



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY AUGUST 1, 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 Goss**
- 3. 3-a. Service Recognitions**
 - Brian E. Smith – Street Department – 5 years
- 3-b. Awards**
 - **GFOA Distinguished Budget Presentation Award**
 - *Fourth Consecutive Year*
- 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 July 11, 2013, July 17, 2013 Budget Workshop, July 18, 2013 Budget Workshop, and July 19, 2013 Budget Workshop City Council meetings**

Page 1-18
- 5-b. Discuss and Possibly Act Upon Ordinance No. O-13-015 on Its Second 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**

Page 19-30

- 5-c. **Discuss and Possibly Act Upon Ordinance No. O-13-016 on Its Second 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**
Page 31-42

WORK SESSION

6. **Presentation of the Second and Third Quarter Report by the Washington County Convention and Visitors Bureau**
Page 43-69
7. **Discussion and Presentation on Final Proposed Budget for Fiscal Year Beginning October 1, 2013 and Ending September 30, 2014**
Page 70

PUBLIC HEARING

8. **Public Hearing Concerning a Text Amendment to Part 1, Section 5.02 (Definitions), (53) Dwelling, Detached, of Appendix A: Zoning of the City of Brenham's Code of Ordinances, Establishing 750 Square Feet as the Minimum Square Footage Allowed for Single Family Detached Dwellings on Individual Lots**
Page 71

REGULAR AGENDA

9. **Discuss and Possibly Act Upon a Text Amendment to Part 1, Section 5.02 (Definitions), (53) Dwelling, Detached, of Appendix A: Zoning of the City of Brenham's Code of Ordinances, Establishing 750 Square Feet as the Minimum Square Footage Allowed for Single Family Detached Dwellings on Individual Lots**
Page 72-76
10. **Discuss and Possibly Act Upon a Request from the Main Street Board for the Approval of the Renewal of a Reserved Parking Space for Hospice Boutique**
Page 77
11. **Discuss and Possibly Act Upon the Appointment of a New Member to the Main Street Board**
Page 78-81
12. **Discuss and Possibly Act Upon a Recommendation from the Library Advisory Board Regarding the 2012 Contract with Komatsu Architecture for the City of Brenham's Library Assessment and Masterplan Design**
Page 82-108

13. **Discuss and Possibly Act Upon a One (1) Year Extension of the Contract with Alexander Oil Company, in Accordance with the Bid Specifications of Bid No. 12-009, for Gasoline and Diesel Fuel for the City's Vehicle and Equipment Fleet, and Authorize the Mayor to Execute Any Necessary Documentation** **Page 109-115**
14. **Discuss and Possibly Act Upon an Interlocal Agreement between the Brazos Valley Council of Governments (BVCOG) and the Brazos Valley Wide Area Communications System (BVWACS) Parties Approving BVCOG to be the Managing Entity of the Brazos Valley Wide Area Communications System and Authorize the Mayor to Execute Any Necessary Documentation** **Page 116-132**
15. **Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County and Texas A & M University Relating to the Operation and Maintenance of the Brazos Valley Wide Area Communications System (BVWACS) and Authorize the Mayor to Execute Any Necessary Documentation** **Page 133-190**
16. **Discuss and Possibly Act Upon an Interlocal Agreement Between the Brazos Valley Council of Governments (BVCOG) and the City of Brenham for E9-1-1 Public Safety Answering Point Services and Authorize the Mayor to Execute Any Necessary Documentation** **Page 191-213**
17. **Discuss and Possibly Act Upon the Acceptance of a Donation in the Amount of \$25,000.00 to the Brenham Police Department and Authorize the Mayor to Execute Any Necessary Documentation** **Page 214**
18. **Discuss and Possibly Act Upon an Interlocal Cooperation Agreement Between the City of Brenham and the Region 6 Education Service Center (ESC6) for the Use of Fiber and Installation of Wireless Equipment on a City of Brenham Radio Transmission Tower** **Page 215-224**

EXECUTIVE SESSION

19. **Section 551.072, Texas Government Code – Deliberation Regarding Real Property – Discussion Regarding the Purchase of Real Estate for Future Municipal Improvements** **Page 225**

RE-OPEN REGULAR AGENDA

20. **Discuss and Possibly Act Upon the Purchase of Real Estate for Future Municipal Improvements** **Page 226**

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.

21. 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 August 1, 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 29, 2013 at *12:30 PM*.

Amanda Klehm

Deputy City Secretary

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

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

Signature

Title

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on July 11, 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 Pro Tem Gloria Nix
Councilmember Mary E. Barnes-Tilley
Councilmember Andrew Ebel
Councilmember Danny Goss
Councilmember Keith Herring
Councilmember Weldon Williams, Jr.

Members absent:

Mayor Milton Y. Tate, Jr.

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, Kaci Konieczny, Darlene Konieczny, Fire Chief Ricky Boeker, Police Chief Rex Phelps, Billy Rich, Trey Gully, Judson Hall, Mike Davis, Carl Wiesepape, Development Services Director Julie Fulgham, Kim Hodde, Jennifer Eckermann, Public Utilities Lowell Ogle, Pam Ruemke, Stephen Draehn, and Grant Lischka

Citizens present:

Wendy Frazier, Amos McDonald, Sara Parker, Perry Thomas, Angela Cowan, Tracy Tate, and Don Boecker

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 – Councilmember Williams**
- 3. 3-a. New Employees**
 - David Andras – Police Department

3-b. Service Recognitions

- Michael Davis – Police Department – 20 years
- Carl Wiesepape – Police Department – 25 years

4. Citizens Comments

There were no citizen comments.

CONSENT AGENDA

5. Statutory Consent Agenda

- 5-a. Minutes from the June 6, 2013, June 6, 2013 Special Meeting, and June 20, 2013 City Council Meetings**
- 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**
- 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**
- 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**

A motion was made by Councilmember Herring and seconded by Councilmember Barnes-Tilley to approve the Statutory Consent Agenda Item 5-a. minutes from the June 6, 2013, June 6, 2013 Special Meeting, and June 20, 2013 City Council Meetings, 5-b. Ordinance No. O-13-012 amending Article IV, Substandard Buildings and Structures, 5-c. Ordinance No. O-13-013 prohibiting turns into and left turns out of the connector driveway of Alton Elementary School, and 5-d. Ordinance No. O-13-014 amending Article X, Swimming Pools.

Mayor Pro Tem Nix called for a vote. The motion passed with Council voting as follows:

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

WORK SESSION

6. Discuss and Review the FY2012-13 Second Quarter Financial Report

Chief Financial Officer Carolyn Miller presented this item. Miller discussed the FY2012-13 second quarter financial report. Miller advised Council that the City has experienced favorable performance with positive net revenues over expenditures in the General, Electric, Gas, and Sanitation funds. Miller explained the Water and Wastewater Funds experienced net losses for the quarter due to primarily to lower utility revenues. Miller provided Council with the following financial performance summary.

Fund	2 nd QTR Actual Performance		
	Revenues	Expenditures	Net Revenues (Expenditures)
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

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

Chief Financial Officer Carolyn Miller presented this item. Miller stated in May, the City solicited proposals for bank depository services for a two year period in accordance with City charter. Miller explained the City received four proposals for banking services in response to the Request for Proposal (RFP), which included: BBVA Compass, Capital One, JPMorgan Chase, and Wells Fargo. Miller stated Linda Patterson with Patterson & Associates assisted with the RFP process and the analysis of bank depository service proposals.

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

A motion was made by Councilmember Williams and seconded by Councilmember Barnes-Tilley to award RFP No. 13-008 for Bank Depository Services to BBVA Compass for a period commencing August 1, 2013 through July 31, 2015 and authorize the Mayor Pro Tem to sign any necessary documentation.

Councilmember Herring abstained from the vote.

Mayor Pro Tem Nix called for a vote. The motion passed with Council voting as follows:

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

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

Controller Stacy Hardy presented the proposed audit engagement letter from Seidel, Schroeder & Company for the fiscal year ending September 30, 2013. Hardy stated that the audit fee estimate, which slightly increased from last year due to changes in auditing standards in the area of regulatory compliance, is a reasonable amount due to the complexity of the City's financial activities.

A motion was made by Councilmember Barnes-Tilley and seconded by Councilmember Ebel to 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 Pro Tem to execute any necessary documentation.

Councilmember Goss abstained from the vote.

Mayor Pro Tem Nix called for a vote. The motion passed with Council voting as follows:

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

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

Deputy City Secretary Amanda Klehm presented this item. Klehm handed out a revised Ordinance that has changes that were not included in the original agenda packet. Klehm stated the major changes include updating the general language, getting all of the Sanitation Franchises on the same expiration date each year, rates to be charged, payments to the City, access to records and reporting, placement of containers, interruption of service or default, and further explaining the issue of containers on the street to state if damage to the street occurs, the franchisee will be responsible for the street repair.

A motion was made by Councilmember Barnes-Tilley and seconded by Councilmember Goss to 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.

Mayor Pro Tem Nix called for a vote. The motion passed with Council voting as follows:

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

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

Deputy City Secretary Amanda Klehm presented this item. Klehm handed out a revised Ordinance that has changes that were not included in the original agenda packet. Klehm stated the major changes include updating the general language, getting all of the Sanitation Franchises on the same expiration date each year, rates to be charged, payments to the City, access to records and reporting, placement of containers, interruption of service or default, and further explaining the issue of containers on the street to state if damage to the street occurs, the franchisee will be responsible for the street repair.

A motion was made by Councilmember Goss and seconded by Councilmember Ebel to 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.

Mayor Pro Tem Nix called for a vote. The motion passed with Council voting as follows:

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

11. 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

City Engineer Grant Lischka presented this item. Lischka stated HUBCO, Inc. has completed the work on the 2012 Collector Street HMAC Overlay Project. Lischka explained 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, which was due to an adjustment of quantities, mostly in the amount of HMAC pavement.

A motion was made by Councilmember Goss and seconded by Councilmember Herring to 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.

Mayor Pro Tem Nix called for a vote. The motion passed with Council voting as follows:

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

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

Main Street Manager Jennifer Eckermann presented this item. Eckermann stated 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. 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.

Citizen John Young expressed his opposition against the Downtown Incentive Grant because the City is putting a lot of money into Downtown and not helping him with the remodel of his building, which is located in Brenham yet not in the Downtown area. Young wants to know if there is something that can be done for others who generate tax dollars through their businesses, but who are not located in the Downtown area. Young stated he has seven (7) commercial real estate properties and he has had to put all of his own money into remodeling them. Young stated he thinks the Downtown Incentive Program should be a loan, not a grant. Young expressed that he thinks tax money should be used in other ways to bring more money and people into Brenham.

Jennifer Eckermann stated since they started the Main Street program in 1999, the property values Downtown have increased approximately 55% since the program's beginning.

Councilmember Goss questioned funding for this program. Goss questioned the purpose of the vote on today's item was solely to adopt the program, not for funding. Eckermann stated Goss was correct, the Resolution was for the policy side of the program only. Eckermann explained the funding will be budgeted. Eckermann stated there are two components to the program: policy and funding. Eckermann explained by State Law, the City has to first adopt a policy and then find funding. Eckermann stated the Council can deny funding at budget time, if they wish to do so.

Mayor Pro Tem Nix questioned if the Grant Program is a matching program. Eckermann explained it is a matching program where the business owner must match the amount of the grant out of their own funds.

A motion was made by Councilmember Barnes-Tilley and seconded by Councilmember Herring to approve Resolution No. R-13-011 adopting an incentive grant reimbursement program.

Mayor Pro Tem Nix called for a vote. The motion passed with Council voting as follows:

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

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

Development Services Director Julie Fulgham presented this item. Fulgham stated 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. Fulgham explained that these property owners have submitted a request to abandon this unimproved right-of-way, as depicted on Exhibit “A” in the ordinance. Fulgham stated that 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. Fulgham stated the ordinance will take effect once a subdivision replat meeting this criterion is approved by the Planning and Zoning Commission.

Councilmember Williams questioned how there is a plot that is unknown. Fulgham stated information gets lost over time and she is working with Mr. Dilworth to get this resolved. Fulgham stated if ownership is not found or the Planning and Zoning does not approve in 120 days, then the abandonment will be voided; however, if it is approved, then there will be a replat.

Councilmember Goss questioned regarding landlocked properties. Fulgham explained that there are no property owners that are landlocked. Fulgham stated she has been working with Jon Hodde to pull all deeds and they cannot find any properties that are landlocked. Councilmember Goss questioned why this matter was coming to Council before Planning and Zoning? City Attorney Cary Bovey stated Council must abandon the right-of-way before it goes to Planning and Zoning. Bovey explained this is a special instance where Planning and Zoning cannot approve a replat before the right-of-way is abandoned by Council. Councilmember Goss would like the replat document to come back to Council, if the property is replatted.

Councilmember Goss questioned Mr. Boecker’s intent for the property. Citizen Don Boecker stated he wants to sell the property and the property will be plotted how the City explains in the zoning rules in as many lots as possible (up to 5). Councilmember Goss would like Fulgham to present Council with preliminary plat of property when she brings back the Ordinance for 2nd reading.

A motion was made by Councilmember Herring and seconded by Councilmember Barnes-Tilley to 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 with changes.

Mayor Pro Tem Nix called for a vote. The motion passed with Council voting as follows:

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

14. Administrative/Elected Officials Report

City Manager Terry Roberts reported on the following:

- A memo was placed around the Dias of upcoming meeting dates relating to the tax rate and budget special Council meetings.
- Budget Workshops will be held July 17th, 18th, and 19th at 8:30am in Conference Room 2-A. Breakfast will be served at 8:00am each morning.
- At this point, there are no matters to be discussed at the regular scheduled Council meeting on Thursday, July 18th.
- Next regular Council meeting will be August 1st.
- Two special Council meetings will be August 29th and September 16th
- Tomorrow is the Chamber Forum and the City was able to get their money back on the table.
- Council photo has been rescheduled for October 3rd.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Amanda Klehm
Deputy City Secretary

Brenham City Council Budget Workshop Minutes

A budget workshop meeting of the Brenham City Council was held on July 17, 2013 beginning at 8:30 a.m. in the Brenham City Hall in Conference Room 2-A, at 200 W. Vulcan Street, Brenham, Texas.

Council members present:

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

Council members absent:

Mayor Milton Y. Tate, Jr.

City staff members present:

City Manager Terry Roberts, Assistant City Manager Kyle Dannhaus, Deputy City Secretary Amanda Klehm, Chief Financial Officer Carolyn Miller, Stacy Hardy, Kaci Konieczny, Development Services Director Julie Fulgham, Public Works Director Dane Rau, Public Utilities Director Lowell Ogle, Dane Bybee, Wanda Kramer, Debbie Gaffey, Alton Sommerfield, Ande Bostain, Bobby Keene, and Grant Lischka

Citizens present:

None

Media Present:

Arthur Hahn, Brenham Banner Press; Frank Wagner, KWHI

- 1. Mayor Pro Tem Nix called the meeting to order**
- 2. FY2013-14 Budget Workshop Discussion**

City Manager Terry Roberts welcomed Council and then turned the meeting over to Public Utilities Director Lowell Ogle and Debbie Gaffey to present the FY2013-14 Electric Fund, Gas Fund, Water Fund, and Wastewater Fund Budgets. Public Works Director Dane Rau presented the FY2013-14 Sanitation Fund Budget.

The following information was presented:

- Electric Fund
 - Dept 132 – Utility Billing (presented by Wanda Kramer)
 - Dept 160 – Public Utilities (presented by Lowell Ogle)
 - Dept 132 – Electric (presented by Alton Sommerfield)
- Gas Fund
 - Dept 162 – Gas (presented by Ande Bostain)
- Water Fund
 - Dept 163 – Water Treatment (presented by Dane Bybee)
 - Dept 164 – Water Construction (presented by Dane Bybee)
- Wastewater Fund
 - Dept 165 – Wastewater Construction (presented by Bobby Keene)
 - Dept 166 – Wastewater Treatment (presented by Bobby Keene)
- Sanitation Fund
 - Dept 042 – Transfer Station (presented by Dane Rau)
 - Dept 043 – Collections Station (presented by Dane Rau)
 - Dept 140 – Recycling (presented by Dane Rau)
 - Dept 142 – Residential Collection (presented by Dane Rau)

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Amanda Klehm
Deputy City Secretary

Brenham City Council Budget Workshop Minutes

A budget workshop meeting of the Brenham City Council was held on July 18, 2013 beginning at 8:30 a.m. in the Brenham City Hall in Conference Room 2-A, at 200 W. Vulcan Street, Brenham, Texas.

Council 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.

Council members absent:

None

City staff members present:

City Manager Terry Roberts, Assistant City Manager Kyle Dannhaus, Deputy City Secretary Amanda Klehm, Chief Financial Officer Carolyn Miller, Kaci Konieczny, Fire Chief Ricky Boeker, Deputy Fire Chief Alan Finke, Police Chief Rex Phelps, Amanda Carker, Development Services Director Julie Fulgham, Kim Hodde, Public Works Director Dane Rau, Leslie Kelm, Casey Redman, Dewayne Lucius, Gary Jeter, Pam Ruemke, and Grant Lischka

Citizens present:

None

Media Present:

None

1. Mayor Tate called the meeting to order

2. FY2013-14 Budget Workshop Discussion

City Manager Terry Roberts welcomed Council and then turned the meeting over to Budget Manager Kaci Konieczny to present the FY2013-14 General Fund Budget. Police Chief Rex Phelps presented the Police Department Budget. Fire Chief Ricky Boeker presented the Fire Department Budget. Communications Manager Pam Ruemke presented the Communications Budget. Information Technology Manager Gary Jeter presented the Information Technology Budget. Development Services Director Julie Fulgham presented the Development Services Budget. Public Works Director Dane Rau presented the Public Works Budget. City Engineer Grant Lischka presented the Airport Budget.

The following departmental budgets were presented:

- Public Safety
 - Dept. 151 – Police & Code Enforcement (presented by Rex Phelps)
 - Dept. 154 – Animal Control/Shelter (presented by Rex Phelps and Amanda Carker)
 - Fund 229 – Criminal Law Enforcement (presented by Carolyn Miller)
 - Dept. 152 – Fire/EOC (presented by Ricky Boeker)
 - Fund 221 – Emergency Management Grants (presented by Carolyn Miller)
 - Fund 235 – Fire Department Grants (presented by Carolyn Miller)
- Communications
 - Dept. 150 – Communications (presented by Pam Ruemke)
- Information Technology
 - Dept. 172 - Information Technology (presented by Gary Jeter)
- Development Services
 - Dept. 122 – Development Services (presented by Julie Fulgham)
 - Dept. 125 – Main Street (presented by Jennifer Eckermann)
- Public Works
 - Dept. 167 – Public Works (presented by Dane Rau)
 - Dept. 131 – Maintenance (presented by DeWayne Lucius)
 - Dept. 141 – Streets (presented by Leslie Kelm)
 - Fund 237 – Streets/Drainage Improvements (presented by Carolyn Miller)
 - Dept. 144 – Parks (presented by Casey Redman)
 - Fund 234 – Parks Capital Improvements (presented by Carolyn Miller)
- Airport
 - Dept 148 – Airport (presented by Kim Hodde and Grant Lischka)
 - Fund 203 – Airport Capital Improvements (presented by Carolyn Miller)

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Amanda Klehm
Deputy City Secretary

Brenham City Council Budget Workshop Minutes

A budget workshop meeting of the Brenham City Council was held on July 19, 2013 beginning at 8:30 a.m. in the Brenham City Hall in Conference Room 2-A, at 200 W. Vulcan Street, Brenham, Texas.

Council 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.

Council members absent:

None

City staff members present:

City Manager Terry Roberts, Assistant City Manager Kyle Dannhaus, City Secretary Jeana Bellinger, Deputy City Secretary Amanda Klehm, Chief Financial Officer Carolyn Miller, Kaci Konieczny, Wende Ragonis, Susan Nienstedt, Fire Chief Ricky Boeker, Police Chief Rex Phelps, Public Works Director Dane Rau, Leslie Kelm, Gary Jeter, Janie Mehrens, Pam Ruemke, and Grant Lischka

Citizens present:

Betty Fortner and Teddy Boehm

Media Present:

None

- 1. Mayor Tate called the meeting to order**
- 2. FY2013-14 Budget Workshop Discussion**

City Manager Terry Roberts opened the workshop. Roberts then turned the meeting over to Administrative Services Manager Wende Ragonis to present the FY2013-14 Purchasing and Library Budgets. City Secretary Jeana Bellinger presented the Administration Budget. Chief

Financial Officer Carolyn Miller presented the Municipal Court Budget, Finance Budget, Special Revenue Funds and Debt Service/Capital Projects Review. Human Resources Manager Susan Nienstedt presented the Human Resources Budget. Risk Management Manager Janie Mehrens presented the Risk Management Budget and Workers Compensation Fund. Recreation Superintendent Jamie Maurer presented the Recreation and Aquatics Budget. Assistant City Manager Kyle Dannhaus presented the Central Fleet Fund.

The following budgets were presented:

- Administrative Services
 - Dept 135 - Purchasing/Warehouse (presented by Wende Ragonis)
 - Dept 146 – Library (presented by Wende Ragonis)
- Administration
 - Dept 121 – Administration (presented by Jeana Bellinger)
- Municipal Courts
 - Dept 155 – Municipal Courts (presented by Carolyn Miller)
- Human Resources
 - Dept 123 – Human Resources (presented by Susan Nienstedt)
- Finance
 - Dept 133 – Finance (presented by Carolyn Miller)
 - Dept 133 – Risk Management (presented by Janie Mehrens)
 - Fund 500 – Workers’ Compensation Fund (presented by Janie Mehrens)
- Recreation and Aquatics
 - Dept 049 – Recreation (presented by Jamie Maurer)
 - Dept 149 – Aquatic Center (presented by Jamie Maurer)
- Special Revenue Funds
 - Funds109/110 – Hotel/Motel (presented by Carolyn Miller)
 - Fund 232 – Donation Fund (presented by Carolyn Miller)
 - Fund 236 – Equipment Fund (presented by Carolyn Miller)
 - Fund 250/252 – BCDC/Capital (presented by Carolyn Miller)
 - Fund 290 – Hwy 290 Fund (presented by Carolyn Miller)
- Central Fleet
 - Fund 220 – Central Fleet (presented by Kyle Dannhaus)

Citizens Betty Fortner and Teddy Boehm representing the Fortnightly Club at the Library Stated they understood what happened with the progress of the new or reconstructed Library plans, but would like to move forward in the future due to the Library’s lack of space and availability for its patrons. Betty Fortner asked if the new Library would be placed in a Bond Election. Terry Roberts stated the Bond Election would probably take place in May 2015. Roberts stated they understand the need to enlarge the building, but they want to explore the renovation and expansion possibilities before deciding on a new building. Roberts stated it is a timing issue, which is why the plans are at a standstill.

Betty Fortner stated the current building is not structurally sound enough to add on without wasting library funds according to what the contractor told her. Teddy Boehm stated they have asked the architecture firm to evaluate the current building to determine if it is useable, but they have not gotten an answer yet. Kyle Dannhaus stated the current building is structurally fine, but has problems that will need to be addressed. Dannhaus reiterated it was bad timing and he feels like they need to hold off because funding is not available at this point.

- Debt Service/Capital Projects Review
 - Debt Service (presented by Carolyn Miller)
 - Capital Projects (presented by Carolyn Miller)
- Tax Rate

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Amanda Klehm
Deputy City Secretary

ORDINANCE NO. O-13-015

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 DISPOSAL SYSTEMS, INC. with the covenants and conditions herein set forth, and the Charter, Ordinances and Regulations of the City governing the collection and disposal of solid waste, CITY hereby grants to TEXAS DISPOSAL SYSTEMS, INC. a non-exclusive franchise for use of designated public streets, alleys and thoroughfares within the corporate limits of City for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and/or commercial compactors from commercial, residential and industrial sites within the jurisdictional limits of CITY, as approved by the City Manager or his designee. Ordinance No. O-07-014 related to the prior franchise granted to TEXAS DISPOSAL SYSTEMS, INC. is hereby repealed.

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

CITY hereby grants to TEXAS 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 (25th) day of the month following the end of the previous month. If the payment due date falls on a Saturday, Sunday or other holiday designated by the CITY, the payment must be received by the CITY on the next regular business day.

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

Failure by 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 DISPOSAL SYSTEMS, INC. place containers on public streets, alleys and/or thorough fares without the prior written approval of the CITY. CITY reserves the right to specify to TEXAS DISPOSAL SYSTEMS, INC. the exact location and time period allowed for placement of any roll-off container(s) it places for service in CITY.

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

**SECTION 9.
CONTAINER MAINTENANCE**

TEXAS 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:

Amanda Klehm
Deputy City Secretary

ORDINANCE NO. O-13-016

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.

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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. Ordinance No. O-07-015 related to the prior franchise granted to ALLIED WASTE MANAGEMENT is hereby repealed.

**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.

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PAYMENTS TO CITY**

For and in consideration of the use of designated streets, alleys, and thoroughfares as well as in consideration of the covenants and agreements contained herein, 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 (25th) day of the month following the end of the previous month. If the payment due date falls on a Saturday, Sunday or other holiday designated by the CITY, the payment must be received by the CITY on the next regular business day.

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

Failure by 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.

SECTION 7. ACCESS TO RECORDS & REPORTING

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 and time period allowed for placement 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:

Amanda Klehm
Deputy City Secretary



AGENDA ITEM 6

DATE OF MEETING: August 1, 2013	DATE SUBMITTED: July 29, 2013	
DEPT. OF ORIGIN: Convention and Visitors Bureau	SUBMITTED BY: Lu Hollander	
MEETING TYPE: CLASSIFICATION: ORDINANCE:		
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
<input checked="" type="checkbox"/> WORK SESSION		
AGENDA ITEM DESCRIPTION: Presentation of the Second and Third Quarter Report by the Washington County Convention and Visitors Bureau		
<p>SUMMARY STATEMENT: In an effort to be more cost efficient, a copy of the Washington County Convention and Visitors Bureau Second and Third Quarter Report is not included in the agenda packet. However, a compact disc of this report will be distributed to Mayor and City Council Members.</p> <p>A complete copy of the Washington County Convention and Visitors Bureau Second and Third Quarter Report is on file for review in the City Secretary's Office. A copy can also be downloaded from the Washington County Chamber of Commerce website at www.brenhamtexas.com.</p> <p>If you are interested in obtaining a hard copy, please call the City Secretary at 979-337-7567</p>		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
<p>A. PROS:</p> <p>B. CONS:</p>		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: (1.) 2 nd Quarter Report – Convention and Visitors Bureau; and (2.) 3 rd Quarter Report – Convention and Visitors Bureau		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Discussion Only		
APPROVALS: Terry K. Roberts		



Washington County

CHAMBER OF COMMERCE
Convention & Visitors Bureau

CONVENTION & VISITORS BUREAU
Quarterly HOT Reports for Jan. – March, April – June 2013

www.BrenhamTexas.com

WCCC Convention & Visitors Bureau

Second Quarter Report – January-March 2013

January Highlights

Statistics:

Walk-in visitors – 694
Website unique visitors – 4,745

Visitor information mailed – 1,642
Website total pages viewed – 19,480

Major tourism events:

Downtown Brenham Uptown Swirl
Brenham Winter Antiques Show

Advertising placements:

Austin Monthly co-op with Main Street, Texas Highways, Edible Austin

Editorial coverage from Geiger:

Western Group Travel: feature about Round Top and Brenham
Women's Focus Wichita: feature about Brenham and Washington County

February Highlights

Statistics:

Walk-in visitors – 426
Website unique visitors – 6,462

Visitor information mailed – 623
Website total pages viewed – 19,988

Major tourism events:

Salt Grass Trail Ride, "The Chalk Garden"-Unity Theatre, Annual Used Book Sale

Advertising placements:

Houston Rodeo Program - 2-page co-op, Small Market Meetings, Group Travel Leader

Editorial coverage:

HGTV film of Junk Gypsies garage sale in Brenham for future airing, *Houston Chronicle* feature about Camptown Cemetery, *Houston Chronicle* front page feature about wildflowers quotes CVB

March Highlights

Statistics:

Walk-in visitors – 1,206
Website unique visitors – 17,088

Visitor information mailed – 1,528
Website total pages viewed – 49,844

Major tourism events:

Texas Ranger Day & Big Star Texas Night in Burton, Herbal Forum at Festival Hill

Advertising placements:

AAA Home & Away (Oklahoma), Southern Living, Houston Chronicle, Louisiana Life

Editorial coverage:

Houston Chronicle (4 appearances), *AAA Texas Journey* (short article about wildflowers generated 100+ calls in one day), *KBTX TV* interview, *Southern Lady* feature about antique shows



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3PM-7PM 🌸 \$25.

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\$30. after Jan 1

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Brenham
Washington County

VisitBrenhamTexas.com 1-800-509-1752
On Highway 290 between Austin & Houston.

Group Travel Leader 1/6 page

Austin Monthly co-op with Main Street

Small Market Meetings 1/6 page

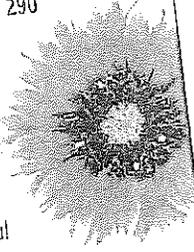
Brenham
Washington County

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TO COME PLAY IN
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WILDFLOWER WATCH page
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beautiful wildflower fields
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or call us at
1-888-273-6426

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City & State

HOUSTON CHRONICLE | houstonchronicle.com and chron.com | Saturday, February 2, 2013 | Section B ***

BRENHAM

Cemetery secrets to be revealed

By Allan Turner

HO BRENHAM — Willy Hubert was born a slave in August 1832. He died a free man in October 1909. Between those dates, engraved with a two-line epitaph on an overturned marble tombstone in a bramble-shrouded graveyard, yawns an enigma.

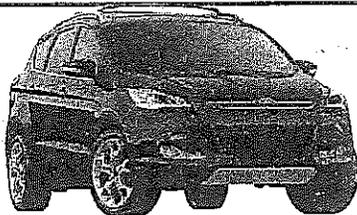
Virtually nothing is known about Hubert, and likely little will be learned. But then, within the tangled 6½ acres of Camp Town Cemetery, an African-American burial ground just blocks from downtown Brenham, there lie uncounted mysteries.

Now, through an effort directed by the Brenham Heritage Cemetery continues on B5



Billy Smith II / Houston Chronicle

Eddie Harrison, a former municipal judge in Brenham, examines a toppled tombstone at the Camp Town Cemetery.



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Cemetery will get renovation

Cemetery from page B1

Museum, the residents of this historic Washington County community will start looking for answers. The work will begin next Saturday as garden-gloved volunteers descend on the site with clippers and saws. Several such sessions will be required.

How many graves?

Within 18 months, organizers hope, the site can be cleared of brush and an enclosing fence erected. Tombstones will be repaired and pedestrian pathways and interpretive signs installed.

The most basic questions organizers hope to answer are how many people are buried on the land and where.

Museum director Doug Price said about 400 people are believed to be buried in the graveyard, which is associated with the Mount Rose Missionary Baptist Church. There may be many more unmarked graves and the unfenced cemetery may extend well beyond its known boundaries, said church official and retired Municipal Judge Eddie Harrison.

"We had heard there was a Camp Town Cemetery," Price said, "but we didn't know it was in such bad condition. We walked over there. It was so overgrown that we barely could get in. There were feral roses, gravestones overturned — the first was

dated 1840. We knew we had to do something about this immediately."

Harrison said the site, one of two historically black cemeteries in Brenham, was named for the campground of Union soldiers who occupied the city after the Civil War. The most recent burials, he said, probably occurred in 2002, when descendants of Hubert were interred near his grave.

Most of the city's modern burials occur at the multiracial Prairie Lee Cemetery.

Harrison said interest in the cemetery has grown in the last 40 years, and periodic efforts have been made to keep it clear of brush. The sheer magnitude of the task, though, proved overwhelming.

Slavery years

Brenham, seat of Washington County in the fertile Brazos River Valley, was a center of plantation life from its founding in the 1820s. In 1850, Washington County had 5,983 residents, 2,817 of whom were slaves; in 1860, 15,215 residents, 7,941 of them slaves.

"During slavery," Harrison said, "the cemetery was just a place to get rid of waste. The slave master didn't normally allow funeral services. They had burials, and someone would be appointed to go out there with a wagon and shovel and maybe a few immediate family members, but they didn't

want the black slaves to congregate unsupervised."

Many of the tombstones on early graves likely were erected by later generations, Harrison said. Price said volunteers will try to collect biographical information about those buried in the cemetery as the project progresses.

Historical importance

A list of those buried at the site exists but likely is incomplete.

Plans call for the use of satellite images of the cemetery to discern the location of unmarked graves — some of which could lie beneath nearby streets or houses.

"It could tell us where the people are," Price said, "but it won't tell us who they are."

He added, "If we find out there are folks interred in someone's backyard, we suspect they'd like to know these things. Some might want these burials reinterred rather than being on their property. We're not sure how that will pan out."

Bob Wishoff, an Austin archaeologist with the project, said human remains exhumed for reburial may be tested to determine their gender and age at time of death.

"This site is important ... as far as Texas and the history of Brenham are concerned," Price said. "There are many stories to tell here, and we can."

allan.turner@cbron.com

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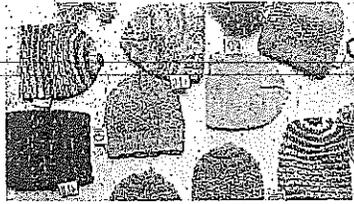
» **Radioactive waste:** Tanks are leaking at a nuclear site in Washington state. **A3**

» **Breast cancer:** The FDA approves a drug that helps extend survival rates. **A4**

City & State

» **Cries for help:** A local woman is worried her sister is being held hostage in Russia. **B1**

» **Houston Advocate:** An old Heights church is getting heat from new neighbors. **B1**



Business

» **BeerSox:** A crafty Houstonian is making a Web and retail success out of her hand-knit cozies for beer cans and other beverages. **D1**

Sports

» **Jerome Solomon:** Don't expect the Texans to find Matt Schaub's successor in the upcoming NFL draft. **C1**

» **Rockets:** A 106-96 win at Brooklyn is team's franchise-record-tying 13th straight against the Nets. **C1**

Star

Tomatoes rule the garden bed

» **Growing tips:** Plant now. Provide a steady diet of attention. Then brag later about your harvest. **E1**

» **Gardening Q&A:** Kathy Huber answers readers' questions about fringe trees, acorns. **E10**

HOUSTON CHRONICLE

houstonchronicle.com and chron.com | Saturday, February 23, 2013 | VOL. 112 No. 133 | WE RECYCLE | \$1.00 ***

Malware on oil rigs raises concern

Exclusive: Gaps in cybersecurity pose serious risk to human lives.

By Zain Shaikh

Malicious software intentionally downloaded by offshore oil workers has incapacitated computer networks

people and the environment, cybersecurity professionals told the Houston Chronicle. The worst-case scenario could be catastrophic: A malfunctioning rig and safe-

Some of the infected files — from online sources featuring pornography or music piracy, for example — have been downloaded directly through satellite

Companies can go a long way toward protecting their networks by keeping software up to date and taking other cybersecurity measures. But some



Johnny Hanson / Houston Chronicle

Riders hit the asphalt trail

The Texas Independence Trail Ride moseys along West Gray on the way to Memorial Park to kick off the Houston Livestock Show and Rodeo. More than 3,000 riders representing 13 groups converged on the park Friday to set up camp. **Story on Page B1**

Chron.com
On the iPad

» Get continuing coverage on the rodeo online and with our iPad app.

Grier said two of the programs deserve grades of A or B-plus, two earn C-pluses and two — at Kashmere and

HISD continues on A13

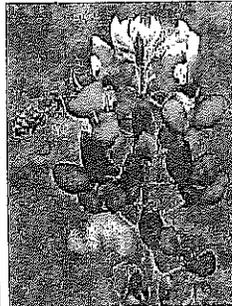
MEDICINE

Houston team targets drug-defiant bacteria

By Eric Berger

It's a medical nightmare. Going into the hospital for a routine procedure and ending up with a nasty infection. Such infections often are caused by so-called Gram-negative bacteria, and they pose an increasing threat to health care because they are becoming more resistant to antibiotics. The rising tide of drug-

resistant bacteria has pushed scientists to look beyond their primary tool, antibiotics, whose discovery before World War II dramatically improved the safety of surgery and wound care. Now a pair of cancer researchers believe they have found a new class of weapons, a corkscrew-like peptide, that might take down many of these infectious bacteria. *Corkscrew continues on A12*



Melissa Phillip / Houston Chronicle file
Bluebonnets were abundant at the Houston Arboretum and Nature Center last March.

ENVIRONMENT

Bluebonnet season won't be showstopper

By Kathy Huber

Texas' annual rite of spring has begun: bluebonnet sightings. "We're starting to see scattered early blooms, and they are a bit smaller than usual," said Lu Hollander, spokeswoman for the Washington County Chamber of Commerce/Convention & Visitors Bureau. Drier than normal conditions

Chron.com

» Snapped a great Texas wildflower photo this year? Email it to photos@chron.com, or post to Twitter or Instagram with the #txflowers hashtag and location.

October through December means we'll see only a moderate showing of bluebonnets in many areas across Texas, said *Show continues on A12*

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Business... **D1** Directory... **A2** Lottery... **A4** Obituaries **B4**
Comics... **E9** Editorials... **B6** Markets... **B4** Outlook... **B7**
Crossword... **E7** Horoscope **E9** Movies... **E5** TV... **E6**



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FROM THE COVER

Show to get better in late spring

Show from page A1

Damon Waitt, the Lady Bird Johnson Wildflower Center's senior botanist. "Indian paintbrush, bluebonnets and other early spring bloomers won't likely be as plentiful along state roadsides this year," said Waitt, who also is the center's senior director.

But the intermittent rains that fell in January and February will encourage a better show from late spring and early summer flowers such as Indian blanket and horsemint, he said.

Robbed of nutrients
Houston wildflower watchers who travel along popular bluebonnet trails in Washington County are likely to find smaller and fewer blooms than the spectacular 2012 show.

"I'd love to say we'll have a record crop of bluebonnets and other wildflowers this year but find we pretty much have to agree with the Lady Bird Johnson Center's projection of a moderate show," Hollander said. Members of her office will be driving Washington County roads for the next few weeks to locate the best viewing areas, she said. They will be posted at visitbrenham-texas.com.

Author and Washington County nurseryman Mike Shoup agrees with the outlook.

"We will have flowers but not a lot of bluebon-



Saints Cyril and Methodius Church rises over a field full of bluebonnets last March in Fayette County. *Smiley N. Pool / Houston Chronicle file*

nets, or spotty brilliance only here and there," the owner of the Antique Rose Emporium said.

"We will have other flowers, but those were even hampered by the 2011 drought and the invasive mustard."

"Mother Nature can surprise us, but I don't see it now."

The towering, yellow-flowering mustard, aka bastard cabbage, became an increasing concern last spring as it pre-empted bluebonnet and other wildflowers in some ar-

reas, robbing them of sun and soil nutrients.

Still around

Hollander said bluebonnets were spotted in Brenham in January. Late-winter rains will encourage more around mid-March from bluebonnet rosettes along county roads.

Bluebonnets are flowering near Marble Falls and other areas in Central Texas. Thanks to irrigation, several bluebonnets are in bloom at the Lady Bird Johnson Wildflower

Center.

Long-living, perennial wildflowers that need less rain — such as winecup and pink evening primrose — should fare better than bluebonnets and other annual flowers, according to the center. Blackfoot daisies, baby blue eyes, giant spiderwort and prairie verbena are also in bloom.

Carolina jessamine, spring cress and windflower have all been spotted closer to Houston.

kathy.huber@chron.com

Where to look for information

» The Lady Bird Johnson Wildflower Center will post a second wildflower forecast by early April at wildflower.org.

» For bloom updates, go to texasbluebonnetsightings.com, wildflowersightings.org or visitbrenham-texas.com.

» The Texas Department of Transportation's hotline will be active in March at 800-452-9292.

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Corkscrew peptide being tested for side effects

Corkscrews from page A1

A peptide is a short chain of organic molecules — the building blocks of life — that is basically a smaller ver-

reach the Gram-negative bacteria. So the challenge. Arap and Pasqualini faced was this: Is there a way to engineer a peptide that could bypass the

variety of Gram-negative bacteria strains including E. coli and multiple drug-resistant varieties. They also found that, in laboratory experiments, it did not seem to have a

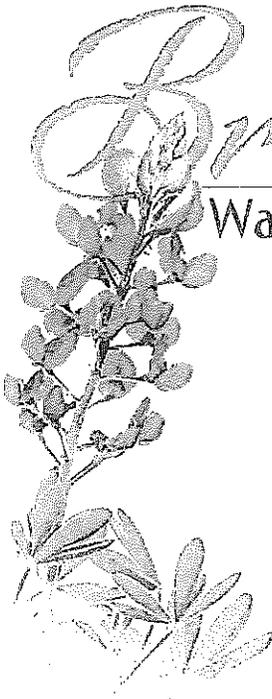
logical physicist familiar with the approach, Jose Onuchic, said it has a great potential to fill an unmet need, especially if the M.D. Anderson researchers can devise

7 8 9 10 11 12

Brenham

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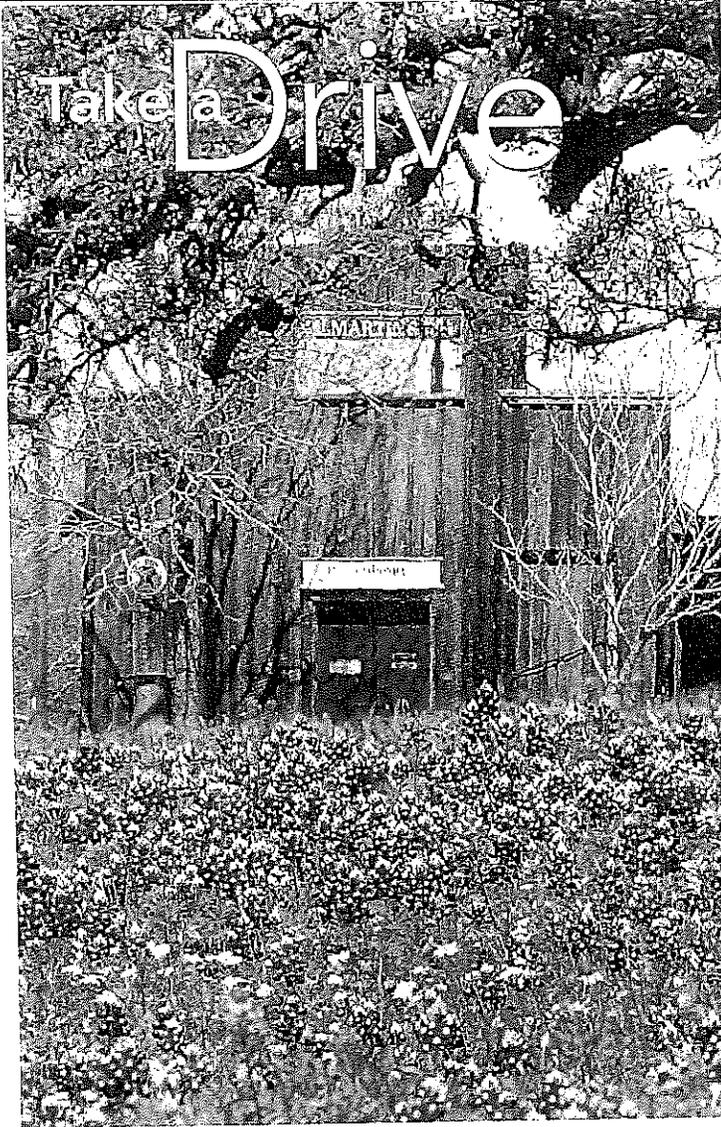
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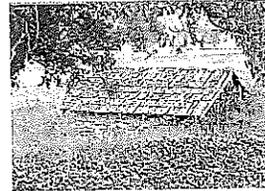
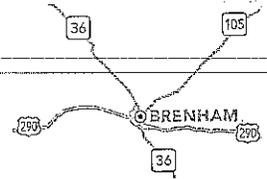
<p>49th Annual CHAPPELL HILL BLUEBONNET FESTIVAL APRIL 13-14 For more information: 800-225-3695 979-836-6033 ChappellHillHistoricalSociety.com</p>	
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Houston Chronicle 4" x 7.5" co-op
for Spring Festivals Tab



Washington County

Positioned halfway between Houston and Austin, Washington County sees truckloads of Texans on the hunt for the quintessential springtime bluebonnet photograph. The county offers **100 miles of pastoral back roads** steeped not only in that purplish blue annual, but also in pink evening primrose and Indian paintbrush. The Brenham/Washington County Convention and Visitors Bureau provides an **online visitor guide** (or call the number below for a printed copy) that includes a

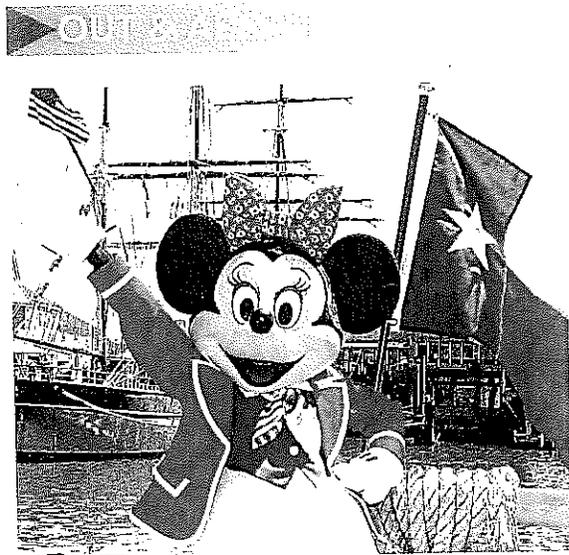


map of FM 390, FM 1155, and other local roads that are typically flowery.

(888) 273-6426;

visitbrenhamtexas.com.

—Andrea Abel



Texas Journey readers sure like to cruise! Our 2012 reader survey showed that 346,000 of you took at least one cruise in the past three years. So, here's some news you can use. Your travel agent has more information. —Editors

In late 2013, **Disney Cruise Line** will offer new itineraries from Galveston. Choices include seven-night sailings with a stop in Jamaica, and packages that take guests to Walt Disney World Resort and Castaway Cay, Disney's private island in the Bahamas.

Princess Cruises and Norwegian Cruise Line will soon be offering Western Caribbean itineraries from the Bayport Cruise Terminal in Pasadena, just outside of Houston. Princess starts in November 2013 and Norwegian begins in early 2014.

Carnival Cruise Lines launched a new entertainment program called Hasbro, the Game Show. It involves audience members in goofy games, such as Yahtzee Bowling. Hasbro is offered on select ships, including the *Conquest* (home port: New Orleans).

FROM TOP: COURTESY BRENHAM/WASHINGTON COUNTY CVB/AURRY GRIGSBY (2); COURTESY DISNEY CRUISE LINE

WCCC Convention & Visitors Bureau

Third Quarter Report – April-June 2013

April Highlights

Statistics:

Walk-in visitors – 1,053
Website unique visitors – 16,566

Visitor information mailed – 2,268
Website total pages viewed – 53,945

Major tourism events:

Chappell Hill Bluebonnet Festival
Burton Cotton Gin Festival

Advertising placements:

See Texas First brochure ad - travel insert, 27 newspapers in Texas, shoulder states

Editorial coverage:

Texas Highways: 7-page feature about Brenham and the area
Texas Farm & Home: feature about Burton and the Texas Cotton Gin Museum

May Highlights

Statistics:

Walk-in visitors – 587
Website unique visitors – 8,824

Visitor information mailed – 1,999
Website total pages viewed – 32,253

Major tourism events:

123rd Maifest

Advertising placements:

Texas Events Calendar – 1/2-page co-op with Texas Independence Trail Region

Editorial coverage:

HGTV film of Junk Gypsies garage sale in Brenham for future airing
Texas Co-op Power feature about Antique Rose Emporium

June Highlights

Statistics:

Walk-in visitors – 602
Website unique visitors – 11,062

Visitor information mailed – 2,378
Website total pages viewed – 35,844

Major tourism events:

Juneteenth Celebration

Advertising placements:

Dallas Drive Guide – ½ page color co-op with Main Street to promote Hot Nights

Editorial coverage:

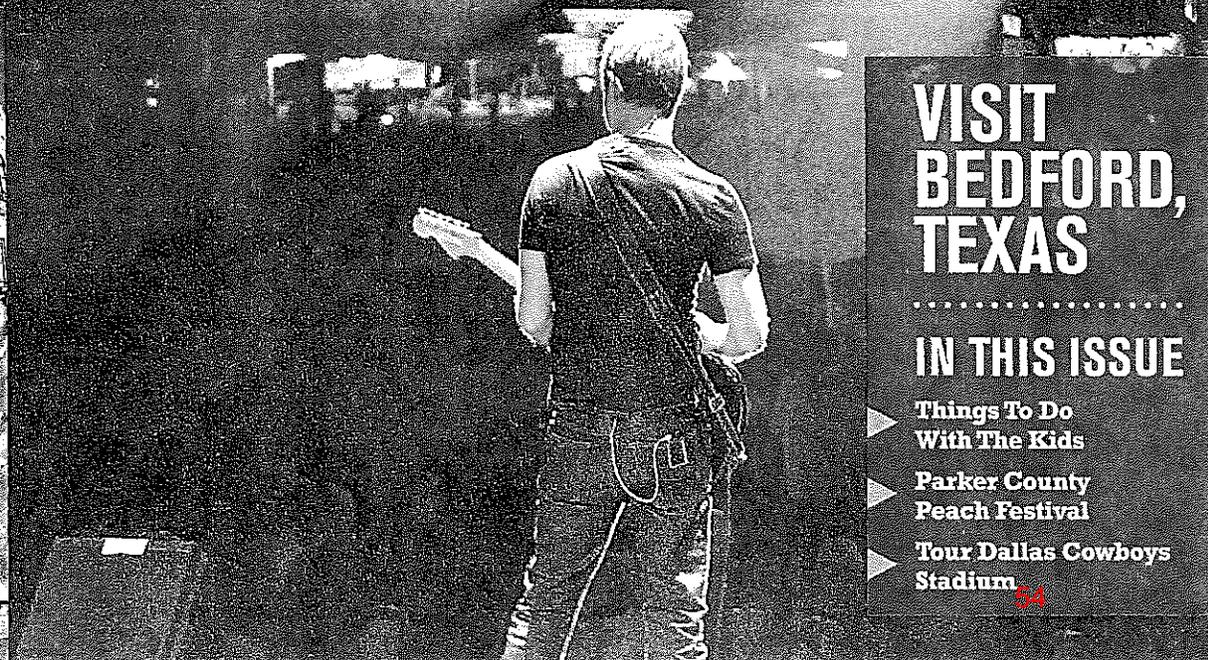
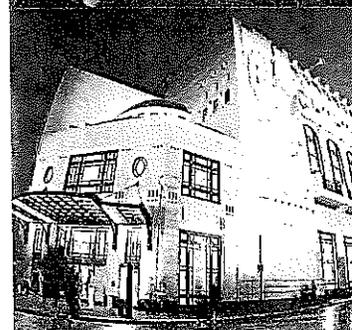
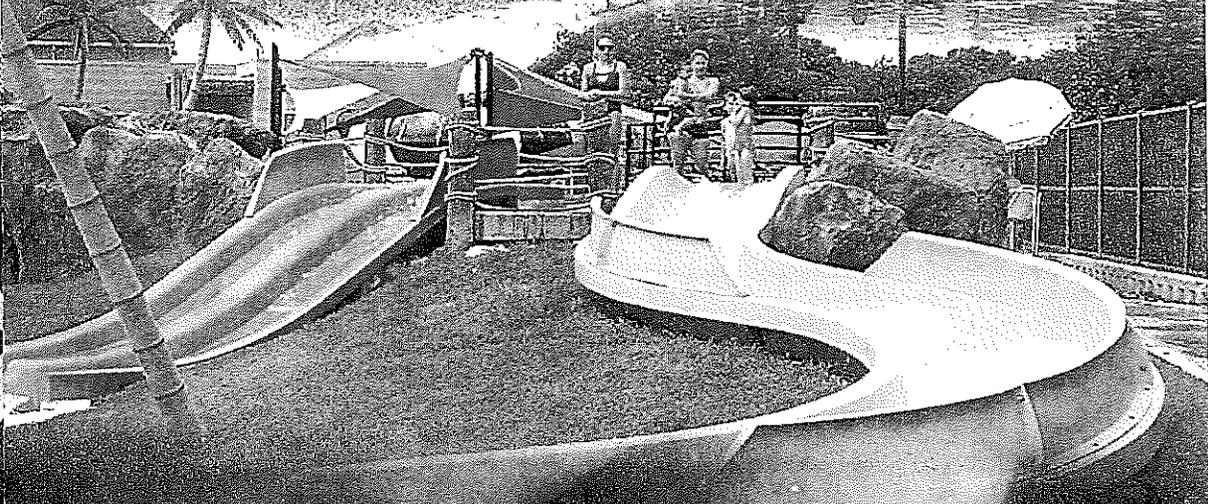
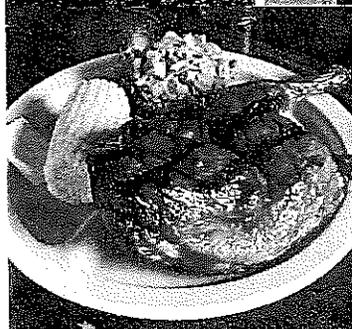
Houston Chronicle (4 appearances)
Austin American-Statesman – Lifestyles feature about Brenham and the area

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MAPS
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JUN-AUG 2013

Drive Guide

WHERE TO GO • WHAT TO SEE • WHAT TO BUY • AS YOU DRIVE



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IN THIS ISSUE

- ▶ Things To Do With The Kids
- ▶ Parker County Peach Festival
- ▶ Tour Dallas Cowboys Stadium

Brenham

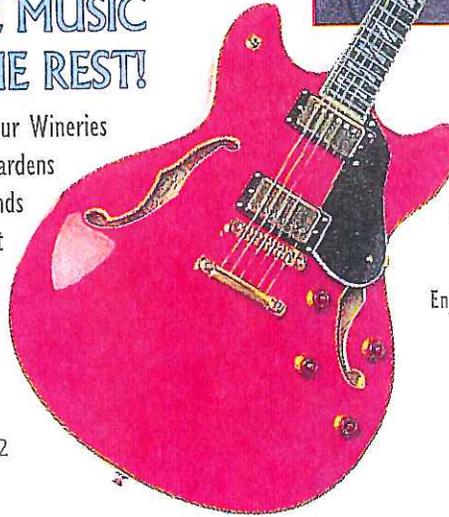
Washington County

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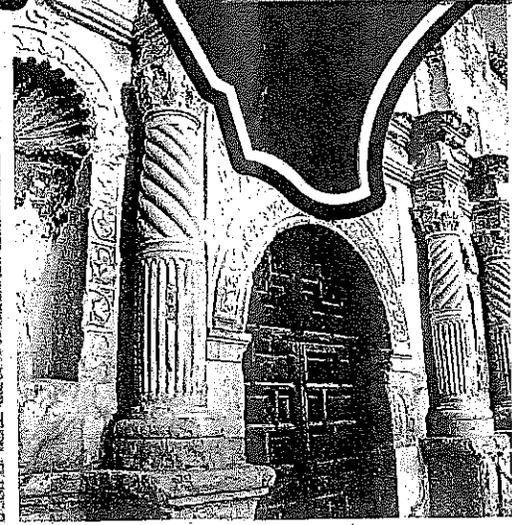
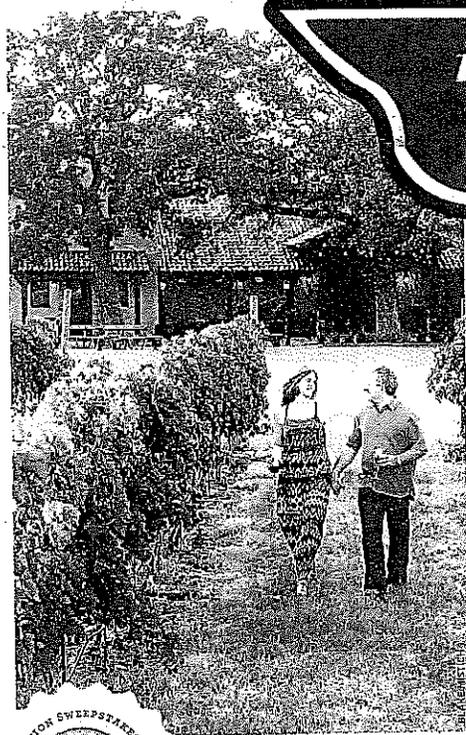
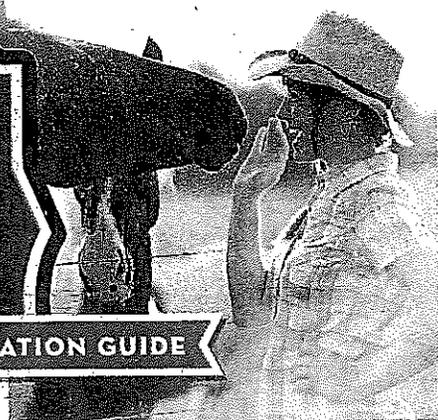
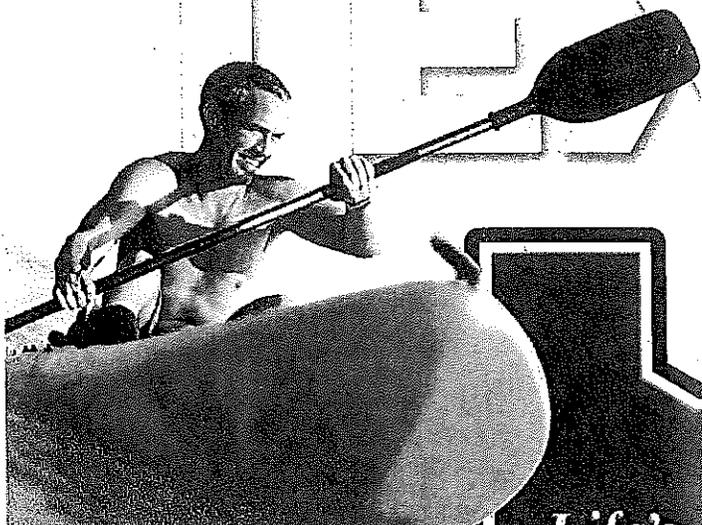
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THE TRAVEL MAGAZINE OF TEXAS

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FROM UTOPIA TO BLOOMING GROVE.



**BIG BEND'S
FOOD SCENE**
see page 23

**VICTORIA'S
SECRETS**
see page 31

**BRENHAM:
BEYOND
BLUE BELL**
see page 10

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Postcards

INSIDE: BIG BEND'S BURGEONING DINING SCENE ...23 FAMILY WEEKEND FUN IN VICTORIA...31



Brenham Beckons

Blue Bell ice cream, wildflowers, and small-town charm entice visitors

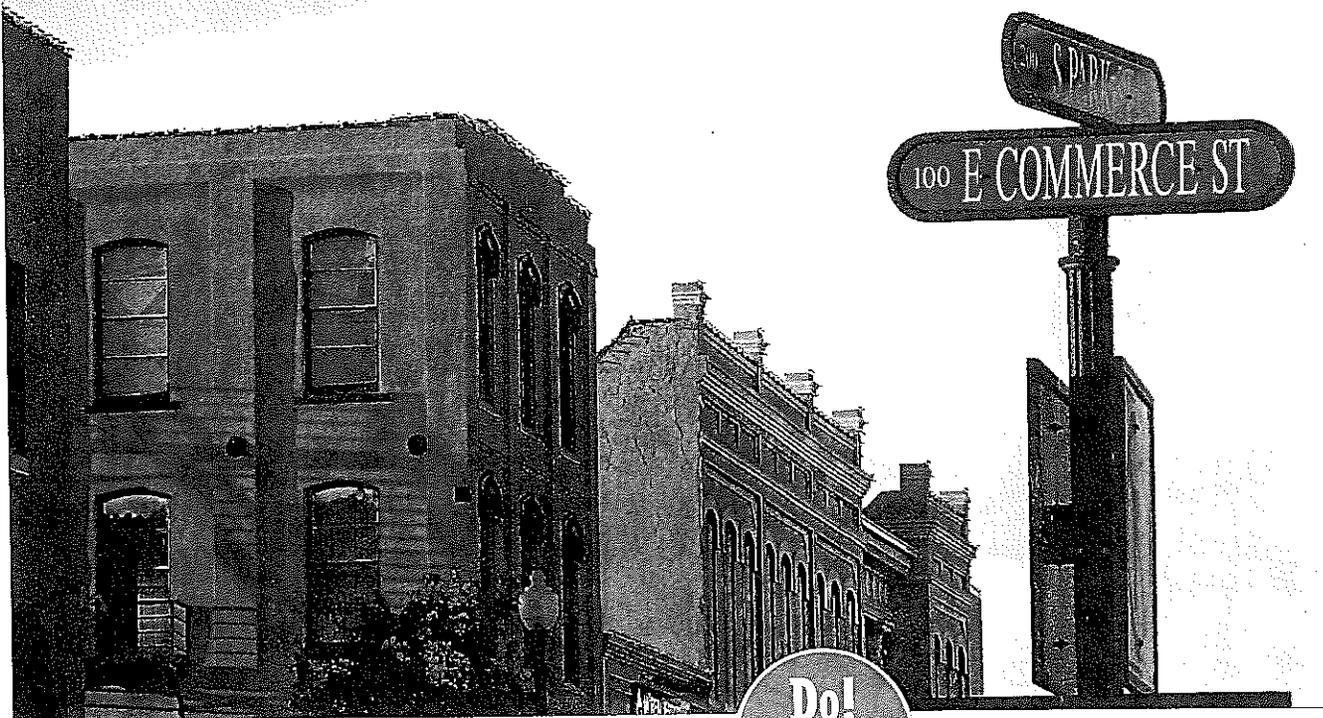
Text by ANTHONY HEAD

On weekdays, Blue Bell offers tours of its creamery in Brenham. The tours last 45 minutes and cost \$6 for adults.

PHOTO: J. GRIFFIS SMITH

Postcards

Downtown Brenham is a walkable area with historic buildings and the birthplace of the famous Blue Bell ice cream. Washington Street.



Do!
Blue Bell Fun Run,
April 13. Ice cream
at the finish line!

IT'S HARD TO SAY WHETHER BRENHAM'S biggest attraction is the wildflowers or the ice cream.

When I traveled for the first time to this small town, about 75 miles west of Houston, the wildflowers were months away from their annual colorful blaze—so I headed straight for Blue Bell.

This is the original Blue Bell creamery, which opened in 1907 as the Brenham Creamery Company to make butter. The creamery added ice cream four years later, and these days, Blue Bell's frozen dessert is available in 20 states. On weekdays, regularly scheduled tours of the plant on the outskirts of Brenham teach guests about the company's history and show most aspects of ice cream production, from mixing to packaging. The 45-minute tour concludes with a complimentary scoop of

the famous treat, and there's more for sale in the ice cream parlor.

Afterward, while making my way into downtown, I noticed that a lot of local companies feature the word "independence" in their names. There's a good reason: Brenham is the county seat of Washington County, which is considered the "Birthplace of Texas." In 1836, Sam Houston and other delegates signed the Texas Declaration of Independence at nearby Washington-on-the-Brazos—now a state

Brenham has a very **walkable** downtown, filled with antiques **shops**, **jewelry** stores, clothing **boutiques**, and **restaurants**.

Postcards

historic site. The historic site and nearby towns such as Chappell Hill, and, yes, Independence, feature several monuments and museums celebrating this important era of Texas history.

My favorite "independence" turned out to be the Independence Coffee Company, located in Brenham's historic downtown district. This bright and cheery coffee shop, at the corner of North Park and

West Main, is a great place to map out an itinerary for visiting the area while sipping a locally roasted coffee or an internationally imported tea.

After energizing with an especially dark coffee called Jet Fuel, I walked a block-and-a-half to Book Nook, on South Douglas. I can't resist locally owned bookstores and always try to visit them on my travels. Book Nook sells both new

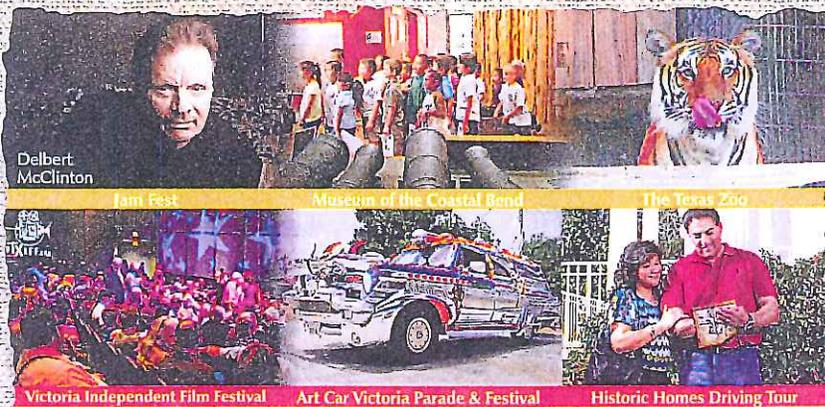


and used books for adults and children.

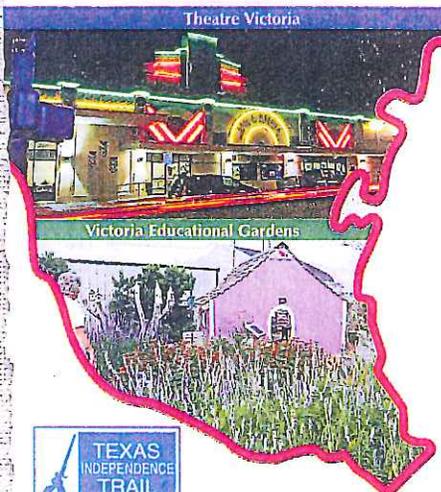
Brenham-based Independence Coffee Co. started roasting coffee beans in 2003.

Owner Stefani Kelley was at the counter and told me that she took over the store from her father-in-law in 2009. "My husband and I moved here in 1997 when we got married," she explained. "I like Brenham a lot, although when I was younger, I wished it was a bit more of a bustling metropolis. But now I really appreciate the small-town feel."

As Stefani rang up my purchase, I asked



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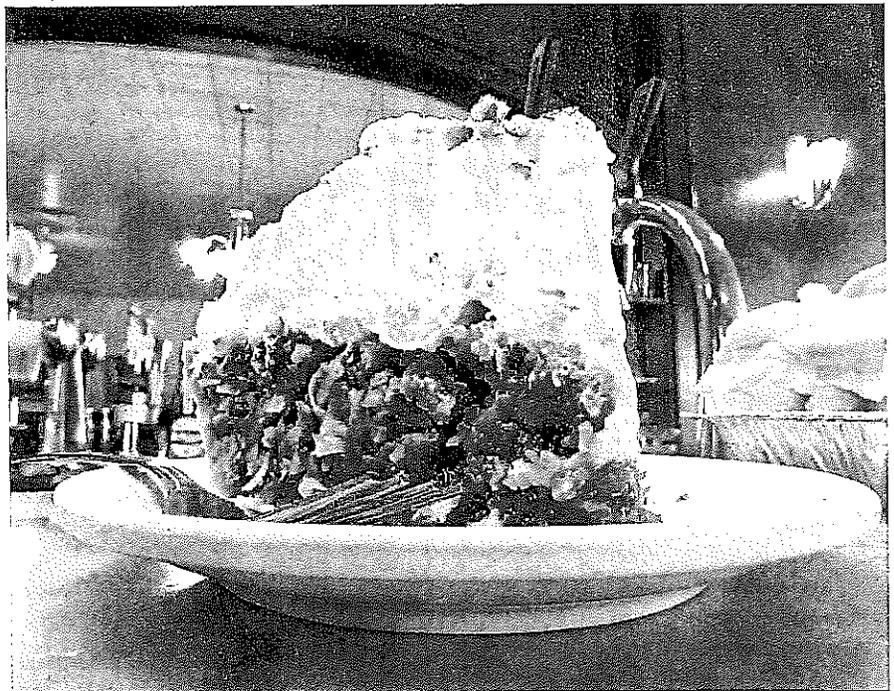
- Victoria Independent Film Festival**
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April 19-20
- Theatre Victoria**
Presents "Harvey" April 19-21 & 25-27
- Cinco de Mayo**
May 4
- Art Car Victoria Parade & Festival**
May 18

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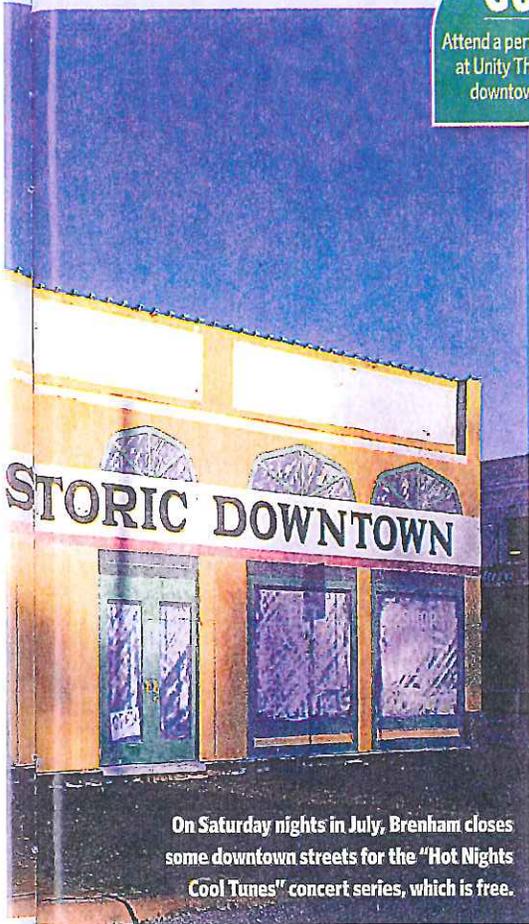


Although not overly **sweet**, **sawdust pie** tastes rich, **delicious**, and comforting, so I ordered a **second** helping.



Go!

Attend a performance at Unity Theatre downtown



On Saturday nights in July, Brenham closes some downtown streets for the "Hot Nights Cool Tunes" concert series, which is free.

parlor, and soda fountain. Brenham is home to the original location (there are others in Bryan and College Station), with two dining rooms and a colorful tearoom decorated with porcelain tea sets, elaborately crafted ladies' tea hats, and local art on the walls. The menu features sandwiches, salads, quiche, and pies, with most items made fresh daily.

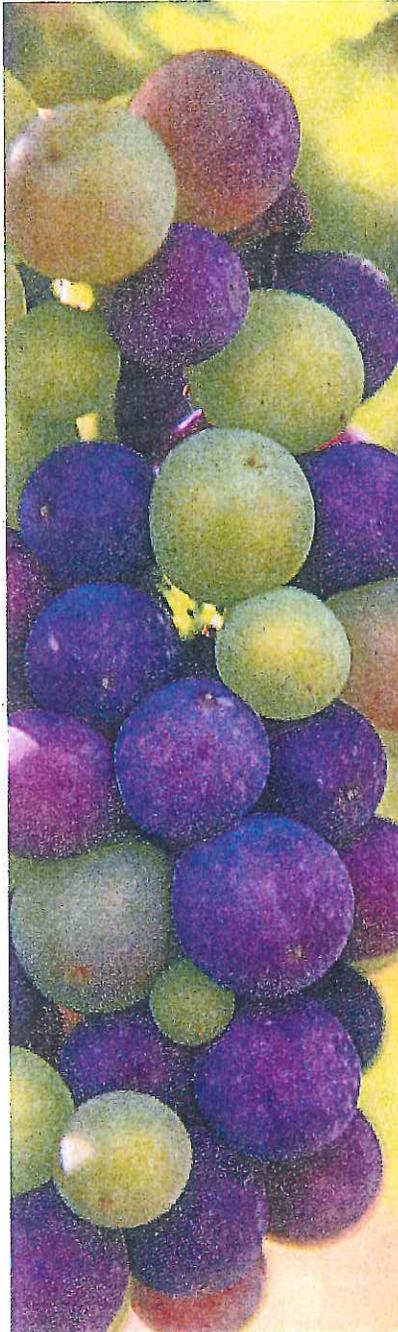
Intrigued by a dessert called "sawdust pie," I took a stool at the vintage soda and ice cream counter. I had never heard of sawdust pie, but I ordered a slice and quickly devoured the concoction of coconut shavings, pecans, graham crackers, and bananas covered in whipped cream. Although not overly sweet, sawdust pie tastes rich, delicious, and comforting, so I ordered a [continued on page 19]

about the role of small, independent bookstores for today's Internet-savvy bibliophiles. "Actually, when the economy turns bad more people look to used-book stores for the prices," she answered. "But it's also a green issue, if you think about it. This is a way for people to recycle their books for future use."

Although I was tempted to head back to Independence Coffee and crack open my new book with another cup of Jet Fuel, Brenham was starting to come alive. It's a very walkable downtown, filled with antiques shops, jewelry stores, clothing boutiques, and restaurants.

As I explored, I received several recommendations for dining, and almost everyone said to try Must Be Heaven, a Southern-style diner, ice cream

A slice of homemade sawdust pie will run you \$3 at Must Be Heaven. It's worth every penny.

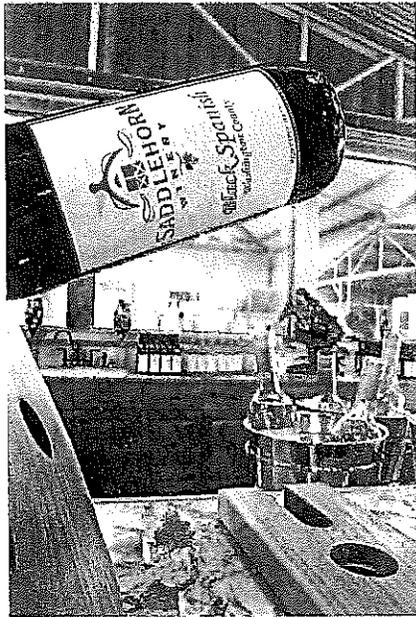


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LUBBOCK
THIS IS WEST TEXAS



Saddlehorn Winery, in the nearby town of Burton, is a member of the Texas Bluebonnet Wine Trail.

Behind the tasting bar, for instance, large windows look out upon old horse stalls, along with

various tanks, pumps, and other wine-making equipment. Tasting room manager DeAnna Duncan explained that the building is a converted horse barn, where

thoroughbred horses were once stabled. As she took me through a tasting flight of Saddlehorn wines, she said that the vineyards I had spotted from the road grew *blanc du bois* and black Spanish grapes, varieties that do especially well in Texas and make exceptional wines.

"In the springtime," DeAnna added, "when the vineyards are beginning to grow and the wildflowers are in bloom, there may

© continued from page 171 second helping.

After looking around downtown for another hour, I drove out to the countryside. Although the wildflowers weren't in season, I noticed a different kind of flora: grape vines. The Texas Bluebonnet Wine Trail covers a wide swath of Southeast Texas and showcases several wineries near Brenham, including Pleasant Hill Winery, Windy Winery, and Saddlehorn Winery, where I stopped to explore.

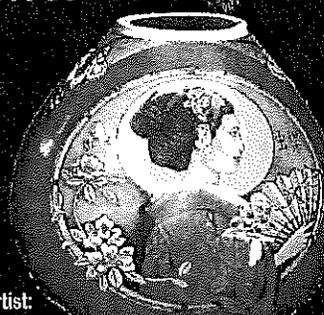
Saddlehorn's tasting room and gift shop exude an equestrian ambiance.

A converted horse **barn** now holds the **tasting room** and gift shop of **Saddlehorn Winery**, which is part of the **Texas Bluebonnet Wine Trail**.



KERRVILLE, TEXAS

small town **BIG EVENTS**



Artist:
Reggie Eakin

"Tigers Be Still"
April 5th - 20th, 830-367-5120
Hill Country Arts Foundation
www.hcaf.com

"Barefoot in the Park"
April 5th - 21st, 830-896-9393
Playhouse 2000
www.caillouxtheater.com

Earth Day Celebration
April 20th, 830-257-4873
Riverside Nature Center
www.riversidenaturecenter.org

Southwest Gourd Fine Art Show
May 23rd - June 23rd, 830-895-2911
Kerr Arts & Cultural Center
www.kackkerrville.com

Kerrville Folk Festival
May 23rd - June 9th
800-435-8429
www.kerrville-music.com

Museum of Western Art
30th Anniversary Exhibit & Sale
April 27th
830-896-2553
www.museumofwesternart.org

Symphony of the Hills
May 2nd - "Symphony's Greatest Hits"
830-792-7469
www.symphonyofthehills.org/tickets

Texas State Arts & Crafts Fair
May 24th - 26th
888-335-1455
www.tacef.org

Kerrville Convention & Visitors Bureau
KerrvilleTexasCVB.com
800-221-7958



Postcards



Spring is a great time for birdies.

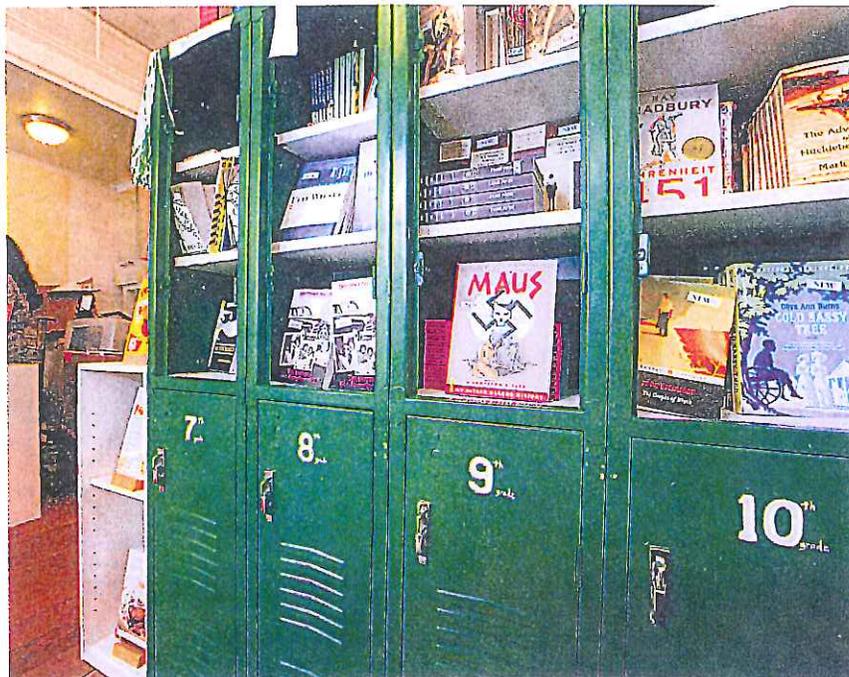
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not be a prettier location in all of Texas.”

Later, as I headed back into Brenham, I imagined the gentle hills and vast fields filled with color. It certainly would be a grand sight, and a perfect backdrop for a full afternoon of wine-tasting.

By the time I wandered into the BT Longhorn Steakhouse, the lunch rush was over and I had the place mostly to myself. This downtown restaurant features an Old West motif, including partially exposed brick walls, steer horns, and a beautifully crafted wooden bar.

Even though I'd filled up on ice cream, pie, and wine, I still had a little room for a late-afternoon nosh. I sat at the bar and perused the menu of steaks, seafood, ribs, burgers, and sandwiches, but instead decided to try the plump and spicy cheddar-stuffed jalapeños from the appetizer selections, which also included crab cakes and chicken tenders.

Before leaving Brenham, I walked through downtown one last time and discovered the Downtown Art Gallery, which showcases works by members of the Brenham Fine Arts League. That's where I found a major display of wildflowers—a whole wall of them, in fact—nicely

framed for easy transportation. Patsy Supak, part-owner of the gallery, noticed me admir-

ing the paintings of bluebonnets and offered information on the various painters. Brenham's Art League has been around for about 50 years and the gallery opened about four years ago, she said.

“We've got about 55 people who display in here, but the league has almost 90 members,” Patsy said. “It's a pretty active group. In addition to displaying and selling art, we give lessons for adults and children.”

Although the wildflower landscapes were gorgeous, I knew that I would return to Brenham in the springtime to witness the colorful spectacle in person. Undoubtedly, I'll also be saving room for another slice of sawdust pie. **TH**

The Book Nook displays books for the local junior-high and high-school Advanced Placement English classes in green lockers.

Brenham

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H: 101° L: 71°

Traffic

Friday, June 21, 2013

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Head to Brenham area for more than just ice cream Roses, winery, cotton gin museum all lure visitors east of Austin

 Resize text [A](#) [A](#) [A](#)

Updated: 11:32 p.m. Saturday, June 15, 2013 | Posted: 11:32 p.m. Saturday, June 15, 2013

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 BY [PAM LEBLANC](#) - AMERICAN-STATSMAN STAFF

Think of Brenham and you probably think ice cream.

I figured I'd be spending a lot of time during a recent visit watching cartons of Moo-llennium Crunch roll off the line at Blue Bell Creameries.

I did, but Brenham and its surroundings surprised me, too. Besides that really cool factory tour, Washington County is ground zero for Texas history. You can also wander through a sprawling rose nursery, visit a winery and tour a cotton gin that's almost 100 years old.

It takes about an hour and 45 minutes to make the 90-mile trek. At the Washington County Visitor Center, Jana Schroeder, who grew up in Brenham, moved away and came back four years ago, explains the town's appeal.

"Growing up in a small town you always have that 'I don't want to stay' feeling, but you leave and then you want to come back," she says. Especially to Brenham. "It's growing and changing, but they've done a good job of making sure it's slow and steady growth."

Armed with brochures, I spent an hour dipping in and out of gift shops and antique stores, admiring a vintage firetruck at the Brenham Heritage Museum and learning about the city's old cistern system at a downtown pocket park. I lunched at the Funky Art Cafe, where employees wear T-shirts that say Keep Brenham Funky, and the dill/lemon/vegetable soup made me swoon. (Must Be Heaven, which serves up roughly 25 kinds of sandwiches in an old-fashioned setting,

Related

advertisement

is another good option.)

I needed dessert, so I headed to Blue Bell Creameries on the outskirts of town. There, I spent an hour mesmerized by the inner workings of the factory, which opened in 1907 and initially made only butter.

The hourlong tour (\$6) takes you from the dry storage rooms where cartons of sugar and cocoa powder are stashed, past tanks where ice cream base is mixed and on to halls where flavorings are added and cartons are packed. During my visit, workers busily poured hoppers full of cake cubes and dollops of cream cheese into batches of frosty slurry to make the newest flavor, Italian Cream Cake.

Among the fun facts tour guide Ester Hahne shared: It takes 60,000 cows to make enough milk for one day's production of ice cream; a single cow yields an average of 7 to 10 gallons of milk a day; a special machine can turn out 180 ice cream sandwiches per minute; and the top-selling Blue Bell flavors are Homemade Vanilla, Cookies 'n Cream, Dutch Chocolate and Great Divide.

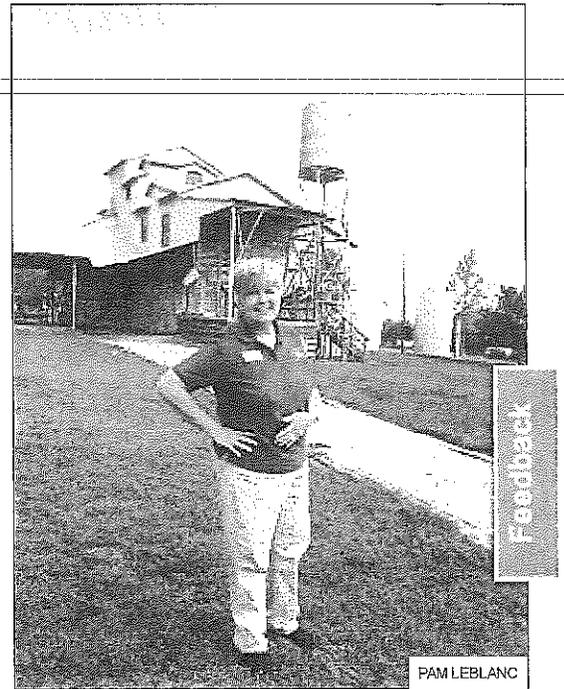
At the end, you belly up to an ice cream parlor. Right after I finished a scoop of Southern Blackberry Cobbler, the woman behind the counter asked me, in all seriousness, "Ready for round two?" (I politely declined, but I was tempted.) From the factory, it's an easy 30-minute drive to Washington-on-the-Brazos State Historic Site, where the Texas Declaration of Independence was signed on March 2, 1836. Going there, and rummaging through the fantastic Star of the Republic Museum, is like visiting mecca if you're a Texan.

I skipped the surrounding park this time because I'd been there recently. Instead, I made my way to the Antique Rose Emporium, about 15 minutes northeast of Brenham. There, I sniffed my way through 8 acres of roses, grown from cuttings that date back hundreds of years. There's also a nursery where you can buy plants.

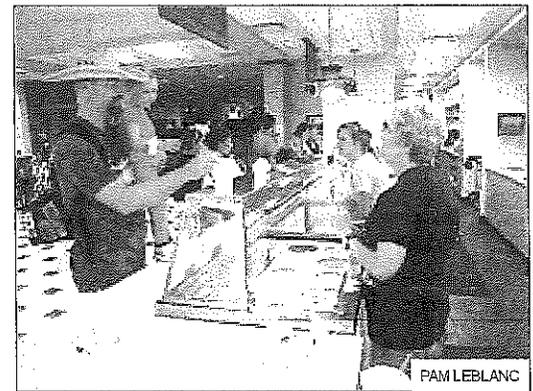
While you're in the neighborhood, drive a mile farther up the road to Independence, where you can see the original site of Baylor University, which was founded in 1845 but moved to Waco in 1886.

On the way home, I made a quick detour off the highway to stop by Saddlehorn Winery, where you can sample wines from 11 a.m. to 6 p.m. Tuesday through Sunday. I bought a bottle and climbed back in my car, determined to make it back home with no more stops.

Until, that is, I spotted the sign for the Texas Cotton Gin Museum and was lured off the highway once more in Burton, just 8 miles west of Brenham.



Linda Russell, director of the Texas Cotton Gin Museum in Burton, near Brenham, poses in front of the old gin. (Photo by Pam LeBlanc)



Visitors get a scoop of ice cream at the end of their tour at Blue Bell Creameries in Brenham. (Photo by Pam LeBlanc)

The gin, which will celebrate its 100th birthday next year, has long since closed, but for decades, the rhythmic thump of its 32,000-pound engine, the Lady B, could be heard up to 3 miles away. Farmers lined up with wagons full of cotton bolls, which could be transformed in just 12 minutes into a bale big enough to make 300 pairs of jeans.

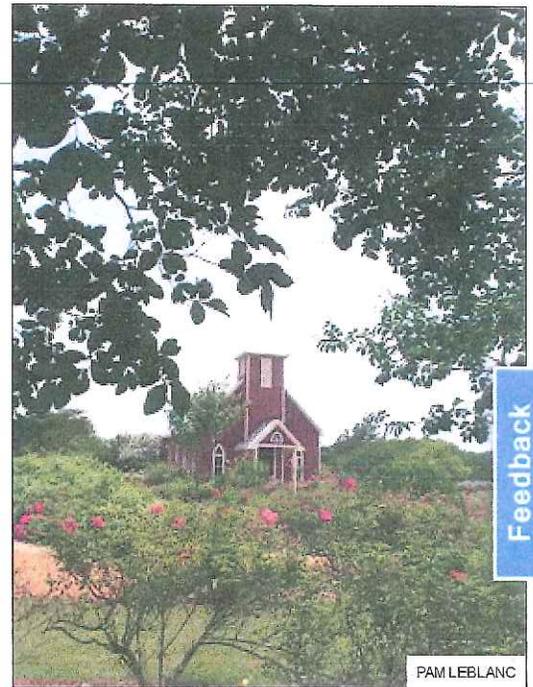
The gin was shuttered in 1974, a victim of several factors including low cotton prices, boll weevil infestations and returning war vets who didn't want to farm cotton. Then, in 1986, a couple visiting from Ohio spotted the decaying gin, notified the Smithsonian Institute and set in motion a plan to save the run-down, rusted-out structure from ruin. Today you can take an hourlong tour. A festival takes place each April.

"That's our biggest goal: to keep the legacy of cotton alive for all generations," says museum director Linda Russell.

With a baggie full of cotton bolls and some cotton seed in hand, I piled back into my car and pointed it for Austin, with a new image of Brenham and its neighbors in mind.

My advice? Go for the ice cream, but stick around for the charming downtown, the roses, the winery and the cotton gin.

If you go: Blue Bell Creameries, 1101 S. Blue Bell Road, offers tours from 8:30 a.m. to 3 p.m. Monday through Friday, (800) 327-8135, www.bluebell.com. The Funky Art Cafe is located at 202 W. Commerce Street, (979) 836-5220, www.funkyartcafe.com; Saddlehorn Winery, 958 FM 1948 North, Burton, (979) 289-3858, www.saddlehornwinery.com; Antique Rose Emporium, 10000 FM 50, (979) 836-5548, www.wearerose.com. For more information about Washington County go to www.visitbrenhamtexas.com.



Visitors can wander the gardens at the Antique Rose Emporium outside of Brenham, Texas. (Photo by Pam LeBlanc)

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All Comments (1)

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Comment(s) 1-1 of 1



AGENDA ITEM 7

DATE OF MEETING: August 1, 2013	DATE SUBMITTED: July 29, 2013	
DEPT. OF ORIGIN: Finance	SUBMITTED BY: Carolyn D. Miller	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input checked="" type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discussion and Presentation on Final Proposed Budget for Fiscal Year Beginning October 1, 2013 and Ending September 30, 2014.		
SUMMARY STATEMENT: The updated FY13-14 proposed budget worksheets will be distributed at the meeting on Thursday.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: None		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: Discussion Only.		
APPROVALS: Terry K. Roberts		



AGENDA ITEM 8

DATE OF MEETING: August 1, 2013	DATE SUBMITTED: July 25, 2013	
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Julie Fulgham	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Public Hearing Concerning a Text Amendment to Part 1, Section 5.02 (Definitions), (53) Dwelling, Detached, of Appendix A: Zoning of the City of Brenham’s Code of Ordinances, Establishing 750 Square Feet as the Minimum Square Footage Allowed for Single Family Detached Dwellings on Individual Lots		
SUMMARY STATEMENT: Public hearing to hear comments regarding establishing a minimum square footage requirement of 750 square feet for single-family detached dwellings on individual single-family residential lots.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: None		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Discussion only		
APPROVALS: Terry K. Roberts		



AGENDA ITEM 9

DATE OF MEETING: August 1, 2013	DATE SUBMITTED: July 25, 2013	
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Julie Fulgham	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Text Amendment to Part 1, Section 5.02 (Definitions), (53) Dwelling, Detached, of Appendix A: Zoning of the City of Brenham’s Code of Ordinances, Establishing 750 Square Feet as the Minimum Square Footage Allowed for Single Family Detached Dwellings on Individual Lots		
SUMMARY STATEMENT: Staff believes minimum square footage requirements for single family detached dwellings should be adopted to ensure new residences built within the City are compatible with the character and development patterns that currently exist. Staff recommends a text amendment to the detached dwelling definition in the zoning ordinance to establish this minimum requirement. This text amendment will define single-family detached dwellings as: (53) Dwelling, detached: A detached dwelling is one containing only one single-family dwelling unit per building lot and does not meet the requirements for a party wall or walls pertaining to a single family attached (townhouse) dwelling unit. All single-family detached dwellings shall be a minimum of seven hundred fifty (750) square feet.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
<p>A. PROS: establishing a minimum square footage requirement for single-family detached dwellings ensures new residences meet the character of Brenham’s existing neighborhoods</p> <p>B. CONS: any minimum square footage requirement could potentially constrict design options and increase overall building cost</p>		
ALTERNATIVES (In Suggested Order of Staff Preference): 1. Approve the proposed text amendment to Appendix A – “Zoning” as recommend by the P&Z Commission at their July 1 st Regular Meeting; 2. Deny the proposed text amendment		
ATTACHMENTS: (1.) Ordinance; (2.) Memo From Julie Fulgham to Planning & Zoning Commission; and (3.) Excerpt from the Draft Minutes of the Planning & Zoning Commission July 1, 2013 Meeting		

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve a Text Amendment to Part 1, Section 5.02 (Definitions), (53) Dwelling, Detached, of Appendix A: Zoning of the City of Brenham's Code of Ordinances, Establishing 750 Square Feet as the Minimum Square Footage Allowed for Single Family Detached Dwellings on Individual Lots.

APPROVALS: Terry K. Roberts

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AMENDING SECTION 5.02, DEFINITION NUMBER 53, PROVIDING FOR THE ESTABLISHMENT OF A 750 SQUARE FEET MINIMUM SQUARE FOOTAGE FOR DETACHED DWELLINGS.

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

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map are hereby amended as follows:
(53) Dwelling, detached: A detached dwelling is one containing only one single-family dwelling unit per building lot and does not meet the requirements for a party wall or walls pertaining to a single family attached (townhouse) dwelling unit. All single-family detached dwellings shall be a minimum of seven hundred fifty (750) square feet.

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 August, 2013.

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

Milton Y. Tate, Jr.
Mayor

ATTEST:

Amanda Klehm
Deputy City Secretary

Memorandum



To: Planning and Zoning Commission

From: Julie Fulgham, Director of Development Services

Date: July 1, 2013

Re: Text Amendment – Minimum Square Footage Requirements for Single-Family Detached Dwellings

City staff believes minimum square footage requirements for single family detached dwellings should be adopted to ensure new residences built within the City are compatible with the character and development patterns that currently exist.

Below is the proposed text amendment to the zoning ordinance establishing a minimum square footage requirement of 750 square feet for single-family detached dwellings.

PART I. GENERAL PROVISIONS

Sec. 5. Definitions and interpretation.

(Sec. 5.02) [Definitions.] The following definitions shall apply in the interpretation and the enforcement of this ordinance:

(53) Dwelling, detached: A detached dwelling is one containing only one single-family dwelling unit per building lot and does not meet the requirements for a party wall or walls pertaining to a single family attached (townhouse) dwelling unit. **All single-family detached dwellings shall be a minimum of seven hundred fifty (750) square feet.**

Excerpt from the July 1st draft minutes of the Planning and Zoning Commission Regular Meeting:

7. Public Hearing, Discussion and Possible Action Concerning the Approval of a Text Amendment to Part 1, Section 5.02 (Definitions), (53) Dwelling, Detached, of Appendix A: Zoning of the City of Brenham's Code of Ordinances, Establishing 750 Square Feet as the Minimum Square Footage Allowed for Single Family Detached Dwellings on Individual Lots

Julie Fulgham, Director of Development Services, stated that there is somewhat of a trend to use “alternative building methods” such as shipping containers, portable buildings, etc. for housing. Most of the time, these buildings are “shells” and are fully renovated for use as dwellings. The plans for these renovations are typically not done by a design professional, such as an architect or engineer, and sometimes they are not up to par with the neighborhood, even though minimum codes are met. Buildings moved to a site must be brought up to code but, even with modifications that meet the building code, the structures may not meet the character of the neighborhood. Ms. Fulgham stated that currently there is no minimum square footage requirement for single family detached dwellings; however, she is proposing that this be changed to 750 square feet. She also stated that apartments, cluster housing, etc. still may have smaller square footage requirements and this proposed text amendment only establishes minimum square footage requirements for single family detached dwellings.

Vice Chairman Low opened the Public Hearing and asked for any citizen comment. Several Commissioners expressed disbelief that we did not already have a minimum square footage requirement in our ordinance. Ms. Fulgham reiterated that this would only be for a single family detached dwelling.

Vice Chairman Low closed the Public Hearing. A motion was made by Commissioner Kossie and seconded by Commissioner Sheffield to approve the text amendment requiring 750 square feet as the minimum square footage allowed for a single family detached dwelling. The motion carried unanimously.



AGENDA ITEM 10

DATE OF MEETING: August 1, 2013		DATE SUBMITTED: July 29, 2013	
DEPT. OF ORIGIN: Main Street		SUBMITTED BY: Jennifer Eckermann	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING	
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING	
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION	
	<input type="checkbox"/> WORK SESSION		
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Request from the Main Street Board for the Approval of the Renewal of a Reserved Parking Space for Hospice Boutique			
SUMMARY STATEMENT: At the July meeting, the Main Street Board voted to recommend approval of the half-day reserved space annually requested by Hospice Boutique based on the non-profit's request originally approved by Council, prior to the board being responsible for making recommendations of this type to Council. The Board's recommendation accounted for concerns that all parking requests be considered in the larger context, being sensitive to other requests that have been, or might be made in the future. The Board requested that staff visit with Hospice Boutique about their request and for the future, consider the use of the back door for deliveries. The Board noted that a number of other consignment shops in town have backdoor delivery and Hospice is fortunate to have several parking spots on the back of their property – a rarity downtown, which makes backdoor deliveries feasible.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):			
A. PROS:			
B. CONS:			
ALTERNATIVES (In Suggested Order of Staff Preference): N/A			
ATTACHMENTS: None			
FUNDING SOURCE (Where Applicable): N/A			
RECOMMENDED ACTION: Approve a request from the Main Street Board for the approval of the renewal of a reserved parking space for Hospice Boutique.			
APPROVALS: Terry K. Roberts			



AGENDA ITEM 11

DATE OF MEETING: August 1, 2013	DATE SUBMITTED: July 29, 2013	
DEPT. OF ORIGIN: Main Street	SUBMITTED BY: Jennifer Eckermann	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon the Appointment of a New Member to the Main Street Board.		
SUMMARY STATEMENT: The resignation of Main Street Board Member Karen Holle has left a position open for a mid-term appointment to complete her term. A recommendation is being made that former Main Street Assistant Tiffany Morisak be named to fill that position.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: (1.) Resignation Email from Karen Holle; and (2.) Appointment Application from Tiffany Morisak		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve the appointment of a new member, Tiffany Morisak, to the Main Street Board to fill the remainder of the term of resigning board member Karen Holle.		
APPROVALS: Terry K. Roberts		

Jennifer Eckermann

From: Karen Holle <kholle@brenhamk-12.net>
Sent: Tuesday, July 23, 2013 1:20 PM
To: Jennifer Eckermann
Subject: Re: main street

Jennifer, You have not let me down. I do feel as though I am not contributing like I should. I have loved being a part of the Board. I do think though that I will resign. I am not sure if I can commit as Billy and I are really gone a lot since we purchased our bay house. Every weekend we are wanting to head to the bay. Therefore I am not around to help with the events. Before you emailed me, I had been thinking about coming to talk with you. I know you will find someone eager to take my place. Thanks for including me and allowing me to be part of the board. Karen

On Tue, Jul 23, 2013 at 11:42 AM, Jennifer Eckermann <JEckermann@cityofbrenham.org> wrote:

Karen, I feel like I let you and the board down, by not finding a niche for you to feel more a part of what is happening with Main Street.

We are in need of making some changes with board accountability, and I am wondering if you'd like to continue on the Main Street Board, or if you'd prefer resigning the position. Your interest in what we are doing is much appreciated, as is the time you've helped us thus far.

Please let me know if you'd like to continue, and if so, let's work on finding the best place for you to participate!

Jennifer H. Eckermann

Main Street Brenham

P.O. Box 1059

Brenham, Texas 77834

979.337.7384 (o)

979.337.7218 (f)



REQUEST FOR APPOINTMENT TO
CITY OF BRENHAM
BOARDS AND COMMISSIONS

Name of Board or Commission in which you have an interest:

- | | |
|--|---|
| <input type="checkbox"/> Airport Advisory Board | <input type="checkbox"/> Board of Adjustments |
| <input type="checkbox"/> Brenham Community Development Corp. | <input type="checkbox"/> Brenham Housing Authority |
| <input type="checkbox"/> Building Standards Commission | <input type="checkbox"/> Hotel Occupancy Tax Board |
| <input type="checkbox"/> Library Advisory Board | <input checked="" type="checkbox"/> Main Street Board |
| <input type="checkbox"/> Parks & Recreation Board | <input type="checkbox"/> Planning & Zoning Board |

(Composition, terms, duties and responsibilities are outlined on the Attachment)

Name: Mrs. Morisak Tiffany Kathleen
(Title) (Last) (First) (Middle)

Residence Address: 4441 Winecup Ct. Chappell Hill TX 77426
(Street) (City) (State) (Zip)

Mailing Address: (If different from above)

(Street) (City) (State) (Zip)

Preferred Phone and Fax: 254-744-5454 _____
(Phone) (Fax)

Email Address: bwildside@aim.com

Occupation: Self Employed

Employer: _____

Are you a registered voter in Washington County? Yes No

Are you a resident of the City of Brenham? Yes No Length of residency: _____

Are you a resident of Washington County? Yes No Length of residency: 6 yrs.

Do you, your spouse or your employer have any financial interest, directly or indirectly, in matters that might come before the Board to which you seek appointment?

Yes No If yes, explain: _____

Applicant Name: Tiffany Morisak

BACKGROUND

Education/Training: BBA Baylor University

Areas of Interest: Traveling, history, event planning, Church activities

Current or Past Volunteer Experience/Community Service:

Please specify current or past volunteer experience/community service, if any, on Boards, Commissions, Corporations, Non-Profit Entities, Agencies, or other Entities. Additional information may be attached.

Organization: Daughters of the American Revolution - Corresponding Sec.

Organization: Pilot Club

Organization: Brenham Heritage Museum Board member

Organization: Main Street Brenham Committee Volunteer

Reasons for seeking appointment: Please attach a brief narrative outlining your interests and qualifications for seeking this appointment. You may also add a resume or any additional documentation.

I have read and understand the instructions and appointment process. I certify that all statements that I have made on this application and other supplementary materials are true and correct. I acknowledge that any false statement or misrepresentation on this application or supplementary materials will be cause for refusal of appointment or immediate dismissal at any time during the period of my appointment.

Signature Tiffany Morisak

Date July 23, 2013

FILE THIS COMPLETED APPLICATION FORM WITH CITY SECRETARY'S OFFICE ON OR BEFORE 5:00 P.M. ON OCTOBER 1ST

City of Brenham - City Secretary
P. O. Box 1059
Brenham, Texas 77834-1059
Phone: 979-337-7567
Fax: 979-337-7568

(Original copy will be kept on file in the City Secretary's office for 12 months from the date of submission)



AGENDA ITEM 12

DATE OF MEETING: August 1, 2013	DATE SUBMITTED: July 29, 2013	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Kyle Dannhaus	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Recommendation from the Library Advisory Board Regarding the 2012 Contract with Komatsu Architecture for the City of Brenham's Library Assessment and Masterplan Design		
SUMMARY STATEMENT: The Library Advisory Board voted to terminate the existing City of Brenham's Library Assessment and Masterplan Design contract with Komatsu Architecture on April 17, 2013. Komatsu Architecture completed approximately 30% of the work as outlined on the existing contract. Staff presented those deliverables to the Library Advisory Board on July 24, 2013.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: City of Brenham's Library Assessment and Masterplan Design Contract		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: Approve the recommended action by the Library Advisory Board to terminate the existing contract with Komatsu Architecture for the City of Brenham's Library Assessment and Masterplan Design.		
APPROVALS: Terry K. Roberts		

AIA[®] Document B104[™] – 2007

Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope

AGREEMENT made as of the 10 day of September in the year 2012
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Brenham, Texas
200 W. Vulcan Street
Brenham, Texas 77834

and the Architect:
(Name, legal status, address and other information)

Komatsu Architecture
3880 Hulen Street Suite 300
Fort Worth, Texas 76107
Telephone Number: 817 332-1914
Fax Number: 817 877-4754

for the following Project:
(Name, location and detailed description)

Brenham Library Assessment & Masterplan
100 W. Martin Luther King Parkway
Brenham, Texas 77833

The Owner and Architect agree as follows.

Based on the attachment – *Community Needs Assessment and Library Master Plan Phase I of II Services Scope of Work*, the City of Brenham is authorizing the pre-design services and conceptual visualization design effort for Phase I.

From approval of Phase I and with the City's authorization based on available funds, Phase II represents the traditional Architect and Engineer design and documentation services to enable the construction phase to be initiated at a date in the future. This Agreement addresses both phases; however, the focus of effort is described in the aforementioned Attachment and as referenced above. The City's approval of Phase II that includes Scope and Fees is required for the Architect to commence these services.

The pre-design services are the Community Needs Assessment and Library Master Plan process, and culminating in the preliminary design – Portfolio – Envisioning the Brenham Public Library segment that completes the Phase I scope of services.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)

See first page.

§ 1.2 The Owner and Architect may reasonably rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.1 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

§ 2.2 Comprehensive General Liability with policy limits of not less than **one million dollars** (\$1,000,000) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.3 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than **one million dollars** (\$1,000,000) combined single limit and aggregate for bodily injury and property damage.

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§ 2.4 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.5 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than **one million dollars** (\$1,000,000).

§ 2.6 Professional Liability covering the Architect's negligent acts, errors, and omissions in its performance of professional services with policy limits of not less than **two million dollars** (\$2,000,000) per claim and in the aggregate.

§ 2.7 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services.

§ 3.1.1 The Architect shall be entitled to reasonably rely on (1) the accuracy and completeness of the information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review and comply with laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the Project requirements.

§ 3.2.3 The Architect shall consider the relative value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner a preliminary estimate of the Cost of the Work.

§ 3.2.5 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.6 The Architect shall submit the Design Documents to the Owner, and request the Owner's approval.

§ 3.3 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Design Documents and adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work.

The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

§ 3.3.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.3.3 The Architect shall update the estimate for the Cost of the Work.

§ 3.3.4 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.3.5 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in bidding, awarding and preparing contracts for construction.

§ 3.3.6 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the conditions of the Contract for Construction (General, Supplementary, and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specification and may include bidding requirements and sample forms. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) facilitating the reproduction of Bidding Documents for distribution to prospective bidders; (2) participating in a pre-bid conference for prospective bidders; (3) preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda; (4) obtaining either competitive bids or negotiated proposals; (5) confirming responsiveness of bids or proposals; (6) determining the successful bid or proposal, if any; and (7) awarding and preparing contracts for construction.

§ 3.4 CONSTRUCTION PHASE SERVICES

§ 3.4.1 GENERAL

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope as modified by the parties thereto. If the Owner and Contractor modify AIA Document A107-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.4.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's willful negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.4.1.3 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Owner approves the final Certificate for Payment.

§ 3.4.2 EVALUATIONS OF THE WORK

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.1, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner in writing (1) known deviations from the Contract Documents and from the

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most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.4.2.4 When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.4.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.4.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents.

§ 3.4.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.4.4 SUBMITTALS

§ 3.4.4.1 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures.

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

§ 3.4.5 CHANGES IN THE WORK

The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.4.6 PROJECT COMPLETION

§ 3.4.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.4.6.2 The Architect's inspections all be conducted with the owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.4.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.4.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payments; (2) affidavits, receipts, releases, and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Document.

§ 3.4.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, value analysis, quantity surveys, interior architectural design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement.

(Insert a description of each Additional Service the Architect shall provide, if not further described in an exhibit attached to this document.)

See Attachment 1 – Quantities for 4.2.1 through 4.2.3 will be determined in the approved Scope to be developed with Phase II – Design, Construction Documents, and Construction Administration Services.

§ 4.2 Additional Services may be provided upon written approval of the Owner, after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect has included in Basic Services () site visits over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.

§ 4.2.2 The Architect shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by approved Change Orders and approved Construction Change Directives prepared by the Architect as an Additional Service.

§ 4.2.3 If the services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner, after consultation with the Architect shall thereafter make a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project, subject to written approval of the Owner.

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; subject to owner's approval: 1) to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; and 2) to make reasonable

adjustments in the program and scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the bidding has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Architect shall notify the Owner of changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate non-binding recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work.

§ 6.6 If the Owner's current budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. Upon such termination, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce, and where permitted by law, to make changes, corrections, or additions to the Instruments of Service for the purposes of completing, using, and maintaining the Project.

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§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

(Paragraph deleted)

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Litigation in a court of competent jurisdiction;
(Paragraph deleted)
Washington County place of venue.

(Paragraphs deleted)

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ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Texas. Exclusive venue for any claim, dispute, lawsuit or other legal proceeding arising out of this Agreement shall be in Washington County, Texas.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope as may be amended by both parties.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

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§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services as described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

| See Attachment 1

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

| See Attachment 1

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

| See Attachment 1

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10.00 %).

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows: N/A

| *(Row deleted)*

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

| See Attachment 2

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

| *(Paragraphs deleted)*

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .6 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .9 All applicable taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses.

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§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0.00 %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

N/A

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

0.00 %

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to off set sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

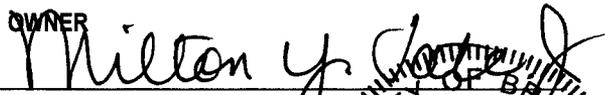
§ 13.2 This Agreement incorporates the following documents listed below:
(List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)

Attachment 1 – "Community Needs Assessment and Library Master Plan – Phase I & II Services Scope of Work" dated May 16, 2012.

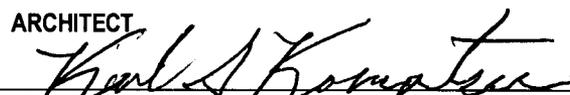
Attachment 2 – "Komatsu Labor and Billing Rates" dated January 2012

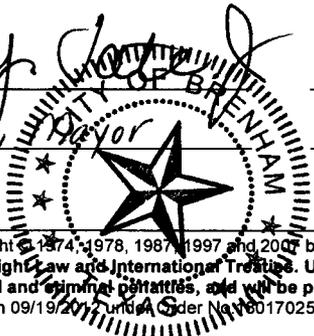
This Agreement entered into as of the day and year first written above.

OWNER


(Signature)
Milton Y. Tate, Jr., Mayor
(Printed name and title)

ARCHITECT


(Signature)
Karl A. Komatsu, President, Komatsu Architecture
(Printed name and title)



CITY OF BRENHAM PUBLIC LIBRARY

COMMUNITY NEEDS ASSESSMENT AND LIBRARY MASTER PLAN
 PHASE I of II SERVICES SCOPE OF WORK
 May 16, 2012

PROJECT UNDERSTANDING

The City of Brenham has selected the Komatsu Architecture team to provide the design of its new public library within a public project development process recommended as:

Phase I

- Defining Brenham's community library needs and service opportunities
- Providing a facility program and projected costs for the City's Capital Improvement Program
- Identifying and through an approval process based on the facility program and site criteria, comparison of site candidates, and final selection of a site
- Envisioning the new facility for public funds allocation and possible private fundraising

Phase II

- Professional services for the comprehensive design and construction documents
 - To be based on Phase I Scope of Work defined by the approved Project Building Program and the Selected Site; Concept work/fee in Phase I applied to Phase II
- Implementation of the facility construction and commencement of operations
 - To be based on the approved design and construction document cost estimates and award of construction contract (Sealed Competitive Proposal Bid; Construction Manager At Risk; or other as the City may elect

It is our (Komatsu) understanding that our contractual client is the City of Brenham; our working relationship is through its designated "Building Committee" that represents the City's Council and staff, Washington County, and The Fortnightly Club. We assume that there will be a single point of contact as the day-to-day liaison with the Komatsu team. We will also designate a Komatsu team single point of contact, Les Edmonds or Amy Sibley, and as an additional contact, Karl Komatsu. Our team's local professional participant is the firm of Upchurch Architects, Inc. and liaison contact is both Tommy Upchurch and Elizabeth Price. As the project process continues we anticipate engaging the services of a Brenham-based civil engineer as part of our team's engineering capabilities.

PHASE I: COMMUNITY LIBRARY NEEDS ASSESSMENT MASTER PLAN

COMMUNITY VISION OF A LIBRARY AND ITS SERVICES

1. Evaluate existing resources, programs and facilities, including the City of Brenham Master Plan Draft, pending approval by City Council. Existing physical resources/facilities will be assessed as potential site or adaptive use candidates. Existing library programs, services, and facility will be evaluated
2. Conduct a Needs Assessment of the community that represents a range of Brenham's diverse citizenry and socio-economics, i.e. agriculture, mercantile and service business, tourism, education, and other components
3. Survey public opinion regarding preferred library service priorities through public meetings and community surveys. ; in-library printed survey for users/patrons and distributed printed copies in select community locations is included in basic fee. Several techniques and cost ranges can be considered for other survey formats, if needed
4. Competition and supportive effects of schools, academic institutions, museums, archives, bookstores, and other information resources will be evaluated through stakeholder interviews. Review and discussion of the future trends of public libraries, and Texas State Library and Archives Standards, technology developments, and other measures and services will be addressed through comparable public libraries as a benchmarking exercise
5. With the stakeholder assistance, explore appropriate partnerships or coordinated program and resource allocations within other community resources and agencies for potential delivery of unique information access and services
6. Assist the City and community to envision what Brenham library priorities will become goals based on future trends. Interpret service delivery approaches into the building program accommodation
7. Correlate growth projection of the city with appropriate type and location of site and its flexibility to adapt to program and service demands
8. Identify associated costs for development and construction of a new and enlarged facility
9. Correlate the proposed recommendations to a future capital budget
10. What "role" should the library play within the community? Within Brenham's visualization of its future sense of place – downtown? Within the County? Should it have other roles besides a traditional library? A learning commons or community commons? As a community center-like component?
11. Recommend an implementation plan that uses a prioritized approach
12. Present draft report and final report. Include an on-site review of the draft report with key stakeholders, prior to developing the final product
13. Lead Public Workshop session(s) to engage the different Brenham community groups: provide a forum for input from citizens – current users and non-library users; provide a roadmap for what the Community Needs Assessment is and its use in the planning stages for the new library; If desired, a second Public Information session that shares the preliminary site selection and basis for the public/private funding of a new library (could be connected with a campaign supporting a

bond referendum or city council action for Certificates of Obligation; public-private partnership financing also a possibility

14. Attend meetings with the Master Plan Implementation committee as necessary or appropriate; and other Stakeholder forums

LIBRARY PROGRAMMING

15. Demographics – population is a factor in using a benchmark of physical space allocation per capital of the service population - city or county populations, depending on The City of Brenham’s services policies
16. Typical collections percentages of similar size libraries; reference and collections variation by Brenham community emphasis; cooperative programs with other lending institutions; special collections and policies, etc.
17. Collections shelf linear footage requirements; growth capacity in shelf space – typically 20 year horizon; multi-media, electronic data, and web-based database and collections access
18. Staff and peer library professional interviews; Fortnightly Club leadership interviews; Stakeholder interviews
19. Library Technology: Check-out; accessioning/de-accessioning system; circulation processing, Wi-Fi; Voice/Data; internal local area network/server compatibility/link with City; Audio Visual; Security (CCTV or other);
20. Staff Functional Areas: Functional adjacencies; Work areas; Collections processing; Administrative offices; Receiving and Processing; Support areas; Book deposit; Auto book drop; etc.
21. Public areas: Activity adjacencies and separation/quiet zone designations; Community and Children’s Program Room(s); Check-out; Circulation; Reference; On-line workstations/carrels; Collections and Stack Range Areas; Reading Room; Commons and Casual Seating Areas; Study Rooms; Study Tables; Children’s Library; Young Adult/Teen Commons; etc.
22. Special Functions: Fortnightly Bookstore; Storage; In-Library Book sales; Refreshments concession or vending area (a la Café AfterWords)
23. Site requirements and amenities - Criteria: Parking; Drive-thru; Outdoor potential depending on context - Pocket Park; Courtyard or Terrace Commons
24. Potential shared or common location City services – Senior Citizen activities; Parks & Recreation; Community Center style functions
25. Fixtures, Furnishings, and Equipment (FF&E) – specification and technical requirements; recommendations for manufacturer’s sources; Staff requirements for information management, i.e. central file storage; personal workstation requirements; inventory and processing equipment; conference and community program room seating; customer/patron area furnishings
26. Building Design Characteristics: Vernacular and cultural interpretation; Context and site setting design influences, i.e. open park setting; urban streetscape setting; adaptive use of existing or historic building; other
27. Environmental Control: Public Spaces and Workplace Ambiance: Lighting; day-lighting; acoustics; interior finishes color and texture; Special environments for collection media if required

28. Sustainable Design: energy efficient heating and cooling system considerations; window treatments; local and recycled materials; water conservation; other considerations if desired
29. Conceptual Site; Building; and Furnishings budgets; Program Development budget including soft costs estimate

SITE SELECTION

30. Using the Site Criteria developed in the preceding Programming process, the designated site candidates will be evaluated for degree of meeting or exceeding the site criteria. Factors such as: current ownership (City, County, or other); available utilities; site elevation contours; probable soil conditions to evaluate foundation costs; potential for amenities such as a pocket park or other outdoor library controlled space; location favorable to community access criteria and supportive or enhancement potential toward the Brenham Master Plan objectives;
31. Assumption that three sites to five sites can be conceptually evaluated, with a shortlist developed of two sites for further, more detailed study. The shortlist's detailed study effort may include necessary costs unless information or data is already available or evident, i.e. environmental or haz-mat studies; geotechnical reports; property survey; deed and title confirmation; utility and easement information; traffic counts on bordering main or secondary arterials
32. If the Brenham High School building or another existing/historic structure is a shortlist candidate, additional engineering technical evaluation fees may be required. Possible MEP evaluation; Structural engineering evaluation; and additional contact effort with the local preservation organization or County Historical Commission (CHC) and possibly the Texas Historical Commission (THC) may be warranted.
33. Sites under consideration that require acquisition will be evaluated confidentially to avoid pricing spikes if requested by the City
34. If the site(s) are adjacent to or in neighborhood or other special designation overlays, it is advisable to conduct an information session prior to official consideration or designation as a selected site. Komatsu can include two (2) such sessions in our proposal as a fee placeholder; if more are required we can identify a per session cost and would require authorization from the City to engage in such additional meetings
35. Assist the Building Committee and stakeholders with interpreting their "vision" of the library as a landmark or an opportunity for "place making" in the community in terms of which site holds the most potential to achieve that vision, presence, and character

PORTFOLIO: ENVISIONING THE BRENHAM PUBLIC LIBRARY

36. Development of collateral materials and information to assist the Community leadership and stakeholders, Council and County leaders, and City staff with a broad-based Information and Support effort and outreach toward all sectors of the larger Brenham and Washington County community
37. Provide an Executive Summary of the benefits to Brenham's educational, economic development, and quality of life standings. Outline the many uses along with the traditional "library" attributes,

i.e. job searches; equipment and product specifications and sources searches; a community gathering place as a children's, youth, and adult "information" commons; affordable advanced media access; supplement the continuing education opportunities and primary resources at public and private K-12 facilities, and the local and regional community college institutions. Bringing the library as a resource up to service capabilities for a growing greater Brenham and Washington County population.

38. Fact Sheet – Description of the proposed library funding; proposed construction cost; square footage for size; full capacity of collections; new features; what it will accomplish from the Brenham Master Plan objectives and the community priorities (jobs, business (agricultural and mercantile), revitalization of Brenham, education, community gather place as an amenity
39. Accompanying board size or poster size print and image media: Highlight the unique role potential of the public library within the larger vision of Brenham and its master plan objectives; how the library will contribute as an activity center and destination with spin-off potential for surrounding businesses and institutions and other public spaces
40. Conceptual floor plan on the selected site plan
41. Conceptual elevation(s) of the Library
42. Conceptual rendering of the potential Library image, capturing its presence and as a visual identity image complimenting the community's vision of Brenham

PROFESSIONAL FEES: Phase I (*recommended)

Community Needs Assessment Master Plan 1-14

- | | |
|--|-----------|
| A. Basic Fee | \$15,000* |
| 1. Community Meetings – if more than 2 | \$ 2,500 |

Library Programming 16-30

- | | |
|------------------|------------|
| A. Basic Fee | \$ 10,000* |
| 2. Cost Estimate | \$ 3,000* |

Site Selection 31-36 – 5 Preliminary; 2 Final;

- | | |
|--|-----------|
| A. Basic Fee | \$ 5,000* |
| 3. Option – Existing Building Engineer Evaluation | \$ 8,000 |
| 4. Option - Testing if Required – Geotech; Haz-Mat | \$ Varies |

Portfolio: Envisioning the Brenham Public Library 37-43

- | | |
|---|---------------|
| A. Basic Fee | \$15,000* |
| 5. Option – Additional renderings beyond 1 | \$ 1,800 each |
| 6. Option – Additional public presentations | \$ 1,000 each |
| 7. Expenses – Travel, Printing & Materials | \$ 4,000* |

TOTAL RECOMMENDED:	\$ 52,000*
TOTAL WITH ALL OPTIONS	\$ 62,300

Meetings and Work Sessions:

Public Meetings (2)

First Meeting – Community Input on Library Services and Vision for the Library

Second Meeting – Presentation of Building Committee approved proposed site and conceptual images.

(Additional meetings, if requested by the City or the Fortnightly Club - \$2,500 per additional session.)

Work Sessions (6)

Two sessions for discussions of the programming, cost estimate, and the site selection; stakeholder interviews

Two sessions to provide intermediate and final work sessions with Building Committee and Library Staff

Two sessions on site selection and “portfolio” package development or as needed; to coincide with public meeting dates

PHASE II: DESIGN AND CONSTRUCTION DOCUMENTS; CONSTRUCTION ADMINISTRATION

Phase II services fees will be based on approved Phase I site selection, programmed building scope square footage, and conceptual design. Phase 1 concept fees (\$28,000) deduct from Phase II fees, as approved by Owner.

KOMATSU ARCHITECTURE
LABOR COSTS & BILLING RATES
 Effective January 2012

ATTACHMENT 2

POSITION	LABOR COST*	BILLING RATE
Project Management		
Vice President, Principal	\$71.50	\$190.00 \$235.00
Prog Director, Proj Mgr	\$57.02 \$71.50	\$155.00 \$190.00
Proj Architect I	\$54.13	\$145.00
Project Coordinator Level		
Architect II	\$48.34	\$130.00
Senior Technical I	\$41.55	\$115.00
Technical Staff Level		
Drafter II	\$40.00	\$107.00
Drafter III	\$28.00	\$75.00
Tech Spec Support	\$25.80	\$69.00
Project Specialist Level		
Estimator	\$40.00	\$135.00
LEED Mgt Prog Mgr	\$57.02	\$145.00
Interior Designer	\$47.22	\$127.00
Facility Mgt Data Coord	\$25.00	\$85.00
Space Planner	\$25.48	\$68.00
Construction Administrator	\$46.13	\$125.00
Construction Field Observor	\$35.06	\$95.00
Quality Control Reviewer	\$51.60	\$138.00

*Labor rates are Salary/Hr plus mandatory Payroll Additives

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on July 5, 2012 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

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

Members absent:

Mayor Pro Tem Gloria Nix

Others present:

City Manager Terry K. Roberts, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Deputy City Secretary Jennifer Salsgiver, Fire Chief Ricky Boeker, Police Chief Rex Phelps, Chief Financial Officer Carolyn Miller, Stacy Hardy, Wende Ragonis, Public Works Director Doug Baker, Leslie Kelm, Kim Hodde, Assistant Public Utilities Director Dane Rau, Thomas Gooden, and Janie Mehrens

Citizens present:

Clint Kolby, Wesley Brinkmeyer, Mike Haywood, Darren Heine, and Bob Springer

Media Present:

Arthur Hahn, Brenham Banner Press; Ed Pothul, KWHI

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

William (Charlie) Bentke – Parks Department	26 years (RETIREMENT)
Thomas Gooden – Street Department	10 years
- 3-b. New Employees**

Wende Ragonis – Purchasing

Mayor Tate presented Thomas Gooden with a service recognition award and Street Superintendent Leslie Kelm expressed his appreciation for Gooden.

Chief Financial Officer Carolyn Miller introduced Wende Ragonis to the Mayor and Council as the new Purchasing Manager. Mayor Tate welcomed her to the City.

4. Citizens Comments

There were no citizen comments.

CONSENT AGENDA

5. Statutory Consent Agenda

5-a. Second Reading of Ordinance O-12-015 for the Creation of Reinvestment Zone Number 34 Requested by Longwood Industries, Inc. for Commercial-Industrial Tax Phase-In Incentive on a Certain Tract of Land Containing 27.325 Acres, More or Less, Being Located at 1901 Longwood Drive, Brenham, Texas, with Boundaries Further Described in Exhibit "A" of Said Ordinance, and Designating This Property as Qualifying for Tax Phase-In

Mayor Tate stated that there was some confusion regarding the definition of retained jobs. He directed City Manager Terry Roberts to work with City staff and the Economic Development Foundation (EDF) to define retained jobs and furnish this definition to Council. Mayor Tate asked Council to consider passing the second reading of this Ordinance with the understanding that staff will work out the issues.

EDF Project Manager Clint Kolby requested that Council consider Longwood Industries, Inc. tax phase-in application in order to contribute to Brenham's economic development. Kolby explained that Longwood proposed an expansion for its newest product group and this tax phase-in will help them invest in necessary equipment and human capital.

A motion was made by Councilmember Herring and seconded by Councilmember Ebel to approve the Statutory Consent Agenda Item 5-a. Ordinance O-12-015.

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	Absent
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 Resolution R-12-012 Authorizing the Execution of a Tax Phase-In Agreement Between the City of Brenham and Longwood Industries, Inc.

A motion was made by Councilmember Herring and seconded by Councilmember Ebel to approve Resolution R-12-012 authorizing the execution of a tax phase-in agreement between the City of Brenham and Longwood Industries, Inc.

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	Absent
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 Audit Engagement Letter from Seidel, Schroeder & Company to Perform an Audit for the Fiscal Year Ending September 30, 2012 and Authorize the Mayor to Execute any Necessary Documentation

Chief Financial Officer Carolyn Miller presented the proposed audit engagement letter from Seidel, Schroeder & Company for the fiscal year ending September 30, 2012. Miller stated that the audit fee estimate, which remained the same as last year, is a reasonable amount due to the complexity of the City's financial activities.

A motion was made by Councilmember Barnes-Tilley and seconded by Councilmember Williams to approve an audit engagement letter from Seidel, Schroeder & Company to perform an audit for the fiscal year ending September 30, 2012 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	Absent
Councilmember Mary E. Barnes-Tilley	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Abstain
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes

8. Discuss and Possibly Act Upon a Recommendation from the Library Advisory Board Regarding the Selection of an Architect to Design the New Library and Authorize the Mayor to Sign Any Necessary Documentation

Human Resource Manager Janie Mehrens presented the Library Advisory Board's recommendation to engage Komatsu Architect to design the new library and noted that the needs assessment and library master plan scope of work is included in Council's agenda packet. Mehrens explained that the library capital fund will cover incurred expenses and undesignated donation funds will be used if necessary.

Mayor Tate asked if the board recommends building new or redesigning what is already there. Mehrens explained that the Library Advisory Board and the Library Building Committee were clear with Komatsu that the current library building and site must be looked at closely to determine if it will meet the needs of the new library before recommending another site.

Councilmember Barnes-Tilley asked if the architect will consider the public's input. Mehrens confirmed that the public will be surveyed and the contract includes a building evaluation, a site evaluation, and a needs assessment such as community or individual meeting facilities.

Councilmember Herring explained that Komatsu Architect will study soil for a potential underground water source and expressed his appreciation for Komatsu Architect's communication strength.

Mayor Tate advised Council that the final contract is still being reviewed by the City Attorney.

A motion was made by Councilmember Williams and seconded by Councilmember Barnes-Tilley to approve the recommendation from the Library Advisory Board and select Komatsu Architect to design the new library and authorize the Mayor to sign any necessary documentation once the final contract, subject to the Mayor's approval, has been completed by the City Attorney.

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	Absent
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 Request for a Noise Variance from the Washington County Tea Party to be Held at the Washington County Courthouse Gazebo from 7:00 A.M. to 1:00 P.M. on October 20, 2012

Public Works Administrative Assistant Kim Hodde presented a noise variance request from the Washington County Tea Party for a rally, which will use amplification equipment, to be held at the Washington County Courthouse Gazebo from 7:00 a.m. to 1:00 p.m. on Saturday, October 20, 2012.

A motion was made by Councilmember Herring and seconded by Councilmember Barnes-Tilley to approve a request for a noise variance from the Washington County Tea Party to be held at the Washington County Courthouse Gazebo from 7:00 a.m. to 1:00 p.m. on October 20, 2012.

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	Absent
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 the Appointment of a New Member to the City of Brenham Board of Adjustment

City Manager Terry Roberts explained that Board of Adjustment member Greg Jerking resigned and Mike Haywood applied to fill his unexpired term. Roberts advised Council that Mr. Haywood is currently an active member in the community.

Mayor Tate voiced his confidence in Haywood's character and work ethic.

A motion was made by Councilmember Barnes-Tilley and seconded by Councilmember Herring to approve the appointment of Mike Haywood to the Board of Adjustment to fill the unexpired term of Greg Jerking that will expire in December of 2012.

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	Absent
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 Ordinance on Its First Reading Amending Chapter 25, Traffic, of the Code of Ordinances of the City of Brenham, to Amend Article III, Stopping, Standing and Parking Inside the City Limits

Police Chief Rex Phelps explained that the Ordinance's language mandating a 24-hour notice allows violators to repeatedly violate the Ordinance, despite numerous notifications by his officers. Phelps recommended amending the Ordinance to enable the police to effectively enforce the Ordinance's intention regarding to parking or storing certain types of vehicles and trailers on public streets.

A motion was made by Councilmember Goss and seconded by Councilmember Williams to approve an Ordinance on its first reading amending Chapter 25, Traffic, of the Code of Ordinances of the City of Brenham, to amend Article III, Stopping, Standing and Parking Inside the City Limits.

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	Absent
Councilmember Mary E. Barnes-Tilley	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes

12. Administrative/Elected Officials Report

Mayor Tate reported on the following:

- Wal-Mart re-opening July 6, 2012 at 8:00 a.m.

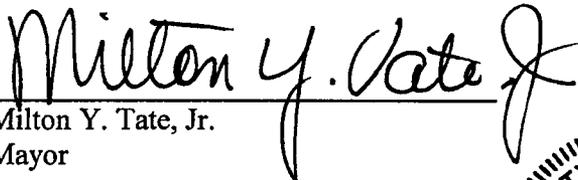
City Manager Terry Roberts reported on the following:

- Mr. Nix is not doing well so keep him and Mayor Pro Tem Nix in your prayers.
- Budget Workshops are scheduled for July 25- 27, 2012 at 8:00 a.m.
- New librarian, Kathy Bell, is scheduled to start on July 30, 2012
- TxDOT has already put traffic over the Highway 290 double overpass at FM 577 going in a west bound direction. He reminded Council that six months after traffic can travel east bound over FM 577, TxDOT will start paying the City back three million dollars a year for five years. The contractor was conservative on their completion date estimates, so it appears that they will finish the project six months early.
- Collier Construction will start the Westwood Drive improvements soon.
- O'Malley is finishing up on the Stringer St. realignment design.

Fire Chief Ricky Boeker reported on the following:

- Paperwork is being submitted to FEMA for the Grimes County fire that happened two years ago so the City should receive reimbursement of \$38,000.

The meeting was adjourned.


Milton Y. Tate, Jr.
Mayor


Jeara Bellinger, TRMC
City Secretary





AGENDA ITEM 13

DATE OF MEETING: August 1, 2013	DATE SUBMITTED: July 19, 2013	
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Dane Rau	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a One (1) Year Extension of the Contract with Alexander Oil Company, in Accordance with the Bid Specifications of Bid No. 12-009, for Gasoline and Diesel Fuel for the City's Vehicle and Equipment Fleet, and Authorize the Mayor to Execute Any Necessary Documentation		
SUMMARY STATEMENT: The City of Brenham and Alexander Oil have had a great working relationship for many years. In 2012 the City of Brenham Council awarded the bulk fueling contract to Alexander Oil in Bid #12-009. The initial term of this contract expired on July 1, 2013. In discussions with Alexander Oil it has been mutually decided that both parties would like to exercise the first contract extension for 2013 and continue utilizing Alexander Oil as our bulk fuel provider. This contract extension will be for one year and will follow all terms and conditions as the contract that was approved in June of 2012. The prices in Bid #12-009 will remain the same as well. In 2012, bids were awarded by the lowest profit margin per gallon above the average OPIS (Oil Price Information Service). Two bids were sent out with only one bid received in 2012. Alexander Oil was awarded the bid based on the lowest profit margin parameters. Alexander Oil provides the City of Brenham a location to fuel up fleet vehicles along with supplying numerous departments bulk fuel at their desired location for items such as generators, bulk storage tanks and the tub grinder. They also provide a secondary location for times when the main location is being worked on or temporarily out of service. This location is the Brenham Food Stop on Prairie Lea St. If council agrees with this extension the new term will run from July 1, 2013-June 30, 2014. There would then be one (1) term extension option remaining for this contract.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS: Great service, local people to speak with, convenient/central fueling site with 24/7 access.		
B. CONS:		

ALTERNATIVES (In Suggested Order of Staff Preference):
ATTACHMENTS: (1.) 2012 Bid from Alexander Oil Company; (2.) Email from Kristie Marth with Alexander Oil Company Requesting an Extension on the Fuel Contract; (3.) Email from Wende Ragonis to Dane Rau Relating to Extension of Fuel Contract
FUNDING SOURCE (Where Applicable): N/A
RECOMMENDED ACTION: Approve a One (1) Year Extension of the Contract with Alexander Oil, in Accordance with the Bid Specifications of Bid No. 12-009, for Gasoline and Diesel Fuel for the City's Vehicle and Equipment Fleet, and Authorize the Mayor to Execute Any Necessary Documentation
APPROVALS: Terry K. Roberts

BID SHEET

<u>Description</u>	<u>Estimated Gallons</u>	<u>Mark-up</u>
<u>Item 1.</u>		
No 2 (Dyed) Diesel Cetane For equipment only Rating 42 minimum Bobtail deliveries Brand/Mfg. <u>Unbranded</u>	20,000 gallons	<u>.20</u> per gallon
<u>Item 2</u>		
Regular Unleaded Rating 87 minimum R+M/2 Method Brand/Mfg. <u>Unbranded</u>	50,000 gallons	<u>.12</u> per gallon
<u>Item 3</u>		
Medium Grade Unleaded Gasoline Octane Rating 89 minimum R+M/2 Method Brand/Mfg. <u>Unbranded</u>	25,000 gallons	<u>.12</u> per gallon
<u>Item 4</u>		
No 2 (Clear) Diesel Fuel Cetane For vehicles Rating of 42 Brand/Mfg. <u>Unbranded</u>	30,000 gallons	<u>.12</u> per gallon
<u>Item 5</u>		
Premium Grade Unleaded Gasoline Octane Rating 92 minimum Brand/Mfg. <u>Unbranded</u>	4,000 gallons	<u>.12</u> per gallon

Provide the following information:

1. Could your firm give the City same day service for bobtail deliveries? yes
2. Will your firm supply emergency service after working hours? yes
3. State what type of service and/or system you have for dispensing fuel. Proprietary Fleet Card System, Private cards issued by Alexander Oil Company
4. Please specify billing frequency. _____ weekly monthly _____ other

What are your terms? Net 10 Days

Prompt payment discount? i.e., 1% 10 days No

5. Please provide the following information:

Number of accessible locations within the City Limits 2 Include address, phone number, and contact person for each location. If necessary, please use another sheet of paper.

Location: Alexander Oil Company

Address: 1501 FM 389 Brenham, Texas 77833

Phone No.: 979-836-2722

Contact Person: Bridget Bartels, Brad Bentke

Location: Brenham Food Stop #2

Address: 1312 Prairie Lea Brenham, Texas 77833

Phone No.: 979-830-1862

Contact Person: Brad Bentke, Murad Allana

Location: _____

Address: _____

Phone No: _____

Contact Person: _____

Please provide the following information:

Mailing Address: PO Box 769 Brenham, TX 77834

Remittance Address: PO Box 769 Brenham, TX 77834

Telephone No.: 979-8310-2722

Fax No.: 979-8310-6281

Contact Person: Bridget Bartels

I hereby certify that we have not participated in nor been a party to any collusion, price fixing or any other agreements with any company, firm, or person concerning the pricing of this bid.

Company Name: Alexander Oil Company

Address: PO BOX 769 Brenham, TX 77834

Authorized Signature: Bridget Bartels

Print Name: Bridget Bartels

Date: 06/01/2012

Amanda Klehm

From: Kristie Marth <kristie@alexanderoil.com>
Sent: Wednesday, July 03, 2013 3:53 PM
To: Wende Ragonis
Subject: Extending Fuel Contract

Hello Mrs. Ragonis.

On behalf of Alexander Oil Company, I am submitting in writing our acceptance of the current fuel agreement terms and wish to extend the arrangements with the City of Brenham.

If you require any further documentation, please let us know.

Thank you. Have a fun and safe July 4th holiday.

Kristie Marth

Alexander Oil Company

Fleet Fuel Sales, Operations and Accounting

PO Box 769

Brenham, TX 77834-0769

979.836.2722 ext. 29

Amanda Klehm

From: Wende Ragonis
Sent: Tuesday, July 16, 2013 12:26 PM
To: Dane Rau
Cc: Jeana Bellinger; Amanda Klehm; Nancy Stafford
Subject: Alexander Oil Contract Extension
Attachments: Extending Fuel Contract; June 21, 2012.pdf

Dane – attached is the email from Alexander Oil wishing to extend the term of bid 12-009 for fleet fueling services. Since this contract was taken to Council, we will need Council’s approval for the term extension. Here are the details for the agenda item.

June 21, 2012 Council awarded Bid No. 12-009 Fleet Fueling Services for Gasoline and Diesel Fuel. The bid contract is effective from July 1, 2012 to June 30, 2013. We are currently operating under the terms of the Bid, but need the formal extension to be executed. The effective term of the extension would be July 1, 2013 – June 30, 2014. There would be one (1) term extension option remaining for this contract.

Kyle Dannhaus originally presented the fuel bid, and I have attached his original agenda item.

Let me know if you need anything. I have copied Amanda and Jeana, so they can add the item to the next Council agenda.

Thanks,

Wende

Wende Ragonis
Administrative Services Manager
City of Brenham
979-337-7556
wragonis@cityofbrenham.org



AGENDA ITEM 14

DATE OF MEETING: August 1, 2013		DATE SUBMITTED: July 19, 2013	
DEPT. OF ORIGIN: Fire		SUBMITTED BY: Ricky Boeker	
MEETING TYPE:		CLASSIFICATION:	
<input checked="" type="checkbox"/> REGULAR		<input type="checkbox"/> PUBLIC HEARING	
<input type="checkbox"/> SPECIAL		<input type="checkbox"/> CONSENT	
<input type="checkbox"/> EXECUTIVE SESSION		<input checked="" type="checkbox"/> REGULAR	
		<input type="checkbox"/> WORK SESSION	
ORDINANCE:			
<input type="checkbox"/> 1 ST READING			
<input type="checkbox"/> 2 ND READING			
<input type="checkbox"/> RESOLUTION			
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Interlocal Agreement between the Brazos Valley Council of Governments (BVCOG) and the Brazos Valley Wide Area Communications System (BVWACS) Parties Approving BVCOG to be the Managing Entity of the Brazos Valley Wide Area Communications System and Authorize the Mayor to Execute Any Necessary Documentation			
SUMMARY STATEMENT: The BVWACS parties which include City of Brenham, City of Bryan, City of College Station, Brazos County, Washington County and Texas A&M University have renewed the Interlocal Agreement to jointly operate and maintain the BVWACS radio system this agreement is for the BVCOG to be the managing entity of the BVWACS. This is the first renewal of the original agreement which was started in 2008			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):			
A. PROS:			
B. CONS:			
ALTERNATIVES (In Suggested Order of Staff Preference):			
ATTACHMENTS: (1.) Interlocal Agreement of BVCOG to be Managing Entity of BVWACS			
FUNDING SOURCE (Where Applicable):			
RECOMMENDED ACTION: Approve an Interlocal Agreement between the Brazos Valley Council of Governments (BVCOG) and the Brazos Valley Wide Area Communications System (BVWACS) parties approving BVCOG to be the managing entity of the Brazos Valley Wide Area Communications System and authorize the Mayor to execute any necessary documentation			
APPROVALS: Terry K. Roberts			



Interlocal Agreement
For Managing Entity by the BVCOG
for the Brazos Valley Wide Area Communications System

THIS INTERLOCAL AGREEMENT (“ILA”), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the “Act”), by and among the Brazos Valley Council of Governments, hereinafter referred to as “BVCOG,” and the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County, and Texas A & M University, all political subdivisions or agencies of the state of Texas.

WHEREAS, the Brazos Valley Council of Governments (the “BVCOG”) is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

WHEREAS, pursuant to the Interlocal Cooperation Act codified in Chapter 791 Texas Government Code, the BVCOG is authorized to contract with eligible entities to perform governmental functions and services; and

WHEREAS, the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County, and Texas A & M University, collectively hereinafter sometimes referred to as the “BVWACS Parties” have entered into the First Restatement of the Interlocal Agreement for the Construction, Acquisition, Implementation, Operation and Maintenance of the Brazos Valley Wide Area Communications System to create and maintain an interoperable radio and data communications system (the “BVWACS Agreement”); and

WHEREAS, the BVWACS Parties desire the BVCOG to supervise the performance of the BVWACS Agreement; and

WHEREAS, the BVCOG desires to undertake the supervision of the performance of the BVWACS Agreement as set forth in this Agreement;

NOW, THEREFORE, BVCOG and the BVWACS Parties do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The BVCOG represents that it is eligible to contract with the BVWACS Parties under the Interlocal Cooperation Act for the purposes recited herein because it is a local government and it possesses adequate legal authority to enter into this Agreement. Likewise, the BVWACS Parties represent that they, too, are each local governments or political subdivisions eligible to enter into this Agreement for the purposes recited herein.

ARTICLE 2: APPLICABLE LAWS

The BVCOG and the BVWACS Parties agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Agreement. This includes applicable laws relating to purchasing and bidding of products and services, maintenance of open records and use of the Brazos Valley Wide Area Communications System in accordance with Federal Communications Commission rules. A party to this Agreement is financially responsible for any FCC penalties, fines or other financial encumbrances or penalties caused by the actions of its agents, employees or representatives.

ARTICLE 3: WHOLE AGREEMENT

This Agreement and any attachments, as provided herein, constitute the complete agreement among the parties hereto, and supersede any and all oral and written agreements among the parties relating to matters herein.

ARTICLE 4: PERFORMANCE PERIOD

This Agreement shall be effective when approved by the governing body of the last party which approval makes the Agreement go into effect or October 1, 2013, whichever occurs latest. It shall remain effective until September 30, 2018, subject to the rights of termination set forth herein. The conditions set forth below shall apply unless modified or terminated in accordance with the provisions hereof.

ARTICLE 5: SCOPE OF SERVICES

The BVCOG agrees to perform certain services for the BVWACS Parties at specified rates and costs as set forth in Exhibit "A-2" Scope of Services attached hereto. Additionally, the BVCOG agrees to perform as the BVWACS Managing Entity as set forth in the BVWACS Agreement which is attached hereto as Exhibit "A-1."

The BVCOG will assist the BVWACS Parties in managing grant funds as set forth in Exhibit "A". Nothing herein shall make the BVCOG responsible for providing funding for various projects associated with such grant or programs in the event of a shortfall.

ARTICLE 6: PAYMENTS

Pursuant to the BVWACS Agreement, upon delivery of goods or services provided and upon presentation of properly documented statements on a quarterly basis to each of the BVWACS Parties for their proportionate share of same, each BVWACS Party shall promptly in accordance with the BVWACS Agreement pay the BVCOG the full amount of its respective share. All payments for goods or services will be made from current revenues available to the BVWACS Parties.

ARTICLE 7: CHANGES AND AMENDMENTS

This Agreement may be amended only by a written amendment executed by all the parties, except that any alternations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and State law or regulations are automatically incorporated into

this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

ARTICLE 8: TERMINATION PROCEDURES

The BVCOG or the BVWACS Parties may cancel this Agreement at any time upon ninety (90) days written notice by certified mail to the other parties to this Agreement. The obligations of the BVWACS Parties and of the BVCOG, including obligations to pay any invoices outstanding for goods and/or services purchased under this Agreement, shall survive such cancellation, as well as any other obligation incurred under this Agreement, until performed or discharged by the responsible party.

ARTICLE 9: SEVERABILITY

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 10: FORCE MAJEURE

To the extent that any party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds.

ARTICLE 11: CONSENT TO SUIT

Nothing in this Agreement will be construed as a waiver or relinquishment by any party of its right to claim such exemptions, privileges and immunities as may be provided by law.

ARTICLE 12: NOTICES

Notices required under this Agreement must be in writing and delivered personally or sent by certified US Mail, postage prepaid, addressed to such party at the following respective addresses:

Brazos Valley Council of Governments:

Attention: Executive Director
P.O. Box 4128
Offices: 3991 East 29th St.
Bryan, Texas 77805-4128

City:

City of Bryan
Attention: City Manager, with a copy to the City Attorney
P. O. Box 1000
Bryan, TX 77805

City:

City of College Station
Attention: City Manager, with a copy to the City Attorney
P. O. Box 9960
College Station, TX 77842

City:
City of Brenham
Attention: City Manager, with a copy to the City Attorney
200 West Vulcan Street
PO Box 1059
Brenham, TX 77834

County:
Brazos County
Attention: County Judge, with a copy to County Attorney
200 S. Texas Avenue
Suite 332
Bryan, TX 77803

County:
Washington County
Attention: County Judge, with a copy to County Attorney
100 East Main Street
Suite 104
Brenham, TX 77833

Texas A & M University:
Texas A & M University
Attention: Vice President and Associate Provost
For Information Technology and Chief Information Officer
1365 TAMU
College Station, TX 77843-1365

ARTICLE 13: MISCELLANEOUS

a. This Agreement has been made under and shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under, or in connection with, this Agreement shall lie exclusively in Brazos County, Texas.

b. It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter.

c. No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all the parties.

d. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.

e. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof.

f. This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of all the other parties to this Agreement.

g. This Agreement is effective as of the effective date set forth above. This Agreement may be executed simultaneously in one or several counterparts, each of which is deemed to be an original and all of which together constitute one and the same instrument. The counterparts may be signed in multiple originals to allow each party to have an originally signed counterpart for each party. The Agreement has been executed in multiple originals, each having equal force and effect, on behalf of the parties.

THIS INSTRUMENT HAS BEEN EXECUTED IN MULTIPLE ORIGINALS BY THE PARTIES HERETO AS FOLLOWS:

BRAZOS VALLEY COUNCIL OF
GOVERNMENTS

By: _____

Date: _____

CITY OF BRYAN

By: _____

Date: _____

CITY OF COLLEGE STATION

By: _____

Date _____

CITY OF BRENHAM

By: _____

Date: _____

BRAZOS COUNTY

By: _____

Date: _____

WASHINGTON COUNTY

By: _____

Date: _____

TEXAS A & M UNIVERSITY

By: _____

Date: _____

EXHIBIT “A-1”

SCOPE OF SERVICES

The BVCOG shall perform the following services at the following rates for the BVWACS Parties as the Managing Entity pursuant to the BVWACS Agreement:

1. Perform as Managing Entity as set forth in the BVWACS Agreement. This includes the following:
 - a. Overall management. To manage the BVWACS on a day to day basis. Responsibilities include specific duties outlined in the BVWACS Agreement plus any other duties as determined by the Governing Board created under such Agreement.
 - b. Management. Perform ongoing management of the construction, acquisition, implementation, operation and maintenance of the BVWACS;
 - c. Coordination with other radio systems. Serve as principle coordinator with other radio systems as determined by the Governing Board;
 - d. Minutes. Maintain minutes of the Governing Board and Operating Board meetings;
 - e. Recommendations. Make recommendations to the Operating Board regarding proper performance of the BVWACS under the terms of this Agreement;
 - f. Supervision. Supervise additional Employees as applicable;
 - g. Dispute Resolution. Assist in the administrative dispute process as set out elsewhere in this Agreement.
 - h. Agreement copy. Maintain and make available at all reasonable times to the Operating Board and to the Governing Board a current copy of this Agreement, including any amendments and the most current version of all Exhibits together with copies of the most current versions of any subsequently developed operating procedures or standards;
 - i. Financial Responsibilities. Reconcile the budget on a quarterly basis or as requested by the Governing Board. Prepare draft budget, coordinate purchasing, conduct inventories, assist with any audits and handle such other fiscal matters as may be directed by the Governing Board;
 - j. Reports. Provide such performance reports, projection reports and other reports regarding the technical, operational, fiscal and other aspects of the BVWACS as required by the Governing Board or Operating Board;
 - k. Record Keeping. Maintain and keep current all records, legal documents, contracts, manuals, warranties, etc. relating to the BVWACS and make same available for review by any of the Parties upon request;
 - l. Contract Administration. Administer all contracts for the construction, acquisition, implementation, operation and maintenance of the BVWACS;
 - m. Project Management. Oversee the management of all projects relating to the construction, acquisition and implementation of Infrastructure and Improvements to the BVWACS;
 - n. Standard Operating Procedures. Develop, distribute and keep current standard operating procedures for the BVWACS as directed by the Operating Board;
 - o. BVWACS Availability. Ensure operational and technical availability of the BVWACS features to the Parties and Associates in accordance with the goals and objectives

set forth herein and that support interaction and communications with other public safety radio systems;

p. Grant Administration. Oversee the application, administration and financial management of grant funding programs available for the construction, acquisition, implementation, operation and maintenance of the BVWACS. This includes performing as a recipient or sub-recipient for the BVWACS Parties in relation to such grant programs, and such other duties as set out below.

2. Perform Grant Administration, including the following:

- a. Procurement and evaluation responses resulting in specific recommendations to the BVWACS Governing Board for the execution of grants and contracts, including receipt of funds;
- b. Recommendation to the BVWACS Governing Board for the award of subcontracts for the provision of the services set forth for covered programs that have been approved in accordance with the BVWACS Agreement;
- c. Management, administration, and oversight of subcontracts and subcontractors' performance, including for contracts for planning, evaluation, and monitoring;
- d. Payment of all authorized grant program expenses, whether for staff or administrative services, participant support costs, authorized subcontracted services, participant wages or stipends, or other costs incurred in the implementation of programs;
- e. Reimbursement of any questioned or disallowed costs will first be demanded from the subcontractor where the costs occurred, and making recommendations regarding possible solutions;
- f. Maintenance of financial and grant participant information records;
- g. Preparation and delivery of such reports and invoices for funds as are required by the state and federal rules, regulations, and administrative policies applicable to the program covered under the statutes;
- h. Preparation of a budget for Grant Recipient/Fiscal Agent;
- i. Authority to procure service providers for services authorized in the adopted and approved annual plans for the covered grant programs;; and
- j. Provision of other duties that may be required by changes in state and/or federal rules, regulations, and/or policies that are applicable to the covered grant program.

3. Exclusion from scope of services:

a. Conveyance of interests in real property. This does not prohibit the provision of services relating to property acquisition, such as oversight of surveys, title work, appraisals, etc.

EXHIBIT "A-2"

	<u>APPROVED</u> <u>FY2013 BUDGET</u>
EXPENSES	
Personnel	
System Manager	91,052
BVCOG Staff	19,351
Benefits	33,941
Total Personnel	<u>144,344</u>
Direct Expenses	
Travel	8,000
T-1 lines	109,164
Maintenance (Motorola)	258,445
Maintenance (HCRRS)	77,765
Supplies	
Telephone Expense	1,400
Equipment	
Contingency	
Consultants	
Postage, Printing, Training	
Other Direct	15,000
Total Direct Expenses	<u>469,774</u>
Other Direct Expenses	
Copier Expense	160
Postage Expense	192
Insurance	6,000
Training and Meeting Expense	2,500
Total Other Direct Expenses	<u>8,852</u>
Internal Service Funds	
Accounting Svc ISF	4,608
System Adm ISF	10,149
Copy Fax Service ISF	513
Human Resource Management	
ISF	8,535
Office Space ISF	6,552
Receipt Internet Loc Ph ISF	2,307
Core Supplies ISF	1,731
Supply Procurement ISF	807
Audit Expense	1,250
Total Internal Service Funds	<u>36,452</u>
Total Expenses before Indirect	<u>659,422</u>
Indirect Expenses	
Indirect Cost Expense	17,804
Total Indirect Expenses	<u>17,804</u>
Total EXPENSES	<u>677,226</u>



AGENDA ITEM 15

DATE OF MEETING: August 1, 2013		DATE SUBMITTED: July 22, 2013	
DEPT. OF ORIGIN: Fire		SUBMITTED BY: Ricky Boeker	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING	
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING	
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION	
	<input type="checkbox"/> WORK SESSION		
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County and Texas A & M University Relating to the Operation and Maintenance of the Brazos Valley Wide Area Communications System (BVWACS) and Authorize the Mayor to Execute Any Necessary Documentation.			
SUMMARY STATEMENT: This is the first renewal of the ILA that organizes and combines the resources of City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County and Texas A&M University to jointly operate the Brazos Valley Wide Area Communications System (BVWACS). The BVWACS system is joined with the Harris County system to make it a part of an even larger Regional Radio system. This public Safety radio system has been a huge asset to all of its members. This is a five year agreement starting on October 1, 2013.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:			
ALTERNATIVES (In Suggested Order of Staff Preference):			
ATTACHMENTS: (1.) First Restatement of the Interlocal Agreement for the Construction, Acquisition, Implementation, Operation and Maintenance of the Brazos Valley Wide Area Communications System (BVWACS)			
FUNDING SOURCE (Where Applicable):			
RECOMMENDED ACTION: Approve an Interlocal Agreement between the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County and Texas A & M University relating to the operation and maintenance of the Brazos Valley Wide Area Communications System (BVWACS) and authorize the Mayor to execute any necessary documentation			
APPROVALS: Terry K. Roberts			

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE BRAZOS VALLEY WIDE AREA COMMUNICATIONS SYSTEM (BVWACS)**

STATE OF TEXAS §
COUNTIES OF BRAZOS AND WASHINGTON §

This Agreement is by and among the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County, and Texas A & M University.

RECITALS

- A. The BVWACS Parties are combining their resources and desire to jointly operate and maintain the Brazos Valley Wide Area Communications System to improve the ability of public safety and public service radio communications internally and among themselves, and to allow direct access to, and exchange of data.

- B. The BVWACS Parties desire to continue to join their Wide Area Communications System with the regional communications system of Harris County, Texas, and to create a mechanism to effectively administrate this endeavor pursuant to a separate agreement with Harris County in a manner consistent with this Agreement.

- C. The BVWACS Parties desire to provide for the organizational structure and funding support for the construction, acquisition, implementation, operation and maintenance of the Wide Area Communications System.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants herein, the BVWACS Parties agree as follows:

1. Definitions.

- 1.A. Annual Assessment means the proportionate share determined in accordance with that BVWACS Party's participation share as shown on Exhibit A of that Fiscal Year's Capital Costs and Operating Costs based on the approved Budget.
- 1.B. Brazos County means the corporate and political body of the state of Texas known as Brazos County.
- 1.C. Brenham means the City of Brenham.
- 1.D. Bryan means the City of Bryan
- 1.E. BVWACS Associates means those entities that are sponsored by a BVWACS Party that are eligible to use the licensed frequencies under FCC rules and regulations, that are using the BVWACS and that are not BVWACS Parties pursuant to the terms of this Agreement.
- 1.F. BVWACS Managing Entity means the Brazos Valley Council of Governments contracted to supervise the performance of this Agreement or any other BVWACS Party or third party entity designated to perform this function pursuant to the terms of this Agreement and pursuant to Section 791.013 Texas Government Code.
- 1.G. BVWACS Parties means the state political subdivisions that have entered into this Agreement for the construction, acquisition, implementation, operation and maintenance of the BVWACS, including Bryan, College Station, Brenham, Brazos County, Washington County, and Texas A & M University. Additional parties may be added from time to time pursuant to the terms of this Agreement.
- 1.H. BVWACS Systems Manager means the Employee of the Managing Entity unless designated by the Governing Board otherwise tasked to perform services for BVWACS as set forth in this Agreement.

1.I. BVWACS Support Vendor means any of the one or more vendors selected to provide maintenance, repair, troubleshooting, and related services for the Brazos Valley Wide Area Communications System.

1.J. BVWACS Value means the undivided interest of a BVWACS Party in the BVWACS Infrastructure, Improvements and real property.

1.K. College Station means the City of College Station.

1.L. Commencement Date means the date on which this Agreement has been duly approved by all BVWACS parties.

1.M. Costs include Capital Costs and Operating Costs as defined below:

1.M.1. Capital Costs means all costs incurred for the construction, acquisition and implementation of the BVWACS in accordance with the terms of this Agreement. Capital Costs includes expenditures for the construction, acquisition and implementation of any and all Improvements, Infrastructure, additions, replacements, upgrades and enhancements to the BVWACS; land acquisition costs, including appraisals, legal fees, surveys, and other costs associated thereto; the procurement of any hardware or software relating to the construction and implementation of any and all Improvements, Infrastructure, additions, replacements, upgrades and enhancements to the BVWACS; engineering studies, consulting reports, analysis, design and planning; auditing and compliance with accounting principles and the fiscal and legal expenses relating thereto, and any and all other costs and expenses relating to the foregoing. The BVWACS will be implemented in phases. The Initial Phase is attached hereto and made a part hereof labeled Exhibit B. Notwithstanding any of the above, Capital Costs shall be processed in accordance with GASB 34 and GAAP Accounting Principles.

1.M.2. Operating Costs means all costs not specifically identified as Capital Costs and includes all fixed and variable costs and expenses incurred, directly or indirectly, in the operation and maintenance of the BVWACS consisting of, without limit, the direct purchase of goods and services, such as photographic supplies, developing and printing, educational materials, books, office supplies, postage, computer supplies, computer software, small tools and minor equipment, and minor computer hardware, office space or the value thereof; costs associated with contracts to supply goods and services, such as support contracts, rental of copy machines, vehicle

maintenance and fuel costs, tower site and infrastructure insurance, building maintenance, computer hardware and software maintenance, printing and binding; personnel costs incurred by all entities for Employees approved in the Budget to support the BVWACS including, without limitation, wages, benefits, insurance, employment related taxes, employers' retirement contributions, phone allowances, pagers, education and seminar fees, travel for training, mileage reimbursement, and parking costs; and further including ongoing utility costs, security, and the normal, periodic maintenance, tuning, servicing, inspecting, parts replacement and repair and other similar activities that are intended to keep the BVWACS functioning efficiently and to maintain the useful life of the assets and reduce the probability of failures. The term includes all other items or expenses of a like or different nature reasonably required or desirable for the efficient maintenance and operation of the BVWACS in full compliance with all current and future regulatory requirements and the performance of the provisions of this Agreement; the provision of liability and other insurance in amounts and types determined necessary for the proper operation of BVWACS; assumption of legal liability of the BVWACS Parties to pay money to satisfy an arbitration award, administrative decision, settlement agreement, or court decision creating a judgment against one or more of the BVWACS Parties as a result of a third party claim arising out of or incident to the terms of this Agreement, including reasonable attorneys' fees and costs incurred in defending against same; and costs incurred in enforcing or defending the provisions of this Agreement, including reasonable attorneys' fees. Notwithstanding any of the above, Operating Costs shall be processed in accordance with GASB 34 and GAAP Accounting Principles.

1.N. Day unless otherwise described, means calendar day.

1.O. Employees means the person(s) employed by one or more of the Parties or by the Managing Entity, devoted exclusively to the construction, acquisition, implementation, operation and maintenance of the BVWACS as set forth in this Agreement.

1.P. FCC means the Federal Communications Commission.

1.Q. Fiscal Year means the fiscal year agreed upon by the entities signing this Agreement.

The Fiscal Year in effect as of the execution of this Agreement commences on October 1st of each year and ends the following September 30th.

1.R. Improvements means any structure, facility, addition, replacement, upgrades and enhancements to the BVWACS including, without limitation, hardware, software, equipment and real property acquired for increasing functionality, range or capacity of the Wide Area Communications System.

1.S. Infrastructure means collectively all Improvements, additions, replacements, upgrades and enhancements to real property or personalty, real property acquisition, and all system hardware and software procurement necessary for the normal operation of the BVWACS and excluding Subscriber Equipment. The twenty-one radio consoles implemented in the system initial phase are included as system infrastructure.

1.T. Initial Phase means that first phase of Infrastructure and Improvements, including the Capital Costs relating thereto, for the Parties to utilize the BVWACS within the designated portions of the Service Area all as shown on Exhibit C. As proposed herein, the Initial Phase shall include radio voice communications but not data transmission.

1.U. Quarterly Assessment means a BVWACS Party's proportionate share of the Capital Costs and Operating Costs that are projected to be incurred and the amount of money projected to be expended during the next fiscal quarter as presented in an itemized schedule prepared by the Managing Entity, with the proportionate share determined in accordance with the participation share of the BVWACS Party shown on Exhibit A.

1.V. Remaining Parties means those BVWACS Parties to this Agreement who remain committed to this Agreement if one or more BVWACS Parties withdraw from this Agreement or is terminated pursuant to the terms of this Agreement.

1.W. Service Area means that geographical area designed to serve the Parties for the BVWACS as same may, from time to time, be amended through approval by the Governing Board. A map of the initial Service Area is attached hereto as Exhibit C.

1.X. Standard Terms and Conditions means the terms and conditions listed in Exhibit D that must be included in all BVWACS Associate Interlocal Cooperation Agreements.

1.Y. Subscriber Equipment means the portable radios, mobile radios, control station radios, radio consoles, excluding the original 21 radio consoles installed or made operational as part of the Initial Phase, and other equipment operated by BVWACS Parties and BVWACS Associates accessing BVWACS.

1.Z. Terminated Party means a BVWACS Party who has received a notice of termination and whose participation in the BVWACS Agreement has been terminated for default, after it failed to cure the default in a timely manner.

1.AA. Termination Date means twelve (12) months from the date of the notice of withdrawal when a BVWACS Party gives notice of its intention to withdraw from this Agreement and terminate its participation in BVWACS.

1.BB. Washington County means the corporate and political body of the state of Texas known as Washington County.

1.CC. Wide Area Communications System or BVWACS means the Regional Voice and Data Radio System serving the Brazos County and Washington County, Texas areas as shown on a Service Area map attached as Exhibit C as same may from time to time be amended as provided in this Agreement, implemented by Parties for public safety and public service purposes in accordance with the terms herein and pursuant to applicable law for such type of public communications system.

1.DD. Withdrawing Party means a BVWACS Party who gives notice of its intention to withdraw from this Agreement and terminate its participation in BVWACS.

2. Term of Agreement.

The term of this Agreement shall be effective when this Agreement has been duly approved by all BVWACS Parties (termed the Effective Date), subject to the BVWACS Parties' rights of termination in this Agreement. The term of this Agreement is from the Effective Date to September 30, 2018. . Nothing in this Agreement will prevent the BVWACS Parties from entering into a separate Agreement with another group or entity providing similar radio services provided such Party continues to adhere to the terms and conditions of this Agreement.

3. Purpose.

The purpose of this Agreement is to establish an organizational and management structure for the construction, acquisition, implementation, ongoing administration, operation, and maintenance of the BVWACS by the Parties, including establishing a budget proposal process, a funding process, and the allocation of Costs associated with the construction, acquisition, implementation, operation, maintenance, and Improvements to the Wide Area Communications System.

The BVWACS Parties have developed initial objectives, attached as Exhibit E, and evaluation factors, attached as Exhibit F.

4. Governing Board.

4.A. Purpose. The Governing Board shall set policy for the BVWACS, direct and approve the operating policies and procedures of the Operating Board, adopt a draft budget annually, and carry out any and all other appropriate tasks necessary for the proper functioning of the BVWACS. The Governing Board may exercise such powers and duties as authorized under this Agreement.

4.B. Composition. The Governing Board shall consist of one member from each of the BVWACS Parties. Governing Board Members should be public officials or senior executive level employees of their respective BVWACS Party. Governing Board Members may designate in writing an individual within their entity to act in their place. The governing body of a BVWACS Party may designate in writing a change in that BVWACS Party's Governing Board Member.

4.C. Officers. The Governing Board shall elect a chair, vice-chair, and other officers annually. The BVWACS Managing Entity shall provide secretarial services and other administrative support services to the Governing Board.

4.D. Meeting Requirements. The Governing Board shall meet at least semi-annually, but special meetings may be called by the request of one (1) or more Governing Board Members. These meetings shall be held in compliance with the Texas Open Meetings Act. These meetings shall be publicly posted 72 hours before the meeting by the Chair of the Governing Board. Meeting notices and meeting agenda shall be sent to members of the Governing Board at least 72 hours before the meeting.

4.E. BVWACS Improvements. The Governing Board may develop agreements defining the roles and responsibilities of the BVWACS Parties for BVWACS Improvements at the time the BVWACS Improvements are approved by the BVWACS Parties. The funding for these BVWACS Improvements shall be included in these agreements. Unless otherwise agreed by the BVWACS Parties in writing, funding for the cost of BVWACS Improvements that are constructed or acquired to benefit one (1) or more individual BVWACS Parties shall be paid only by the BVWACS Parties benefiting from such BVWACS Improvements.

4.F. Quorum and Voting. No action may be taken by the Governing Board unless a quorum is present. A quorum shall consist of a majority of members. Unless expressly stipulated otherwise in this Agreement or unless required differently pursuant to applicable law, the affirmative vote of a majority of members is required for the Governing Board to

adopt any resolution or take any action. Each member of the Governing Board shall have one vote.

5. Operating Board.

5.A. Purpose. The management and technical operation of the BVWACS is overseen by an Operating Board which ensures that the policies set by the BVWACS Governing Board are carried out and which provides overall BVWACS advice as to the construction, acquisition, implementation, operation and maintenance of the BVWACS and provides advice to the BVWACS Managing Entity.

5.B. Composition. The Operating Board consists of one member appointed by each of the BVWACS Parties. In addition, each BVWACS Party may designate in writing an alternate (“Alternate”) to act in place of its appointed Operating Board member. Notice of a change in designated Board Members or Alternate by a BVWACS Party may be made by sending written notice of the newly designated Board Member(s) or Alternate to the Chair of the Operating Board, with a copy to the BVWACS Managing Entity. The composition of the initial Operating Board is shown in Exhibit G.

5.C. Duties. The Operating Board shall meet at least quarterly. The Operating Board shall examine the apportionment of BVWACS Capital Costs and Operating Costs among the BVWACS Parties and recommend any adjustments needed to the Governing Board. The Operating Board shall annually submit a draft Operating and Capital Program budget for presentation to the Governing Board by March 1 of each year unless directed otherwise by the Governing Board regarding funds needed to improve, operate, maintain, and use the BVWACS. The Operating Board shall review and recommend the operating policies and procedures for the BVWACS, including policies related but not limited to system security, fleetmap management, capacity management, and interoperability with other radio systems and equipment. The Operating Board shall regularly review the evaluation factors for the BVWACS as described in Exhibit F of this Agreement and take needed actions to ensure reliable BVWACS performance. The BVWACS Managing Entity, together with the Operating Board, shall develop and recommend to the Governing Board BVWACS Improvements as needed to ensure optimal BVWACS functionality and performance. The Operating Board shall consider the impact of proposed BVWACS Associates and proposed new Parties to this Agreement on the capacity of the BVWACS and recommend approval or

denial of requests to sponsor an entity as an Associate or to add an additional party to this Agreement.

In addition, the Operating Board annually provides input to the Governing Board and to the BVWACS Managing Entity on the performance of the BVWACS Systems Manager.

5.D. Terms. The term of each Board Member shall be determined by the appointing BVWACS Party. All Board Members serve at the pleasure of their appointing BVWACS Party.

5.E. Attendance Requirements. Either a Board Member or Alternate shall attend all meetings. If a BVWACS Party has no representation at more than 25% of the meetings during any calendar year, the BVWACS Party shall appoint new Board Member(s) and new Alternate(s). Operating Board meetings are scheduled by the Operating Board Chair.

5.F. Chair, Vice-Chair, and Secretary. The Operating Board Members elect the Chair, Vice-Chair, and Secretary in the first month of each Fiscal Year. The Chair is responsible for scheduling meetings and providing Operating Board members with meeting notices. One of the duties of the Secretary shall be to record and track attendance of Board Members and Alternates. The BVWACS Managing Entity provides or arranges staff support to make written minutes of each Operating Board meeting and provides other needed logistical support for the Operating Board.

5.G. Procedures at Meeting. The Chair presides at the meetings and the Vice-Chair acts in the absence of the Chair. No action may be taken by the Operating Board unless a quorum of Board Members is present. A quorum shall consist of a majority of Board Members. The Chair shall provide the Board Members with at least 20 days notice of proposed dates for regular meetings. Any Board Member may place items on the Operating Board's meeting agenda by submitting the item to the Chair at least ten days before the next meeting. The Chair shall submit the agenda to the Board Members no later than seven days before the meeting. Each Board Member shall have one vote. The affirmative vote of more than 50 percent of all the members of the Operating Board is required to adopt any resolution or take any action. Voting by proxy or delegate is permitted.

5.H. Actions of Operating Board. The Operating Board may not take any action that would violate any applicable statute, law, regulation, court order, ordinance, commissioners'

court order, city charter provision, articles of incorporation or other governing document. If any such action is taken, it is null and void.

5.I. Special Meetings. The BVWACS Managing Entity may call meetings upon 72 hours written notice to the Board Members to conduct regular business matters or to address budget related items, which may require action by the Parties' governing bodies to increase or decrease currently budgeted expenditures. The Chair or a majority of the Board Members may also call special meetings of the Operating Board. In the event of an emergency, the notice provision herein shall be suspended.

6. Amendments to Agreement.

Any BVWACS Party may propose an amendment to this Agreement to the Operating Board. The Operating Board considers the amendment and makes a recommendation to the Governing Board for consideration. The Governing Board shall review amendments to this Agreement and may recommend approval of the amendment to the governing bodies of the BVWACS Parties. An amendment to this Agreement shall be effective when approved by three fourths of the governing bodies of the BVWACS Parties. A BVWACS Party whose governing body does not approve an amendment to this Agreement adopted as provided above, may withdraw from participation in the BVWACS as described elsewhere in this Agreement.

7. Construction, Acquisition and Implementation of BVWACS.

7.A. Initial Phase. The Initial Phase of the BVWACS shall be comprised of current Infrastructure and Improvements owned by one or more of the Parties hereto plus additional Infrastructure and Improvements to be constructed or acquired. Exhibit B sets out the Infrastructure, Improvements and real property currently owned by one or more of the Parties as well as the additional proposed BVWACS Infrastructure and BVWACS Improvements that will comprise the Initial Phase. The Parties agree that the Initial Phase of the BVWACS shall be as set forth in Exhibit B.

7.B. Ownership and Permission. Ownership of Infrastructure and Improvements currently owned by the Parties shall remain the property of such Party. Permission for all BVWACS Parties, BVWACS Associates, the BVWACS Managing Entity and its respective agents and representatives to access and use such Infrastructure and Improvements as part of the BVWACS in accordance with this Agreement is herein granted. New BVWACS Improvements and BVWACS

Infrastructure shall be owned as tenants in common among the Parties then in existence at the time funding was provided for such BVWACS Improvements or BVWACS Infrastructure.

8. Staffing and Operations.

8.A. Designation of Managing Entity. The Governing Board shall designate one of the BVWACS Parties or a mutually agreed upon third party as the Managing Entity for the BVWACS.

8.B. BVWACS Systems Manager. The Managing Entity is responsible for providing the BVWACS Systems Manager. This may be a full time Employee or, with the approval of the Governing Board, contracted third party devoted to managing the construction, acquisition, implementation, operation and maintenance of the BVWACS under the direction of the Managing Entity. The Operating Board will serve in an advisory capacity to the BVWACS Systems Manager on behalf of the Governing Board. The BVWACS Systems Manager shall be an Employee of the Managing Entity unless the Governing Board designates otherwise. As its Employee, the Managing Entity shall be responsible for the hiring, firing, performance review, training and education, provision of health and retirement benefits and all other costs associated with this position as well as costs associated with being an Employee of the Managing Entity, subject to reimbursement by the Parties through adoption of the annual BVWACS Budget which shall include the costs of all Employees. The Managing Entity shall obtain input from the Governing Board before taking any formal action regarding performance, including annual reviews, with respect to such Employee.

8.C. Management Duties of the BVWACS Managing Entity. The BVWACS Managing Entity will manage the BVWACS on a day to day basis. Responsibilities include the following plus any other duties as determined by the Governing Board:

8.C.1. Management. Perform ongoing management of the construction, acquisition, implementation, operation and maintenance of the BVWACS;

8.C.2. Coordination with other radio systems. Serve as principal coordinator with other radio systems as determined by the Governing Board;

8.C.3. Minutes. Maintain minutes of the Governing Board and Operating Board meetings;

8.C.4. Recommendations. Make recommendations to the Operating Board regarding proper performance of the BVWACS under the terms of this Agreement;

8.C.5. Supervision. Supervise additional Employees as applicable;

8.C.6. Dispute Resolution. Assist in the administrative dispute process as set out elsewhere in this Agreement.

8.C.7. Agreement Copy. Maintain and make available at all reasonable times to the Operating Board and to the Governing Board a current copy of this Agreement, including any amendments and the most current version of all Exhibits together with copies of the most current versions of any subsequently developed operating procedures, policies or standards;

8.C.8. Financial Responsibilities. Reconcile the budget on a quarterly basis or as requested by the Governing Board. Prepare draft budget, coordinate purchasing, conduct inventories, assist with any audits and handle such other fiscal matters as may be directed by the Governing Board;

8.C.9. Reports. Provide such performance reports, projection reports and other reports regarding the technical, operational, fiscal and other aspects of the BVWACS as required by the Governing Board or Operating Board;

8.C.10. Record Keeping. Maintain and keep current all records, legal documents, contracts, manuals, warranties, etc. relating to the BVWACS and make same available for review by any of the Parties upon request;

8.C.11. Contract Administration. Administer all contracts for the construction, acquisition, implementation, operation and maintenance of the BVWACS;

8.C.12. Project Management. Oversee the management of all projects relating to the construction, acquisition and implementation of Infrastructure and Improvements to the BVWACS;

8.C.13. Standard Operating Procedures. Develop, distribute and keep current standard operating procedures for the BVWACS as directed by the Operating Board;

8.C.14. BVWACS Availability. Ensure operational and technical availability of the BVWACS features to the Parties and Associates in accordance with the goals and objectives set forth herein and that support interaction and communications with other public safety radio systems.

8.C.15. Grant Administration. Oversee the application, administration and financial management of grant funding programs available for the construction, acquisition,

implementation, operation and maintenance of the BVWACS. This includes performing as a recipient or sub-recipient for the BVWACS Parties in relation to such grant programs.

8.D. Staffing. There may be such other Employees as may, from time to time, be budgeted and approved by the Governing Board. The BVWACS Parties through action of the Governing Board may elect to contract out some or all services relating to the construction, acquisition, implementation, operation and maintenance of the BVWACS. The initial number and types of Employees to be provided or funded by the BVWACS Parties are shown in Exhibit H. Notwithstanding anything herein to the contrary, personnel provided by one or more of the Parties to support the BVWACS are, and shall exclusively remain, employees of their respective entity, subject to all of the employment rules and personnel policies of that entity. The personnel costs necessary to support the BVWACS are included in each year's draft budget submitted to the Parties, subject to the provisions in Section 9. Budget, and Section 18. Effect of Breach and Default.

8.E. Operating Procedures. The BVWACS Managing Entity shall ensure that standard operating procedures are prepared to govern the day-to-day management and operation of the BVWACS and BVWACS staff ("Standard Operating Procedures") as may be directed by the Governing Board, and shall submit such Standard Operating Procedures to the Operating Board for review and approval. Standard Operating Procedures shall be annually reviewed by the Operating Board and updated as needed. The BVWACS Managing Entity also monitors the implementation of and compliance with the Standard Operating Procedures. If there is any conflict between the Standard Operating Procedures and the employment rules and personnel policies of the entities, then the employment rules and personnel policies of the entities control as they impact that entities' staff supporting the BVWACS. The Operating Board shall also oversee the development and implementation of corrective measures policies.

8.F. Roles and Responsibilities. The BVWACS Parties shall use the BVWACS in a manner consistent with the Standard Operating Procedures, directives of the Governing Board and in compliance with applicable FCC rules and regulations. The BVWACS Parties shall follow the established Standard Operating Procedures and Governing Board directives regarding the programming and addition of Subscriber Equipment to the BVWACS. The BVWACS Parties are encouraged to utilize and improve the interoperation capabilities of the BVWACS. BVWACS Parties shall utilize the BVWACS Managing Entity as their primary

point of contact for requests for BVWACS Improvements when dealing with problems, or to answer questions. BVWACS Parties shall work in good faith with the BVWACS Managing Entity to help resolve problems. Using Standard Operating Procedures or other directives from the Governing Board, BVWACS Parties shall have access to system reports including, but not limited to, system usage, utilization and performance. A BVWACS Party is financially responsible for any FCC penalties, fines or other financial encumbrance caused by the actions of that BVWACS Party and any BVWACS Associate sponsored by it.

8.G. Capacity Management. The BVWACS Managing Entity may develop a policy for capacity management and submit the policy to the Operating Board for review and approval. This policy shall be reviewed annually by the Operating Board, and updated as needed to ensure appropriateness and applicability with current BVWACS needs and industry standards and practices.

8.H. Withdrawal of Managing Entity. In the event the current entity ceases to be the BVWACS Managing Entity and the BVWACS Managing Entity is not a BVWACS Party subject to the provisions of Section 17.B herein, the Governing Board Members representing three-fourths of the BVWACS Parties shall appoint a replacement BVWACS Managing Entity. Within ten (10) days after receipt of notice of the identity of the replacement BVWACS Managing Entity, the current BVWACS Managing Entity shall:

8.H.1 Possession. Transfer control and possession of all BVWACS Infrastructure, BVWACS Improvements including BVWACS real property owned as tenants in common pursuant to this Agreement to the replacement BVWACS Managing Entity.

8.H.2 Conveyance of Real Property. Transfer any and all ownership rights it may have to real property acquired pursuant to the terms of this Agreement to the BVWACS Parties.

8.H.3 Evidence of Ownership. Provide evidence and documentation adequate to prove ownership of the BVWACS Infrastructure, BVWACS Improvements or real property, including, wherever applicable, transferring all rights, title and interests, including proprietary and intellectual property rights, to enable the replacement BVWACS Managing Entity to manage, upgrade, update, maintain, and operate or to sell, convey or otherwise dispose of the BVWACS Infrastructure, BVWACS Improvements or real property if or when the BVWACS Parties determine that this is appropriate, and

8.H.4. Operations and Legal Documents. Transfer the originals of all deeds, operations manuals, warranties, bills of sale, licenses, leases, titles and other legal documents related to BVWACS Infrastructure, BVWACS Improvements or BVWACS real property to the replacement BVWACS Managing Entity.

9. Budget.

9.A. Budget Adoption. The Governing Board shall annually approve a draft BVWACS Budget upon the approval of three-fourths of its ~~six~~ members in accordance with the timeframes set forth herein and recommend approval of the Budget to the governing bodies of the BVWACS Parties, including approval to appropriate their proportionate share of the BVWACS Budget. All Operating Costs must be included in each annual BVWACS Budget as well as any Capital Costs. The Budget shall include any and all costs relating to employees in implementing and maintaining the BVWACS. If any BVWACS Party does not agree with the draft BVWACS Budget as presented, it must provide the Governing Board with a detailed explanation of its issues with the draft Budget within 30 days after receipt of it. Each member of the Governing Board shall consult with its governing body or appropriate budget review personnel before voting to approve any Budget.

9.B. Annual Operating Costs Budget. The annual Operating Costs shall be shared according to the participation levels shown in Exhibit A, or as may be amended from time to time by the Governing Board based on an annual true-up of the ratio of actual accounts for each party to total accounts. An annual true-up shall take place by January 31 of each year. . Each year the BVWACS Managing Entity, following and abiding by its budgeting and accounting practices, shall prepare an annual Operating Costs budget (“Operating Budget”) on a fiscal year basis and submit this budget to the Operating Board. The Operating Budget must provide for all Operating Costs. The Operating Board shall review and adjust, as needed, the Operating Budget and then submit its recommendation to the Governing Board. The Governing Board shall, no later than April 1st of each year, approve a draft budget and recommend approval of the Operating Budget by each BVWACS Party and appropriation of their proportionate share of the Operating Budget in their next Fiscal Year’s budget. If budgeted amounts exceed actual expenditures, the Governing Board by majority vote may move the unexpended balances into the BVWACS Capital Fund, or credit the unexpended balances against the budgeted expenditure amounts in the Operating Budget for the next

Fiscal Year at each Parties then-current participation level, unless refunded to the Party at such Party's request. From time to time, participation levels shall be re-evaluated upon request of a Party using the same procedure set forth herein of recommendation by the Operating Board and determination by the Governing Board as Infrastructure or Improvements are made to BVWACS, as use of the BVWACS changes, or when new information affecting BVWACS becomes available. A BVWACS Party may use its share of BVWACS capacity for its own purposes or may allocate a portion of that share through a BVWACS Associate Interlocal Cooperation Agreement.

9.C. Annual Capital Costs Budget. A Capital Costs budget shall be prepared annually using the same process for adoption as the Annual Operating Costs Budget except that while the Capital Costs budget is prepared annually, the planning period for Capital Costs is five (5) years. Unless otherwise agreed by the BVWACS Parties, Capital Costs shall be shared according to the participation levels shown in Exhibit A, if and as amended, as described in Section 9.B; provided, however, that the Capital Costs that are incurred to benefit only one or more individual BVWACS Parties shall be paid by the BVWACS Parties benefiting from such BVWACS Improvements and Infrastructure.

9.D. Budgeted Expenditures. After the Budget has been approved and funded by the BVWACS Parties, the BVWACS Managing Entity is authorized to incur costs in accordance with the Budget. Any costs to be incurred in excess of the approved and funded Operating Costs or Capital Costs Budget amounts require additional budget approval and funding, or re-allocation of existing funds, by the BVWACS Governing Board. The BVWACS Governing Board may approve transfer of funds from the BVWACS Capital Fund to the Capital Budget to meet an urgent need that was not addressed during the Budget process. Such approval requires the vote of three-fourths of the members of the Governing Board.

9.E. Other BVWACS Fees. Fees payable by BVWACS Associates are determined by the terms of their BVWACS Associate Interlocal Cooperation Agreement. Funds received by new Parties are determined in accordance with this Agreement.

9.F. Funding Transfers to the Managing Entity. Once each BVWACS Party appropriates its portion of the BVWACS Budget in its annual budgetary process, the Managing Entity shall provide timely and accurate invoices to facilitate the transfer of funds by each BVWACS Party to the Managing Entity, and the Parties shall each comply with the

following procedures to facilitate payment by the Managing Entity to the BVWACS vendors and contractors:

9.F.1. Quarterly Assessment. At least 60 days prior to the beginning of each Quarter of the Fiscal Year, the BVWACS Managing Entity shall give the Operating Board, for its review, an itemized schedule of the Capital Costs and Operating Costs that are projected to be incurred, and the amount of money projected to be expended, during the next quarter. At least 30 days prior to the beginning of each Quarter, the Managing Entity shall send each BVWACS Party an invoice for its Quarterly Assessment.

9.F.2. Approval. Each BVWACS Party must approve or dispute its Quarterly Assessment and provide written notice of any dispute to the BVWACS Managing Entity within 15 business days after receipt of the invoice for the Quarterly Assessment. If a dispute concerning the Quarterly Assessment is not resolved by the time the BVWACS Party is required to remit payment, the matter shall be resolved in accordance with the procedures set forth in Section 21, Dispute Resolution.

9.F.3. Payment Instructions. The Managing Entity must provide payment instructions to each BVWACS Party for the transfer of BVWACS Party funds to the Managing Entity.

9.F.4. BVWACS Party Funds. Each BVWACS Party must pay its Quarterly Assessment to the Managing Entity no later than 60 calendar days after receipt of an invoice in accordance with the resolution of any dispute about the Quarterly Assessment.

9.F.5. BVWACS Fund. The Managing Entity shall establish a separate fund for BVWACS in its accounting records (“BVWACS Fund”) that is dedicated to the administration of the BVWACS. All funds received from BVWACS Parties and other BVWACS revenues, including the capital fund and any interest earned, shall be credited to the BVWACS Fund. All BVWACS obligations shall be debited from the BVWACS Fund. The records for the BVWACS Fund shall be maintained in compliance with generally accepted accounting principles.

9.F.6. Accounting. The BVWACS Fund is managed by the Managing Entity in the same manner as the Managing Entity manages funds held in its depository accounts. Funds associated with the BVWACS, including accrued interest, shall be accounted

for separately by the Managing Entity for the benefit of the BVWACS Parties, unless otherwise required by law or this Agreement.

9.F.7. Statements. The BVWACS Managing Entity is responsible for providing quarterly statements showing the credits to and debits from the BVWACS Fund, including any income earned, to each Party on or before the 20th day of the first month following the end of such quarter.

9.F.8. Payments. Subject to the availability of sufficient funds in the BVWACS Fund, the Managing Entity shall pay BVWACS contractors and vendors in compliance with the Texas Prompt Payment Act.

9.F.9. Reports. The BVWACS Managing Entity is responsible for providing each BVWACS Party with a quarterly written financial report on the Budget, including current BVWACS Cost projections for the succeeding quarter.

9.G. Funding. The BVWACS Parties specifically acknowledge that funding for each BVWACS Party's share of the BVWACS Operating Budget and Capital Costs Budget goes through that BVWACS Party's normal budgeting process; and upon approval by its governing body, is payable from current revenue available to each funding BVWACS Party. Purchase, operation and maintenance costs of Subscriber Equipment are the responsibility of each BVWACS Party.

9.H. Failure to appropriate. The failure of a BVWACS Party to appropriate its proportionate share of the BVWACS Budget by the first day of the Fiscal Year for which the Operating Budget and Capital Costs Budget is applicable shall be a material default of such BVWACS Party under this Agreement, and the BVWACS Parties shall follow the procedures for termination of a BVWACS Party set out in this Agreement addressing the effect of breach and default.

9.I. Partial Funding. If any BVWACS Party appropriates less than its proportionate share of Operating Budget and Capital Costs budget for any year, or if any BVWACS Party fails to pay its Quarterly Assessment, (herein called the "Underfunding Party") the other BVWACS Parties, acting through the Governing Board may take one or more of the following actions:

9.I.1. Suspension of Representation. Remove the Governing Board representation and voting rights for the Underfunding Party.

9.I.2. Service Reduction. Reduce the BVWACS services being provided to the Underfunding Party.

9.I.3. Notice of Underfunding. Send the Underfunding Party a notice stating the amount of underpayment, which is the difference in the Underfunding Party's Quarterly Assessment and the amount of funding provided by the Underfunding Party ("Deficiency"). Said Deficiency is an obligation of such Underfunding Party subject to the Prompt Payment Act. Each Underfunding Party agrees that its future right to participate in the BVWACS is dependent upon fully paying its Quarterly Assessments. The Underfunding Party must appropriate and pay the Deficiency, and its entire Quarterly Assessment for the remainder of that Fiscal Year.

9.I.4. Budget Revision. Amend the BVWACS Operating Budget and Capital Costs budget by reducing costs and/or increasing the amounts paid by the other BVWACS Parties.

9.I.5. Termination of Participation. Terminate the Underfunding Party's participation in this Agreement by following the procedure for termination of a BVWACS Party, if the level of funding is deemed by the other BVWACS Parties to be substantially a failure to fund.

9.J. Asset Management. BVWACS Infrastructure shall be tracked in accordance with standard operating procedures approved by the Operating Board. These procedures must be consistent with generally accepted accounting principles for property held as tenants in common for one or more of the BVWACS Parties. If any BVWACS Infrastructure needs to be retired, the BVWACS Managing Entity will provide this information to the Operating Board for approval prior to removal. At a minimum, the BVWACS Managing Entity shall provide the asset serial number, asset ID tag (if any), location from which it is to be removed and description of the asset. The asset to be retired shall be disposed as directed by the Governing Board upon receiving the recommendation of the Operating Board. Any funds received from the disposal of the asset shall be credited as revenue in the BVWACS Fund and shown in the next BVWACS Capital budget. These funds are managed in accordance with the provisions of this Agreement.

With respect to Infrastructure, Improvements and real property owned by only one or some of the Parties and that is not listed as BVWACS Infrastructure, BVWACS Improvements, or BVWACS real property, right of access, license and use is herein granted by such Parties to

all Parties and to the BVWACS Managing Entity as necessary for BVWACS purposes as determined by the Governing Board. With respect to future Infrastructure, Improvements and real property owned by only one or some of the Parties, such Parties agree that all rights of access, use or licenses required to make same a part of the BVWACS shall be granted. No Infrastructure, Improvement or real property owned by only one or some of the Parties may be conveyed to a third party, destroyed or otherwise removed from the BVWACS without giving at least 12 months advance notice. Failure to do so shall be considered a failure to perform substantially such Party's or Parties' material obligations under this Agreement, and the provisions of Section 18. (Effect of Breach and Default) shall apply. The Governing Board may determine to file Certificates of Memorandums in the deed records of the county where an asset owned by one or more Parties is located notifying the public regarding BVWACS rights associated with such asset.

10. BVWACS Associates.

10.A. Procedure for Becoming BVWACS Associate. To use the BVWACS, an entity must be either a BVWACS Party or BVWACS Associate unless special access is granted by three-fourths vote of the members of the Governing Board. Additionally, the Texas Department of Public Safety is hereby granted special access. To become a BVWACS Associate, a BVWACS Party must sponsor the entity. A BVWACS Party may only sponsor BVWACS Associates to the extent that it has a portion of its share of BVWACS capacity that is unused and therefore available to assign. A BVWACS Party may not sponsor any entity unless the entity is eligible to use the BVWACS licensed radio frequencies under FCC rules, regulations and practices. A BVWACS Party may sponsor one or more entities as BVWACS Associates. BVWACS Parties shall use the following procedure for sponsoring an entity:

10.A.1. Share of Capacity. Determine the extent of the BVWACS Party's share of the BVWACS capacity that is available for assignment to the entity based upon most recent participation level determined using the true-up provisions set forth in Section 9.B

10.A.2. Anticipated Usage. Determine the anticipated usage of the entity to be sponsored based on talk time if available, the number of radios used by the entity and other relevant information as determined by the Governing Board.

10.A.3. Compatibility. Determine the compatibility of the Subscriber Equipment used by the entity with the system and the impact of their inclusion in the system based on voice traffic, talk-group needs, and functionality.

10.A.4. Associate Agreement. Negotiate a BVWACS Associate Interlocal Cooperation Agreement with the prospective BVWACS Associate that includes the Standard Terms and Conditions as well as any other terms and conditions related to payment, term of agreement, nature of the services to be provided, curtailment of services or termination of the authority to continue use of the BVWACS for breach, withdrawal by the entity, and other matters that they desire as long as they are not contrary to or more expansive than the Standard Terms and Conditions or the terms and conditions of this Agreement.

10.A.5. Report to Board. Present a report to the Operating Board that includes the anticipated usage of the entity, the number of radios or equipment used by the entity, the compatibility of the radios or equipment used by the entity with the system, the number of talkgroups needed and any other information relevant to whether the addition of the entity is likely to cause the BVWACS Party to exceed its share of the BVWACS capacity.

10.A.6. Board Approval of Draft Agreement. Present a draft copy of the proposed BVWACS Associate Interlocal Cooperation Agreement to the Operating Board so that it can verify that the agreement contains the Standard Terms and Conditions and is consistent with the terms and conditions of this Agreement.

10.A.7. Parties Approval of Associate Agreement. Obtain approval of the BVWACS Associate Interlocal Cooperation Agreement by the governing bodies of the sponsoring Party and the prospective BVWACS Associate to the agreement.

10.B. Operating Board Duties. The Operating Board shall review the report of the BVWACS Party asking to sponsor an entity as a BVWACS Associate and evaluate the following:

10.B.1. Impact on current and future BVWACS voice traffic capacity.

10.B.2. Impact on current and future BVWACS talkgroup capacity.

10.B.3. Impact on overall current and future BVWACS functionality.

The Operating Board shall review the proposed BVWACS Associate Interlocal Cooperation Agreement to be entered into by the BVWACS Party asking to sponsor an

entity as a BVWACS Associate and determine whether it includes the Standard Terms and Conditions.

If the impact on these three aspects of the BVWACS capacity is not likely to result in that BVWACS Party's exceeding its share of the BVWACS capacity or to detrimentally affect the overall current and future functionality of the BVWACS, and the proposed BVWACS Associate Interlocal Cooperation Agreement includes the Standard Terms and Conditions, the Operating Board may recommend approval of the request to sponsor the entity to the Governing Board.

10.C. Association Interlocal Cooperation Agreements Approval. The Governing Board must approve all BVWACS Association Interlocal Cooperation Agreements before such prospective BVWACS Associate may access or use the BVWACS.

10.D. Capacity for Sponsoring BVWACS Associates. Initially, a BVWACS Party's share of the capacity of the BVWACS is based on the participation levels stated in Exhibit A. Two years after system acceptance of the BVWACS or when adequate information is available, whichever occurs first, BVWACS capacity is based on the capacity management process recommended by the Operating Board and approved by the Governing Board. The share of capacity used may be adjusted as Infrastructure or Improvements are made to BVWACS. A BVWACS Party may use its share of BVWACS capacity for its own purposes or may allocate a portion of that share through a BVWACS Associate Interlocal Cooperation Agreement. In no event shall sponsoring a BVWACS Associate cause alteration to the Participation Table set forth in Exhibit A, if and as amended as described in Section 9.B..

10.E. Financial Effect of Sponsoring BVWACS Associate. When a BVWACS Party authorizes another entity to use a portion of its share of BVWACS capacity, that BVWACS Party remains responsible for full payment of its entire cost share of the BVWACS.

10.F. Sponsor's Control of BVWACS Associate's Access to BVWACS. If a BVWACS Party requests that the BVWACS System Manager disable all or part of the services available to a BVWACS Associate sponsored by that BVWACS Party, the BVWACS System Manager shall comply with these requests and disable the portion of the services available to a BVWACS Associate requested by the BVWACS Party as soon as practicable.

10.G. Responsibility for Subscriber Equipment. BVWACS Associates are responsible for purchasing and providing their own Subscriber Equipment to be used on the BVWACS.

The purchase of Subscriber Equipment shall be coordinated with the BVWACS Managing Entity.

10.H. Additional Units. BVWACS Associates are not allowed to add units to the BVWACS without approval from their sponsoring BVWACS Party.

10.I. Changes to Operations. Each BVWACS Party that has sponsored BVWACS Associates is responsible for informing the BVWACS Associates of changes in BVWACS Standard Operating Procedures.

11. New BVWACS Parties.

11.A. New Parties to BVWACS. From time to time, entities may join the BVWACS as full Parties. Entities desiring to join the BVWACS as full Parties shall petition the current Parties for membership in accordance with the terms herein.

11.B. Contents of Petition. An entity desiring to join BVWACS shall submit a petition. At a minimum, a petition to join BVWACS as a Party shall include the following:

11.B.1 Area to be Served. A description of the area to be covered and a description of how the Service Area will be affected;

11.B.2 Proposed Subscriber Equipment. The type of Subscriber Equipment proposed to use the BVWACS, including the approximate number of units to be added, talk groups and talk time;

11.B.3 Infrastructure, Improvements, Funds and Real Property. A description of any Infrastructure, Improvements, funds or real property that will be made available to the BVWACS to offset costs associated with system expansion, and a description of how this will affect the BVWACS and the current Service Area; and

11.B.4. Share of Capacity. Provide an estimate of the requested capacity desired, including the anticipated type and amount of usage based on talk time, talk group needs and other relevant factors as determined by the Governing Board.

11.C. Procedure. The following procedure shall be followed when petitioning to become a Party.

11.C.1 Submit Petition. An entity desiring to become a Party to the BVWACS shall petition the Governing Board through the BVWACS Managing Entity who will then review such petition for completeness as well as content. The BVWACS Managing Entity shall

forward the petition to the Operating Board for recommendation by the Operating Board within 30 days from submission of such petition.

11.C.2 Operating Board. The Operating Board shall review the petition of the submitting entity and make its recommendation to the Governing Board within 60 days from the date of submission of such petition. The Operating Board shall evaluate the petition based upon the following:

11.C.2.1 Whether the addition of petitioner as a Party will have an adverse impact on the current and future needs of the existing Parties, on the Service Area and on BVWACS as a whole; and

11.C.2.2 Whether the addition of petitioner as a Party is consistent with the goals and objectives of BVWACS as set forth in this Agreement.

11.C.3 Governing Board. The petitioner may negotiate an amendment to this Agreement relating to its inclusion as a Party. The Governing Board will consider the request and the recommendation of the Operating Board within ninety (90) days from the date of submission of the petition and approve, deny or request additional information needed to consider the request. Adding a new Party to this Agreement shall be considered an amendment subject to the terms and conditions for approval of amendments set forth in Section 6 above. The Governing Board will also determine if the petitioner will be required to make a capital contribution towards construction or improvement to the system. Such contribution may be in the form of a reimbursement for prospective construction or improvements to the system.

11.D. Participation Level. A BVWACS Party's share of the capacity of the BVWACS is based on the participation levels stated in Exhibit A, as may be amended, and as described in Section 9.B.. Addition of new Parties will require reevaluation and possible alteration of the participation levels. The Operating Board will provide preliminary recommended participation levels based on the new Party joining BVWACS at the time it reviews the petition. The Governing Board shall then review such recommendation and determine whether such participation levels should be modified. Such determination must be approved by three-fourth of the members of the Governing Board.

11.E. Obligations of New BVWACS Parties. When a new BVWACS Party is authorized by the Governing Board, the participation levels determined above will establish the Annual Assessment for the new Party. Once the new Party is approved for membership, that Party

assumes responsibility for its Annual Assessment and all other obligations as a Party to this Agreement. New BVWACS Parties are responsible for purchasing and providing their own Subscriber Equipment to be used on the BVWACS. The purchase of Subscriber Equipment shall be coordinated with the BVWACS Managing Entity.

12. Accounting Records.

The BVWACS Managing Entity maintains accounting records in accordance with generally accepted accounting standards applicable to governmental entities, including compliance with federal guidelines for spending federal funds or bond proceeds.

The BVWACS Managing Entity shall ensure that records pertaining to the BVWACS shall be kept in accordance with the records retention policy of the Managing Entity and in accordance with the Open Records Act. At any reasonable time, upon three (3) business days prior written notice, any BVWACS Party may inspect, copy, examine, and/or audit the BVWACS records, at that BVWACS Party's expense, at the office of the BVWACS Managing Entity, or any other mutually acceptable location.

13. Contracting Authority.

Except for real estate transactions, the BVWACS Parties hereby grant such BVWACS Managing Entity the authority to contract on behalf of the BVWACS Parties for acquisitions and services that have been approved in the annual BVWACS Budget or as otherwise approved by the Governing Board, so long as the contracted amount is within the budgeted amount and the payments are made from available funds, using the BVWACS Managing Entity's standard purchasing processes, unless expenditure of federal funds or bond proceeds requires use of additional procedures or guidelines. Procurements shall be made in accordance with the laws applicable to such entity. These contracts shall be administered by the BVWACS Managing Entity.

14. Federal Funds and Bond Funds.

If a BVWACS Party utilizes federal funds, grant funds, or bond funds to meet a portion of their financial commitment under this Agreement, the BVWACS Parties agree to conduct all procurements, maintain all records and otherwise conduct their activities in furtherance of this Agreement so as to comply with all applicable statutes, regulations, policies and grant contract provisions necessary to qualify the BVWACS expenditures contemplated for federal or grant program reimbursement and to avoid arbitrage penalties. Further, the BVWACS Parties agree to cooperate with each other in the application for and administration of federal funds, grant funds, or bond funds to maximize funding participation in the operation and maintenance of the BVWACS.

By October 1 of each year each BVWACS Party using federal funds, grant funds, or bond funds to meet a portion of its annual financial commitment shall notify the BVWACS Managing Entity.

15. BVWACS Performance.

The Operating Board shall take such action as may be necessary for assuring that Subscriber Equipment configuration changes or additions do not adversely affect the performance of the BVWACS. The Operating Board may utilize the system assessment services of the BVWACS Support Vendor or other qualified contractor to determine the impact of adding Subscriber Equipment to the BVWACS. The Operating Board may develop policies involving the BVWACS Support Vendor that provide a review process prior to implementing any Subscriber Equipment system configuration changes requested or made by BVWACS Parties. BVWACS Parties shall not take any action that is known or ought to be known to affect the operation of the BVWACS adversely and shall reverse any action taken that affects the operation of the BVWACS adversely. BVWACS Parties shall not change the configuration of their program or template in a way that is known or ought to be known to affect the operation of the BVWACS adversely and shall reverse any change in the configuration of their program or template that affects the operation of the BVWACS adversely.

16. Dissolution of BVWACS.

16.A. Dissolution of BVWACS. This Agreement may be voluntarily dissolved before the end of the final term if three-fourths of the governing bodies of the BVWACS Parties agree in writing to provide for a dissolution date. The dissolution date shall not be less than twelve (12) months after these BVWACS Parties have executed the agreement to dissolve the BVWACS unless all BVWACS Parties agree to an earlier dissolution date.

16. B. Distribution of Assets. If the BVWACS is dissolved either by agreement or at the end of the final term, the assets of the BVWACS shall be equitably distributed among the BVWACS Parties. The BVWACS Parties shall agree on which BVWACS Party receives which assets in the distribution. An agreement for distribution of assets of the BVWACS shall be effective after approval by three-fourths of the the governing bodies of the BVWACS Parties. The manner of distribution shall consider and be consistent with the following factors:

16.B.1. Participation Level. The BVWACS Party's share of the Capital Costs for Infrastructure and Improvements to the BVWACS and the BVWACS Party's

participation level as stated in Exhibit A, if and as amended as described in Section 9.B.;

16.B.2. Asset Value. The value of the assets on the dissolution date;

16.B.3. Manner of Acquisition. The basis on which the asset was acquired, whether the asset

16.B.3.1 Was already owned by a Party;

16.B.3.2. Was acquired jointly by all BVWACS Parties or

16. B.3.3. Was acquired by only one or some of the BVWACS Parties;

16.B.4. Early Termination. Whether and, if so, when the BVWACS Party terminated its participation in BVWACS before the dissolution of the BVWACS; and

16.B.5. Utility of Asset. The usefulness of the asset to the BVWACS Party receiving it.

16.C. The BVWACS Party to which an asset is distributed shall also be provided evidence and documentation adequate to prove ownership of that asset, including, wherever applicable, transfer of all rights, title and interests, including proprietary and intellectual property rights, to enable that BVWACS Party to upgrade, update, operate, and maintain it or to sell, convey or otherwise dispose of it and the originals of all operations manuals, warranties, bills of sale, licenses, leases, titles and other legal documents related to that asset.

17. **Withdrawal of a BVWACS Party.**

17.A. Notice of Withdrawal. A BVWACS Party may withdraw from this Agreement and terminate its participation in BVWACS at any time by giving at least twelve (12) months prior written notice to the Remaining Parties. The Termination Date shall not be earlier than twelve months after notice is given unless three-fourths of the members of the Remaining Parties agree otherwise. The Withdrawing Party must continue to fund its Annual Assessment through the Termination Date, and if it does so, the Withdrawing Party may continue to participate in the BVWACS until its Termination Date. The portion of the Budget allocated to a Withdrawing Party after receipt of the notice of withdrawal may be reduced by the agreement of three-fourths of the members of the Remaining Parties.

17.B. Withdrawal of Managing Entity. In the event the BVWACS Managing Entity is a party to this Agreement and such Party withdraws from the BVWACS, the Governing Board Members representing three-fourths of the members of the Remaining Parties shall appoint

a replacement BVWACS Managing Entity. Within ten (10) days after receipt of notice of the identity of the replacement BVWACS Managing Entity, the Withdrawing BVWACS Party that is the BVWACS Managing Entity shall:

17.B.1 Possession. Transfer control and possession of all BVWACS Infrastructure, BVWACS Improvements including BVWACS real property owned as tenants in common pursuant to this Agreement to the replacement BVWACS Managing Entity.

17.B.2 Conveyance of Real Property. Transfer any and all ownership rights it may have to real property acquired pursuant to the terms of this Agreement to the Remaining Parties.

17.B.3 Evidence of Ownership. Provide evidence and documentation adequate to prove ownership of the BVWACS Infrastructure, BVWACS Improvements or real property, including, wherever applicable, transferring all rights, title and interests, including proprietary and intellectual property rights, to enable the replacement BVWACS Managing Entity to manage, upgrade, update, maintain, and operate or to sell, convey or otherwise dispose of the BVWACS Infrastructure, BVWACS Improvements or real property if or when the Remaining Parties determine that this is appropriate, and

17.B.4. Operations and Legal Documents. Transfer the originals of all deeds, operations manuals, warranties, bills of sale, licenses, leases, titles and other legal documents related to BVWACS Infrastructure, BVWACS Improvements or BVWACS real property to the replacement BVWACS Managing Entity.

17.C. Disposition of BVWACS Value of Withdrawing Party. All right, title, and interest in and to the Withdrawing Party's BVWACS Value may be dealt with in one of two ways: 1) sale and assignment by Withdrawing Party; or 2) determination of valuation and disposition of Withdrawing Party's BVWACS Value by Remaining Parties. In either event, all rights of access, licenses and use to such Withdrawing Party's assets comprising a part of the BVWACS remain in place during the withdrawal process.

17.C.1. Sale and Assignment by Withdrawing Party. The Withdrawing Party shall offer its BVWACS Value to the Remaining Parties. If none of the Remaining Parties accept the offer within sixty (60) days after receipt of the offer, the Withdrawing Party may sell its BVWACS Value to one or more entities approved by all of the Remaining Parties if the entity or entities enter into an assignment of this Agreement

from the Withdrawing Party and accept the duties and obligations of the Withdrawing Party under this Agreement as its or their own duties and obligations. The assignee, if other than a Remaining Party, shall also obtain the rights of the Withdrawing Party under the BVWACS Agreement, including one representative on the Governing Board and one representative on the Operating Board. After the assignment, the BVWACS Agreement shall be construed as if the assignee were listed in the definition of BVWACS Parties. If the Withdrawing Party has an offer to purchase its BVWACS Value from an entity but all of the Remaining Parties do not approve that entity as a reasonable replacement for the Withdrawing Party, the Remaining Parties shall compensate the Withdrawing Party for its BVWACS Value in proportion to their Annual Assessment of BVWACS and obtain a proportionate share of the Withdrawing Party's BVWACS Value.

17.C.2. Determination of Value by Remaining Parties. If the Withdrawing Party does not give the Remaining Parties notice that it is exercising its rights under 17.C.1. at least six (6) months before the Termination Date, no later than the Termination Date the Remaining Parties must fairly determine what the Withdrawing Party's BVWACS Value is at the Termination Date. If the Withdrawing Party and the Remaining Parties are unable to agree on the BVWACS Value, an accounting shall be performed by a panel of three persons. The Remaining Parties shall select one person to represent them on the panel. The Withdrawing Party shall select another person to represent it on the panel. The two persons selected shall select a third person to complete the panel and the accounting. If an accounting is performed, it shall be the basis for determining BVWACS Value for the Withdrawing Party. One half of the cost of this panel shall be borne by the Withdrawing Party and one half of the cost of this panel shall be borne by the Remaining Parties.

17.C.3. Disposition by Remaining Parties. When the BVWACS Value is determined, the Remaining Parties shall determine how to disburse the ownership of the BVWACS Value of the Withdrawing Party. The Remaining Parties shall consider at least the following options:

17.C.3.1. New Party. Find another entity to compensate the Withdrawing Party for its BVWACS Value, assume ownership of the

Withdrawing Party's BVWACS Value and assume its obligations and rights under the BVWACS Agreement;

17.C.3.2. Share Value. Divide the Withdrawing Party's BVWACS Value proportionally among the Remaining Parties, compensate the Withdrawing Party for its BVWACS Value, and provide for a proportional increase in Annual Assessment;

17.C.3.3. Single or some of BVWACS Parties. Allow one or only some of the Remaining Parties to compensate the Withdrawing Party for its BVWACS Value, assume ownership of the Withdrawing Party's BVWACS Value with a corresponding increase in Annual Assessment; or

17.C.3.4. Ownership without Use. Require the Withdrawing Party to retain ownership of its BVWACS Value but forfeit its use of the BVWACS and representation on the Governing Board and Operating Board unless and until the Withdrawing Party pays what its accrued share of the systems operations costs from the Termination Date to the end of the then current Budget Year would have been if it had not withdrawn.

17.D. Exclusion of Withdrawing Party's Votes. The Withdrawing Party and its vote on the Governing Board shall be excluded in determining the votes needed for the Remaining Parties to make a decision about the disposition of the Withdrawing Party's BVWACS Value after the Termination Date.

17.E. Disposition of BVWACS Value by Remaining Parties. If the Remaining Parties select the ownership alternative in 17.C.3.2, or 17.C.3.3 the Remaining Parties shall provide for payment of the Withdrawing Party's BVWACS Value in the fiscal year following the fiscal year of the Termination Date.

17.F. Effect of Disposition on Membership in Governing Board. If the Remaining Parties select the option in 17.C.2 or 17.C.3.3 and Withdrawing Party's BVWACS Value is divided among the Remaining Parties or assumed by one or only some of the Remaining Parties, the representation of these BVWACS Parties on the Governing Board shall not be increased.

17.G. Depreciation of BVWACS Value. If the Withdrawing Party retains its BVWACS Value, the portion of the value that relates to depreciable assets shall be reduced annually on a declining balance method over the useable life of the asset as long as the depreciable assets that form part of the BVWACS Value are owned by one or more of the Remaining Parties.

The portion of the BVWACS Value that relates to non-depreciable assets shall remain unchanged.

18. Effect of Breach and Default.

18.A. Events of Breach. Breach results from any of the following:

18.A.1. Payment. A BVWACS Party's failure to appropriate or pay its Annual Assessment timely;

18.A.2. FCC Rules. Violation of FCC rules and regulations by a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;

18.A.3. Policies and Procedures. Individual or repeated violations of approved written policies and procedures by a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;

18.A.4. Inappropriate Use. Inappropriate use of the BVWACS by a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;

18.A.5. Penalty Payment. Failure to pay FCC penalties or fines resulting from the actions of a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;

18.A.6. Improper Disposition of Assets or Interest. Disposing of assets owned by only one or some of the Parties in contravention of the provisions of this Agreement, or failure to follow the required process set forth in this Agreement of divesting a Party's interest in a BVWACS Improvement, BVWACS Infrastructure or BVWACS real property.

18.A.7. Adverse Impact. Any other action or omission that has a material adverse impact on the operation and maintenance of BVWACS; or

18.A.8. Substantial Performance. Failure to perform substantially its material obligations other than failure to appropriate or timely pay its Annual Assessment.

18.B. Breach for Non-Payment. The decision to exercise rights granted by this subsection 18.B. shall be made by the Governing Board. If any BVWACS Party commits the breach described in 18.A.1, the Governing Board may determine to deliver a written notice of breach to the BVWACS Party that specifies the nature of the breach and indicates that

unless the breach is cured within thirty (30) days, additional steps shall be taken. A breach described in 18.A.1 can only be cured by paying that Annual Assessment. If the breaching BVWACS Party does not cure that breach within thirty (30) days of receiving the written notice of breach, the breaching BVWACS Party is in default and the Governing Board shall deliver a written notice of default to the BVWACS Party that specifies the following:

18.B.1. The nature of the default;

18.B.2. The date of the notice of breach;

18.B.3. The failure of the breaching BVWACS Party to cure timely; and

18.B.4. The BVWACS Party's interest in the BVWACS is terminated no later than 60 days from the date of the written notice of breach if the termination is approved by all of the BVWACS Remaining Parties unless the default is cured by the defaulting BVWACS Party paying that Annual Assessment within an additional thirty (30) days from the date of default as referenced in 18.A.1 above for a total of sixty (60) days from the date of default unless the Governing Board approves a longer timeframe.

18.C. Suspension for Other Breaches. If any BVWACS Party commits a breach described in 18.A.2 through 18.A.8 or a breach described in 18.A.2 through 18.A.8 involving use of any radio or other equipment accessing the BVWACS under the authority of a BVWACS Party, the Governing Board may suspend the right of that BVWACS Party to use the BVWACS for that radio or equipment or for any other radio or equipment for a period of time adequate to cure the breach and determine whether additional remedies are needed.

18.D. Notice of Breach, Default, and Termination For Other Breaches. The decision to exercise rights granted by this subsection 18.D. shall be made by the Governing Board. If any BVWACS Party commits a breach described in 18.A.2 through 18.A.8, the Governing Board may deliver a written notice of breach to the BVWACS Party that specifies the nature of the breach and indicates that unless the breach is cured within thirty (30) days, additional steps shall be taken. If the breaching BVWACS Party begins to cure the breach within the thirty (30) day period, the thirty (30) day cure period is extended as long as the breaching BVWACS Party continues to prosecute a cure diligently to completion and is making a good faith effort to cure the breach. If the breaching BVWACS Party does not cure the breach within thirty (30) days of receiving the written notice of breach or additional period as extended by diligent prosecution of a good faith effort to cure the breach, the breaching

BVWACS Party is in default and the Governing Board shall deliver a written notice of default to the BVWACS Party which specifies the following:

18.D.1. The nature of the default;

18.D.2. The date of the notice of breach;

18.D.3. The failure of the breaching BVWACS Party to cure timely; and

18.D.4. The BVWACS Party's interest in the BVWACS is terminated on the effective date stated in the notice if the termination is approved by all of the BVWACS Remaining Parties unless the default is cured within thirty (30) days of the notice of default.

18.E. Disposition of BVWACS Value. The Remaining Parties shall determine as to how the Terminated Party's BVWACS Value shall be disposed. The Remaining Parties have ninety (90) days after the date that termination is effective to determine the value and disposition of the Terminated Party's BVWACS Value. The Remaining Parties may seek an agreement with the Terminated Party about its BVWACS Value. If the Terminated Party and the Remaining Parties are unable to agree on the Terminated Party's BVWACS Value, they shall use the method for determination of value in section 17.C. as if the Terminated Party were a Withdrawing Party. When the BVWACS Value is determined, the Remaining Parties shall determine how the ownership of the BVWACS Values is to be disposed. The Remaining Parties shall consider at least the following ownership alternatives for the BVWACS Value of the Terminated Party:

18.E.1. New Party. Find another entity to compensate the Terminated Party for its BVWACS Value, assume the ownership of the Terminated Party's BVWACS Value, and assume its obligations and rights under the BVWACS Agreement;

18.E.2. Share Value. Divide the Terminated Party's BVWACS Value proportionally among the Remaining Parties so that the Remaining Parties can each compensate the Terminated Party for their share of the BVWACS Value and pay a proportional increase in Annual Assessment in the fiscal year following the fiscal year in which the default last occurred;

18.E.3. One or More BVWACS Parties. Allow one or more Remaining Parties to compensate the Terminated Party for its BVWACS Value and assume ownership of the Terminated Party's BVWACS Value with a corresponding increase in Annual Assessment; or

18.E.4. Ownership without Use. Require the Terminated Party to retain the ownership of its BVWACS Value but forfeit its use of the BVWACS and representation on the Governing Board and Operating Board and annually reduce its BVWACS Value by twenty per cent (20%) of the original BVWACS Value so that the Terminated Party has no BVWACS Value remaining after five (5) years. The Terminated Party would transfer the reduction in value among the Remaining Parties each of such five (5) years proportionally based on the Remaining Parties' respective participation level during the year such distribution is made.

18.F. Exclusion of Terminated Party's Votes. The Terminated Party and its vote on the Governing Board shall be excluded in determining the votes needed for the BVWACS Remaining Parties to make a decision about the disposition of the Terminated Party's BVWACS Value after the date that termination is effective.

18.G. Effect of Termination on Representation on Governing Board. If the Terminated Party's BVWACS Value is divided among the Remaining Parties or assumed by only one or some of the Remaining Parties, the representation of these BVWACS Parties on the Governing Board shall not be increased.

19. Effect of Withdrawal or Termination on Remaining Parties.

Termination or withdrawal of a BVWACS Party has no effect on a Remaining Party's rights to participate in the BVWACS other than the specific rights and duties set out in this Agreement, and the continuing duty of all Remaining Parties to pay their Annual Assessment.

20. FCC Licenses.

Termination or withdrawal of any Party from the BVWACS shall include the surrender to the Remaining Parties any and all of that BVWACS Party's radio frequency licenses that were licensed for the purpose of implementing the BVWACS. The Remaining Parties shall determine whether to request reassignment of the license to another BVWACS Party or surrender these licenses to the Federal Communications Commission (FCC). The Remaining Parties are responsible for complying with all rules and regulations of the FCC related to reassignment and surrender of these licenses. Notwithstanding the above, licenses held, managed and owned by only one or some of the Parties as the exclusive license of such Party or Parties at the time of termination or withdrawal are not subject to the provisions of this section.

21. Dispute Resolution Process.

21.A. Cooperation. All BVWACS Parties are encouraged to work together to resolve all disputes prior to invoking the dispute resolution process set forth herein.

21.B. Hearing by Operating Board. Any BVWACS Party that has an issue or dispute relating to the BVWACS may request a hearing before the Operating Board. The Operating Board shall hear such matter after requesting information regarding such dispute or issue from such BVWACS Party and from the BVWACS Managing Entity. The Operating Board shall then hold a hearing and render its decision in writing.

21.C. Appeal to Governing Board. A BVWACS Party that is adversely affected by the Operating Board's decision may appeal such decision to the Governing Board, which may elect to hear the appeal or refer the matter to mediation.

21.D. Withdrawal of Dispute. A dispute may be withdrawn at any time during the Dispute Resolution process.

21.E. Timeframes:

21.E.1. Initial Dispute Hearing. Any BVWACS Party may bring an issue or dispute to the Chair of the Operating Board. The Chair must schedule a meeting of the Operating Board within (15) fifteen business days of receipt of the notice and provide a written determination to the appropriate BVWACS Parties and to the BVWACS Managing Entity within (5) five business days after the hearing. Any appeal of the decision or recommendation of the Operating Board is to the Governing Board.

21.E.2. Appeal to Governing Board. Any appeal from the decision of the Operating Board must be made by delivery of written notice of appeal to the BVWACS Managing Entity and Governing Board within (15) fifteen business days after receipt of the Operating Board's decision or recommendation. The Governing Board may meet to hear the appeal or may elect to send the appeal to mediation. The Governing Board, assisted by the BVWACS Managing Entity, either schedules a hearing or sends the appeal to mediation within (25) twenty-five business days of receipt of the notice of the appeal. Any appeal from the Governing Board's recommendation is to a mediator as described below.

21.E.3. Mediation. If the Governing Board refers a dispute to mediation, the parties to the dispute shall select, within thirty (30) days, a mediator trained in mediation skills to assist with resolution of the dispute. The parties to the dispute agree to act

in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) days after the Governing Board refers the dispute to mediation, the mediator shall be selected by mutual agreement. If that is not possible, by the Dispute Resolution Center of the Brazos Valley or a mutually agreeable mediation center. The parties agree to participate in mediation sessions in good faith for a period of up to thirty (30) days from the date of the first mediation session. Notice of the date, time, and location of the mediation shall be given to the BVWACS Managing Entity, which may attend. The parties to the dispute shall share the costs of mediation equally. If efforts to mediate the dispute are unsuccessful, the parties to the dispute shall then be free to exercise all available rights and remedies under this Agreement, or at law or in equity.

21.E.4. Application of Government Code, chapter 2260. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement, is not inconsistent with the process set forth above, and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used in disputes involving Texas A & M University that cannot be resolved in the ordinary course of business. The designated officers of Texas A & M University, as applicable, shall examine the claim and any counterclaim and negotiate with the claimant in an effort to resolve such claims. The BVWACS Parties specifically agree that

21.E.4.1. Neither the execution of this Agreement by Texas A & M University nor any other conduct, action or inaction of any representative of Texas A & M University relating to this Agreement constitutes or is intended to constitute a waiver of Texas A & M University's or the state's sovereign immunity to suit; and

21.E.4.2. Texas A & M University has not waived its right to seek redress in the courts.

22. Miscellaneous.

22.A. Interlocal Agreement. This Agreement is an Interlocal Agreement authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each BVWACS Party agrees that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function, which it is authorized to perform individually under the applicable statutes of the State of Texas and/or its charter. Each BVWACS Party agrees that the compensation to be made to the other BVWACS Parties as set forth in this Agreement is in an amount intended to fairly compensate each performing BVWACS Party for the services or functions it provides hereunder, and is made from current revenues available to the paying BVWACS Party. Where applicable, this Interlocal Agreement shall be administered in accordance with the laws applicable to a home-rule municipality.

22.B. Immunity as a Defense. No BVWACS Party has agreed to waive any defense, right, immunity, or other protection under law including any statutory provision, by entering into this Agreement or otherwise participating in the BVWACS.

22.C. Retention of Defenses. The Parties agree that neither this Agreement nor the operation or use of the BVWACS by the BVWACS Parties affect, impair, or limit their respective immunities and limitations of liability to the claims of third parties, including claims predicated on premises defects.

22.D. Notices. Notices required under this Agreement must be in writing and delivered personally or sent by certified US Mail, postage prepaid, addressed to such BVWACS Party at the following respective addresses:

City:

City of Bryan
Attention: City Manager, with a copy to the City Attorney
P. O. Box 1000
Bryan, TX 77805

City:

City of College Station
Attention: City Manager, with a copy to the City Attorney
PO Box 9960
College Station, TX 77842

City:

City of Brenham
Attention: City Manager, with a copy to the City Attorney
200 West Vulcan Street
PO Box 1059
Brenham, TX 77834

County:

Brazos County
Attention: County Judge, with a copy to County Attorney
200 S. Texas Avenue
Suite 332
Bryan, TX 77803

County:

Washington County
Attention: County Judge, with a copy to County Attorney
100 East Main Street
Suite 104
Brenham, TX 77833

Texas A & M University:

Texas A & M University
Attention: Vice President and Associate Provost
For Information Technology and Chief Information Officer
1365 TAMU
College Station, TX 77843-1365

All notices so given, are deemed given on the date so delivered or so deposited in the US Mail. All BVWACS Parties may change their address by sending written notice of such change to the other Parties in the manner provided for above.

22.E. Assignment. This Agreement being based upon the special qualifications of each BVWACS Party, any assignment or other transfer of this Agreement or any part hereof without the express consent in writing of the other Parties is void and has no effect, which consent shall not be unreasonably withheld.

22.F. Entire Agreement. The entire agreement among the BVWACS Parties is contained herein and no change in or modification, termination, or discharge of this Agreement in any form whatsoever is valid or enforceable unless it is in writing and signed by duly authorized representatives of all Parties.

22.G. Prior Agreements. This Agreement supersedes any and all prior agreements regarding this subject that may have previously been made. The subject of this Agreement is the construction, acquisition, implementation, operation and maintenance of the BVWACS.

22.H. Severability. If any term or provision of this Agreement is, to any extent, rendered invalid or unenforceable, the remainder of this Agreement is not affected, and each other term and provision of this Agreement remains valid and enforceable to the fullest extent permitted by law.

22.I. Non-waiver. Failure of a BVWACS Party to exercise any right or remedy for a breach or default of any other BVWACS Party does not waive such right or remedy for that breach or default or in the event of a subsequent breach or default.

22.J. Authority of Signatories. Each BVWACS Party represents to all the other BVWACS Parties that the representative signing this Agreement on any BVWACS Party's behalf has been duly authorized by the governing body of that BVWACS Party in compliance with Texas law.

22.K. Further Assurances. Each BVWACS Party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

22.L. Exhibits. The Exhibits, which are attached hereto and described below, are incorporated herein and made a part hereof for all purposes.

22.M. Counterparts and Multiple Originals. This Agreement is effective as of the Effective Date set forth in this Agreement. This Agreement may be executed simultaneously in one or several counterparts, each of which is deemed to be an original and all of which together constitute one and the same instrument. The terms of this Agreement become binding upon each BVWACS Party from and after the time that it is executed by all BVWACS Parties. The counterparts may be signed in multiple originals to allow each BVWACS Party to have an originally signed counterpart for each BVWACS Party. The Agreement has been executed in multiple originals, each having equal force and effect, on behalf of the Parties.

Exhibit List:

Exhibit A – Participation Table

Exhibit B – Initial Phase of the BVWACS

Exhibit C – Service Area map for Initial Phase

Exhibit D – BVWACS Associate Standard Terms and Conditions

Exhibit E – Goals and Objectives

Exhibit F – Monthly, Quarterly, and Annual Evaluation Factors

Exhibit G – Governance, Operation, and Maintenance Flow Chart and Distribution of Board Membership

Exhibit H –Initial staffing for BVWACS Program

CITY OF BRYAN

By: _____

Date: _____

CITY OF COLLEGE STATION

By: _____

Date: _____

CITY OF BRENHAM

By: _____

Date: _____

BRAZOS COUNTY

By: _____

Date: _____

WASHINGTON COUNTY

By: _____

Date: _____

TEXAS A & M UNIVERSITY

By: _____

Date: _____

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit A – Participation Table

<u>BVWACS Party</u>	<u>Participation Level</u>
City of Bryan	20.35%
City of College Station	31.29%
City of Brenham	9.69%
Brazos County	13.38%
Washington County	15.57%
Texas A & M University	9.72%

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT
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MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit B - Initial Phase

Each of the BVWACS parties will contribute existing infrastructure, and real property currently owned or leased by the parties for the purpose set forth in the Agreement. The existing infrastructure and real property contributed by each of the parties at the execution of the Agreement is as follows:

College Station

Access to 325' radio tower, equipment shelter, land (tower & shelter located), existing equipment and furnishings that will serve the BVWACS system.

Bryan

Access to secure third floor equipment space, including 48 VDC battery plant, generator use, and tower use rights on a 133 foot communications tower atop the 4 story building located at 101 Regent Street, Bryan, Texas.

Access to a climate-controlled, fenced, equipment shelter, including UPS system and generator, and use of two conventional 800 MHz repeaters, including their antenna system, at the City of Bryan water tower located on Luza Street, between 26th Street and 28th Street, Bryan, Texas.

Brenham

Communications existing furnishings (console desks).

Washington County

Access to three rental towers with shelters.

Brazos County

Access to a climate-controlled, fenced, equipment shelter on real property located at 21550 Kathy Fleming Road, Millican, Texas, in south Brazos County.

Texas A&M University

Access to a 320 foot tower located at Hensel Park for installation of the radio antennas and cable.

Space in the TAMU radio transmission facility for up to six 19” floor mount racks.

Air conditioning and AC power (supported both by UPS and generator) for RF transmission systems.

24x7 access to the radio facility via University issued keyless entry access cards for approved personnel.

Environmental monitoring of facility by TAMU Network Operations Center on a 24x7 basis. The monitoring will include security cameras, temperature and humidity alarms, power interruption alarms and high water alarms.

Phase I - Public Safety Interoperability Communications (PSIC) grant

Phase I provided the necessary equipment and racks (consisting of base radios, site controller and radio frequency distribution system), antennas and associated wiring located at each of seven sites.

Phase I also provided operator consoles replacement/upgrade for the parties

Table 1: Phase I

Item/Site	Description
Network Connectivity	Leased connectivity to connect all the sites together
Bryan /Brazos County Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax
College Station Site	Includes 700/800 MHz Multicast Base equipment with racks (12 chls), Xmit & Rcv antennnas and coax
College Station Console Sys	As shown in Table 2 below. - 6 operator positions
Bryan/Brazos county Console Sys	Convert existing system to P25
Millican	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax
Hensel Park Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax

TAMU Console Equip	Convert existing system to P25
LCRA - Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax
Brenham Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax
Burton Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax
Brenham Emerg Comms Console Sys	As shown in Table 2 below. - 4 operator positions
Management Reserve	Includes structural analysis of all towers and project reserves.

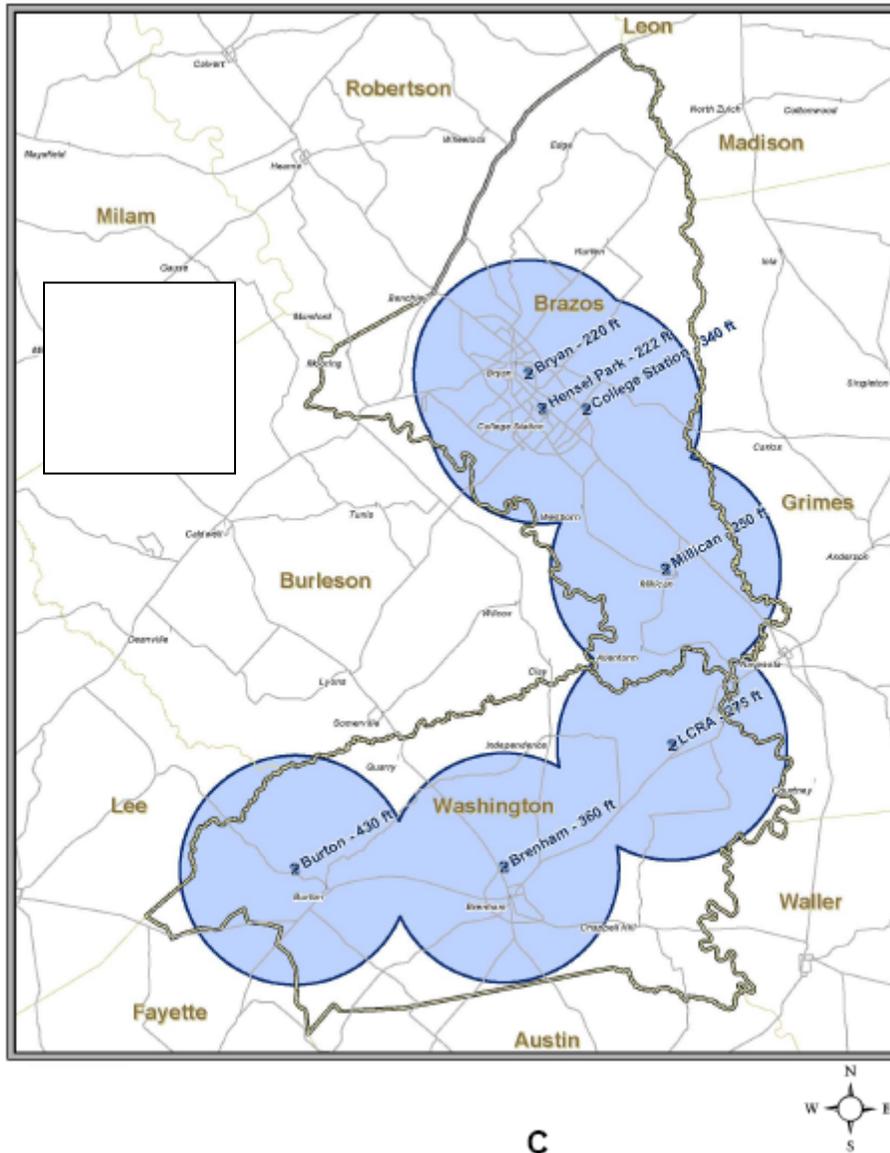
Console equipment installed at College Station and the City of Brenham is shown in Table 2.

**Table 2: Console Equipment
Console Sys Equipment**

- IP Based console sys
- Console site router
- Auxiliary I/O Server
- Site Controller
- Conventional Channel Gateway
- LAN Switch
- Operator Position Equip: PC, Mouse, Speakers, Mic, Keyboard
- IP Based Logging Sys: Archiving Interface Server, Digital Logging Server, Digital Logging Recorder, Logging Playback Station
- 700/800 MHz P25 Trunked B/U Stations
- Remote Control - Multimode
- Antenna System
- Lightening Protection
- UPS

FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT
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Exhibit C - Service Area



**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit D - BVWACS Associate Standard Terms and Conditions

When using the Brazos Valley Wide Area Communications System (“BVWACS”), BVWACS Associate shall abide by all policies, procedures and guidelines established by the BVWACS Operating Board, the BVWACS Governing Board, and the terms and conditions of this BVWACS Associate Interlocal Cooperation Agreement

BVWACS Associate shall use the BVWACS in a manner consistent with the Standard Operating Procedures established by the BVWACS Operating Board and in compliance with applicable Federal Communications Commission (“FCC”) regulations and rules.

BVWACS Associate is encouraged to use and improve the interoperation capabilities of the BVWACS and to provide input to the BVWACS Managing Entity on the day-to-day operations of the BVWACS and development of BVWACS standard operating policies and procedures.

BVWACS Associate shall utilize its sponsoring BVWACS Party as its primary point of contact for requests for BVWACS Improvements.

BVWACS Associate shall utilize the BVWACS Managing Entity as its primary point of contact when dealing with problems, or to answer questions. BVWACS Associate shall work in good faith with the BVWACS Managing Entity to help resolve problems.

BVWACS Associate shall purchase and provide its own subscriber radios and equipment to be used on the BVWACS. The selection and specifications for these radios and equipment must be coordinated with the BVWACS Managing Entity so that all radios and equipment purchased are compatible with the BVWACS.

BVWACS Associate shall ensure that programming for its subscriber equipment that uses the BVWACS is consistent with the Standard Operating Procedures established by the BVWACS Operating Board.

BVWACS Associate has no right to use the BVWACS if the BVWACS Party entering into this BVWACS Associate Interlocal Cooperation Agreement with it is no longer eligible to use the BVWACS.

BVWACS Associate is subject to any limitations or restraints on its usage of BVWACS that apply to the BVWACS Party entering into this BVWACS Associate Interlocal Cooperation Agreement.

The current term of this BVWACS Associate Interlocal Cooperation Agreement shall not exceed the current term of the Interlocal Agreement for Construction, Acquisition, Implementation, Operations and Maintenance of a Wide Area Communications System.

BVWACS Associate may be subject to immediate suspension of this BVWACS Associate Interlocal Agreement for violation of FCC rules and regulations, individual or repeated violations of the BVWACS Standard Operating Procedures, or use of the BVWACS that is determined to be inappropriate by the Governing Board.

Upon thirty (30) days written notice that specifies the existence and nature of the default, the BVWACS Party sponsoring the BVWACS Associate may automatically terminate the participation of BVWACS Associate. Default results from failure to comply with the BVWACS Associate Interlocal Cooperation Agreement, including:

1. Violation of FCC rules and regulations;
2. Individual or repeated violations of the BVWACS Standard Operating Procedures; or
3. Use of the BVWACS that is determined to be inappropriate by the Governing Board.

BVWACS Associate may avoid termination if the default is cured within thirty (30) days. If the BVWACS Associate begins to cure the default within the thirty (30) day period, the time to cure may be extended, at the sole discretion of the sponsoring BVWACS Party, for as long as the BVWACS Associate diligently continues to work toward completion of the cure.

BVWACS Associate shall ensure that the persons it authorizes to use its radios and equipment are trained in the proper use and etiquette for two-way radio communication.

BVWACS Associate shall reimburse the BVWACS Party that is the holder of an FCC license if there is any actual or alleged violation of any FCC rule or regulation as a result of any radios or equipment that is owned by BVWACS Associate or used by any person associated with BVWACS Associate for all costs arising from the actual or alleged violation, including costs and attorneys fees for defense against the allegation as well as fines and penalties incurred.

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit E – Goals and Objectives

GOALS

The goal of the Brazos Valley Wide Area Communications System is to provide voice radio and ultimately data transmission coverage and radio communication interoperability throughout the Service Area utilizing Infrastructure and Improvements currently provided by the Parties as well as new Infrastructure and Improvements in accordance with this Agreement.

OBJECTIVES

1. The Brazos Valley Wide Area Communications System shall maintain an appropriate reserve capacity based on the determination of the Governing Board.
2. The Brazos Valley Wide Area Communications System shall strive to maintain coverage at or above 95% reliability for a portable radio worn on the hip with a speaker collar microphone inside a –10db loss building within the Service Area.
3. To the extent practicable, the Brazos Valley Wide Area Communications System shall maintain interoperability with other public safety and governmental radio systems within the Service Area, the Brazos Valley Council of Governments area, regionally, statewide, and nationally.
4. The Brazos Valley Wide Area Communications System shall maintain the performance and equipment of the BVWACS at a standard consistent with the developments in technology and the needs of the BVWACS Parties.
5. The Brazos Valley Wide Area Communications System shall research and pursue opportunities for assistance for funding the BVWACS through grants and other means.

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit F – Monthly, Quarterly and Annual Evaluation Factors

Maintain system reserve capacity at or above the level approved by the Governing Board.

Maintain coverage at RFP's coverage specifications.

Report number of minutes of BVWACS non-normal operation.

Report number of system busies.

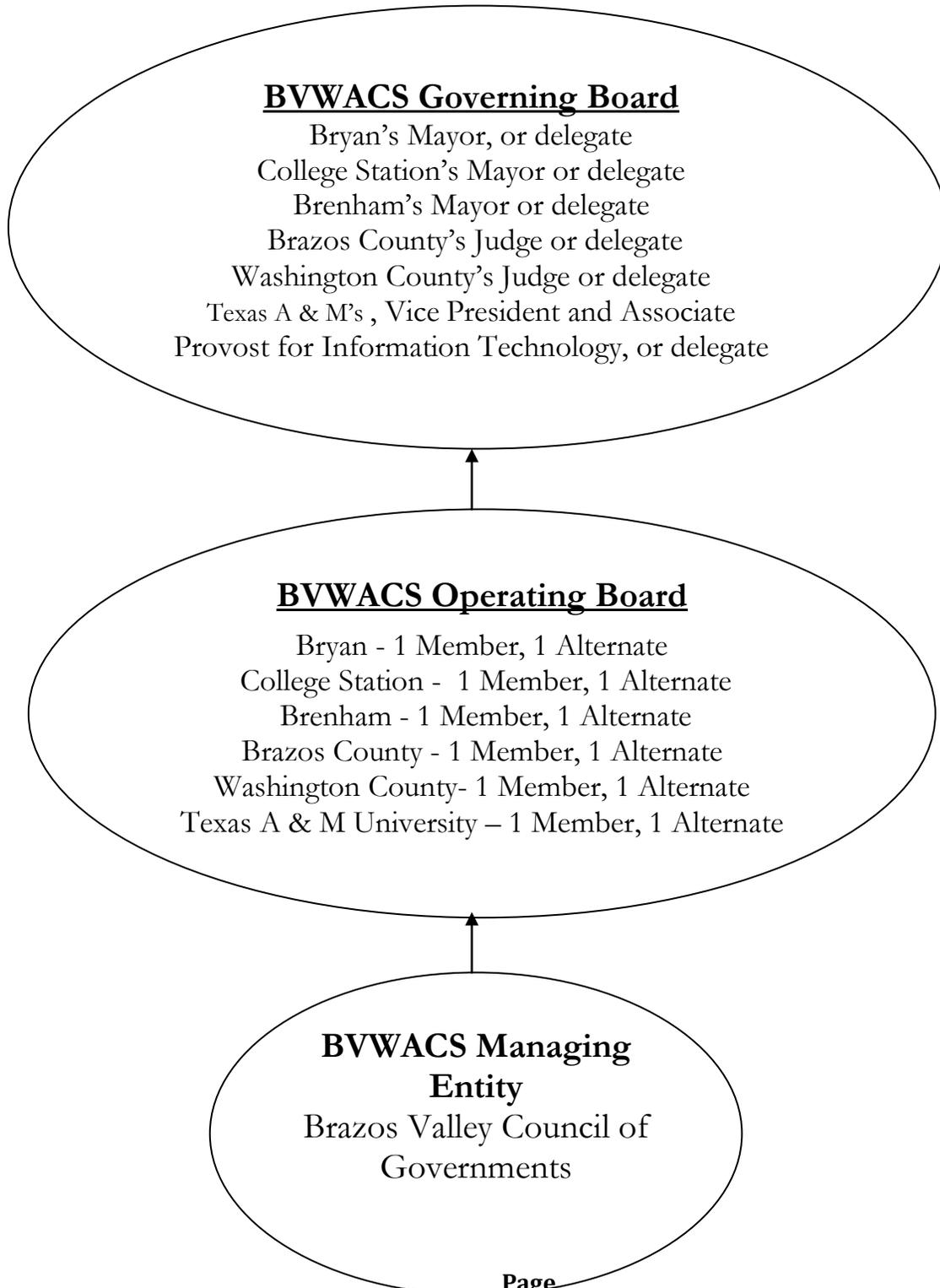
Report BVWACS Support Vendor response time to system problems.

Develop shared staff performance measures.

Report peak Busy Hour for each month.

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, IMPLEMENTATION, OPERATION AND
MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

**Exhibit G- Governance, Operation, and Maintenance Flow Chart
and Distribution of Board Membership**



**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit H – Staffing for BVWACS Program for FY 2014

Radio System Manager (100 %)



AGENDA ITEM 16

DATE OF MEETING: August 1, 2013	DATE SUBMITTED: July 23, 2013	
DEPT. OF ORIGIN: Communications	SUBMITTED BY: Pamela R. Ruemke	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> RESOLUTION
<input type="checkbox"/> WORK SESSION		
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Interlocal Agreement Between the Brazos Valley Council of Governments (BVCOG) and the City of Brenham for E9-1-1 Public Safety Answering Point Services and Authorize the Mayor to Execute Any Necessary Documentation		
SUMMARY STATEMENT: The Contract for 9-1-1 Services between Commission on State Emergency Communications (CSEC) and the Brazos Valley Council of Government (BVCOG) requires the execution of an Interlocal Agreement with the City of Brenham; relating to the planning, development, operation and provision of 9-1-1 service, the use of wireline and wireless 9-1-1 fees and equalization surcharge appropriated to the Commission and granted to BVCOG. The current agreement was signed in 2011 and is terminated August 31, 2013. The only changes made from last time are a statement in the ILA about complying with the PSAP Guidelines, added a statement under security about not connecting any external device to the 9-1-1 equipment and a statement about retaining records for two previous years plus current year. The interlocal agreement when signed is effective as of September 1, 2013 and shall terminate on August 31, 2015.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1.) Copy of Letter from BVCOG; and (3) Copy of Interlocal Agreement Between the BVCOG and City of Brenham		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve an Interlocal Agreement between the Brazos Valley Council of Governments (BVCOG) and the City of Brenham for E9-1-1 Public Safety Answering Point Services and authorize the Mayor to execute any necessary documentation.		
APPROVALS: Terry K. Roberts		



BRAZOS VALLEY COUNCIL OF GOVERNMENTS

P.O. DRAWER 4128 · BRYAN, TEXAS 77805-4128

July 17, 2013

Honorable Milton Tate, Jr.
Mayor, City of Brenham
PO Box 1059
Brenham TX 77834-1059

Dear Mayor Tate:

Please find enclosed two (2) signed copies of an Interlocal Agreement (ILA) between the Brazos Valley Council of Governments (BVCOG) and City of Brenham for E9-1-1 Public Safety Answering Point (PSAP) Services. **We are requesting that City of Brenham approve the Interlocal Agreement for PSAP services, sign and return one copy to BVCOG for our records.** Please note that the ILA and scope of work has been reviewed and signed by Pamela Ruemke.

The Commission on State Emergency Communications (CSEC) requires that there be an Interlocal agreement between the COG and its local governments providing 9-1-1 and/or database maintenance services. CSEC recommends that this Interlocal Agreement be reissued every two years at the beginning of the biennium. There were slight changes to the agreement to add reference to the new PSAP Guidelines adopted by the BVCOG Board along with minor changes to the security and record retention sections.

The City of Brenham conducts E9-1-1 PSAP services that are funded in part by 9-1-1 service fees. Therefore, the BVCOG would like to re-enter into an Interlocal agreement with City of Brenham for this service. Please approve the enclosed agreement at your next regularly scheduled meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Anita J. Pitt".

Anita J. Pitt
9-1-1 Program Manager

Enclosures/Attachments

cc: Pamela Ruemke, Communication Supervisor

**INTERLOCAL AGREEMENT BETWEEN THE
BRAZOS VALLEY COUNCIL OF GOVERNMENTS AND
CITY OF BRENHAM
FOR E9-1-1 PUBLIC SAFETY ANSWERING POINT SERVICES**

Article 1: Parties & Purpose

1.1 The Brazos Valley Council of Governments (RPC) is a regional planning commission and political subdivision of the State of Texas organized and operating under the Texas Regional Planning Act of 1965, as amended, Chapter 391 of the Local Government Code. The RPC has developed a Strategic Plan to establish and operate 9-1-1 service (Strategic Plan) in State Planning Region 13 (Region), and the Commission on State Emergency Communications (Commission) has approved its current Strategic Plan.

1.2 City of Brenham (Local Government) is a local government that operates Public Safety Answering Points (PSAP) that assists in implementing the Strategic Plan as approved by the Commission.

1.3 The Commission, as authorized by Health & Safety Code, Chapter 771, is the oversight and funding authority for regional planning commissions implementing 9-1-1 service.

1.4 The Contract for 9-1-1 Services between the Commission and the RPC requires the RPC to execute Interlocal agreements with local governments relating to the planning, development, operation, and provision of 9-1-1 service, the use of wireline and wireless 9-1-1 fees and equalization surcharge appropriated to the Commission and granted to the RPC (9-1-1 Funds) and adherence to Applicable Law.

Article 2: Applicable Law

2.1 Applicable laws include, but are not limited to, the Texas Health and Safety Code Chapter 771; Commission Rules (Title 1, Part 12, Texas Administrative Code) and Program Policy Statements; the biennial state General Appropriations Act, Texas Government Code (including Uniform Grant and Contract Management Standards [UGMS]), Chapter 783 and Title 1, Part 1, Chapter 5, Subchapter A, Division 4, Texas Administrative Code; Preservation and Management of Local Government Records Act, Chapter 441, Subchapter J; and Resolution of Certain Contract Claims Against the State, Chapter 2260; Texas Local Government Code (including Regional Planning Commissions Act, Chapter 391).

2.2 Any new or amended policy or procedure, other than an adopted rule, shall be enforceable against the Local Government 30 days following the date of its adoption unless the RPC finds and declares that an emergency exists which requires that such policy or procedure be enforceable immediately. The RPC shall provide the Local Government written notice of all new or amended policies, procedures or interpretations of Commission rules within a reasonable time after adoption, and in any event at least 10 days prior to the time such policies or procedures are enforceable against the Local Government.

2.3 Local Government agrees to comply with the BVCOG Guidelines for Adding, Closing or Reduced Funding a Public Safety Answering Point or Adding a 9-1-1 Calltaking Position (Attachment G).

Article 3: Deliverables

3.1 The Local Government agrees to:

3.1.1 Operate and maintain the Brenham Emergency Communications Department (BECD) PSAP located at 301 N Baylor, Brenham, TX 77834.

3.1.2 Provide 9-1-1 public safety answering service 24 hours per day, seven days per week; and

3.1.3 Cooperate with the RPC in providing and maintaining suitable PSAP space meeting all technical requirements.

3.2 Ownership, Transference & Disposition of Equipment

3.2.1. The RPC and the Local Government shall comply with Applicable Law, in regards to the ownership, transfer of ownership, and/or control of equipment acquired with 9-1-1 Funds in connection with the provision of 9-1-1 service (9-1-1 equipment).

3.2.2 The RPC shall establish ownership of all 9-1-1 equipment located within the Local Government's jurisdiction. The RPC may maintain ownership, or it may agree to transfer ownership to the Local Government according to established policy.

3.2.3 The Local Government shall ensure that sufficient controls and security exist by which to protect and safeguard the 9-1-1 equipment against loss, damage or theft.

3.2.4 Ownership and transfer-of-ownership documents shall be prepared by the RPC and signed by both parties upon establishing ownership or transference of ownership of any such 9-1-1 equipment in accordance with UGMS and the State Comptroller of Public Accounts. BVCOG Property Record forms for New or Transfer and Disposal will be used and are attached to this Agreement.

3.2.5 Replacement insurance on 9-1-1 equipment shall be purchased and maintained by Brazos Valley Council of Governments and proof of insurance shall be provided upon request.

3.2.6 The RPC and/or the Commission shall be reimbursed by the Local Government for any damage to 9-1-1 equipment other than ordinary wear and tear.

3.3 Inventory

3.3.1 The RPC shall maintain a current inventory of all 9-1-1 equipment consistent with Applicable Law;

3.3.2 All 9-1-1 equipment shall be tagged with identification labels.

3.3.3 Any lost or stolen 9-1-1 equipment shall be reported to the RPC as soon as possible.

3.4 Security

3.4.1 The Local Government shall limit access to all 9-1-1 equipment and related data only to authorized personnel.

3.4.2 The Local Government shall not connect any external device into the 9-1-1 equipment.

3.5 Training

3.5.1 The Local Government shall notify the RPC of any new 9-1-1 call takers and schedule for applicable training as soon as possible.

3.6 Operations

The Local Government shall:

3.6.1 Designate a PSAP supervisor and provide related contact information to the RPC;

3.6.2 Monitor and test the 9-1-1 equipment and report any failures or maintenance issues immediately to the appropriate maintenance vendor and/or the RPC;

3.6.3 Coordinate with the RPC and local elected officials in the planning for and implementation and operation of all 9-1-1 equipment;

3.6.4 Allow 24-hour access to the 9-1-1 equipment for repair and maintenance service, as required;

3.6.5 Assist the RPC in conducting inspections of all 9-1-1 equipment at the PSAP as identified by the RPC for quality assurance;

3.6.6 Test all Telecommunications Devices for the Deaf (TDD) for proper operation;

3.6.7 Log all TDD 9-1-1 calls and equipment testing as required by the Americans with Disabilities Act of 1990;

3.6.8 Log all trouble reports and make copies available to the RPC as required by the RPC;

3.6.9 Make no changes to 9-1-1 equipment, software or programs without prior written consent from the RPC.

3.6.10 Comply with all the requirements identified in the Scope of Work (Attachment D).

Article 4: Performance Monitoring

4.1 The RPC and the Commission reserve the right to perform on-site monitoring of the PSAP(s) for compliance with Applicable Law and performance of the deliverables specified in this Agreement. The Local Government agrees to fully cooperate with all monitoring requests from the RPC and/or the Commission for such purposes.

Article 5: Procurement

5.1 The RPC and the Local Government agree to use competitive procurement practices and procedures required by Applicable Law and RPC procurement policies in connection with any procurement to be funded with 9-1-1 Funds.

5.2 The RPC shall purchase for Local Government the supplies necessary for performance of the deliverables per this Agreement.

Article 6: Financial

6.1 As authorized by Applicable Law, the provisioning of 9-1-1 service throughout the Region is funded by Commission grants of appropriated 9-1-1 Funds.

Article 7: Retention Records

7.1 The Local Government will retain two previous years of 9-1-1 records (audio, hand written log and/or electronic) plus the current year.

Article 8: Assignment

8.1 The Local Government may not assign its rights or subcontract its duties under this Agreement. An attempted assignment or subcontract in violation of this paragraph is void.

Article 9: Nondiscrimination and Equal Opportunity

9.1 The RPC and the Local Government shall not exclude anyone from participating under this Agreement, deny anyone benefits under this Agreement, or otherwise unlawfully discriminate against anyone in carrying out this Agreement because of race, color, religion, sex, age, disability, handicap, or national origin.

Article 10: Dispute Resolution

10.1 Disputes include, but are not limited to, disagreement between the parties about the meaning or application of the Strategic Plan, the Applicable Law or policy, or this Agreement.

10.2 The parties desire to resolve disputes without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between them. To this end, the parties agree not to sue one another, except to enforce compliance with this Article 10, until they have exhausted the procedures set out in this Article 10.

10.3 At the written request of either party, each party shall appoint one non-lawyer representative to negotiate informally and in good faith to resolve any dispute arising between the parties. The representatives appointed shall determine the location, format, frequency, and duration of the negotiations.

10.4 If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the parties agree to submit the dispute to a mutually designated legal mediator. Each party shall pay one-half the total fee and expenses for conducting the mediation.

10.5 The parties agree to continue performing their duties under this Agreement, which are unaffected by the dispute, during the negotiation and mediation process.

10.6 If mediation does not resolve the parties' dispute, the parties may pursue their legal and equitable remedies.

Article 11: Suspension for Unavailability of Funds

11.1 In the event that (i) the RPC's approved budget and/or appropriations to the Commission from the Texas Legislature do not permit or otherwise appropriate funds for reimbursement to Local Government provided for in this Agreement, and (ii) such lack of permission or non-appropriation shall not have resulted from any act or failure to act on the part of the RPC, and (iii) the RPC has exhausted all funds legally available for reimbursement to Local Government, and no other legal procedure shall exist whereby payment hereunder can be made to Local Government; and (iv) RPC has negotiated in good faith with Local Government to develop an alternative payment schedule or new agreement that will accommodate RPC's approved budget and/or appropriations for the

applicable period, then RPC will not be obligated to reimburse the Local Government for the applicable budget year(s).

Article 12: Notice to Parties

12.1 Notice under this Agreement must be in writing and received by the party against whom it is to operate. Notice is received by a party (1) when it is delivered to the party personally; or (2) on the date shown on the return receipt if mailed by registered or certified mail, return receipt requested, to the party's address specified in this Article and signed on behalf of the party.

12.2 The RPC's address is:

Brazos Valley Council of Governments
3991 E. 29th St.
Bryan, TX 77802

The Local Government's address is:

City of Brenham
P O Box 1059
Brenham, TX 77834

12.3 A party may change its address by providing notice of the change in accordance with paragraph 12.1.

Article 13: Effective Date and Term

13.1 This Agreement is effective as of September 1, 2013 and shall terminate on August 31, 2015.

13.2 In the event of default in the performance of this Agreement, the non-defaulting party may terminate this Agreement after providing written notice of the default to the defaulting party, and the failure of the defaulting party to cure said default within 30 calendar days of said notice.

13.3 If this Agreement is terminated for any reason, the RPC shall not be liable to the Local Government for any damages, claims, losses, or any other amounts arising from or related to any such termination.

Article 14: Force Majeure

14.1 The RPC may grant relief from performance of the Agreement if the Local Government is prevented from performance by act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Local

Government. The burden of proof for the need of such relief shall rest upon the Local Government. To obtain release based on force majeure, the Local Government shall file a written request with the RPC.

Article 15: Confidentiality

15.1 The parties will comply with the Texas Public Information Act, Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. This Agreement and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. The parties agree to maintain the confidentiality of information received during the performance of this Agreement.

15.2 The Local Government or its duly authorized representative will notify the RPC upon receipt of any requests for information.

Article 16: Indemnification

16.1 To the extent authorized by law, each party agrees to indemnify the other and agrees to defend its governing body members, officers and employees, against any claim, suit or administrative proceeding, and to indemnify them against any liability including all costs, expenses, and reasonable attorney's fees incurred arising out of an act or omission of the governing body, any officer, employee or agent in carrying out this Agreement.

Article 17. Historically Underutilized Business Requirements

17.1 The Local Government shall comply with requirements of Chapter 2261 of the Government Code regarding Historically Underutilized Businesses.

Article 18: Miscellaneous

18.1 For purposes of this Agreement, terms not specifically defined herein are defined in the Applicable Laws.

18.2 Each individual signing this Agreement on behalf of a party warrants that he or she is legally authorized to do so, and that the party is legally authorized to perform the obligations undertaken.

18.3 This Agreement constitutes the entire agreement between the parties and supersedes any and all oral or written agreements between the parties relating to matters herein. An amendment to this Agreement is not effective unless in writing and signed by both parties.

18.4 All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect the term of this Agreement, which shall continue in full force and effect.

18.5 The following Attachments are part of this Agreement:

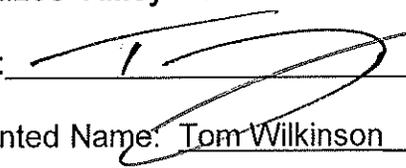
- | | |
|--------------|---|
| Attachment A | Ownership Agreement |
| Attachment B | BVCOG Property Record – New or Transfer |
| Attachment C | BVCOG Property Record -- Disposal |
| Attachment D | Scope of Work |
| Attachment E | PSAP Operations Performance Measures and Monitoring |
| Attachment 2 | TTY Call Log |
| Attachment 3 | 9-1-1 Trouble / Alarm Log |
| Attachment 4 | PSAP Monitoring Checklist |
| Attachment F | PSAP Guidelines |
| Attachment G | PSAP Recurring Expenses |
| Attachment H | Commission Documents – Legislation, Rules and Program Policy Statements |

18.6 This Agreement is binding on, and to the benefit of, the parties' successors in interest.

18.7 This Agreement is executed in duplicate originals.

Brazos Valley Council of Governments

City of Brenham

By:  _____

By: _____

Printed Name: Tom Wilkinson

Printed Name: Milton Tate Jr.

Title: Executive Director

Title: City of Brenham Mayor

Date: 7-17-13

Date: _____

**Attachment A
Ownership Agreement**

As stipulated in Article 3 of the Agreement, the RPC shall establish ownership of all 9-1-1 equipment located within the Local Government's jurisdiction.

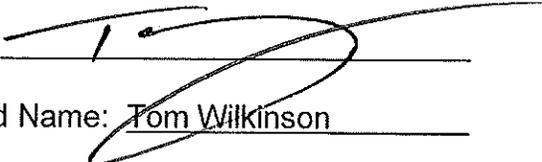
The RPC hereby establishes all 9-1-1 equipment located at the Brenham Emergency Communications Department, in the City of Brenham, to be the property of Brazos Valley Council of Governments, hereinafter referred to as "Owner".

Following is an itemized listing of 9-1-1 equipment hereby defined as the property of Owner.

Equipment inventory list is attached

Brazos Valley Council of Governments

City of Brenham

By:  _____

By: _____

Printed Name: Tom Wilkinson

Printed Name: Milton Tate Jr.

Title: Executive Director

Title: City of Brenham Mayor

Date: 7-17-13

Date: _____

BVCOG INVENTORY OF 9-1-1 EQUIPMENT

AGENCY: Brenham Emergency Communications Department, Brenham TX

DATE: 05/16/13

Master Tag Number	Tag Number	Serial Number	Asset Description	Vendor	Owner / Manager	Master Location	Contract Date	Install Date	Original Value	Estimated Life/ Replacement Date
5768		Master Tag	Vesta Pallas ANI/ALI System Upgrade	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$84,452	
5768	BECD 14	MX203500LX	DC1 Server Vesta/Vela software & Support	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$51,247	6 / 2017
5768	BECD 13	MXQ11805F4	Aurora Sequel Server hardware, software, configuration, license fee	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$13,268	6 / 2017
5768	5410	NT7B10AAFRE5	BCM 400 4.0	Embarq	BVCOG	BECD	08/26/09	04/27/10	\$5,451	6 / 2017
5768	BECD10	FTX13518239	Cisco 1841 Router	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$1,488	6 / 2017
5768	BECD11	FTX140281DE	Cisco 1841 Router	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$1,488	6 / 2017
5768		09742H	Vesta ACU 1	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$2,443	6 / 2017
5768		09743H	Vesta ACU 2	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$2,443	6 / 2017
5768		09744H	Vesta ACU 3	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$2,443	6 / 2017
5768	BECD04	2UA150018W	VP Workstation, keyboard and mouse, Datasync software	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$2,145	4 / 2014
5768	BECD05	2UA9471SKM	VP Workstation, keyboard and mouse, Datasync software	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$2,145	4 / 2014
5768	BECD06	2UA9471SL2	VP Workstation, keyboard and mouse, Datasync software	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$2,145	4 / 2014
5768	BECD04	N/A	17" Flat Monitor 1	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$340	4 / 2014
5768	BECD04	N/A	17" Flat Monitor 2	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$340	4 / 2014
5768	BECD05	N/A	17" Flat Monitor 3	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$340	4 / 2014
5768	BECD05	N/A	17" Flat Monitor 1	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$340	4 / 2014
5768	BECD06	N/A	17" Flat Monitor 2	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$340	4 / 2014
5768	BECD06	N/A	17" Flat Monitor 3	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$340	4 / 2014
5768	BECD08	11942	SpectraCom NetClock	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$6,172	6 / 2017
5768	BECD09	98207G9	LexMark C540N	CntryLnk	BVCOG	BECD	08/26/09	04/27/10	\$350	4 / 2014
	5578	4Y93284YA	Monitor, Keyboard & Arbitrator	CntryLnk	BVCOG	BECD	08/18/05	08/18/05	\$554	6 / 2011
	5580	RX394A0452	3.0 kVA UPS Power Ware	CntryLnk	BVCOG	BECD	08/18/05	08/18/05	\$3,146	6 / 2011
	3495	N/A	Bypass Switch (BEST)	CntryLnk	BVCOG	BECD	08/18/05	08/18/05	\$438	6 / 2011
	BECD01	NT8B27JAAA	16 Button Telephone 1	Embarq	BVCOG	BECD	08/18/05	08/18/05	\$258	6 / 2011
	BECD03	NT8B27JAAA	16 Button Telephone 2	Embarq	BVCOG	BECD	08/18/05	08/18/05	\$258	6 / 2011
	BECD02	NT8B27JAAA	16 Button Telephone 3	Embarq	BVCOG	BECD	08/18/05	08/18/05	\$258	6 / 2011
6254	BECD12	FTX15040BSC	Cisco 1941 IP Network Router	Verizon	BVCOG	BECD	12/29/10	05/06/11	\$3,358	6 / 2017
	6226	819226	TTY MP2000D	Krown	BVCOG	BECD	02/01/13	02/01/13	\$511	5 / 2018
		10703	Ultratec Superprint TDD 4425A	Ultratec	BVCOG	BECD	06/07/02			
	5712	807706	TTY MP2000D	Krown	BVCOG	BECD	08/20/09	08/20/09	\$457-	5 / 2014
*	5012	N/A	Cisco 1720 Router	AT&T	BVCOG	BECD	03/13/00			
*	5013	N/A	Cisco 1720 Router	SBC	BVCOG	BECD	01/24/01			
*	5579	USE635N88H	BECD SequelServer	CntryLnk	BVCOG	BECD	08/26/09			
ORIGINAL VALUE OF EQUIPMENT									\$104,505	

ANNUAL CERTIFICATION FOR FY 13

Inventory Certified By: Pam Ruemke
 Title and Agency: Brenham ECD Communications Supervisor
 Accepted by BVCOG: Anita J. Pitt
 Title: 9-1-1 Program Manager

Date: May 16, 2013
 Date: May 16, 2013

Kept on inventory, but not eligible for replacement.
 * Kept at BVCOG as spares



Attachment B

BRAZOS VALLEY COUNCIL OF GOVERNMENTS PROPERTY RECORD

FORM REVISED:
JUNE 2009

NEW	(A) OR	TRANSFER
-----	-----------	----------

(B) FROM Vendor (NEW) or Program transfer	Check Program or fill in *Other below					(F) TO Program Transfer	Check Program or fill in *Other below				
IT	Admin	AAA	RSVP	911		IT	Admin	AAA	RSVP	911	
PSP/BIO	CIHC	SW	HSG	BVWACS		PSP/BIO	CIHC	SW	HSG	BVWACS	
HHS	FIN	BVAHC	WF BOARD	WF CENTER		HHS	FIN	BVAHC	WF BOARD	WF CENTER	
*Other Program:						*Other Program:					
(C) ** Please indicate county **						(G) ** Please indicate county **					
Brazos	Burleson	Grimes	Robertson	Washington		Brazos	Burleson	Grimes	Robertson	Washington	
Leon	Madison	Other County				Leon	Madison	Other County			
(D) NEW VENDOR NAME:											
(E) Insured by	BVCOG	OTHER: <i>Please be specific</i>				(H) Insured by	BVCOG	OTHER: <i>Please be specific</i>			
(I) Tag No.	Serial No.	Model No.		Detailed Description ex: desk top, lap top, printer, projector, etc							
(J) Additional information											
(K)						(L)					
FROM: Signature: Employee/Other						TO: Signature: Employee/Other					
Date Released						Date Received					
FROM: Signature: Program Manager						TO: Signature: Program Manager					
Return to: Property Control, Finance Department, P O Box 4128, Bryan, TX 77802											
(M) For Property Control Office Use Only:											
Received:	Entered:				Signature						

Attachment C
BRAZOS VALLEY COUNCIL OF GOVERNMENTS



PROPERTY RECORD

FORM
 REVISED:
 JUNE 2009

DISPOSAL

***** BVCOG inventory tag must accompany the disposal record or noted why it is not available *****

(A) FROM Program	Check Program or fill in *Other below				(C)	Reason for disposal or *Other below
IT	Admin	AAA	RSVP	911		DAMAGED <i>(not cost effective to repair)</i>
PSP/BIO	CIHC	SW	HSG	BVWACS		STOLEN <i>(Police report must be attached)</i>
HHS	FIN	BVAHC	WF BOARD	WF CENTER		OTHER - <i>Please be specific</i>
Other Program:						DONATED <i>Please be specific i.e. to what organization</i>
(B) ** Please indicate county **					(D) Paste Inventory Tag Here:	
Brazos	Burleson	Grimes	Robertson	Washington		
Leon	Madison	Other County				
(E) Tag Number	Serial Number		Model Number		Detailed Description ex: desk top, lap top, etc	
(F) Additional Information						
(G)				(H)		
FROM Signature: Employee/Other				TO Signature		
Date Released				Date Received		
FROM Signature: Program Manager				TO Title		
(I) Executive Director signature required						
				Signature:		
<i>Return to: Property Control, Finance Department, P O Box 4128, Bryan, TX 77802</i>						
(J) For Property Control Office Use Only:						
Received:		Entered:		Signature		

Attachment D Scope of Work – PSAP

Local Government will:

- Designate a PSAP Communications Supervisor and provide related contact information as a single point of contact for BVCOG.
- Coordinate with BVCOG in the planning for, implementation and operation of all 9-1-1 equipment.
- Monitor the 9-1-1 equipment, report any failures or maintenance issues immediately to the appropriate telephone company, and notify BVCOG if appropriate response is not forthcoming from the company.
- Keep a log of all trouble reports and make copies available to BVCOG at quarterly monitoring visits or upon request.
- Notify BVCOG of any and all major service-affecting issues or issues needing escalation within a service provider's organization.
- Test all 9-1-1 and ancillary equipment for proper operation and user familiarity at least once per month.
- Test alternate routing switch(es) once a month.
- Test all 9-1-1 TDD/TTYs for proper operation and to maintain user familiarity at least once per month.
- Log all TDD/TTY calls, and make copies available to BVCOG and Department of Justice on an as-needed basis.
- Log and document 9-1-1 test calls by typing the word "test" in the notes field of the 9-1-1 software.
- Limit access to all 9-1-1 equipment and related data only to authorized personnel.
- Maintain security of the 9-1-1 system by not connecting any external device to the 9-1-1 equipment.
- Retain 9-1-1 records (audio, hand written and/or electronic) for the previous two years plus current year.
- Make no changes to 9-1-1 equipment, software or programs without prior written consent from BVCOG.
- Provide a safe and healthy environment for all 9-1-1 call takers/dispatchers which enhances proper use and maintenance of 9-1-1 equipment.
- Not change or modify any configuration, software or hardware provided by BVCOG.
- The PSAP shall notify BVCOG of any service provider changes and/or changes in phone numbers programmed on the 9-1-1 equipment.
- Fax ANI/ALI Discrepancy Reports including wireless information within 24-hours of the initial 9-1-1 call.

Brazos Valley Council of Governments

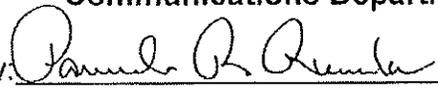
By: 

Printed Name: Anita J. Pitt

Title: 9-1-1 Program Manager

Date: 7-17-13

**Brenham Emergency
Communications Department**

By: 

Printed Name: Pamela Ruenke

Title: Communications Supervisor

Date: 07-17-2013

Attachment E

PSAP Operations Performance Measures and Monitoring

Reports

The RPC may request that the Local Government provide it with specialized reports which will not duplicate information readily available from vendors.

Logs

The Local Government shall provide copies of logs and reports to assist with the RPC's collection of efficiency data on the operation of PSAPs including, but not limited to:

1. Certification of TTY/TDD training twice per year
2. TTY/TDD call test logs on a quarterly basis.
3. Trouble Log Report on a quarterly basis – in lieu of report can contact BVCOG to report and log repairs
4. PSAP Monitoring Checklist – on a quarterly basis

See attachments 2, 3 and 4.

Quality Assurance Inspections

RPC personnel will conduct site visits at least 4 per year to evaluate the condition of equipment, efficiency of PSAP operations, and compliance with the Agreement.

In addition, quality assurance inspections will be conducted at quarterly site visits or as often as necessary.

Inventory

RPC personnel will conduct annual inventory visits at least once per year. PSAP personnel will assist and sign-off on annual inventory or equipment or when 9-1-1 equipment is removed and replaced by vendor.

PSAP Monitoring Checklist:

Brazos Valley Council of Governments

County Name: Washington

Date: _____

PSAP Name: Brenham Emerg Comm Dept

PSAP TN: 979 337 7272 / 979 337 7274

PSAP Contact: Pamela Ruemke

BVCOG Contact: Anita Pitt 979 595 2801 x 2030

Signatures:

Previous Findings:

CPE TYPE: Cassidian Vesta Pallas 3.0; Vela 3.0; Aurora 2.0 Updated 6/05/12
CPE Ownership: BVCOG Purchased: August 2010 Updated 12/15/10 Windows XP
CPE Vendor: CenturyLink Server 2003
CPE Maintenance: CenturyLink -- Shannon Cheatham @ (832) 233-9536; 1 877 433 1989 Opt 1; Site ID # 21283403

Monitoring Component	Standard	Check Current Status		Findings	Comments
		Compliant	Non-Compliant		
Cleanliness -- Front & Back; Healthy environment					
Inventory Tags	Silver BVCOG Tags				
PSAP Security -- Room & CPE					
Unauthorized Software					
No unauthorized changes	NO Integration				
Redundant CPE Functioning	3 Positions				
Redundant Network	3 Med Center				
ANI & ALI Displays	All info Displays				
Wireless ALI connection modem	3 green lights				
Map Displays	Plots Landline Map Updated				
Aurora	Opens Successfully				
WPH I & II -- Maps	Plots Caller WPH2 Printout				
PEN Network Test	Did ALI display				
WSP Evaluation (pANI's, ALI display, misroutes, etc.)	ATTMO, Nextel, SPPCS, T-Mobile, Verizon				
TTY Tested & Documented	Stand Alone & Testing File				
TTY Test Calls	# of PSAP Test # of Test AJP				
UPS / Generator Testing	Known CPE Outage				
Reports of any known issues	BVCOG Trouble Log				
Contingency Routing/MBC; Did PSAP test?	TO: NPD				
Overflow	TO: 1st Admin Line				
Network Testing - Trunks & Admin Lines	3 Trunks / 2 Admin				
Test calls for quarter	# of TOTAL test				
Need Print-Out	# of PSAP Test # of BVCOG				
	Total # of 9-1-1 calls				
90-Day Evaluation 9-1-1 calls	# of Wireless				
Speed dial programming -- any changes requested?					
Language Line & Poison Accessibility	Account Info Posted				
Recorder / 9-1-1 Channels Listed & Recording	Channels: 1 & 2				
Recorder Model & Supply of Storage Media	NICE Focus III				
Repair #'s Accessible	CenturyLink				
BVCOG Contact Info	Accessible				
Printer Functioning	Color toner				
Incorrect ANI/ALI Reports	Send landline CL				
Retention Records	2+ current				
New Calltakers?					

PSAP Supplies / Public Education Materials Delivered:

Attachment F

BVCOG Guidelines for Adding, Closing or Reduced Funding a Public Safety Answering Point Or Adding a 9-1-1 Calltaking Position

1. PURPOSE

The addition of a Public Safety Answering Point (PSAP) or 9-1-1 calltaking position (equipment) impacts the BVCOG Regional Strategic Plan for 9-1-1 Service and the performance measures reported to the Commission on State Emergency Communications (CSEC). These guidelines provide criteria and identify required information to be included in a request to add a PSAP or 9-1-1 calltaking position (equipment). Items to be considered for closing or providing reduced funding for a PSAP are also included.

2. OVERRIDING POLICIES

- A. Two or more counties may enter into an Interlocal contract for the operation of a Primary PSAP to serve those counties; otherwise there shall be at least one Primary PSAP in each county.
- B. BVCOG Board of Directors approval is required to submit request to CSEC.
- C. CSEC has final approval authority for all new PSAPs and 9-1-1 calltaking positions.
- D. All applicable provisions of CSEC Rules and Program Policy Statements must be met.
- E. A request to add a second PSAP in a county, the requesting jurisdiction must agree to reimburse BVCOG, depending on availability of 9-1-1 funds, a minimum of 25% of the total monthly recurring charges for the system and 100% nonrecurring charges to acquire the equipment.
- F. If funding is not available within the BVCOG Strategic Plan for 9-1-1 Service for an additional calltaking position, the requesting jurisdiction must agree to reimburse BVCOG 100% nonrecurring charges to acquire the equipment and 5-years maintenance for the additional position.
- G. A second PSAP jurisdiction may provide funding (minimum of 25% of the total monthly recurring charges for the system and 100% nonrecurring charges to acquire the equipment) to continue operation of a PSAP selected for closing or reduced funding.
 - (1) Annual monthly recurring charges will be calculated in May of every odd numbered year to begin September of that year for the next biennium.
- H. BVCOG shall have ownership over all PSAP equipment, regardless of funding source.
- I. All requests must be submitted in writing on departmental letterhead signed by the chief elected official of jurisdiction's governing body.

3. ADDITIONAL PSAP

A PSAP may be added if all of the following factors are met:

- A. Population of requesting jurisdiction is:
 - (1) Greater than 20,000; or
 - (2) At least 33% of the total population of the County.
- B. For the previous six months, the jurisdiction can document a minimum average of 30 calls per day, which may include the combined total of the number of 9-1-1 and 10-digit emergency telephone number calls for the

agency (or agencies, if the site will serve as a Backup PSAP) requesting the PSAP.

- C. Resolution from local governing body of existing PSAP agreeing to release the proposed area for the new PSAP; and resolution from the local governing body of proposed PSAP agreeing to provide the duties and responsibilities of 9-1-1 service for the area specified.
- D. Written acknowledgement from the jurisdiction of the capability to provide:
 - (1) Minimum PSAP requirements as outlined in CSEC Rule 251.1; and
 - (2) Adequate facilities and personnel to house and operate a PSAP for receiving 9-1-1 calls.

4. ADDITIONAL CALL TAKING POSITION

A calltaking position (equipment) may be added if all of the following factors are met:

- A. Jurisdiction has a population growth rate of at least 3% over the past two years.
- B. Call volume averages 30 calls per day per existing position over the past six months.
- C. Identification of other factors which may be relevant to the need for an additional workstation.
- D. Jurisdiction must certify the capability to provide staffing for the additional position.

5. CLOSING A PSAP

- A. A PSAP will be identified for closing when the average daily total call volume of 9-1-1 and 10-digit emergency calls falls below 20 calls per day over an 18 month period. PSAPs operating at an educational institution or PSAPs that are the only PSAP within a county are exempt.
- B. Notification process:
 - (1) In March of even numbered years, a report will be provided to the BVCOG Board of Directors identifying PSAPs that are subject to closure or reduced funding. The average call volume will be calculated for the 18 month period ending in February of that year.
 - (2) In February of odd numbered years, as part of the budget approval process, a recommendation will be presented to the BVCOG Board of Directors to which PSAPs may be closed or partially funded for the biennium beginning in September of that year.
- C. Once a PSAP has been closed or had funding reduced, the jurisdiction must meet all requirements for adding a PSAP in order to reactivate the PSAP or have BVCOG funding restored.

6. REDUCE FUNDING

- A. The following factors will be considered when budget reductions necessitate closing or providing reduced funding to PSAPs that meet the minimum daily call volume:
 - (1) Average daily total call volume of 9-1-1 and 10-digit emergency calls based on the past 12 months falls below 30 calls but above 20 calls per day the BVCOG Board of Directors will review staff recommendations and consider reduced funding for second PSAPs.
 - (2) Proximity to primary PSAP.
 - (3) Number of 9-1-1 and 10-digit emergency calls transferred to other PSAPs for dispatch.

January 4, 2013

Brenham ECD 9-1-1 System Recurring Expenses*

Description of Services	Provider	Monthly Recurring
9-1-1 Network (delivery of calls)	AT&T	\$ 713.00
9-1-1 Network (delivery of calls)	CenturyLink	\$ 88.00
9-1-1 Network (delivery of calls)	Verizon	\$ 78.00
9-1-1 Network (ALI)	DIR	\$ 402.00
9-1-1 Network (Private IP)	Verizon	\$ 546.00
9-1-1 Network (local phone lines)	AT&T	\$ 326.00
NETWORK SUBTOTAL		\$ 2,153.00
9-1-1 Equipment (Maintenance)	CenturyLink	\$ 993.00
EQUIPMENT SUBTOTAL		\$ 993.00
9-1-1 Database	Intrado	\$ 867.00
Language Line Services	Language Line	\$ 100.00
Managed Services (24 x 7 monitoring)	Cassidian	\$ 454.00
Software support (Aurora, Vela & Vesta)	Cassidian	\$ 378.00
Wireless Tariff	AT&T	\$ 94.00
Wireless Phase I	Sprint	\$ 102.00
SERVICES SUBTOTAL		\$ 1,995.00
TOTAL RECURRING EXPENSES		\$ 5,141.00
Annualized recurring expenses		\$ 61,692.00

* Does not include software upgrade and installation; nonrecurring and installation costs for new equipment; PSAP supplies for 9-1-1 printer or recording system.

Equipment Asset at PSAP	\$ 103,994.00
Equipment Asset at Database Maintenance	\$ 14,324.00
Annual Database Reimbursement	\$ 20,000.00

Number of 9-1-1 calls FY 2012 41,650

Commission Documents

The following documents govern the funding and provisioning of 9-1-1 services by the RPC:

1. Commission Legislation: <http://www.csec.texas.gov/statutes>
2. Commission Rules:
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=4&ti=1&pt=12&ch=251&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=12&ch=251&rl=Y)
3. Commission Program Policy Statements:
<http://www.csec.texas.gov/9-1-1/documents/program-policy-statements-rev>



AGENDA ITEM 17

DATE OF MEETING: August 1, 2013		DATE SUBMITTED: July 29, 2013	
DEPT. OF ORIGIN: Police		SUBMITTED BY: Rex Phelps	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING	
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING	
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION	
	<input type="checkbox"/> WORK SESSION		
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon the Acceptance of a Donation in the Amount of \$25,000.00 to the Brenham Police Department and Authorize the Mayor to Execute Any Necessary Documentation			
SUMMARY STATEMENT: The Pegasus Foundation has offered a donation to the police department for \$25,000 to assist in needed training and equipment costs. The same foundation also donated the same amount of money to the sheriff's office. It was the desire of the foundation to give the generous donation to the area law enforcement agencies listed. The donation money will be placed in the donation account for equipment needs, facility needs or training. The donor only requested the funds be used for law enforcement training, facility or equipment needs.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):			
A. PROS: These funds will assist the department with rapid response training and equip the department to be more effective and efficient when responding to critical incidents. The donation funds can be used to purchase simulated munitions, protective gear, other equipment, etc.			
B. CONS: None identified			
ALTERNATIVES (In Suggested Order of Staff Preference): Utilized general fund budgeting			
ATTACHMENTS: None			
FUNDING SOURCE (Where Applicable): Donation			
RECOMMENDED ACTION: Accept a donation in the amount of \$25,000.00 to the Brenham Police Department and authorize the Mayor to execute any necessary documentation			
APPROVALS: Terry K. Roberts			



AGENDA ITEM 18

DATE OF MEETING: August 1, 2013		DATE SUBMITTED: July 26, 2013	
DEPT. OF ORIGIN: I.T.		SUBMITTED BY: Gary Jeter	
MEETING TYPE:		CLASSIFICATION:	
<input checked="" type="checkbox"/> REGULAR		<input type="checkbox"/> PUBLIC HEARING	
<input type="checkbox"/> SPECIAL		<input type="checkbox"/> CONSENT	
<input type="checkbox"/> EXECUTIVE SESSION		<input checked="" type="checkbox"/> REGULAR	
		<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Interlocal Cooperation Agreement Between the City of Brenham and the Region 6 Education Service Center (ESC6) for the Use of Fiber and Installation of Wireless Equipment on a City of Brenham Radio Transmission Tower			
SUMMARY STATEMENT: ESC6 has requested cooperation with the City of Brenham through an ILA on a project that will bring broadband internet to rural school districts. The City will allow use of a pair of fiber optic cables and installation of wireless equipment on the Communications tower.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):			
A. PROS: The City's wireless signal to the Lake Somerville midpoint location would be improved and the City will be able to drop the \$600.00 per year payment to Central Washington County Water Supply Corporation (CWCWSC) for electrical service at the midpoint location.			
B. CONS:			
ALTERNATIVES (In Suggested Order of Staff Preference):			
ATTACHMENTS: (1.) ESC6 Wireless Broadband Interlocal Agreement; and (2.) ESC6 Wireless Broadband Summary			
FUNDING SOURCE (Where Applicable):			
RECOMMENDED ACTION: Approve an Interlocal Cooperation Agreement between the City of Brenham and the Region 6 Education Service Center (ESC6) for the use of fiber and installation of wireless equipment on a City of Brenham Radio Transmission Tower.			
APPROVALS: Kyle Dannhaus			

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN REGION 6 EDUCATION SERVICE CENTER AND CITY OF BRENHAM, TEXAS**

THE STATE OF TEXAS }
 }
COUNTY OF WASHINGTON }

THIS “Interlocal Agreement between Region 6 Education Service Center and City of Brenham, Texas” (“Agreement”) is entered into by and between the State agency and local governmental entities shown below as contracting parties, pursuant to the authority granted and in compliance with the provisions of the “Interlocal Cooperation Act,” Texas Government Code, Chapter 791.

I. CONTRACTING PARTIES:

State Agency: Region 6 Education Service Center

Local Governmental Agency: The City of Brenham, Texas

II. STATEMENT OF SERVICES TO BE PERFORMED:

The City of Brenham (“City” or “party”) will make available to the Region 6 Education Service Center (“ESC6” or “party”) space on the City’s Communications tower, located next to the Brenham Police Station, to support network access to Independent School Districts in the vicinity of Brenham. The network will make available a WiMax Broadband network in collaboration with Blinn College, Texas A&M University, City of Brenham and others. The network will establish a licensed Microwave link between locations at Brenham, Longpoint, Somerville and Burton, as shown on Exhibit “A” attached hereto and incorporated herein for all purposes. The City is authorized to use these links to support City of Brenham communications requirements including law enforcement, utilities, and other City departments. The City is also authorized to use these links to expand the Brazos Valley Area Wide Communications System (“BVWACS”) P25 radio network.

The City will provide ESC6 with the non-exclusive use of tower space, sufficient space within the City’s communication shed for ESC6 to furnish and install one (1) full rack (ESC6 shall at all times reserve at least 10 rack spaces in said rack for City’s use) and reasonable electric power. ESC6’s use of the tower space and rack mount space shall be limited to the installation, operation and repair of the following equipment: one (1) antenna installed using a drop pipe assembly on the communications tower at a height of 150 feet, one (1) full rack radio equipment, adapters, universal power supply, power surge protection, and associated mounting equipment, conduits, brackets, wiring, connectors, etc. The City will also provide ESC6 use of one pair of fiber optic cable from the Communications tower location to the Blinn Student Center. The City of Brenham will supply the electric power necessary for all added equipment at the Communications tower location. City makes no representation or warranty with respect to the condition of the communications tower and City shall not be liable for any latent or patent defect in the communications tower. ESC6 has provided the City with an engineering structure study of the proposed equipment installation on the communications tower, and said study contains an opinion of a Texas licensed engineer certifying that the communications tower possesses the structural integrity and ability to safely bear the weight of the communications equipment and other incidental equipment to be installed by the ESC6 on the communications tower. ESC6, at its sole cost and with prior written approval of the City, shall install such safety measures and equipment as appropriate to ensure the safety of persons climbing on and/or installing the communications equipment and associated equipment on the communications tower and related premises.

Prior to installation, ESC6 must obtain the City's written approval of the installation of the communications equipment, which must in strict accordance with this Agreement.

At the Central Washington County Water Supply Corporation ("CWCWSC") Longpoint location the City will move its equipment from the existing enclosure into a new weatherproof enclosure provided by ESC6. The City will remove the existing enclosure and the 3'x3' concrete pad on which it is currently located. ESC6 will install a new electric meter at the enclosure and will supply and pay for all electric power charges for all equipment in the enclosure. The City is authorized to improve its network connection to the City's Lake Somerville location by routing the City's traffic on the ESC6 equipment. In the event a new tower is built in the future on the CWCWSC premises the City will be allowed to install its equipment on it at no charge. The City of Brenham will be allowed to utilize services on the WiMax network at costs established by the BVCnet network.

ESC6 will fund all equipment, labor and construction of improvements required to complete this installation. Mounting hardware and network equipment specifications will be provided to the City for approval prior to the commencement of any installation or construction. Proof of Insurance meeting the requirements provided for in Exhibit "B", attached hereto and incorporated herein for all purposes, will be provided in writing to the City of Brenham by ESC6. This written proof of insurance will also be provided by the sub-contractor that is responsible for the installation and construction.

Each party shall have sole responsibility for the maintenance, operation, repair, and security of its own communications equipment and facilities, and shall keep same in good repair and condition during the term and all renewals of this Agreement. Each party shall be responsible for repairing any and all damage to its communications equipment caused by natural disasters, lightning, wind, rain, fire, weather events, acts of God or similar causes.

III. CONTRACT AMOUNT:

The City and ESC6 acknowledge and agree that the mutual exchange of services and the other terms, conditions and obligations contained in this Agreement constitute fair and adequate consideration for the services being provided and received by each party, and neither party is entitled any monetary compensation from the other party for any services provided pursuant to this Agreement.

IV. TERM OF CONTRACT:

This Contract shall commence on August 1, 2013 and will terminate on December 31, 2018, unless terminated earlier as provided for in this Agreement.

V. MISCELLANEOUS

1. Termination. This Agreement may be terminated at any time by the City of Brenham or ESC6, with or without cause, upon ninety (90) days written notice to the other party. Costs of removal of the communications equipment and other equipment shall be borne by the equipment owner, and full removal of equipment shall be completed within ninety (90) days of date of termination.

2. Texas Law. This Agreement has been made under and shall be governed by the laws of the State of Texas. Exclusive venue for any action, lawsuit, claim, dispute or other legal proceeding concerning or arising out of this Agreement shall be in Washington County, Texas.

3. Compliance with Laws. ESC6's operations and all modifications to the equipment installation must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

4. Entire Agreement. This Agreement, together with all Exhibits attached hereto and incorporated herein constitute the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

5. Capacity. Both ESC6 and City represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

6. Amendment. This Agreement may only be amended by the mutual written agreement signed by the parties hereto.

7. Legal Construction; Severability. In the event that anyone or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or enforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

8. Non-waiver. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or conditions of this Agreement may be waived without consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its rights herein shall in no way constitute a waiver thereof.

9. Successors and Assigns. City and ESC6 each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither City nor ESC6 will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of City. ESC6 shall not assign, sublet, subcontract, transfer or allow the use of any interest in the City's premises or any use of ESC6's equipment or facilities, including but not limited to equipment, lines or frequencies, on the City's premises without the prior written consent of City. City's consent may be conditioned upon ESC6 successfully obtaining contracts from such third parties wherein those parties agree to directly compensate City for all benefits incurred by the use of the premises.

10. Contract Interpretation. Both parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

11. Non-exclusive license. ESC6 understands and agrees that this Agreement is a non-exclusive license and that the City has the right to grant other user rights to third parties to use the premises.

12. Attorney's Fees. If any action is brought to enforce, construe or determine the validity of any term or provision of this Agreement (whether at the trial court level or any appeal therefrom), the prevailing party shall be entitled to reasonable attorney's fees and costs of the action.

13. Liability and Indemnification. ESC6 SHALL AT ALL TIMES COMPLY WITH ALL LAWS AND ORDINANCES AND ALL RULES AND REGULATIONS OF MUNICIPAL, STATE AND FEDERAL GOVERNMENT AUTHORITIES RELATING TO THE INSTALLATION, MAINTENANCE, HEIGHT, LOCATION, USE, OPERATION, AND REMOVAL OF THE

EQUIPMENT AND FACILITIES AUTHORIZED HEREIN. ESC6 SHALL FULLY INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS, AND SERVANTS, OF AND FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTIONS OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS AND ANY LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY OR IN CONNECTION WITH THIS AGREEMENT OR THE ACTIVITIES TO BE PERFORMED HEREUNDER, WHETHER OR NOT SAID CLAIMS, DEMANDS, CAUSES OF ACTIONS ARE CAUSED BY THE NEGLIGENCE OF THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS, OR SERVANTS, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND A PARTY TO THIS AGREEMENT, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND SOME OTHER THIRD PARTY.

ESC6 represents and warrants that its use of the tower space and rack space and other premises herein will not generate any hazardous substance, and it will not store or dispose on the premises nor transport to or over the premises any hazardous substance. ESC6 FURTHER AGREES TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS, AND SERVANTS, FROM AND AGAINST ANY DAMAGE, LOSS, OR EXPENSE OR LIABILITY RESULTING FROM THE GENERATING, RELEASING, STORAGE OR DISPOSAL OF SUCH HAZARDOUS SUBSTANCES BY ESC6, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, OR SERVANTS, INCLUDING ALL ATTORNEY FEES, COSTS AND PENALTIES INCURRED AS A RESULT THEREOF.

"Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease.

14. Notice. All notices to the parties shall be in writing and shall be sent by certified or registered mail, or hand delivered, to the respective representatives for the parties as designated below and shall be deemed given when received at the address of the parties set forth below, or when received in person if hand delivered:

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

ESC6:

The undersigned contracting party, ESC6, does hereby certify that: (1) the services specified above are necessary and authorized for activities that are properly within the statutory functions and programs of the affected agency of State Government, and (2) the services, materials, or equipment contracted for are not

required by Section 21 of Article XVI of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

ESC6 further certifies that it has the authority to contract for the above services by authority granted in Texas Education Code Chapter 86 and the Current Appropriations Act.

The undersigned parties bind themselves to the faithful performance of this Agreement.

Region 6 Education Service Center

City of Brenham, Texas

Name:
Title:

Milton Y. Tate, Jr., Mayor

Date

Date

EXHIBIT "A"

ESC6 WIRELESS PROJECT

ESC6 Wireless Project

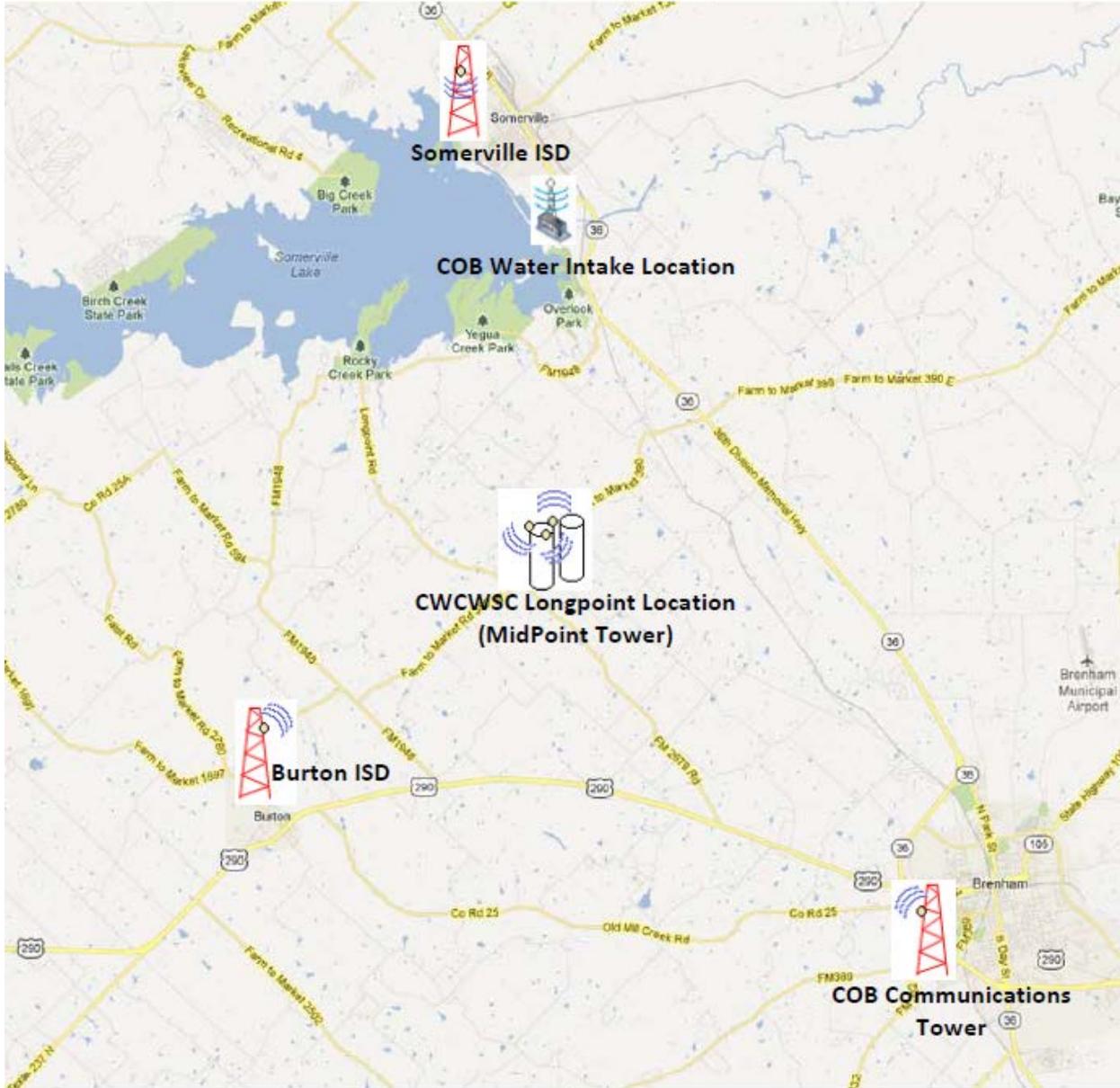


EXHIBIT “B”

INSURANCE

ESC6 shall keep in full force and effect during the terms of this Agreement insurance in the following types and minimum amounts:

TYPE	AMOUNT
Worker's Compensation or equivalent if approved by the City	Statutorily required or as the agreed by City
Employer's Liability	\$1,000,000.00
Comprehensive General Liability Including Contractual Liability, Premises/Operations, Personal Injury Liability	Combined Single Limit \$1,000,000.00 per occurrence \$1,000,000.00 aggregate
*Comprehensive Automobile Liability, Including Owned, Non-owned, and Hired Car Coverage *(applicable only If vehicles are used on Premises)	Bodily Injury: \$250,000.00 per person \$500,000.00 aggregate Property Damage: \$500,000.00 per occurrence \$500,000.00 aggregate

All insurance policies shall be subject to the examination and approval of City for their adequacy as to form and content, form of protection, and insurance company. ESC6 shall furnish copies of the policies or certificates of insurance to City plainly and clearly evidencing the terms of such insurance prior to ESC6 commencing activities under this Agreement, and thereafter new certificates or policies prior to the expiration date of any prior certificate or policy. ESC6 understands that it is its sole responsibility to provide this necessary information and that failure to timely comply with the requirements of these insurance requirements shall be a cause for termination of this Agreement. ESC6 shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas satisfactory to City. All policies required by this article shall also contain the following provisions:

1. City of Brenham, Texas named as an additional insured.
2. Policy terms shall provide that such insurance shall not be canceled or materially changed without a minimum of thirty (30) days advance notice in writing to the City of Brenham, Texas.

ESC6 Wireless Broadband ILA Summary

Background:

The City of Brenham has a phone, a video surveillance camera and several pumps and SCADA equipment to monitor the water intake location at Somerville Lake. The Gay Hill Ridge blocks direct line-of-sight connectivity from the City's various towers. Because of this, a number of years ago the City made an agreement with Central Washington County Water Supply Corporation (CWCWSC) for the right to house a small equipment enclosure and a 30' tower on their property on the ridge. This location serves as a midpoint antenna relay from the Jeffries Water Tower to the water intake location at Somerville Lake. The annual lease payment is \$1.00 and the city is billed \$600.00 per year for electricity usage. The city has four radio antennas installed on the 30' tower which allows a phone and video camera, as well as SCADA equipment data to be monitored and accessed from the City's network.

Proposal:

The Region 6 Educational Service Center (ESC6) is trying to provide increased bandwidth for rural school districts. They are proposing a joint effort project between ESC6, Texas A&M University, Blinn College and the City of Brenham to bring broadband internet to the Somerville and Burton independent school districts. The City of Brenham has been asked to 1.) allow an ESC6 radio antenna to be installed 150' up on the Communications radio tower next to the Police Station, 2.) allow use of rack space in the communications hut next to the tower, 3.) provide power to the equipment in this rack, 4.) allow use of a pair of existing fiber optic cables from the tower to the Blinn College Server Room. ESC6 has obtained CWCWSC's approval to install a power meter, an additional pad and enclosure and equipment to be installed at the Somerville Lake Midpoint location adjacent to the city's existing wireless equipment. The City will remove its existing pad and enclosure at the midpoint. The City's existing equipment will be moved into the new enclosure. ESC6 will assume all power charges at the CWCWSC location. Other than a few man hours to terminate the fiber and reconnect to the new antenna, a slight monthly increase in power consumption at the Communications hut, no additional costs should occur to the City. The \$600.00 per year electricity usage fee paid to CWCWSC will also be dropped. After meeting with ESC6, Blinn and CWCWSC officials the City requested that ESC6 pay for an engineering study of the Communications Tower to ensure that the tower will not be adversely affected by the additional antenna weight. ESC6 supplied this tower study to the City. All other labor and expenses (including groundwork, trenching, electrical, etc.) are to be paid for by ESC6.

Benefit to the City:

The City's antennas at the midpoint location are not at optimum height, so the signal strength is not as strong as we would like. Occasionally there are small connectivity problems. By

routing our network traffic through the new ESC6 antennas from the communications tower to the midpoint the City will gain increased signal strength which will provide a higher level of network availability to the lake equipment.

Recommendation:

The City staff's recommendation is to enter into the agreement with ESC6. The added signal strength to the remote lake location is worth the small costs associated with the ILA. Signing the ILA will show the City's continued willingness to cooperate toward the common good with other governmental and educational agencies.



AGENDA ITEM 19

DATE OF MEETING: August 1, 2013	DATE SUBMITTED: July 29, 2013	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Terry K. Roberts	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input checked="" type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Section 551.072, Texas Government Code – Deliberation Regarding Real Property –Discussion Regarding the Purchase of Real Estate for Future Municipal Improvements		
SUMMARY STATEMENT: Executive Session Discussion.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: None.		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: Discussion Only		
APPROVALS: Terry K. Roberts		



AGENDA ITEM 20

DATE OF MEETING: August 1, 2013		DATE SUBMITTED: July 29, 2013	
DEPT. OF ORIGIN: Administration		SUBMITTED BY: Terry K. Roberts	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING	
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING	
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION	
	<input type="checkbox"/> WORK SESSION		
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon the Purchase of Real Estate for Future Municipal Improvements			
SUMMARY STATEMENT: As discussed in Executive Session.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):			
A. PROS:			
B. CONS:			
ALTERNATIVES (In Suggested Order of Staff Preference):			
ATTACHMENTS:			
FUNDING SOURCE (Where Applicable): N/A			
RECOMMENDED ACTION: Approve the purchase of real estate for future municipal improvements.			
APPROVALS: Terry K. Roberts			