945,573	(119,159)	775,035	945,573	(170,538)
<b>SUBTOTAL COMMODITY EXP</b>					
213,787	219,429	(5,642)	262,327	219,429	42,898
<b>TRANSFERS-OUT</b>					
1,468,482	1,568,244	(99,762)	1,386,973	1,568,244	(181,271)
<b>TOTAL USES OF OP RESOURCES</b>					

(1) THIS PROJECT IS MONITORED IN FUND 108 BUT IS AN EXPENDITURE OF THE FUND.

(2) INCLUDES INVENTORY ADJUSTMENTS.

**GAS FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT C**

**NET REVENUES**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
22,443	56,828	34,385	<b>DISTRIBUTION</b>	78,161	56,828	(21,333)
22,847	23,419	572	<b>COMMODITY</b>	10,534	23,419	12,885
45,289	80,246	34,957	<b>TOTAL NET REVENUES</b>	88,694	80,246	(8,448)

**EXHIBIT D**

**WORKING CAPITAL BALANCE**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
1,041,356	969,554	(71,802)	<b>BEGINNING BALANCE</b>	969,554	969,554	0
45,289	80,246	34,957	<b>NET REVENUES</b>	88,694	80,246	(8,448)
(13,050)	0	13,050	<b>CAFR ADJ</b>	0	0	0
1,073,595	1,049,800	(23,795)	<b>ENDING BALANCE</b>	1,058,248	1,049,800	(8,448)

**EXHIBIT E**

**DEPARTMENT EXPENDITURES BY CATEGORY**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
151,194	165,246	(14,053)	<b>PERSONNEL</b>	160,876	165,246	(4,370)
7,785	13,692	(5,907)	<b>SUPPLIES</b>	9,195	13,692	(4,497)
11,292	8,869	2,423	<b>MAINTENANCE</b>	11,492	8,869	2,623
10,801	27,518	(16,718)	<b>SERVICES</b>	15,843	27,518	(11,675)
38,617	15,171	23,446	<b>CAPITAL</b>	42,043	15,171	26,872
2,313	4,415	(2,102)	<b>SUNDRY</b>	6,335	4,415	1,920
222,001	234,912	(12,910)	<b>TOTAL DEPT EXPENDITURES</b>	245,784	234,912	10,872

**EXHIBIT F**

**DEPARTMENT EXPENDITURES BY DEPARTMENT**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
222,001	234,912	(12,910)	<b>DEPT 162 - GAS</b>	245,784	234,912	10,872
222,001	234,912	(12,910)	<b>TOTAL DEPT EXPENDITURES</b>	245,784	234,912	10,872

**GAS FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT G**

**AMR METER PROJECT**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
1,673	4,295	2,622	# OF AMR METERS	4,300	4,295	(5)
2,589	0	(2,589)	# OF NON-AMR METERS	0	0	0
4,262	4,295	33	TOTAL # OF METERS	4,300	4,295	(5)
39.25%	100.00%	60.75%	AMR % OF METERS	100.00%	100.00%	0.00%

**EXHIBIT H**

**CAPITAL EXPENDITURE DETAIL**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS PRIOR YEAR		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
6,193	5,687	506	62C-17 ANNUAL SVC REPLACEMENTS	6,250	5,687	563
9,120	7,696	1,424	62C-18 NEW SVC INSTALLS	24,750	7,696	17,054
484	0	484	62C-20 MAIN BLINN AG BLDG	0	0	0
1,258	0	1,258	62C-22 SW INDUSTRIAL PK EXT	0	0	0
21,562	0	21,562	62C-23 HWY 36S-NICHOLS UTIL EXT	0	0	0
0	511	(511)	62C-25 REPLACE 2" STEEL MAIN	9,543	511	9,032
0	288	(288)	62C-26 HIGH ST MAIN EXT BLINN	500	288	212
0	989	(989)	62C-28 GUN & RODD MAIN EXT	1,000	989	11
38,617	15,171	23,446	TOTAL	42,043	15,171	26,872

**WATER FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT A**

**TOTAL OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET			
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE		YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>REVENUES</b>						
1,972,951	1,898,796	(74,156)	UTILITY REVENUES	1,942,069	1,898,796	(43,274)
1,637	2,263	625	INTEREST EARNED	1,709	2,263	554
66,809	55,358	(11,452)	OTHER REVENUE	52,686	55,358	2,672
2,041,398	1,956,416	(84,982)	<b>TOTAL REVENUES</b>	1,996,464	1,956,416	(40,048)
156,732	365,616	208,884	<b>OTHER SOURCES (1)</b>	334,732	365,616	30,884
2,198,129	2,322,032	123,903	<b>TOTAL OPERATING RESOURCES</b>	2,331,195	2,322,032	(9,163)

(1) RESIDUAL BOND PROCEEDS FROM 2008 DEBT ISSUANCE RELEASED FROM RESTRICTED CASH AT YEAR-END.

**EXHIBIT B**

**TOTAL USES OF OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET			
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE		YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>EXPENDITURES</b>						
793,281	821,229	(27,948)	OPERATING DEPARTMENTS	885,723	821,229	64,495
0	36,332	(36,332)	HIGH PRESSURE PLANE EXPAND	36,000	36,332	(332)
0	56,547	(56,547)	VALMONT EXTENSION	53,000	56,547	(3,547)
0	117,006	(117,006)	SALEM ROAD EXTENSION	90,000	117,006	(27,006)
120,758	354,806	(234,048)	AMR METER PROJECT (1)	350,000	354,806	(4,806)
138,106	132,916	5,190	FRANCHISE TAX	133,168	132,916	252
542,711	551,228	(8,517)	DEBT SERVICE	544,812	551,228	(6,416)
132,825	132,825	0	PURCHASE COSTS	132,825	132,825	0
(1,167)	229	(1,396)	OTHER (2)	818	229	589
1,726,513	2,203,117	(476,603)	<b>TOTAL EXPENDITURES</b>	2,226,347	2,203,117	23,230
207,520	215,905	(8,385)	<b>TRANSFERS-OUT</b>	251,666	215,905	35,762
1,934,033	2,419,021	(484,988)	<b>TOTAL USES OF OP RESOURCES</b>	2,478,013	2,419,021	58,992

(1) THIS PROJECT IS MONITORED IN FUND 108 BUT IS AN EXPENDITURE OF THE FUND.

(2) EXCLUDES DEPRECIATION, AMORTIZED BOND COSTS/CHARGES, FIXED ASSET CLEARING ACCT BUT INCLUDES INVENTORY ADJUSTMENTS.

**WATER FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT C**

**NET REVENUES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)	YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE	ACT FY13B	ACT FY13	VARIANCE
2,198,129	2,322,032	123,903	2,331,195	2,322,032	(9,163)
1,934,033	2,419,021	(484,988)	2,478,013	2,419,021	58,992
264,096	(96,989)	(361,085)	(146,818)	(96,989)	49,829
		<b>NET REVENUES</b>			

**EXHIBIT D**

**WORKING CAPITAL BALANCE**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)	YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE	ACT FY13B	ACT FY13	VARIANCE
2,119,885	2,328,885	209,000	2,328,885	2,328,885	0
264,096	(96,989)	(361,085)	(146,818)	(96,989)	49,829
0	0	0	0	0	0
		<b>ENDING BALANCE</b>			
2,383,981	2,231,896	(152,085)	2,182,067	2,231,896	49,829

**EXHIBIT E**

**DEPARTMENT EXPENDITURES BY CATEGORY**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)	YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE	ACT FY13B	ACT FY13	VARIANCE
293,424	312,668	(19,244)	310,081	312,668	(2,587)
185,991	104,628	81,363	104,040	104,628	(588)
74,660	89,979	(15,320)	112,735	89,979	22,756
114,841	143,587	(28,746)	179,136	143,587	35,548
117,272	162,680	(45,408)	172,500	162,680	9,820
7,092	7,686	(594)	7,232	7,686	(454)
793,281	821,229	(27,948)	885,723	821,229	64,495
		<b>TOTAL DEPT EXPENDITURES</b>			

**EXHIBIT F**

**DEPARTMENT EXPENDITURES BY DEPARTMENT**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)	YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE	ACT FY13B	ACT FY13	VARIANCE
479,679	463,250	16,429	493,082	463,250	29,832
313,602	357,978	(44,376)	392,641	357,978	34,663
793,281	821,229	(27,948)	885,723	821,229	64,495
		<b>TOTAL DEPT EXPENDITURES</b>			

**WATER FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT G**

**AMR METER PROJECT**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
3,720	5,909	2,189	# OF AMR METERS	5,635	5,909	274
3,527	1,408	(2,119)	# OF NON-AMR METERS	1,753	1,408	(345)
7,247	7,317	70	TOTAL # OF METERS	7,388	7,317	(71)
51.33%	80.76%	29.43%	AMR % OF METERS	76.27%	80.76%	4.48%

**EXHIBIT H**

**CAPITAL EXPENDITURE DETAIL**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
0	3,073	(3,073)	DEPT 163 A/C CHEMICAL ROOM	1,550	3,073	(1,523)
0	2,862	(2,862)	DEPT 164 COMPRESSOR/GENERATOR	3,500	2,862	638
0	3,340	(3,340)	DEPT 164 CHAIN SAW	2,700	3,340	(640)
0	2,875	(2,875)	DEPT 164 TAPPING KIT	3,000	2,875	125
3,102	0	3,102	DEPT 164 BREAK ROOM REFURB	0	0	0
15,904	0	15,904	DEPT 164 TOP60B BREAKER	0	0	0
1,939	4,933	(2,994)	64C-13 SVC REPLACEMENTS	5,884	4,933	951
20,705	3,463	17,242	64C-14 NEW SVC INSTALLS	10,866	3,463	7,403
1,767	0	1,767	64C-19 INDUSTRIAL PK EXPANSION	0	0	0
47,860	0	47,860	64C-21 HW 36S/NICHOLS DEV	0	0	0
25,996	123,858	(97,863)	64C-22 WTR DIST SYSTEM IMPRV	125,000	123,858	1,142
0	9,219	(9,219)	64C-24 HWY 36N UTILITY EXT	10,000	9,219	781
0	9,056	(9,056)	64C-29 WATER DIST IMPROVE 2013	10,000	9,056	944
117,272	162,680	(45,408)	<b>TOTAL</b>	172,500	162,680	9,820

**WASTEWATER FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT A**

**TOTAL OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>REVENUES</b>					
1,793,082	1,672,841	(120,241)	1,795,731	1,672,841	(122,890)
29,863	28,146	(1,717)	35,000	28,146	(6,854)
11,145	20,427	9,282	14,630	20,427	5,797
684	976	292	782	976	194
0	0	0	0	0	0
450	28,195	27,745	350	28,195	27,845
<hr/>					
1,835,225	1,750,586	(84,639)	1,846,493	1,750,586	(95,907)
<hr/>					
0	0	0	0	0	0
<hr/>					
1,835,225	1,750,586	(84,639)	1,846,493	1,750,586	(95,907)

**EXHIBIT B**

**TOTAL USES OF OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>EXPENDITURES</b>					
726,851	703,540	23,311	714,587	703,540	11,047
119,677	158,999	(39,322)	175,000	158,999	16,002
125,515	117,098	8,417	125,701	117,098	8,603
565,639	585,159	(19,520)	588,820	585,159	3,661
(166)	(1,845)	1,679	0	(1,845)	1,845
1,537,516	1,562,951	(25,435)	1,604,109	1,562,951	41,158
<hr/>					
205,358	218,859	(13,501)	249,021	218,859	30,162
<hr/>					
1,742,874	1,781,810	(38,936)	1,853,130	1,781,810	71,320

(1) THIS PROJECT IS MONITORED IN FUND 108 BUT IS AN EXPENDITURE OF THE FUND.

(2) EXCLUDES DEPRECIATION, AMORT BOND COSTS/CHARGES AND FIXED ASSET CLEARING ACCT. INCLUDES INVENTORY ADJUSTMENTS.

**WASTEWATER FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT C**

**NET REVENUES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)	YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE	ACT FY13B	ACT FY13	VARIANCE
1,835,225	1,750,586	(84,639)	1,846,493	1,750,586	(95,907)
<b>TOTAL OPERATING RESOURCES</b>					
1,742,874	1,781,810	(38,936)	1,853,130	1,781,810	71,320
<b>TOTAL USES OF OP RESOURCES</b>					
92,351	(31,224)	(123,575)	(6,637)	(31,224)	(24,587)
<b>NET REVENUES</b>					

**EXHIBIT D**

**WORKING CAPITAL BALANCE**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)	YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE	ACT FY13B	ACT FY13	VARIANCE
573,812	633,859	60,047	633,859	633,859	0
<b>BEGINNING BALANCE</b>					
92,351	(31,224)	(123,575)	(6,637)	(31,224)	(24,587)
<b>NET REVENUES</b>					
0	0	0	0	0	0
<b>CAFR ADJ</b>					
666,163	602,635	(63,528)	627,222	602,635	(24,587)
<b>ENDING BALANCE</b>					

**EXHIBIT E**

**DEPARTMENT EXPENDITURES BY CATEGORY**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)	YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE	ACT FY13B	ACT FY13	VARIANCE
<b>EXPENDITURE CATEGORY</b>					
246,499	252,422	(5,924)	272,045	252,422	19,623
PERSONNEL					
60,738	62,392	(1,654)	68,006	62,392	5,614
SUPPLIES					
63,316	86,557	(23,241)	67,580	86,557	(18,977)
MAINTENANCE					
212,405	240,537	(28,132)	240,501	240,537	(36)
SERVICES					
123,755	43,659	80,096	45,948	43,659	2,289
CAPITAL (SEE EXHIBIT G)					
20,138	17,972	2,166	20,507	17,972	2,535
SUNDRY					
726,851	703,540	23,311	714,587	703,540	11,047
<b>TOTAL DEPT EXPENDITURES</b>					

**WASTEWATER FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT F**

**DEPARTMENT EXPENDITURES BY DEPARTMENT**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE		YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>DEPARTMENTS</b>						
209,733	214,839	(5,106)	DEPT 165 - WASTEWATER CONST	253,337	214,839	38,498
517,118	488,701	28,417	DEPT 166 - WASTEWATER TREAT	461,250	488,701	(27,451)
726,851	703,540	23,311	<b>TOTAL DEPT EXPENDITURES</b>	714,587	703,540	11,047

**EXHIBIT G**

**CAPITAL EXPENDITURE DETAIL**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE		YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
3,100	0	3,100	DEPT 165 TRAILER	0	0	0
0	407	(407)	DEPT 166 RTU REPLACEMENT	0	407	(407)
1,397	0	1,397	DEPT 166 RADIOS/CAMERA	0	0	0
459	385	74	65C-15 NEW SVC INSTALLS	1,300	385	915
825	0	825	65C-16 BELLE'S ALLEY	0	0	0
2,579	30	2,549	65C-17 SERVICE REPLACEMENTS	1,000	30	970
3,971	0	3,971	65C-20 INDUSTRIAL PK EXP	0	0	0
3,977	0	3,977	65C-22 LOWER SEWER C. LEWIS	0	0	0
28,486	0	28,486	65C-23 NICHOLS DEVELOPMENT	0	0	0
208	3,163	(2,955)	65C-24 AMPHITHEATRE SR TAP	3,000	3,163	(163)
0	0	0	65C-25 HWY 36N EXTENSION	0	0	0
20	0	20	65C-27 HWY 290 RELOCATION	0	0	0
	8,405	(8,405)	65C-28 SALEM RD SWR LN/LIFT ST	8,943	8,405	538
0	31,270	(31,270)	65C-29 FM289 EXTENSION	31,705	31,270	435
78,733	0	78,733	66C-06 RECLAIMED WATER	0	0	0
123,755	43,659	80,095	<b>TOTAL</b>	45,948	43,659	2,289

**SANITATION FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT A**

**TOTAL OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>REVENUES</b>					
385,406	421,248	35,842	389,500	421,248	31,748
213,267	158,025	(55,242)	217,500	158,025	(59,475)
80,492	43,060	(37,432)	80,000	43,060	(36,940)
975,437	973,540	(1,897)	989,638	973,540	(16,097)
373	511	138	475	511	36
321	17,446	17,125	225	17,446	17,221
1,655,296	1,613,830	(41,466)	1,677,338	1,613,830	(63,508)
1,655,296	1,613,830	(41,466)	1,677,338	1,613,830	(63,508)

**EXHIBIT B**

**TOTAL USES OF OPERATING RESOURCES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
<b>EXPENDITURES</b>					
1,272,178	1,349,609	(77,431)	1,327,167	1,349,609	(22,442)
34,739	34,812	(74)	35,622	34,812	810
2,071	2,071	(0)	1,775	2,071	(296)
886	1,121	(234)	0	1,121	(1,121)
1,309,874	1,387,613	(77,739)	1,364,564	1,387,613	(23,049)
141,161	163,285	(22,124)	195,768	163,285	32,483
1,451,035	1,550,898	(99,863)	1,560,332	1,550,898	9,433

(1) EXCLUDES POST RETIREMENT BENEFITS, AND DEPRECIATION BUT INCLUDES INVENTORY ADJUSTMENTS AND UNCOLLECTIBLE ACCTS.

**EXHIBIT C**

**NET REVENUES**

ACTUAL VERSUS PRIOR YEAR			ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE	YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
1,655,296	1,613,830	(41,466)	1,677,338	1,613,830	(63,508)
1,451,035	1,550,898	(99,863)	1,560,332	1,550,898	9,433
204,261	62,932	(141,329)	117,006	62,932	(54,074)

**SANITATION FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT D**

**WORKING CAPITAL BALANCE**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
720,040	864,874	144,834	<b>BEGINNING BALANCE</b>	864,874	864,874	0
204,261	62,932	(141,329)	NET REVENUES	117,006	62,932	(54,074)
0	0	0	CAFR ADJ	0	0	0
924,301	927,806	3,505	<b>ENDING BALANCE</b>	981,880	927,806	(54,074)

**EXHIBIT E**

**DEPARTMENT EXPENDITURES BY CATEGORY**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
241,944	256,822	(14,878)	PERSONNEL	266,425	256,822	9,603
134,704	139,336	(4,632)	SUPPLIES	136,551	139,336	(2,785)
46,848	53,618	(6,769)	MAINTENANCE	36,675	53,618	(16,943)
752,316	759,588	(7,272)	SERVICES	770,417	759,588	10,829
86,799	131,915	(45,116)	CAPITAL	106,200	131,915	(25,715)
9,567	8,331	1,236	SUNDRY	10,899	8,331	2,568
1,272,178	1,349,609	(77,431)	<b>TOTAL DEPT EXPENDITURES</b>	<b>1,327,167</b>	1,349,609	(22,442)

**EXHIBIT F**

**DEPARTMENT EXPENDITURES BY DEPARTMENT**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD	YTD	FAV/(UNFAV)		YTD	YTD	FAV/(UNFAV)
ACT FY12	ACT FY13	VARIANCE		ACT FY13B	ACT FY13	VARIANCE
338,016	312,229	25,787	DEPT 042 - TRANSFER STATION	283,032	312,229	(29,196)
160,000	237,819	(77,818)	DEPT 043 - COLLECTION STATION	248,028	237,819	10,209
70,120	119,164	(49,044)	DEPT 140 - RECYCLING CENTER	90,792	119,164	(28,371)
704,042	680,398	23,644	DEPT 142 - RESIDENTIAL COLLECT	705,315	680,398	24,916
1,272,178	1,349,609	(77,431)	<b>TOTAL DEPT EXPENDITURES</b>	<b>1,327,167</b>	1,349,609	(22,442)

**SANITATION FUND  
2ND QUARTER PERFORMANCE**



**EXHIBIT G**

**CAPITAL EXPENDITURE DETAIL**

ACTUAL VERSUS PRIOR YEAR				ACTUAL VERSUS BUDGET		
YTD ACT FY12	YTD ACT FY13	FAV/(UNFAV) VARIANCE		YTD ACT FY13B	YTD ACT FY13	FAV/(UNFAV) VARIANCE
0	1,625	(1,625)	MODEL AIRPORT ENTRANCE (142)	10,000	1,625	8,375
8,150	0	8,150	MULE (042/043)	0	0	0
60,653	0	60,653	REFUSE TRAILERS (042)	0	0	0
0	78,183	(78,183)	BACK HOE (043)	78,200	78,183	17
0	17,700	(17,700)	BALER (140)	18,000	17,700	300
0	34,407	(34,407)	LAND (140)	0	34,407	(34,407)
17,996	0	17,996	TRUCKS (142)	0	0	0
<b>86,799</b>	<b>131,915</b>	<b>(45,116)</b>	<b>TOTAL</b>	<b>106,200</b>	<b>131,915</b>	<b>(25,715)</b>



## AGENDA ITEM 7

<b>DATE OF MEETING:</b> July 11, 2013	<b>DATE SUBMITTED:</b> July 3, 2013	
<b>DEPT. OF ORIGIN:</b> Finance	<b>SUBMITTED BY:</b> Carolyn D. Miller	
<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 RFP No. 13-008 for Bank Depository Services and Authorize the Mayor to Execute Necessary Documentation.		
<b>SUMMARY STATEMENT:</b> In May, the City solicited proposals for bank depository services for a two year period in accordance with City charter. The City received four proposals for banking services in response to the Request for Proposal (RFP). The proposals were made by BBVA Compass, Capital One, JPMorgan Chase, and Wells Fargo. The City received notices of non-participation from Citizens State Bank and Brenham National Bank. Linda Patterson with Patterson & Associates assisted with the RFP process and the analysis of bank depository service proposals. <i>Her complete analysis is included as an attachment to this agenda form.</i>		
<b><u>Proposal Review</u></b>		
Ms. Patterson noted that all the banks have facilities and services within the City and are solid financial institutions which can provide the basic services. However, the current economic conditions have somewhat dictated how this evaluation and bank services are reviewed because of the various earning capabilities within the banks. Normally, the best rates available to the City would be obtained through a ‘sweep account’ which moves funds out of the bank every night investing them into a higher yielding money market fund which then also reduces collateral requirements and costs. But, with overnight rates currently hovering at zero percent the earnings in money market funds are effectively negative with fees applied.		
Therefore, the earnings potential must be focused on the Earnings Credit Rate (ECR) which is applied to compensating balances and in interest bearing accounts. Rates are anticipated to be low for at least the first year of the contract based on Federal Reserve statements. However, it is quite possible that rates will rise and therefore the bottom line rates and sweep options will have a major influence in the costs and earnings potential in banking relationships.		
Because of current rates none of the banks are offering a sweep mechanism but it is critical that the chosen bank has the option available for the higher rate environment when rates rise. Regardless of rate environments the fees for services and the earnings potential at the banks are the key to evaluating the net savings/earnings to the City.		

**Banking Cost Evaluation**

In the RFP the City has reserved the right to pay for services on a fee or compensating balance basis dependent upon the interest rate environment. Regardless of the method of compensation used, the total cost of the contract starts with the individual service fees in each bank. Both fees and compensating balances are based on these fees and the volumes of those services used. Using historical volumes for services from the City, a gross estimated monthly price level was calculated for each bank.

<u>Depository</u>	<u>Gross Fees</u>
BBVA Compass	\$ 1,731
Capital One	\$ 2,345
Chase Bank	\$ 1,799
Wells Fargo	\$ 1,806

**Compensating Balance Calculations**

When a compensating balance basis is used to pay bank fees, which could be estimated to continue another year (conservatively), a target balance sufficient to generate interest equal to the fees must be maintained in the bank. The interest rate used to generate funds to pay the fees is called the ECR (Earnings Credit Rate). It is a unique managed bank rate applied only for this purpose. The higher the ECR the higher the earnings and the lower the target balances required. As a result, the City then has more funds to be used to invest otherwise or does not have to keep more funds in the bank. The target balance is set by the bank. The ECR rates offered by BBVA and Capital One are particularly cost effective when rates are low. It is likely that the rates will increase and then the City would switch to a fee compensation basis. But this is not likely in the next two years.

Based on the given historical ECR or floor rate and fees, the target balances required are:

<u>Depository</u>	<u>ECR</u>	<u>Balance Requirement</u>
BBVA Compass	.90%	\$ 2,190,101
Capital One	.70%	\$ 3,220,746
Chase Bank	.25%	\$ 7,877,069
Wells Fargo	.20%	\$10,757,536

The City routinely maintains approximately \$ 1.5 million in a total bank balance with comp balances. The investment pools are yielding approximately 0.06-0.09% so investment in the higher ECR position is a benefit to the City and the 0.90% offered by BBVA is significantly higher than the other banks. During this low interest rate environment, it is wiser to use the higher ECR rates for the target balance.

**RECOMMENDATION**

The purpose of this analysis was to find the most cost effective and efficient banking situation for the City which provided all the necessary services. Initially the evaluation looked at service levels. Although basic services are available from all the banks there are material differences in service capabilities and Chase and Wells Fargo ranked significantly higher in service points and capabilities because of technology not all of which will be used by the City.

On a fee basis BBVA Compass was materially the lowest. And, the materially higher ECR rates in the projected two year period give BBVA a natural advantage.

Patterson & Associates recommended that the City award the banking services contract to BBVA Compass.

**STAFF ANALYSIS (For Ordinances or Regular Agenda Items):**

**A. PROS:**

**B. CONS:**

**ALTERNATIVES (In Suggested Order of Staff Preference):**

**ATTACHMENTS:** (1.) Patterson & Associates Analysis of Bank Depository Service Proposals

**FUNDING SOURCE (Where Applicable):**

**RECOMMENDED ACTION:** Award RFP No. 13-008 for Bank Depository Services Contract to BBVA Compass for a period commencing August 1, 2013 through July 31, 2015 and authorize the Mayor to sign any necessary documentation.

**APPROVALS:** Carolyn D. Miller

## CITY OF BRENHAM, TEXAS

### Analysis of Bank Depository Service Proposals June 2013

In May 2013, the City of Brenham solicited proposals for banking services to serve the City with efficient and cost effective banking services. The City intended for its banking partner to continue to provide state-of-the-art technology to assure that its current banking needs would be met and that it will be able to incorporate technological changes and improvements into its operations over the period of the contract. The contract is to be for a two year period in accordance with City Ordinances.

The City received four proposals for banking services in response to the Request for Proposal (RFP). The proposals were made by BBVA Compass, Capital One, Chase Bank, and Wells Fargo. All the banks have facilities and services within the City and are solid financial institutions which can provide the basic services.

The current economic conditions have somewhat dictated how this evaluation and bank services are reviewed and evaluated because of the various earnings capabilities within the banks. Normally, the best rates available to the City would be obtained through a 'sweep account' which moves funds out of the bank every night investing them into a higher yielding money market fund which then also reduces collateral requirements and costs. But, with overnight rates currently hovering at zero percent the earnings in money market funds are effectively negative with fees applied. Therefore, the earnings potential must be focused on the Earnings Credit Rate (ECR) which is applied to compensating balances and in interest bearing accounts. Rates are anticipated to be low for at least the first year of the contract based on Federal Reserve statements. However, it is quite possible that rates will rise and therefore the bottom line rates and sweep options will have a major influence in the costs and earnings potential in banking relationships.

Because of current rates none of the banks are offering a sweep mechanism but it is critical that the chosen bank has the option available for the higher rate environment when rates rise. Regardless of rate environments the fees for services and the earnings potential at the banks are the key to evaluating the net savings/earnings to the City.

The evaluation was guided by the City's guiding objectives in the RFP:

- banking services costs and earnings potential,
- responsiveness and ability to provide services and reports required,
- collateral capacity,
- earnings potential, and
- creditworthiness and stability of the bank.

Since banks bundle services and price services differently, the evaluation of the proposals was made on several different levels to capture and evaluate those differences equitably.

- (1) All services offered and recommended have been evaluated as to the level of service offered compared to the required specifics. The bank was also evaluated to determine its adaptability and capability to grow into new technologies as they become available.
- (2) The cost of specific and overall services has been compared based on actual historical volumes.
- (3) The potential for earnings has been compared based on various account structures and based on historical data incorporating any floor rates offered.
- (4) The proposals have been evaluated combining all these factors and netting earnings and costs to create a final, unbiased assessment of net impact to the City.

These four levels of analysis have been completed through a detailed compilation of findings. The worksheets which were used to make these analyses are attached. The following report summarizes those findings highlighting only key areas to identify differences between banks. Comments are not all-inclusive but are made to highlight specific differences by way of explanation and illustration of the recommendation.

### **REQUIRED SERVICES EVALUATION**

The City's RFP outlined and requested detailed information on all the services which would be required under the contract to perform its current banking services and to meet its projected needs. The goal is to assure that the bank performs those duties in the most cost effective/cost efficient manner.

The analysis evaluated all services which will be used initially or added during the term of the contract. Specific functional areas of required services are discussed briefly here noting significant differences in service levels or capabilities between banks. Neither the analysis nor recommendations automatically include all services available through the banks if the costs were prohibitive or if their use by the City was unlikely. It is imperative, however, that the bank be capable of providing the service should it be needed.

The banks were ranked on services by (a) weighting each question in the RFP by its relative importance to the City and to the performance of the service and (b) scoring each proposal's response. The total points received by each bank for service provisions are:

BBVA Compass	535
Capital One	568
Chase	613
Wells Fargo	618

The two larger national banks, as might be expected, have materially more services available and have incorporated more technology into their service base since they have a larger customer base over which to spread development costs. The difference in service ratings between the two sets of banks indicates the differences between service level capabilities in these two groups. However three of the banks have the services required by the City. Capital One does not have a few of the required services needed.

### **Account Structure**

The RFP required the ability to automatically sweep daily into an SEC regulated money market fund as an option when rates rise. The RFP also allowed for sweeps to an interest bearing account or stand-alone accounts to accommodate the current low rate environment.

All the banks have the ability to sweep to outside funds but, of course, are not recommending it until rates rise. BBVA sweeps to Goldman Sachs Funds, Chase and Wells Fargo to their own funds. Wells Fargo does have an interesting Government Advantage Checking that will automatically sweep to the target balance and allow the remaining funds to earn interest but the bank has not completed the responses in this proposal. Capital One has no fund sweep and instead has repo sweep which is not recommended due to the FDIC coverage status of the funds in the repo.<sup>1</sup> Capital One has however as described later offered a floor on all interest bearing accounts of 0.40% which would be used in lieu of a sweep.

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<sup>1</sup> The FDIC has no established rule for funds in a bank repo sweep and use could put the City at risk unless specific categorization of those funds is established and maintained.

In addition, the FDIC Assessment Fees charged by every bank have been waived by Capital One (in the incentive section response but not in direct response to the question. It is assumed that the fee would be waived.

BBVA and Capital One have agreed that no interest earned on interest bearing accounts will be charged as an item on the account analysis. Chase will only compute ECR on non-interest bearing accounts which is reasonable. Wells Fargo will however reduce the ECR earnings (used to pay bank fees) by the amount of interest earned.

The analysis of the proposals did include the potential to utilize the earnings credit rate (ECR) when rates so dictate assuming continuous full investment.<sup>2</sup> During the current period, paying bank fees through a “compensating balance” (i.e. target balance) is recommended because it is extremely cost effective with the bank’s ECR significantly higher than the pools or other liquid vehicles. The banks have been aggressive on their ECR rates which will be considered in detail below. BBVA Compass has offered a rate which is 60 bps above their standard rate resulting in a 0.90% and Capital One has set a floor of 0.70%. Chase and Wells Fargo have materially lower rates of 0.25% and 0.20% respectively. The impact of these floors and rates will be analyzed below.

#### **Automation and Online Transactions**

All the banks have the basic reporting and transactional services needed available through a single portal. All scored relatively closely on this service area. All the banks utilize automated services which reduce time and effort required of City staff for standard banking functions (balance reporting, wires, ACH, stop pays, positive pay, etc.). All have dual or more levels of client controlled security administration and some customization to provide sufficient report detail and provide information in a timely manner. All are available prior to 8:00am for information processing and have intra-day reporting. All have unbundled their various automated modules for pricing allowing the City to choose its online services.

All the banks retain detail and summary information on line for a stated period of time. BBVA Compass and Capital One generally have the information online for 120 days but the other two banks all have options to extend online access to seven years. (All banks are required to maintain data for seven years.) Others differences in automation come in the flexibility and customization allowed by Chase and Wells Fargo which have concentrated heavily on developing the technologies. Both Chase and Wells Fargo have recently updated and stream-lined their portals and treasury management systems for user friendliness. BBVA uses alerts and quick reports to ease use.

#### **Deposit/Collection Services**

In the area of basic deposit and collection services all the banks are essentially the same with local deposit sites. All the banks are actively recommending remotely captured checks for deposit. Every bank has offered a free scanner to expedite check deposits and reduce City float and liability in making deposits. All the banks remote systems are web based. BBVA, Chase and Wells Fargo can link their remote deposit to additional receivables services. Capital One has a somewhat earlier close on remote services at 8pm and Chase accepts until 11pm. BBVA and Wells allow input until 9pm. Only Capital One has a monthly maintenance fee for the service. Chase is waiving their monthly fee. The banks all use poly-seal bags and Capital One has offered these free for the life of the contract.

All the banks except Capital One, have the RCK, re-presentation of checks through ACH, function. BBVA has enhanced their service through the possible addition of CheckTrack which is a collection system. Wells Fargo has limited the re-presentation dates to the 1<sup>st</sup> and 15<sup>th</sup> of the next month only.

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<sup>2</sup> The City has reserved right to change between fee and compensating balance basis for compensation determines the level of the sweep on an ongoing basis.

An important factor in deposit activities is the actual detail cost of each deposit. The RFP had a sample deposit ticket with checks, coin and currency and asked for a cost of making that deposit. BBVA was the lowest cost at \$50.93 versus the others at \$80.20, \$77.45 and \$76.71 respectively.

**Disbursing Services**

The provision of standard disbursing services is basically the same at all the banks. All the banks have positive pay services for safety. In the area of disbursements, it is critical for any large institution/business to protect against fraudulent checks. The system designed by the banking industry to accomplish this is positive pay. It has been required in this RFP for all accounts to provide security.

In the area of positive pay an important consideration is the time available to City staff to review the check exceptions. These times for review vary which impacts staff time:

BBVA Compass	9:30am – 12:00	2.5 hours
Capital One	10:00am – 2:30pm	4.5 hours
Chase	10:00am – 4:00pm	6.0 hours
Wells Fargo	11:00 – 4:00pm	5.0 hours

Payment management has become a more effective service from the banks over the past several years which could be used by the City for efficient and cost effective payment handling. The same information processing is available at BBVA through Integrated Payables, Chase (Receiver Services) and Wells Fargo (Payment Manager). Capital One does not appear to have a comparable service.

Another area of disbursements is stored value cards (debit cards) which can be used for payroll or other reimbursement or advance purposes. This service was added an Optional Service in the RFP. All the banks except Capital One have a stored value card program through Visa and use ACH for transactions.

**Account Reconciliation**

The City does not currently use either full or partial reconciliation services. Chase and Wells Fargo have both reconciliation services but BBVA relies solely on file downloads. Chase uses its PWS service platform to notify on reports availability on most services including reconciliation which represents additional time efficiency.

**Wires and Internal Transfers**

In the area of wires and internal account transfers the banks are almost identical. Notification of incoming wire activity is found online in real time at BBVA and Wells Fargo and all banks have alert messaging capabilities. Chase is also real time but also emails the notification through eServe.

All require at least dual security and security levels are set by the City administrator. All the banks can provide future dating of at least 60 days.

**ACH Services**

ACH services are of paramount and growing importance as it represents the most cost efficient payment transfer system available. Its use is undoubtedly going to increase in importance in the future as new services develop and use this mechanism. All the banks must utilize the NACHA<sup>3</sup> formats and services and function through SWACHA so there is little difference in the basic service.

All of the banks give the City the ability to input by transmitted batch and have online input for single or multiple transactions. All the banks, with the exception of Capital One, have the ability to establish blocks

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<sup>3</sup> National Association of Automated Clearing House Association

and/or filters on the accounts for City transaction and account safety. The variety available for blocks/filters is greater at Chase and Wells Fargo. BBVA appears to have more extensive return reporting from the filters. The addenda accompanying ACH transactions are critical for the staff to identify transactions. BBVA, Chase and Wells Fargo all provide the entire addendum with BBVA and Wells Fargo going through EDI reporting.

### **Investment Safekeeping**

The City does not currently invest in securities for its portfolio so safekeeping is a required but not currently critical service. All will accommodate the service through the account analysis.

The delivery versus payment (DVP) settlement and protective custody of the City's owned securities are paramount for safety and control. Chase has not offered safekeeping services and Wells Fargo's response and pricing matrix reflect their push to utilization of their brokerage services for investments and safekeeping even though the RFP clearly stated that the brokerage services of any bank chosen would not be used to perfect DVP settlement .

Capital One and Wells Fargo provide online monitoring.

### **Collateral Conditions**

The RFP outlined specific conditions for the provision and safekeeping of required collateral which were directed to maximum safety of the City's funds and listed authorized collateral. The requirements included the 102% margin level for collateral, authorized collateral types, and the provision for independent third party safe-keeping and reporting. The banks were required to accept the conditions as stated. Capital One and Wells Fargo confirmed agreement without exceptions. BBVA Compass is requesting the use of a letter of credit from the FHLB as collateral but has also offered securities if they are held at the FHLB. It is recommended that the letter of credit be rejected. The City should however with any bank chosen require in writing a monthly collateral report sent by the custodian. BBVA has also set the maximum collateral to be set at \$10million. No collateral fees are being charged by any of the banks. Chase has made several objections to the collateral conditions including removing them from the liability for under-collateralization – while allowing 'responsibility' only.

Wells Fargo use Bank of New York (BNY) as the Custodian and BNY provides online access to the collateral reporting along with market pricing.

### **Statements and Account Analyses**

All the banks provide monthly statements online next day and make them available for downloads. Neither Capital One nor Wells Fargo provides a monthly CD. Chase will do so if requested. Online availability of the statements is very similar for all banks providing next or within 3-day availability.

The account analysis which provides critical information on the services used and a check on fee application, is provided by all the banks. All the banks provide the analysis online in downloadable form but none provide it on the monthly CD except Capital One.

### **Overdraft Protection**

Although the City does not anticipate any overdrafts the potential exists. All the banks view overdrafts as an extension of credit and review each occurrence. BBVA and Chase view overdrafts on an account basis and Capital One and Wells Fargo judge it on an aggregated account or relationship basis. The basis for the charges varies for the banks: BBVA Compass at prime plus 4% and a maximum of 18%, Capital One as an ECR offset, Chase at prime plus 3%. Wells Fargo has no fee. All will address on a case-by-case basis with relationship managers.

## Company Banking

As an optional service the City asked the banks whether they had company banking programs to offer service to direct deposit employees, at no cost to the City. All the banks except Capital One have a program of this type but Capital One has stated its special programs for any customer.

## BANKING COSTS EVALUATION

In its RFP the City has reserved the right to pay for services on either a fee or compensating balance basis dependent upon the interest rate environment<sup>4</sup>. Regardless of the method of compensation used, the total cost of the contract starts with the individual service fees in each bank. Both fees and compensating balances are based on these fees and the volumes of those services used. A detailed RFP Attachment form was used to capture unit costs for each services and levels of service. And, banks were alerted to the need to include all fees associated with the provision of a service if that fee was to be charged during the contract period.

Using the historical volumes for services from the City, a gross estimated monthly price level was calculated for each bank.

	Gross Fees
BBVA Compass	\$ 1,731
Capital One	\$ 2,345
Chase	\$ 1,799
Wells Fargo	\$ 1,806

## Transition Incentives

The cost of the contract is directly impacted by the transition incentives being offered by the banks. In the RFP, the banks were asked if they were offering the City any transition incentive to reduce the cost of changing banks or as an incentive to maintain the account.

- **Chase, as the incumbent depository, is offering a \$3,000 credit to be used for supplies within the first 90 days of the contract only. The bank is also offering one free remote scanner**
- **BBVA Compass is proposing to offer the City a premium ECR rate 60 basis points above their standard rate putting it at 0.90% currently. They are also offering all supplies free for the life of the contract which is approximately worth \$1,550 annually. The bank is offering one free scanner for remote services and a free safe deposit box. They are also waiving all set-up fees.**
- **Capital One has offered a waiver of all fees for the first three (3) months (which reflects fewer fees as the City transitions. In addition, they are offering free 'physical deposit materials' and a remote scanner. The bank has offered an attractive floor rate on the ECR of 0.70% and a floor rate on interest bearing accounts of 0.40%.**
- **Wells Fargo is offering \$500 for bank supplies and one scanner. In addition, the City would receive 500 free poly-seal deposit bags. The Treasury set-up fees would be waived.**

Using each bank's estimated gross cost per month these incentives have been included to measure the impact on the monthly cost of service. The average adjusted monthly charges over a two, four and six year contract period are shown below. The level of fees is indicative but is not the full picture of the price of services as will be explained below.

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<sup>4</sup> In very low interest rate environments the ECR may exceed the interest paid in accounts or money funds. Rates rise however the ECR usually earns half of Fed Funds (i.e. overnight rates).

	Gross Fees	Adjusted 2 Yrs	Adjusted 4 Yrs
BBVA Compass	\$ 1,731	\$ 1,633	\$ 1,682
Capital One	\$ 2,345	\$ 1,879	\$ 2,037
Chase	\$ 1,799	\$ 1,641	\$ 1,720
Wells Fargo	\$ 1,806	\$ 1,748	\$ 1,777

There are some material fee differences on high volume items between banks which create these differences as shown below:

Service Category	BBVA	C.One	Chase	Wells
Account maintenance	15.00	10.00	10.00	8.00
Credits Posted	0.40	0.16	0.30	0.05
Check Clearing/On-Us	0.06	0.05	0.07	0.06
Check Clearing/Transit	0.06	0.09	0.07	0.08
Positive Pay Maintenance	70.00	0.00	0.00	35.00
Incoming Wires	7.50	12.00	7.00	10.00
Outgoing Repetitive Wires	4.50	9.00	4.00	10.00
ACH Maintenance	12.50	50.00	35.00	15.00
ACH Originations	0.07	0.15	0.08	0.05
ACH Debits Originated	0.07	0.15	0.09	0.05

#### Compensating Balance Calculations

When a compensating balance basis is used to pay bank fees, which could be estimated to continue another year (conservatively), a target balance sufficient to generate interest equal to the fees must be maintained in the bank. The interest rate used to generate funds to pay the fees is called the ECR (Earnings Credit Rate). It is a unique managed bank rate applied only for this purpose. The higher the ECR the higher the earnings and the lower the target balances required. As a result, the City then has more funds to be used to invest otherwise or does not have to keep more funds in the bank. The target balance is set by the bank. The ECR rates offered by BBVA and Capital One are particularly cost effective when rates are low. It is likely that the rates will increase and then the City would switch to a fee compensation basis. But this is not likely in the next two years.

Based on the given historical ECR or floor rate and fees, the target balances required are:

	ECR %	Target Balance
BBVA Compass	0.90 %	\$ 2,190,101
Capital One	0.70%	\$ 3,220,746
Chase	0.25 %	\$ 7,877,069
Wells Fargo	0.20 %	\$ 10,757,536

The City routinely maintains approximately \$ 1.5 million in a total bank balance with comp balances. The investment pools are yielding approximately 0.06-0.09% so investment in the higher ECR position is a benefit to the City and the 0.90% offered by BBVA is significantly higher than the other banks. During this low interest rate environment, it is wiser to use the higher ECR rates for the target balance.

When, at some point the City moves to a fee basis for bank compensation the difference would be the amount of the fees we saw averaged above over the two year period and shown below. Combined with the interest rates set for the interest bearing accounts on a historical or floor basis:

	Avg Monthly Fees (adjusted)	IB Rate	Est.Earning/Mo
BBVA Compass	\$ 1,633	0.22%	\$ 277
Capital One	\$ 1,879	0.40%	\$ 500
Chase	\$ 1,641	0.10%	\$ 125
Wells Fargo	\$ 1,748	0.15%	\$ 188

Since rates are anticipated to keep the City in a compensating balance basis for most of the contract period, the most cost effective and earnings position goes to BBVA Compass.

**RECOMMENDATION**

The purpose of this analysis was to find the most cost effective and efficient banking situation for the City which provided all the necessary services. Initially the evaluation looked at service levels. Although basic services are available from all the banks there are material differences in service capabilities and Chase and Wells Fargo ranked significantly higher in service points and capabilities because of technology not all of which will be used by the City.

On a fee basis BBVA Compass was materially the lowest. And, the materially higher ECR rates in the projected two year period give BBVA a natural advantage.

It is recommended that the City award the banking services contract to BBVA Compass.

Patterson & Associates  
Austin, TX



## AGENDA ITEM 8

<b>DATE OF MEETING:</b> July 11, 2013	<b>DATE SUBMITTED:</b> July 5, 2013		
<b>DEPT. OF ORIGIN:</b> Finance	<b>SUBMITTED BY:</b> Stacy Hardy		
<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 An Audit Engagement Letter from Seidel, Schroeder & Company to Perform An Audit for Fiscal Year Ending September 30, 2013 and Authorize the Mayor to Execute Any Necessary Documentation.			
<b>SUMMARY STATEMENT:</b> Attached is the proposed audit engagement letter from Seidel, Schroeder & Company (SSC) for the fiscal year ending September 30, 2013, with the audit fee range of \$41,800 to \$43,800. In comparing this fee with prior years, the following information is provided:			
<u>Fiscal Year Ending</u>	<u>Audit Fee</u>	<u>\$ Increase</u>	<u>% Increase</u>
09/30/2009	\$39,500		
09/30/2010	39,500	-	-
09/30/2011	41,000 to 43,000	\$3,500	8.86%
09/30/2012	41,000 to 43,000	-	-
09/30/2013	41,800 to 43,800	800	1.86%
You will notice that the annual audit fee has increased from the prior year by \$800. This slight increase is due to changes in auditing standards in the area of regulatory compliance. These new standards will require additional review of regulatory communications and documentation in the current year. All other terms of the engagement and services provided are in line with prior years.			
<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.) Audit Engagement Letter from Seidel, Schroeder and Company			

**FUNDING SOURCE (Where Applicable):** Finance Department Budget – Audits & Consultants Account

**RECOMMENDED ACTION:** Approve an audit engagement letter from Seidel, Schroeder & Company to perform an audit for the fiscal year ending September 30, 2013 and authorize the Mayor to execute any necessary documentation.

**APPROVALS:** Carolyn D. Miller



**SEIDEL, SCHROEDER & COMPANY**  
CERTIFIED PUBLIC ACCOUNTANTS / BUSINESS ADVISORS

July 2, 2013

To The City Council of the  
City of Brenham, Texas

We are pleased to confirm our understanding of the services we are to provide for the City of Brenham, Texas for the year ended September 30, 2013. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements of the City of Brenham, Texas, as of and for the year ended September 30, 2013. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City of Brenham's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City of Brenham's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principals and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis
2. Schedules of funding progress

We have also been engaged to report on supplementary information other than RSI that accompanies the City of Brenham's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

1. Combining and individual nonmajor fund financial statements
2. Analysis and budgetary comparison information – Governmental Funds and Blended Component Unit
3. Schedules within the reports for management

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and for which our auditor's report will not provide an opinion or any assurance on that other information:

1. Introductory section
2. Statistical data

### **Audit Objectives**

The objective of our audit is the expression of an opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the basic financial statements taken as a whole.

Our audit will be conducted in accordance auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and will include tests of the accounting records of the City and other procedures we consider necessary to enable us to express such an opinion. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

We will also provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Governmental Auditing Standards*. The reports on internal control and compliance will each include a paragraph that states that the purpose of the report is solely to describe the scope of testing of internal control over financial reporting and compliance, and the result of that testing, and not to provide an opinion on the effectiveness of internal control over financial reporting or on compliance, and that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering internal control over financial reporting and compliance. The paragraph will also state that the report is not suitable for any other purpose. If during our audit we become aware that the City is subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in *Governmental Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

**Management Responsibilities**

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. You agree to assume all management responsibilities for any nonaudit services we provide; oversee the services by designating an individual, preferably from senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; for the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements in conformity with U.S. generally accepted accounting principles.

Management is responsible for making all financial records and related information available to us, and for ensuring that management is reliable and financial information is reliable and properly recorded. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the written representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud, or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud or illegal acts affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants for taking timely and appropriate steps to remedy any fraud, illegal acts, violations of contracts or grant agreements, or abuse that we may report.

You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the

supplementary information in accordance with GAAP; (2) that you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) that the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

#### **Audit Procedures—General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform the appropriate level of management of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will also require certain written representations from you about the financial statements and related matters.

### **Audit Procedures—Internal Controls**

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.

### **Audit Procedures—Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of City of Brenham's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

### **Engagement Administration, Fees, and Other**

We understand that your employees will prepare all cash or other confirmations we request and will locate any invoices selected by us for testing.

We will provide copies of our reports to Council; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Seidel, Schroeder and Company, and constitutes confidential information. However, pursuant to authority given by law or regulation we may be requested to make certain audit documentation available to a cognizant, grantor agency, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such requests. If requested, access to such workpapers will be provided under the supervision of Seidel, Schroeder and Company personnel. Furthermore, upon request, we may provide copies of selected workpapers to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release or for any additional period requested by the grantor agency. If we are aware that a federal awarding agency or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

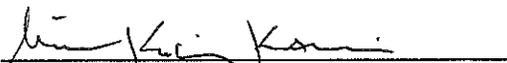
We will require that all schedules and reports to be provided by management are complete and available to us on prior to the beginning of fieldwork.

We expect to begin our audit planning process during October, 2013, audit fieldwork beginning in November, 2013 and to issue our reports no later than March 1, 2014. Michele Kohring Kwiatkowski is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. Our fees for these services will be based on the actual time spent at our standard hourly rates, plus travel and other out-of-pocket costs; except that we agree that our total audit fee will range from \$41,800 to \$43,800. The above fee is based on your staff preparing the financial statements, notes, other supplementary information, and anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to the City of Brenham, Texas and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

SEIDEL, SCHROEDER & COMPANY

By:   
Michele Kohring Kwiatkowski, CPA

City of Brenham, Texas  
Page 7

RESPONSE:

This letter correctly sets forth the understanding of the City of Brenham, Texas.

By: \_\_\_\_\_

Title: \_\_\_\_\_

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



## AGENDA ITEM 9

<b>DATE OF MEETING:</b> July 11, 2013	<b>DATE SUBMITTED:</b> July 8, 2013	
<b>DEPT. OF ORIGIN:</b> City Secretary	<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 checked="" 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 an Ordinance on Its First Reading to Repeal Ordinance O-07-014 and Grant a Non-Exclusive Franchise to Texas Commercial Waste to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits		
<b>SUMMARY STATEMENT:</b> Texas Commercial Waste has had a franchise to provide roll-off containers within the city limits since May, 2003. They average about \$617.34 a year in franchise taxes. This ordinance will get Texas Commercial Waste on the same expiration date as all other sanitation franchise holders (October 1 thru September 30).		
<p>Jeana Bellinger has been working with Dane Rau and the City Attorney over the last couple of months to update the City's sanitation franchise ordinance. A redlined version of the current ordinance, showing all of the recommended staff changes, is included in this packet for your review. While some of the changes are strictly grammatical and/or spelling corrections, there are few significant ones that I would like to bring to your attention:</p> <ul style="list-style-type: none"> <li>➤ <u>Section 5 - Rates to be Charged:</u> Requires that any time a franchise holder changes their prices, and the prices are agreed to by their customers, the holder must provide the City with a copy of their rates.</li> <li>➤ <u>Section 6 - Payments to the City:</u> Moved the payment due date back to the 25<sup>th</sup> of the month. Clarified how payments will be handled if the 25<sup>th</sup> falls on a holiday or week-end.</li> <li>➤ <u>Section 7 - Access to Records &amp; Reporting:</u> The city is subject to the Texas Public Information Act and, if we receive a request for information related to possible trade secrets and/or certain commercial or financial information, the City will notify the holder as outlined in the Act.</li> <li>➤ <u>Section 8 – Placement of Containers:</u> Wording was added to this Section to allow the city to charge a franchise holder for any damage done to the city streets.</li> <li>➤ <u>Section 14 – Interruption of Service or Default:</u> This section protects the franchise holder from being in default of the ordinance if they cancel a customer's service due to non-payment. It also gives the holder 72-hours to respond to any interruption of service claims.</li> <li>➤ <u>Section 24 – Term of Agreement:</u> This section clarifies the termination language and sets an effective date that corresponds with the City's fiscal year (October 1 to September 30).</li> </ul>		

**STAFF ANALYSIS (For Ordinances or Regular Agenda Items):**

**A. PROS:**

**B. CONS:**

**ALTERNATIVES (In Suggested Order of Staff Preference):**

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

**FUNDING SOURCE (Where Applicable):** N/A

**RECOMMENDED ACTION:** Approve an Ordinance on its first reading to repeal O-07-014 and grant a Non-Exclusive Franchise to Texas Commercial Waste to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits

**APPROVALS:** Terry K. Roberts

**ORDINANCE NO. \_\_\_\_\_**

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

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

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

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

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

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

**SECTION 1.  
DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 5.  
RATES TO BE CHARGED**

~~A written Attached hereto as Exhibit "A" and incorporated herein by reference is the Schedule of Rates thatwhich \_\_\_\_\_ shall charge for the aforementioned services shall be provided to each customer, and such Schedule of Rates may be revised periodically as agreed by \_\_\_\_\_ and its customers. \_\_\_\_\_ shall immediately provide the CITY with copies of any and all revised Schedule of Rates documents, and must be submitted to and approved by the City Council upon each revision and will be attached to the original franchise agreement.~~

**SECTION 6.  
PAYMENTS TO CITY**

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

Any revenue received by \_\_\_\_\_ in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into \_\_\_\_\_ monthly gross ~~delivery and hauling~~ 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 shall be due by the twenty-fifth (25<sup>th</sup>)~~twentieth (20<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 ~~made~~ after the due~~that~~ date shall be assessed~~involve~~ a ten percent (10%) penalty on the outstanding franchise fee amount owed under this Section~~article of the Agreement~~.

Failure by \_\_\_\_\_ to pay amounts due under this Agreement, after written notice by CITY, ~~may shall~~ constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 1514 of this Agreement (FAILURE TO PERFORM), and/or any other remedy available to the CITY in law or equity.

## SECTION 7. ACCESS TO RECORDS & REPORTING

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

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

- A. Reports of ~~the results of~~ all complaints, ~~and~~ investigations, ~~received~~ and actions taken by \_\_\_\_\_ with regard to services provided pursuant to this Agreement.
- B. A listing of all \_\_\_\_\_ accounts served and monthly revenue derived from roll-off containers placed in the CITY under the terms of this Agreement. The reports should include: a unique customer's identification or account number-name, address, 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 \_\_\_\_\_ that invoke Section 552.305.

### **SECTION 8. PLACEMENT OF CONTAINERS**

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

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

**SECTION 9.  
CONTAINER MAINTENANCE**

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

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

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

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

**SECTION 11.**  
**OBEISANCE OF LAWS**

\_\_\_\_\_ agrees that it shall comply with all laws, policies, rules and regulations of the United States, State of Texas, and CITY-~~OF BRENHAM~~. All collections made hereunder shall be made by \_\_\_\_\_ 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 \_\_\_\_\_ to utilize the streets, alleys or public ways to dispose of commercial, industrial, or residential solid waste other than demolition and construction debris. Both parties agree and understand that nothing in this Agreement conveys to \_\_\_\_\_ an exclusive franchise for the services described in this Agreement and that this Agreement is non-exclusive.

**SECTION 13.**  
**OWNERSHIP OF MATERIALS COLLECTED**

Nothing herein shall create or be construed to convey any title to ~~CITY~~~~the City of Brenham~~ 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 \_\_\_\_\_ terminates service to any customer with the CITY limits for cause, \_\_\_\_\_ must notify the CITY through certified mail within forty-eight (48) hours of termination and state the cause of such termination.

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

**SECTION 15.**  
**FAILURE TO PERFORM**

It is expressly understood and agreed by the parties that if at any time \_\_\_\_\_ shall fail to perform any of the terms, covenants, or conditions herein set forth, CITY may after a hearing as described herein, revoke and cancel the Agreement by and between the parties and said Agreement shall be null and void. Upon the determination by the staff of CITY that a hearing should be held before the City Council, CITY shall mail notice of the hearing to \_\_\_\_\_, at the address designated herein or at such

address as may be designated from time to time, by registered or certified mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council and \_\_\_\_\_ shall be allowed to present evidence and given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the CITY.

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**SECTION 165.  
INDEMNIFICATION**

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

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

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

\_\_\_\_\_ agrees to and shall indemnify and hold harmless CITY, its officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the work done by IMPACT DISPOSAL SERVICE, LLC 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 176.  
INSURANCE**

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

\_\_\_\_\_ insurance coverage shall be primary insurance with respect to the CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, employees or volunteers shall be considered in excess of the \_\_\_\_\_ insurance and shall not contribute to it.

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

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

## A. STANDARD INSURANCE POLICIES REQUIRED

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

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## 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 ~~CITYity of Brenham~~, 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 ~~CITYity of Brenham~~ 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 ~~CITYity of Brenham~~.
8. Upon request, certified copies of all insurance policies shall be furnished to the ~~CITYity of Brenham~~.

## 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.

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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~~city of Brenham.
- e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

**SECTION 187.  
ASSIGNMENT**

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

**SECTION 198.**  
**SAFETY**

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

**SECTION ~~2019~~.**  
**AD VALOREM TAXES**

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

**SECTION ~~210~~.**  
**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	_____
<u>ATTN: City Secretary</u>	<u>ATTN:</u>

All notices shall be deemed to have been properly served only if sent by ~~certified mail~~~~Registered or 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 221.**  
**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 232.**  
**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 243.**  
**TERM OF AGREEMENT**

The term of this Agreement shall be ~~effective for a period of two (2) years~~ beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, being the date of acceptance by \_\_\_\_\_ and shall terminate on September 30, 2014.

~~Thereafter, t~~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 and ~~shall continue in full effect upon the expiration of (2) years unless~~ either party gives written notice of non-renewal by ~~certified registered~~ mail no later than ~~within~~ 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. If the two (2) years expired and this Agreement was automatically renewed, termination by either party may only be proper upon written notice by registered or certified mail within sixty (60) days prior to the intended termination date. 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 254.**  
**ACCEPTANCE OF AGREEMENT**

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

**SECTION 265.**  
**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 276.**  
**PUBLIC HEARING MEETING**

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

|  
**PASSED and APPROVED** on its first reading this \_\_\_\_ day of \_\_\_\_\_, 2013.

**PASSED and APPROVED** on its second reading this \_\_\_\_ day of \_\_\_\_\_, 2013.

---

Milton Y. Tate, Jr.  
Mayor

**ATTEST:**

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Jeana Bellinger, TRMC  
City Secretary

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE GRANTING TEXAS COMMERCIAL WASTE, 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 COMMERCIAL WASTE, 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 COMMERCIAL WASTE.* Herein-after referred to as "TEXAS COMMERCIAL WASTE". 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE a non-exclusive franchise for use of designated public streets, alleys and thoroughfares within the corporate limits of City for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and/or commercial compactors from commercial, residential and industrial sites within the jurisdictional limits of CITY, as approved by the City Manager or his designee.

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

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

**SECTION 5.  
RATES TO BE CHARGED**

A written Schedule of Rates that TEXAS COMMERCIAL WASTE shall charge for the aforementioned services shall be provided to each customer, and such Schedule of Rates may be revised periodically as agreed by and its customers. TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE monthly gross revenues generated from TEXAS COMMERCIAL WASTE provision of solid waste roll-off container collection services within the CITY excluding actual landfill tipping charges.

Any revenue received by TEXAS COMMERCIAL WASTE in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE's records, billing records of those customers served by TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE's records shall be provided to CITY within ten (10) business days, after written notice to TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE with regard to services provided pursuant to this Agreement.
- B. A listing of all TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE place containers on public streets, alleys and/or thoroughfares without the prior written approval of the CITY. CITY reserves the right to specify to TEXAS COMMERCIAL WASTE the exact location of any roll-off container(s) it places for service in CITY.

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

**SECTION 9.  
CONTAINER MAINTENANCE**

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

TEXAS COMMERCIAL WASTE agrees that during transport all vehicles used by TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE vehicles shall at all times be clearly marked with TEXAS COMMERCIAL WASTE name in letters not less than three (3) inches in height.

**SECTION 11.  
OBEISANCE OF LAWS**

TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE terminates service to any customer with the CITY limits for cause, TEXAS COMMERCIAL WASTE must notify the CITY through certified mail within forty-eight (48) hours of termination and state the cause of such termination.

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

**SECTION 15.**  
**FAILURE TO PERFORM**

It is expressly understood and agreed by the parties that if at any time TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE, 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE, then TEXAS COMMERCIAL WASTE shall indemnify and hold CITY harmless for such damage.

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

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

TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE, its agents, representatives, volunteers, employees or subcontractors.

TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE insurance and shall not contribute to it.

TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE without the specific prior written approval of the City Council. Any assignment by TEXAS COMMERCIAL WASTE without prior written approval of the City Council shall be null and void.

**SECTION 19.  
SAFETY**

TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE is solely responsible. In the carrying on of the work herein provided for, TEXAS COMMERCIAL WASTE shall use all proper skill and care, and TEXAS COMMERCIAL WASTE shall exercise all due and proper precautions to prevent injury to any property, person or persons. TEXAS COMMERCIAL WASTE assumes responsibility and liability and hereby agrees to indemnify the CITY from any liability caused by TEXAS COMMERCIAL WASTE 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 COMMERCIAL WASTE 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 COMMERCIAL WASTE  
\_\_\_\_\_  
\_\_\_\_\_  
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 COMMERCIAL WASTE 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 COMMERCIAL WASTE shall have sixty (60) days from and after the final passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary, and upon such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its acceptance, and shall effectuate and make binding the agreement provided by the terms hereof.

**SECTION 26.**  
**AUTHORIZATION TO EXECUTE**

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

**SECTION 27.**  
**PUBLIC MEETING**

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

**PASSED and APPROVED** on its first reading this \_\_\_\_ day of \_\_\_\_\_, 2013.

**PASSED and APPROVED** on its second reading this \_\_\_\_ day of \_\_\_\_\_, 2013.

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

**ATTEST:**

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



## AGENDA ITEM 10

<b>DATE OF MEETING:</b> July 11, 2013	<b>DATE SUBMITTED:</b> July 8, 2013	
<b>DEPT. OF ORIGIN:</b> City Secretary	<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 checked="" 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 an Ordinance on Its First Reading to Repeal Ordinance O-07-015 and Grant a Non-Exclusive Franchise to Allied Waste Management to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits		
<b>SUMMARY STATEMENT:</b> Allied Waste Management has had a franchise to provide roll-off containers within the city limits since May, 1994. They average about \$1111.38 a year in franchise taxes. This ordinance will get Allied Waste Management on the same expiration date as all other sanitation franchise holders (October 1 thru September 30).		
<p>Jeana Bellinger has been working with Dane Rau and the City Attorney over the last couple of months to update the City’s sanitation franchise ordinance. A redlined version of the current ordinance, showing all of the recommended staff changes, is included in this packet for your review. While some of the changes are strictly grammatical and/or spelling corrections, there are few significant ones that I would like to bring to your attention:</p> <ul style="list-style-type: none"> <li>➤ <u>Section 5 - Rates to be Charged:</u> Requires that any time a franchise holder changes their prices, and the prices are agreed to by their customers, the holder must provide the City with a copy of their rates.</li> <li>➤ <u>Section 6 - Payments to the City:</u> Moved the payment due date back to the 25<sup>th</sup> of the month. Clarified how payments will be handled if the 25<sup>th</sup> falls on a holiday or week-end.</li> <li>➤ <u>Section 7 - Access to Records &amp; Reporting:</u> The city is subject to the Texas Public Information Act and, if we receive a request for information related to possible trade secrets and/or certain commercial or financial information, the City will notify the holder as outlined in the Act.</li> <li>➤ <u>Section 8 – Placement of Containers:</u> Wording was added to this Section to allow the city to charge a franchise holder for any damage done to the city streets.</li> <li>➤ <u>Section 14 – Interruption of Service or Default:</u> This section protects the franchise holder from being in default of the ordinance if they cancel a customer’s service due to non-payment. It also gives the holder 72-hours to respond to any interruption of service claims.</li> <li>➤ <u>Section 24 – Term of Agreement:</u> This section clarifies the termination language and sets an effective date that corresponds with the City’s fiscal year (October 1 to September 30).</li> </ul>		

**STAFF ANALYSIS (For Ordinances or Regular Agenda Items):**

**A. PROS:**

**B. CONS:**

**ALTERNATIVES (In Suggested Order of Staff Preference):**

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

**FUNDING SOURCE (Where Applicable):** N/A

**RECOMMENDED ACTION:** Approve an Ordinance on its first reading to repeal Ordinance O-07-015 and grant a non-exclusive franchise to Allied Waste Management to operate a Roll-Off Container Service for Residents, Businesses, and Industries inside Brenham City Limits

**APPROVALS:** Terry K. Roberts

**ORDINANCE NO. \_\_\_\_\_**

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

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

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

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

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

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

**SECTION 1.  
DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 5.  
RATES TO BE CHARGED**

~~A written Attached hereto as Exhibit "A" and incorporated herein by reference is the Schedule of Rates thatwhich \_\_\_\_\_ shall charge for the aforementioned services shall be provided to each customer, and such Schedule of Rates may be revised periodically as agreed by \_\_\_\_\_ and its customers. \_\_\_\_\_ shall immediately provide the CITY with copies of any and all revised Schedule of Rates documents, and must be submitted to and approved by the City Council upon each revision and will be attached to the original franchise agreement.~~

**SECTION 6.  
PAYMENTS TO CITY**

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

Any revenue received by \_\_\_\_\_ in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into \_\_\_\_\_ monthly gross ~~delivery and hauling~~ 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 shall be due by the twenty-fifth (25<sup>th</sup>)~~twentieth (20<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 ~~made~~ after the due~~that~~ date shall be assessed~~involve~~ a ten percent (10%) penalty on the outstanding franchise fee amount owed under this Section~~article of the Agreement~~.

Failure by \_\_\_\_\_ to pay amounts due under this Agreement, after written notice by CITY, ~~may shall~~ constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 1514 of this Agreement (FAILURE TO PERFORM), and/or any other remedy available to the CITY in law or equity.

## SECTION 7. ACCESS TO RECORDS & REPORTING

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

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

- A. Reports of ~~the results of~~ all complaints, ~~and~~ investigations, ~~received~~ and actions taken by \_\_\_\_\_ with regard to services provided pursuant to this Agreement.
- B. A listing of all \_\_\_\_\_ accounts served and monthly revenue derived from roll-off containers placed in the CITY under the terms of this Agreement. The reports should include: a unique customer's identification or account number-name, address, 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 \_\_\_\_\_ that invoke Section 552.305.

### **SECTION 8. PLACEMENT OF CONTAINERS**

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

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

**SECTION 9.  
CONTAINER MAINTENANCE**

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

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

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

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

**SECTION 11.**  
**OBEISANCE OF LAWS**

\_\_\_\_\_ agrees that it shall comply with all laws, policies, rules and regulations of the United States, State of Texas, and CITY-~~OF BRENHAM~~. All collections made hereunder shall be made by \_\_\_\_\_ 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 \_\_\_\_\_ to utilize the streets, alleys or public ways to dispose of commercial, industrial, or residential solid waste other than demolition and construction debris. Both parties agree and understand that nothing in this Agreement conveys to \_\_\_\_\_ an exclusive franchise for the services described in this Agreement and that this Agreement is non-exclusive.

**SECTION 13.**  
**OWNERSHIP OF MATERIALS COLLECTED**

Nothing herein shall create or be construed to convey any title to ~~CITY~~~~the City of Brenham~~ 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 \_\_\_\_\_ terminates service to any customer with the CITY limits for cause, \_\_\_\_\_ must notify the CITY through certified mail within forty-eight (48) hours of termination and state the cause of such termination.

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

**SECTION 15.**  
**FAILURE TO PERFORM**

It is expressly understood and agreed by the parties that if at any time \_\_\_\_\_ shall fail to perform any of the terms, covenants, or conditions herein set forth, CITY may after a hearing as described herein, revoke and cancel the Agreement by and between the parties and said Agreement shall be null and void. Upon the determination by the staff of CITY that a hearing should be held before the City Council, CITY shall mail notice of the hearing to \_\_\_\_\_, at the address designated herein or at such

address as may be designated from time to time, by registered or certified mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council and \_\_\_\_\_ shall be allowed to present evidence and given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the CITY.

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**SECTION 165.  
INDEMNIFICATION**

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

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

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

\_\_\_\_\_ agrees to and shall indemnify and hold harmless CITY, its officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the work done by IMPACT DISPOSAL SERVICE, LLC 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 176.  
INSURANCE**

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

\_\_\_\_\_ insurance coverage shall be primary insurance with respect to the CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, employees or volunteers shall be considered in excess of the \_\_\_\_\_ insurance and shall not contribute to it.

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

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

## A. STANDARD INSURANCE POLICIES REQUIRED

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

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## 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 ~~CITYity of Brenham~~, 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 ~~CITYity of Brenham~~ 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 ~~CITYity of Brenham~~.
8. Upon request, certified copies of all insurance policies shall be furnished to the ~~CITYity of Brenham~~.

## 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.

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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~~city of Brenham.
  - e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

**SECTION 187.  
ASSIGNMENT**

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

**SECTION 198.**  
**SAFETY**

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

**SECTION ~~2019~~.**  
**AD VALOREM TAXES**

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

**SECTION ~~210~~.**  
**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	_____
<u>ATTN: City Secretary</u>	<u>ATTN:</u>

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

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**SECTION 221.**  
**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.

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**SECTION 232.**  
**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.

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**SECTION 243.**  
**TERM OF AGREEMENT**

The term of this Agreement shall be ~~effective for a period of two (2) years~~ beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, being the date of acceptance by \_\_\_\_\_ and shall terminate on September 30, 2014.

~~Thereafter, t~~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 and ~~shall continue in full effect upon the expiration of (2) years unless~~ either party gives written notice of non-renewal by certified registered-mail no later than within 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. If the two (2) years expired and this Agreement was automatically renewed, termination by either party may only be proper upon written notice by registered or certified mail within sixty (60) days prior to the intended termination date. 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 254.**  
**ACCEPTANCE OF AGREEMENT**

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

**SECTION 265.**  
**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 276.**  
**PUBLIC HEARING MEETING**

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

|  
**PASSED and APPROVED** on its first reading this \_\_\_\_ day of \_\_\_\_\_, 2013.

**PASSED and APPROVED** on its second reading this \_\_\_\_ day of \_\_\_\_\_, 2013.

---

Milton Y. Tate, Jr.  
Mayor

**ATTEST:**

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Jeana Bellinger, TRMC  
City Secretary

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE GRANTING ALLIED WASTE MANAGEMENT, 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 ALLIED WASTE MANAGEMENT, 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.

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*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".

*ALLIED WASTE MANAGEMENT.* Herein-after referred to as "ALLIED WASTE MANAGEMENT". 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 ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT a non-exclusive franchise for use of designated public streets, alleys and thoroughfares within the corporate limits of City for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and/or commercial compactors from commercial, residential and industrial sites within the jurisdictional limits of CITY, as approved by the City Manager or his designee.

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

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

**SECTION 5.  
RATES TO BE CHARGED**

A written Schedule of Rates that ALLIED WASTE MANAGEMENT shall charge for the aforementioned services shall be provided to each customer, and such Schedule of Rates may be revised periodically as agreed by and its customers. ALLIED WASTE MANAGEMENT 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, ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT monthly gross revenues generated from ALLIED WASTE MANAGEMENT provision of solid waste roll-off container collection services within the CITY excluding actual landfill tipping charges.

Any revenue received by ALLIED WASTE MANAGEMENT in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT 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.

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CITY shall have access to ALLIED WASTE MANAGEMENT's records, billing records of those customers served by ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT's records shall be provided to CITY within ten (10) business days, after written notice to ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT with regard to services provided pursuant to this Agreement.
- B. A listing of all ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT the exact location of any roll-off container(s) it places for service in CITY.

ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT 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**

ALLIED WASTE MANAGEMENT\_\_ 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**

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

ALLIED WASTE MANAGEMENT agrees that during transport all vehicles used by ALLIED WASTE MANAGEMENT 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. ALLIED WASTE MANAGEMENT vehicles shall at all times be clearly marked with ALLIED WASTE

MANAGEMENT name in letters not less than three (3) inches in height.

**SECTION 11.  
OBEISANCE OF LAWS**

ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT terminates service to any customer with the CITY limits for cause, ALLIED WASTE MANAGEMENT must notify the CITY through certified mail within forty-eight (48) hours of termination and state the cause of such termination.

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

**SECTION 15.  
FAILURE TO PERFORM**

It is expressly understood and agreed by the parties that if at any time ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT, 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 ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT, then ALLIED WASTE MANAGEMENT shall indemnify and hold CITY harmless for such damage.

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

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

ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT 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**

ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT, its agents, representatives, volunteers, employees or subcontractors.

ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT insurance and shall not contribute to it.

ALLIED WASTE MANAGEMENT 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 ALLIED WASTE MANAGEMENT without the specific prior written approval of the City Council. Any assignment by ALLIED WASTE MANAGEMENT without prior written approval of the City Council shall be null and void.

**SECTION 19.  
SAFETY**

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

ALLIED WASTE MANAGEMENT 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

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

**SECTION 26.  
AUTHORIZATION TO EXECUTE**

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

**SECTION 27.  
PUBLIC MEETING**

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

**PASSED and APPROVED** on its first reading this \_\_\_\_ day of \_\_\_\_\_, 2013.

**PASSED and APPROVED** on its second reading this \_\_\_\_ day of \_\_\_\_\_, 2013.

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

**ATTEST:**

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



## AGENDA ITEM 11

<b>DATE OF MEETING:</b> July 11, 2013	<b>DATE SUBMITTED:</b> July 8, 2013	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Grant Lischka	
<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 Authorize Final Payment to Hubco, Inc. for the 2012 Collector Street HMAC Overlay Project and Authorize the Mayor to Execute Any Necessary Documentation		
<b>SUMMARY STATEMENT:</b> HUBCO, Inc. has completed the work on the 2012 Collector Street HMAC Overlay Project. The construction came in \$38,996.00 under the original contract amount of \$1,107,054.30 for a revised contract amount of \$1,068,058.30. The reason for the decrease was due to adjustment of quantities, mostly in the amount of HMAC pavement. The contractor is responsible for any defects in materials and workmanship that may occur in the above described improvements for a period of one year, beginning on the date of acceptance by the City.		
<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.) Application for Payment No. 4 & Final (with Affidavit & Certification of Pay Application by Contractor); (2.) Consent of Surety to Final Payment; (3.) Certificate of Substantial Completion; and (4.) Change Order No. 1 – Reconciliation of Final Quantities.		
<b>FUNDING SOURCE (Where Applicable):</b>		
<b>RECOMMENDED ACTION:</b> Approve Change Order No. 1 and authorize final payment to Hubco, Inc. for the 2012 Collector Street HMAC Overlay Project in the amount of \$53,407.93 and authorize the Mayor to execute any necessary documentation.		
<b>APPROVALS:</b> Terry K. Roberts		

**APPLICATION FOR PAYMENT NO. 4 & FINAL**

TO OWNER: City of Brenham, 200 West Vulcan, Brenham, TX 77833  
 FROM CONTRACTOR: HUBCO, Inc., 11714 Charles Street, Houston, Texas 77041  
 PROJECT: 2012 Collector Street HMAC Overlay Project  
 OE JOB NO. 1006.075-PA/PB

CONTRACT AWARDED: October 18, 2012  
 PERIOD FROM: April 11, 2013  
 CONST. TIME ALLOTTED: 120 Calendar Days

NOTICE TO PROCEED: December 9, 2012  
 PERIOD TO: May 31, 2013  
 TIME USED: 173 Calendar Days

Item No.	Description	Contract Quantity	Completed Quantity			Unit Price	Total Value of Work Completed
			Previous Period	Current Period	Total		
<b>BASE BID</b>							
1	Furnish and install 2" minimum thickness Type D hot mix asphaltic concrete (HMAC) pavement, including tack coat	115,973 SY	111,912.42	0.58	111,913	\$ 9.10	\$ 1,018,408.30
2	Furnish all labor and materials and adjust elevation of existing manhole (all sizes and types) as shown in the details	107 EA	96	0	96	\$ 125.00	\$ 12,000.00
3	Furnish all labor and materials and adjust elevation of existing valve box or cleanout (all sizes and types) as shown in the details	111 EA	102	0	102	\$ 75.00	\$ 7,650.00
4	Furnish material and labor to perform traffic control for the entire project	1 LS	1.00	0.00	1.00	\$ 5,000.00	\$ 5,000.00
<b>ADDITIVE ALTERNATE BID B</b>							
B1	Furnish all labor, equipment, and materials to mill out a straight edge a minimum of 1-1/2" deep to create a smooth butt joint at all locations where the new HMAC overlay is to tie-in to existing asphaltic concrete pavement	1 LS	1.00	0.00	1.00	\$25,000.00	\$ 25,000.00

Original Contract:	\$ 1,107,054.30	Value of Work Performed to Date	\$ 1,068,058.30
Plus Additions:	\$ -	Plus Materials Stored at Close of Period	\$ -
Less CO 1 & Recon.:	\$ 38,996.00	Net Amt Earned to Date	\$ 1,068,058.30
Adjusted Contract:	\$ 1,068,058.30	Less 0% Retainage	\$ -
		Subtotal	\$ 1,068,058.30
		Less Previous Pay Applications	\$ 1,014,650.37
		<b>Amount Due this Application</b>	<b>\$ 53,407.93</b>

AFFIDAVIT & CERTIFICATION OF PAY APPLICATION BY CONTRACTOR

STATE OF TEXAS  
COUNTY OF Harris

WHEREAS, the undersigned, Russell Farmer, who being duly sworn, on oath, says that he is the legal representative of HUBCO, Inc., has been employed by City of Brenham to furnish labor and materials for the installation of 2012 Collector Street HMA Overlay Project in Brenham, Texas.

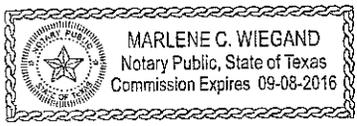
The undersigned Contractor certifies that: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

BY: [Signature] DATE: 6-28-13  
HUBCO, INC.

PRINTED NAME: Russell S. Farmer TITLE: Vice President

SWORN TO AND SUBSCRIBED BEFORE ME THIS 28 DAY OF June, 2013

[Signature]  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



RECOMMENDED BY: [Signature] DATE: 7.1.2013  
OMALLEY ENGINEERS, L.L.P.

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
CITY OF BRENHAM

**CONSENT OF SURETY  
TO FINAL PAYMENT**

*AIA Document G707*

OWNER   
ARCHITECT   
CONTRACTOR   
SURETY   
OTHER

Bond No. 46BCSGJ3903

TO OWNER:  
*(Name and address)*

ARCHITECT'S PROJECT NO.:

City of Brenham  
200 West Vulcan  
Brenham, TX 77833

CONTRACT FOR: Construction

PROJECT:  
*(Name and address)*

CONTRACT DATED: October 18, 2012

2012 Collector Street HMAC Overlay Project, OE Job No. 1006.075-PA/PB  
Brenham, Texas

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the  
*(Insert name and address of Surety)*

Hartford Casualty Insurance Company  
One Hartford Plaza  
Hartford, CT 06155-0001

, SURETY,

on bond of  
*(Insert name and address of Contractor)*

Hubco, Inc.  
11714 Charles Road  
Houston, TX 77041

, CONTRACTOR,

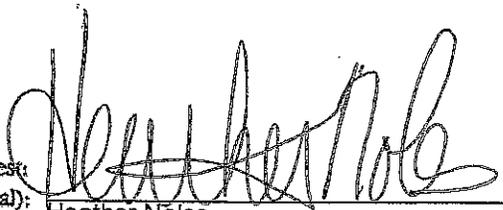
hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of  
any of its obligations to  
*(Insert name and address of Owner)*

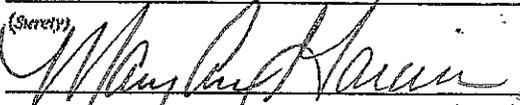
City of Brenham  
200 West Vulcan  
Brenham, TX 77833

, OWNER,

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: June 13, 2013  
*(Insert in writing the month followed by the numeric date and year.)*

Attest:  
(Seal):   
Heather Noles

Hartford Casualty Insurance Company  
*(Surety)*  
  
*(Signature of authorized representative)*  
Mary Ann Garcia Attorney-in-Fact  
*(Printed name and title)*

# POWER OF ATTORNEY

Direct Inquiries/Claims to:

**THE HARTFORD**

BOND, T-4

One Hartford Plaza  
Hartford, Connecticut 06155

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Code: 61-613558, 46-504809, 46-507142, 43-483850, 46-505579

- Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of unlimited:**

*David G. Miclette, Sam F. Bowen, Edward G. Britt, Jr., Kristi Lovett, Barry K. McCord, Ashley Britt Russell, Robert C. Davis, David T. Miclette, Michael Tubbs, Susan Zapalowski, Rita G. Gulizo, Joni Bowen, Mary Ann Garcia, Brett A. Tisdale of Houston TX, Fort Smith AR and New Orleans LA*

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on August 1, 2009 the Companies have caused these presents to be signed by its Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*Wesley W. Cowling*

*M. Ross Fisher*

Wesley W. Cowling, Assistant Secretary

M. Ross Fisher, Vice President

STATE OF CONNECTICUT

ss. Hartford

COUNTY OF HARTFORD

On this 12<sup>th</sup> day of July, 2012, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



*Kathleen T. Maynard*  
Kathleen T. Maynard  
Notary Public  
My Commission Expires July 31, 2016

CERTIFICATE

I, the undersigned, Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of *June 13, 2013*  
Signed and sealed at the City of Hartford.



*Gary W. Stumper*  
Gary W. Stumper, Vice President

## CERTIFICATE OF SUBSTANTIAL COMPLETION

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DATE OF ISSUANCE June 27, 2013

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OWNER City of Brenham

CONTRACTOR HUBCO, Inc.

Contract: 2012 Collector Street HMAC Overlay Project

Project: 2012 Collector Street HMAC Overlay Project

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OWNER's Contract No. N/A

ENGINEER's Project No. OE Job No. 1006.075-PB

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This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

N/A

To City of Brenham  
OWNER

And To HUBCO, Inc.  
CONTRACTOR

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The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

May 31, 2013  
DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within \_\_\_\_\_ days of the above date of Substantial Completion.

N/A

EJCDC No. 1910-8-D (1996 Edition)

Prepared by the Engineers' Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall be as follows:

OWNER: As of the date of substantial completion, the OWNER shall assume responsibility for security, operation, safety, maintenance, and utilities associated with the portion of the project certified as substantially complete. Within 15 days from the date of substantial completion the OWNER shall become responsible for insurance associated with the portion of the project certified as substantially complete.

CONTRACTOR: The CONTRACTOR shall be responsible for providing warranties and guarantees in accordance with the CONTRACT DOCUMENTS.

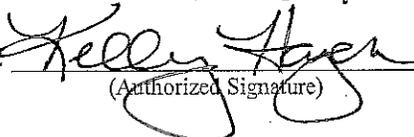
The following documents are attached to and made a part of this Certificate:  
N/A

*[For items to be attached see definition of Substantial Completion as supplemented and other specifically noted conditions precedent to achieving Substantial Completion as required by Contract Documents.]*

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

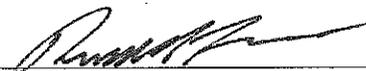
Executed by ENGINEER on 7-1-2013  
Date

O'Malley Engineers, LLP  
ENGINEER

By:   
(Authorized Signature)

CONTRACTOR accepts this Certificate of Substantial Completion on 6-28-13  
Date

HUMCO, INC  
CONTRACTOR

By:   
(Authorized Signature)

OWNER accepts this Certificate of Substantial Completion on \_\_\_\_\_  
Date

\_\_\_\_\_  
OWNER

By: \_\_\_\_\_  
(Authorized Signature)

CHANGE ORDER NO. 1 - Reconciliation of Final Quantities  
 CITY OF BRENHAM  
 2012 COLLECTOR STREET HMAC OVERLAY PROJECT  
 OE JOB NO.: 1006.075-PB  
 June 27, 2013

REASON: Reconciliation of Final Quantities.

Item No.	Description	Contract Quantity	Final Quantity	Quantity Increase/ Decrease	Unit Price	Amount Increase	Amount Decrease
<b>BASE BID</b>							
1	Furnish and install 2" minimum thickness Type D hot mix asphaltic concrete (HMAC) pavement, including tack coat	115,973.00 SY	111,913	(4,060)	\$ 9.10	-	\$ (36,946.00)
2	Furnish all labor and materials and adjust elevation of existing manhole (all sizes and types) as shown in the details	107 EA	96	(11)	\$ 125.00	-	\$ (1,375.00)
3	Furnish all labor and materials and adjust elevation of existing valve box or cleanout (all sizes and types) as shown in the details	111 EA	102	(9)	\$ 75.00	-	\$ (675.00)
4	Furnish material and labor to perform traffic control for the entire project	1 LS	1	0	\$ 5,000.00	-	-
<b>ADDITIVE ALTERNATE BID B</b>							
B1	Furnish all labor, equipment, and materials to mill out a straight edge a minimum of 1-1/2" deep to create a smooth butt joint at all locations where the new HMAC overlay is to tie-in to existing asphaltic concrete pavement	1 LS	1	0	\$25,000.00	-	-
SUBTOTAL FOR AMOUNT INCREASE						\$ -	
SUBTOTAL FOR AMOUNT DECREASE							\$ (38,996.00)
NET CONTRACT DECREASE							\$ (38,996.00)

**ADJUSTED CONTRACT AMOUNT (FINAL)**

ORIGINAL CONTRACT AMOUNT	\$ 1,107,054.30
LESS CHANGE ORDER NO.1 - RECONCILLATION (NET CONTRACT DECREASE)	\$ (38,996.00)
<b>REVISED CONTRACT AMOUNT</b>	<b>\$ 1,068,058.30</b>

REQUESTED BY:

HUBCO, INC.

RECOMMENDED BY:

OMALLEY ENGINEERS, L.L.P.

APPROVED BY:

CITY OF BRENHAM



**AGENDA ITEM 12**

<b>DATE OF MEETING:</b> July 11, 2013		<b>DATE SUBMITTED:</b> July 3, 2013	
<b>DEPT. OF ORIGIN:</b> Main Street		<b>SUBMITTED BY:</b> Jennifer Eckermann	
<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 Approval of Resolution No. R-13-011 Adopting an Incentive Grant Reimbursement Program.			
<b>SUMMARY STATEMENT:</b> The Main Street Board is requesting approval of a Resolution adopting an Incentive Grant Reimbursement Program as an economic development tool making limited grant funds available for downtown building and site improvements. As presented in a Work Session on June 20, the program would benefit the City of Brenham by making Downtown more attractive, increasing the economic vitality of the buildings, increasing sales tax and property values while preserving and enhancing Brenham's architectural and cultural history.			
<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 No. R-13-011; (2.) Downtown Incentive Grant Reimbursement Program Guidelines; and (3.) Map of Boundaries of the Eligible Area for the Program			
<b>FUNDING SOURCE (Where Applicable):</b> N/A			
<b>RECOMMENDED ACTION:</b> Approve Resolution No. R-13-011 adopting an incentive grant reimbursement program.			
<b>APPROVALS:</b> Terry K. Roberts			

**RESOLUTION NO. R-13-011**

**A RESOLUTION OF THE CITY OF BRENHAM, TEXAS ADOPTING AN INCENTIVE GRANT FUND POLICY INCLUDING THE BOUNDARIES OF THE DOWNTOWN AREA AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Main Street Advisory Board has requested adoption of the Incentive Grant Fund Program for redevelopment and enhancement of historical and other significant buildings in the Downtown area; and

**WHEREAS**, the Incentive Grant Fund is designed to preserve the historical fabric of the downtown area while stimulating economic activity; and

**WHEREAS**, the program is designed to provide funding assistance to stimulate new business development and the retention of existing businesses in the Downtown area; and

**WHEREAS**, City Council adopted the Brenham Downtown Master Plan calling for development of incentives to promote the City's revitalization efforts;

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS** that the Downtown Incentive Grant Fund Program is hereby adopted in the boundaries of the eligible area as set forth in the attached Exhibit B to this Resolution. The program guidelines are Attachment A and hereby confirmed.

**RESOLVED** on this the \_\_\_\_ day of \_\_\_\_\_, 2013.

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

**ATTEST:**

\_\_\_\_\_  
Amanda Klehm  
Deputy City Secretary



MAIN STREET  
B R E N H A M

## **DOWNTOWN INCENTIVE REIMBURSEMENT GRANT PROGRAM**

### **Application Instructions**

**If you have any application questions, please contact the Main Street Brenham office at 979.337.7384. If you have any building permit questions, please contact the Building Permits and Inspections Department at 979.337.7220.**

*The City of Brenham Main Street Program works to revitalize and enhance the unique character of Downtown Brenham through historic preservation and community involvement, while at the same time promoting Downtown, providing educational and technical assistance to business and property owners, and maintaining the beauty of Brenham.*

*As an economic incentive, the City of Brenham Development Services Department has designed the following incentive reimbursement grant program.*

### **PROGRAM GOALS:**

Funds available through this program will be used to improve the buildings and building sites located in the eligible area of Downtown. The program will benefit the City of Brenham by making Downtown more attractive, increasing the economic vitality of the buildings, increasing sales tax and property values while preserving and enhancing Brenham's architectural and cultural history.

### **PROGRAM OBJECTIVES:**

- A. Restore and preserve the historical fabric and character of Downtown Brenham, ensuring the survival of the area's rich architectural and cultural history.
- B. Stimulate redevelopment to increase sales tax revenues and property values; and
- C. Eliminate dilapidated structures or property conditions as they exist in Downtown Brenham.

### **PROGRAM DETAILS:**

The Downtown Incentive Reimbursement Grant Program is set up as a single payment reimbursement to property owners for exterior building renovations and improvements. Reimbursement grants are available for Façade Rehabilitation, to include: removing slipcovers or non-historic/added facades; re-pointing brick or replacing mortar joints; replacing or restoring architectural details; removing paint from brick; painting and replacing or restoring windows, canopies, awnings or storefronts. Signage is not included unless it is restoring historic signage. Painting historic masonry is not eligible unless it has previously been painted.



Project Limits:

1. 50/50% matching basis with a cap of \$5,000 per grant (\$10,000+ total project cost).
2. 50/50% matching bases with a cap of \$2,000 per grant (\$4,000+ total project cost) for fabric awning or paint grants.

**GRANT GUIDELINES (please read carefully):**

1. Façade rehabilitation grant funds are available for exterior work on building facades that immediately overlook public streets location in the designated Main Street area, as defined by the attached map and are historic and meets the following criteria:
  - Possess significance in history, architecture, archeology, or culture;
  - Embodies the distinctive characteristics of a type, period, or method of construction;
  - Represents the work of a master designer, builder, or craftsman;
  - Represents an established and familiar visual feature of the City;
  - Meets the criteria established by the National Register of Historic Places;
  - Exemplification the culture, economic, social, ethnic, or historical heritage of the City, state, or nation;
  - Identification with a person or persons who significantly contributed to the culture and development of the city, state, or nation; or
  - Is the site of an event that had significant contributions to the culture and development of the city, state, or nation.
2. Grants are on a first-come, first-served basis until allocated funds are depleted, or until the program ends, whichever comes first. Funding is subject to allocation in the annual budget.
3. No grants will be awarded for work that has already been completed or for work that is covered by insurance. Incentive grant applications must be submitted before requests for building permits.
4. All grants will be awarded on a reimbursement basis once completed work has been verified by staff as compliant with the plans proposed in the approved application. Any deviation from the approved grant project may result in the total or partial withdrawal of the grant.
5. All submitted work will be reviewed based on the Secretary of the Interior's *Standards for Rehabilitation* (see attached) and the Main Street Brenham's *Downtown Design Guidelines* (available from the Main Street office in City Hall). City staff and the Main Street Design Committee will review submitted work and determine eligibility. Staff will present the application to the Main Street Board for a recommendation on approving or denying the request. A positive recommendation is required before final approval by the City Manager. Final approval by the City Manger must be obtained BEFORE any work commences.



6. Grant applications and awards can be made in any of the reimbursable activities listed above and may be combined for any single property or project. **However, the maximum amount available bi-annually per applicant is \$7,000.**
7. An applicant is defined as an eligible property within the Main Street designated area. A single owner of multiple properties may apply for grant funds for each property owned but may not receive more than \$7,000 per property.
8. Projects will be reviewed with the following considerations in mind:
  - Project compliance with all current building standards;
  - Perceived need for proposed renovations to building;
  - Historical accuracy of proposed renovations;
  - Design quality of the proposed renovations;
  - Compatibility of design in relation to other buildings;
  - Project compatibility with streetscape objectives; and
  - Project compatibility in relation to downtown development goals at time of application.

### **GRANT APPLICATION PROCESS**

1. ***Determine eligibility:*** Discuss project plans in a pre-application meeting with Brenham Main Street. An appointment for free assistance in selecting paint, fabrics, color schemes and materials for the building façade may be scheduled through the Texas Main Street Center’s Architectural Assistance Program, or with the Main Street Design Committee. The *Downtown Design Guidelines* should be a reference guide when making any design improvements to the properties in the Main Street District. The Downtown Design Guidelines are available from the Main Street Program office at 200 W. Vulcan, Brenham, Texas 77833.
2. ***Fill out incentive reimbursement grant application agreement forms.*** All grant applications must include a drawing, with dimensions, from the project architect or contractor of all proposed grant work to be done. Color samples of all final paint selections and/or material selections must be included with the application to be reviewed and approved/rejected by the Brenham Main Street Board. Obtain **itemized** written work estimates on all project work from contractors or project architects. At least two bids shall be submitted to Main Street Brenham for review. Only supplies necessary for the property will be reimbursed for self-contracted work. This expressly excludes tools. The applicant’s labor or labor from family members of applicant is not an eligible expense.
3. ***Return the completed application form*** with a tax certificate from the Washington County Appraisal District showing all taxes are paid, all original itemized work estimates, color samples, drawings and sample materials of the proposed work to the Main Street office at 200 W. Vulcan, no later than 5 p.m. the Friday prior to the 2nd Thursday of each month.



4. *The approval process will include without limitation the following:*

- (a) All projects must meet current building standards and codes, as well as building permit requirements.
- (b) All applicants are required to attend and present their grant reimbursement project to Brenham Main Street. This may involve multiple presentations.
- (c) If the Main Street Board recommends approval of the project, the request will be reviewed for approval/denial by the City Manager and final notification of the request will be sent to the applicant.
- (d) Main Street Brenham shall only consider applications which have been properly and fully completed and which contain all information required in the application, or requested.
- (e) **The City of Brenham’s Administration Department has the final discretion with regard to funding and reserves the right to modify or reject any project or elements of any project.**
- (f) All construction bids submitted by an applicant must be current and must be dated no earlier than ninety (90) days prior to the application request. Bids shall be submitted on the contractor’s or project architect’s letterhead and shall contain the contractor name, address, telephone number, and shall itemize the bid in a manner that allow Main Street Brenham to determine the bid components and authenticity of the bid.
- (g) An applicant who submits an application that was denied a grant by Main Street Brenham shall not be eligible to re-submit a grant application for six (6) months from the date the prior application was declined by Main Street Brenham.
- (h) Applicants awarded a grant shall commence construction described within the application within ninety (90) days from the date the grant is awarded. All applicants must complete the construction described in the application within 6 months from the date the official grant notification is sent. If the Applicant is unable to commence construction with ninety (90) days from the date the grant is approved or complete construction within 6 months from the date the grant is approved, the applicant may submit a written request for an extension provided the extension request is made prior to the time limit. Main Street Brenham shall not be obligated to allow extensions but may do so at their discretion. The extensions, if granted, shall be for the term and for the conditions determined exclusively by Main Street Brenham. An extension denial cannot be appealed and shall be final.

- (i) The City Manager shall have sole discretion in awarding grants. The grants will be awarded considering the following:
- the amount requested;
  - grant funds available;
  - the guidelines of the grant program;
  - condition of the building;
  - economic impact;
  - Main Street Brenham’s recommendation; and
  - the type and nature of the construction.
- (j) No applicant has a proprietary right to receive grant funds. Main Street Brenham shall consider any application to determine what grant amount would be in the best interest of the Grant Program. The review criteria may include, but shall not be limited to, project compliance with all current building standards, perceived need for proposed renovations to building, historical accuracy of proposed renovations, design quality of the proposed renovations, the compatibility of design in relation to other buildings, project compatibility with streetscape objectives and project compatibility in relation to downtown development goals at time of application.
- (k) The applicant shall be required to furnish current and historical photographs (if available) of the building’s exterior as part of the application request and shall provide photographs after the construction has been completed, as a condition of final grant reimbursement.
- (l) The applicant is required to obtain all applicable City permits and City approvals required for the construction if a grant is awarded.
- (m) No applicant, nor applicant agent, representative or tenant shall be entitled to receive grant approval on the same property – for the same grant type - if requested within three (3) years from the date a previous grant was awarded
- (n) An applicant, or applicant’s representative, must attend the Main Street Board meeting in which consideration of the request is scheduled to be discussed. Failure to attend a meeting when required shall be cause for rejection of the application.
- 5. *Reimbursement:* When the entire grant project has been satisfactorily completed and reviewed, the applicant shall present the Main Street Brenham office with copies of all paid invoices, including copies of cancelled checks and/or credit card receipts, for a single payment reimbursement of the approved funding.**

## REHABILITATION TIPS

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- Roof, foundation and structural items should always be given priority over cosmetic improvements.
- Carefully examine old buildings for termites, wood rot and general deterioration.
- When repairing a building, do not cut expenses on the roof or foundation.
- Be aware of areas on the roof and at connecting walls where water does not readily drain. Flashing should be installed at intersections to prevent leakage.
- Carefully locate air conditioning units to avoid water condensations on the sides of buildings. Condensing units should be supported from the masonry walls and not placed directly on the roof.
- The top brick cornices that project above the roof deteriorate rapidly unless they are capped with metal, terra cotta, stone or concrete.
- When mortar is missing or in poor repair, moisture will enter the walls and eventually may cause structural damage. Deteriorated mortar should be removed to a depth of at least three-fourths of an inch and replaced with new mortar that matches the old in color, texture and striking of the joint.
- Do not sandblast. Chemicals and/or water can remove dirt and paint without damaging the surface of the building.
- Do not paint too often; many times a building only needs mild washing.
- If the building has stone or brick that has never been painted, do not create a maintenance problem by painting it.
- Existing architectural details, including old wood doors, windows, ceilings, and trim work add to the character of a building and its resale value. Repair these features rather than remove them.
- Wood windows are reasonable to repair, if a specialist in window repair can be found. If the windows are missing, custom-made windows can be ordered for replacement in old buildings.
- Pressed metal ceiling panels are still being manufactured today with some of the same patterns installed originally. Deteriorated panels, therefore, can often be replaced exactly.
- Do not use aluminum siding. It can hide water penetration into the walls and accelerate deterioration.
- Before rehabilitating a building façade, take a careful look at the structural aspects of the building. Develop a design that is compatible with neighboring buildings.



## SECRETARY OF INTERIOR'S STANDARDS FOR REHABILITATION

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**Main Street Brenham will maintain an awareness of the *Standards of Rehabilitation as follows:***

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New addition and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.



## **DOWNTOWN INCENTIVE REIMBURSEMENT GRANT PROGRAM CHECKLIST**

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**Use this form as a checklist to follow all steps needed to complete the Downtown Incentive Reimbursement Grant Program application to receive approval.**

- Meet with Main Street staff to determine eligibility and to walk through Downtown Incentive Reimbursement Grant and instructions, and to possibly set up an appointment for free assistance from the Texas Main Street Center's Design Assistance Program.
- Meet with the City's Building Inspectors for any work involving a building or sign permit.
- Complete the Downtown Incentive Reimbursement Grant application form and sign agreement form. Include the following required attachments: Drawing to show all of proposed grant work to be done including renderings, color samples of all final paint selections and/or material selections, photographs of building exterior.
- Return completed application and agreement form with required attachments no later than 5 p.m. on the Friday prior to the 2<sup>nd</sup> Thursday of the month to the Main Street office.
- Attend and present Downtown Incentive Reimbursement Grant application project all required meetings.
- Receive project recommendation of proposed work listed on grant application.
- Do not start work until notification of grant award is received from the Administration office of the City of Brenham
- If approved, Downtown Incentive Reimbursement Grant project construction may commence. Work must commence within ninety (90) days of approval from Main Street Board and be completed in 6 months.
- Upon completion of Downtown Incentive Reimbursement Grant project, furnish photographs of the building's exterior; copies of all paid invoices, including copies of cancelled checks and/or credit card receipts, to receive a single payment reimbursement of the approved funding.



## DOWNTOWN INCENTIVE REIMBURSEMENT GRANT PROGRAM APPLICATION

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Please return completed with necessary attachments and signature to Main Street Brenham offices at 200. W. Vulcan, no later than 5 P.M. on the Friday prior to the 2<sup>nd</sup> Thursday of each month. If you have any application questions, please contact the Main Street staff at 337.7374. If you have any building permit questions, please contact the City of Brenham’s Building and Permits Department at 337.7220.

❖ Applicant Name: \_\_\_\_\_ Date: \_\_\_\_\_

❖ Business Name: \_\_\_\_\_

❖ Mailing Address: \_\_\_\_\_

❖ Contact Phone: \_\_\_\_\_ Email Address: \_\_\_\_\_

❖ Building Owner (if different than applicant) \_\_\_\_\_

❖ Historical/Current Building Name: \_\_\_\_\_

❖ Physical Building Address: \_\_\_\_\_

❖ Type of Work: (check all that apply)

\_\_\_ Façade Rehabilitation

\_\_\_ Façade – paint only

\_\_\_ Awnings

Details of Planned Improvements for Downtown Reimbursement Grant: (attach additional sheets if necessary.)

\_\_\_\_\_

List Contractor/Project Architect proposals and Total amounts (please attach copies of original proposals.)

1. \_\_\_\_\_

2. \_\_\_\_\_

**Total Cost of Proposed Project:** \_\_\_\_\_

**Amount of Grant Requested (50% of Total Cost Above, within stated limits):** \_\_\_\_\_

*Attach with all required color samples of paint, awning/canopy design, etc., as well as current and historical photographs (when available) of building’s exterior façade.*

\_\_\_\_\_  
**Applicant’s Signature**

\_\_\_\_\_  
**Date**



## **DOWNTOWN INCENTIVE REIMBURSEMENT GRANT AGREEMENT FORM**

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I have met with the Brenham Main Street staff, and I fully understand the Downtown Incentive Reimbursement Grant Procedures and Detail established by Main Street Brenham. I intend to use this grant program for the aforementioned renovation projects to forward the efforts of revitalization and historic preservation of Brenham’s historic downtown. I have not received, nor will I receive insurance monies for this revitalization program.

I have read the Downtown Incentive Reimbursement Grant Application Procedures including the Downtown Incentive Reimbursement Grant Details.

I understand that if I am awarded a reimbursement grant for façade or awning work and the façade or awning is altered for any reason within one (1) year from construction, I may be required to reimburse the City of Brenham immediately for the full amount of the Downtown Reimbursement Grant.

\_\_\_\_\_ *Business/Organization Name*

\_\_\_\_\_ *Applicant’s Signature* *Printed Name* *Date*

\_\_\_\_\_ *Building Owner’s Signature (if different from applicant)* *Printed Name* *Date*

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\_\_\_\_\_ *Design Committee signature* *Recommendation* *Date*

\_\_\_\_\_ *Main Street Board signature* *Recommendation* *Date*

\_\_\_\_\_ *City Manager signature* *Action* *Date*

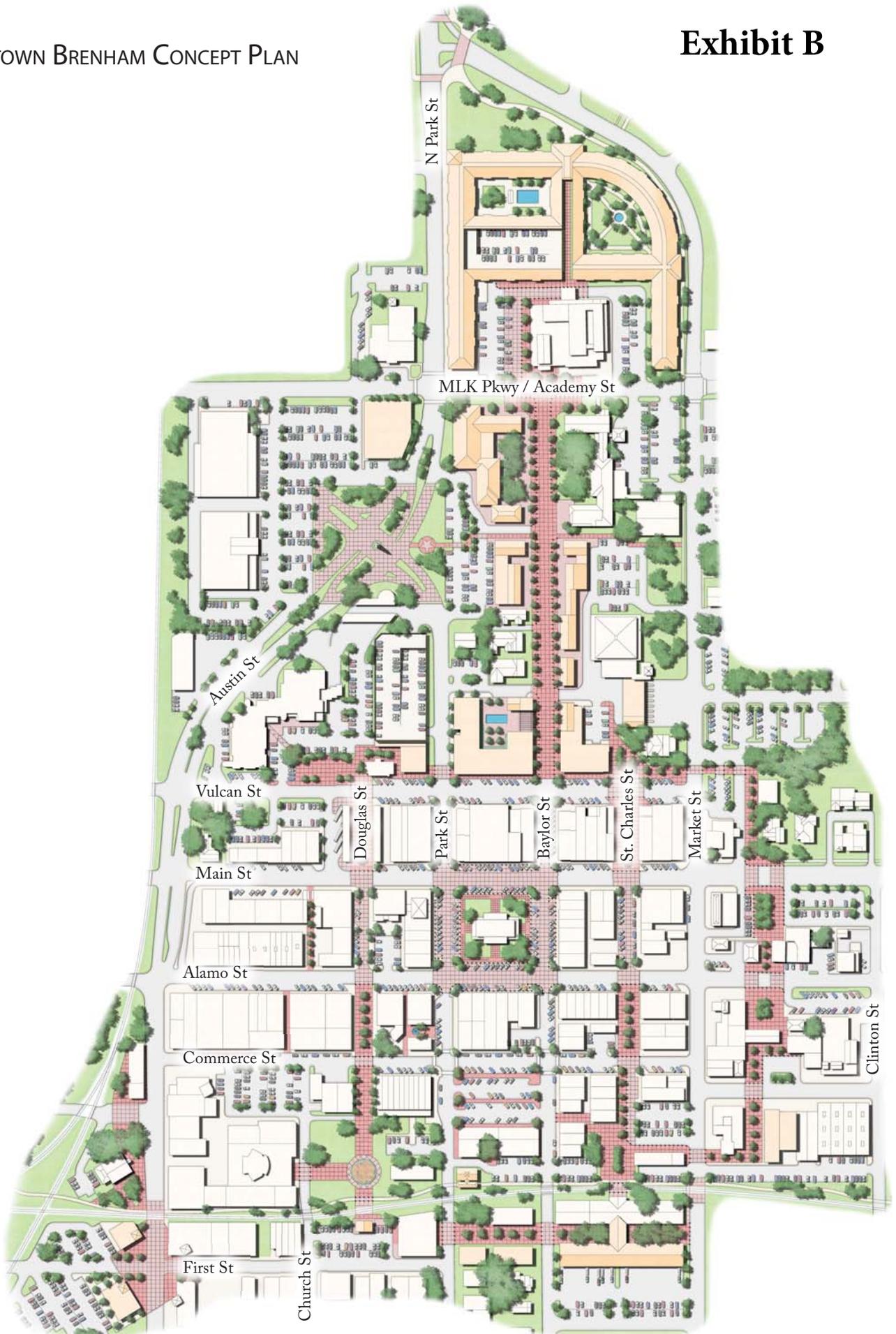


Figure 100: Conceptual Plan for Downtown Brenham



### AGENDA ITEM 13

<b>DATE OF MEETING:</b> July 11, 2013	<b>DATE SUBMITTED:</b> July 8, 2013	
<b>DEPT. OF ORIGIN:</b> Development Services	<b>SUBMITTED BY:</b> Julie Fulgham	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input checked="" 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 an Ordinance on its First Reading Authorizing the Abandonment of the Unimproved Right-of-Way as Shown on the Ewing Subdivision Plat and Located Near the Intersection of Old Chappell Hill Road and Carrington Lane in Brenham, Texas		
<b>SUMMARY STATEMENT:</b> Donald Boecker, Ernest Lott, Peggy Williams, Danny Wilson, and Mabel Wills own property that abuts an unimproved right-of-way named Ewing Street on the W. R. Ewing subdivision plat filed on April 12, 1919. All property owners listed above also have frontage on Carrington Lane or Old Chappell Hill Road. These property owners have submitted a request to abandon this unimproved right-of-way, as depicted on Exhibit “A” of the attached ordinance. Staff recommends approving this abandonment subject to a replat being filed to include the abandoned right-of-way as well as the rear yards (and separately platted lots) of the platted lots owned by the requestors being submitted to match property ownership lines. The ordinance will take effect once a subdivision replat meeting this criterion is approved by the Planning and Zoning Commission.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
A. <b>PROS:</b> Removes City maintenance responsibilities for this unimproved right-of-way.		
B. <b>CONS:</b>		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b> 1. Approve request, 2. Deny request		
<b>ATTACHMENTS:</b> (1.) Letters from property owners/requestors and aerial photograph showing property ownership; (2.) Ordinance with Exhibit “A” (W. R. Ewing Addition to the City of Brenham)		
<b>FUNDING SOURCE (Where Applicable):</b> N/A		
<b>RECOMMENDED ACTION:</b> Approve an Ordinance on its first reading authorizing the abandonment of the unimproved right-of-way as shown on the Ewing Subdivision Plat and located near the intersection of Old Chappell Hill Road and Carrington Lane in Brenham, Texas.		
<b>APPROVALS:</b> Terry K. Roberts		

**DONALD L. BOECKER**  
**500 NORTH BERLIN ROAD**  
**BRENHAM, TEXAS 77833**  
**979-830-5853**

April 10, 2013

Attn: Julie Fulgham  
City of Brenham, Texas

The property owners request an abandonment and replat of the unimproved right of way between lots 1 – 13 and 14-26 in the middle of the W. R. Ewing Addition Plat.

The unimproved right of way runs south of Chappell Hill Street and West of and parallel Carrington Lane on the East side of Brenham.

Respectfully Submitted:


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

**DONALD L. BOECKER**  
**500 NORTH BERLIN ROAD**  
**BRENHAM, TEXAS 77833**  
**979-830-5853**

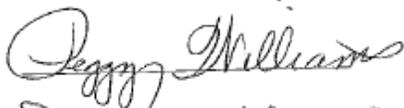
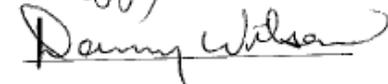
April 10, 2013

Attn: Julie Fulgham  
City of Brenham, Texas

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The unimproved right of way runs south of Chappell Hill Street and West of and parallel Carrington Lane on the East side of Brenham.

Respectfully Submitted:


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



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF EWING STREET AS SHOWN ON THE PLAT FOR THE W.R. EWING ADDITION FILED FOR RECORD ON APRIL 12, 1919.**

**WHEREAS**, the City of Brenham has ownership of Ewing Street as shown on the Plat for the W. R. Ewing Addition recorded on April 12, 1919 in the official records of Washington County, Texas; and

**WHEREAS**, the adjoining property owners have requested the abandonment and closing of Ewing Street; and

**WHEREAS**, the abandonment and closing of Ewing Street as shown on the plat for the W.R. Ewing Addition will not create an undue burden on traffic; and

**WHEREAS**, the City of Brenham has no need or use for Ewing Street as shown on the plat for the W.R. Ewing Addition as a public thoroughfare and Ewing Street remains undeveloped and unused; and

**WHEREAS**, the City Council of the City of Brenham desires to abandon and close the portion of Ewing Street as shown on the plat for the W.R. Ewing Addition as a public thoroughfare being in the best interest of the Citizens of Brenham.

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

**SECTION I.**

That the portion of Ewing Street as shown on the plat for W.R. Ewing Addition is hereby abandoned and closed as a public thoroughfare.

**SECTION II.**

This street is currently undeveloped and any existing or future maintenance by the City of Brenham will cease.

**SECTION II.**

The Mayor of the City of Brenham is hereby authorized to execute any documents necessary for the sale and conveyance of the portion of Ewing Street as shown on the plat for the W.R. Ewing Addition, attached hereto as Exhibit "A" and incorporated herein for all purposes, to the adjoining property owners, after a replat, submitted by said owners, is submitted for approval by the Planning and Zoning Commission.

**SECTION IV.**

This Ordinance shall take full force and effect from and after its passage and approval on second reading, and approval of a replat which includes the abandoned Ewing Street right-of-way by the Planning and Zoning Commission; however, notwithstanding any other provision herein, this Ordinance shall not be effective unless the Planning and Zoning Commission approves said replat within 120 days from the date of approval of this Ordinance on second reading.

PASSED and APPROVED on its first reading this the \_\_\_\_\_ day of \_\_\_\_\_, 2013

PASSED and APPROVED on its second reading this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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Milton Y. Tate, Jr.  
Mayor

ATTEST:

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Amanda Klehm  
Deputy City Secretary

