



NOTICE OF A MEETING
Brenham Community Development Corporation
Thursday, September 28, 2023 @ 7:30 a.m.
City Hall – 2nd Floor Conference Room
200 W. Vulcan St.
Brenham, Texas

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the U. S. and Texas Flag**
- 3. Discuss and Possibly Act Upon Minutes from the August 8, 2023 Regular Meeting**
- 4. Discuss and Possibly Act Upon the Reallocation of FY2023-24 Budgeted Funds for the Hohlt Park Synthetic Turf Improvement Project**
- 5. Discuss and Possibly Act Upon the Reallocation of FY2023-24 Budgeted Funds for the Blue Bell Aquatic Center Restroom Improvement Project**
- 6. Discuss and Possibly Act Upon a Performance Agreement Between the Brenham Community Development Corporation (BCDC) and Academy, Ltd. d/b/a Academy Sports + Outdoors and Authorize the President to Execute Any Necessary Documentation**
- 7. Discuss and Possibly Act Upon an Amendment to a Professional Services Agreement with Strand Associates, Inc. Related to Sanitary Sewer Improvements Along James Nutt Blvd. in the Brenham Business Center and Authorize the President to Execute Any Necessary Documentation**
- 8. Discuss and Possibly Act Upon the Repurchase of Approximately 6.413 Acres, Owned by Capital Westview Partners, LLC in Accordance with the Terms Outlined in the Restrictions, Covenants, Easements and Conditions of Brenham Business Center and Authorize the President to Execute Any Necessary Documentation**

EXECUTIVE SESSION

- 9. Texas Government Code, Section 551.072 – Deliberation Regarding Real Property – Deliberation Regarding Real Estate Matters Concerning the Sale of Industrial Park Land**

10. **Texas Government Code, Section 551.072 – Deliberation Regarding Real Property – Deliberation Regarding the Possible Sale, Exchange, Transfer and/or Acquisition of Real Property and Associated Matters Concerning Project Deer in the Southwest Industrial Park, Section IV, in the City of Brenham, Texas**

RE-OPEN REGULAR SESSION

11. **Discuss and Possibly Act Upon the Possible Sale, Exchange, Transfer and/or Acquisition of Real Property and Associated Matters Concerning Project Deer in the Southwest Industrial Park, Section IV, in the City of Brenham, Texas and Authorize the President to Negotiate and Execute Any Necessary Documentation**

12. **Board and Staff Updates**

- **Economic Development**
 - **Project Color Guard**
 - **Irby Construction Company**
 - **Brenham Kitchens, LLC**
- **Parks and Recreation**
- **Administration**

Adjourn

CERTIFICATION

I certify that a copy of the agenda of items to be considered by the Brenham Community Development Corporation (BCDC) on Thursday, September 28, 2023 was posted to the City Hall bulletin board at 200 W. Vulcan, Brenham, Texas on Thursday, September 21, 2023 at 4:30 p.m.

Jeana Bellinger, TRMC, CMC

City Secretary/BCDC Secretary

Executive Sessions: The Brenham Community Development Corporation (BCDC) 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.

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 this notice and agenda of items to be considered by the Brenham Community Development Corporation (BCDC) was removed by me from the City Hall bulletin board on _____ at _____.

Signature

MINUTES

BRENHAM COMMUNITY DEVELOPMENT CORPORATION

August 8, 2023

A regular meeting of the Brenham Community Development Corporation was held on Tuesday, August 8, 2023 at City Hall, Conference Room 2A, 200 W. Vulcan, Brenham, Texas beginning at 7:30 a.m.

Board members present were Charles Moser, Darrell Blum, John Hasskarl, Bill Betts, Jim Kolkhorst Gary Crocker, and Ken Miller

Board members absent: None

City of Brenham staff members present were Carolyn Miller, Jeana Bellinger, Stacy Hardy, Stephanie Doland, Dane Rau, Teresa Rosales, and Casey Redman

Others present: Kyle Merten, James Whatley

1. **Chairman Charles Moser called the meeting to order**
2. **Invocation and Pledges to the U.S. and Texas Flags**

WORK SESSION

3. **Discussion and Update on the FY2023-24 Budget**

City Manager Carolyn Miller presented this item. Miller explained that at the July 6, 2023 BCDC meeting, the FY2023-24 Budget was discussed and approved by the Board; however, there were some outstanding issues that need to be addressed:

- 1) A memo from Cary Bovey, City Attorney, was presented clarifying that the BCDC can legally fund maintenance and operation items as per Section 505 of the Texas Local Government Code. Bovey also advised that the ballot language from the 1995 election approving the 3/8 of one percent sales tax for BCDC expressly stated that the funds could be used for maintenance and operation of City facilities.
- 2) A schedule of General Fund revenues derived from park field rentals, aquatic center revenues and intergovernmental support (Blinn College and BISD) was presented to the Board for their review.
- 3) A list of Aquatics Department expenditures for the FY2023-24 Proposed General Fund budget was presented to the Board.
- 4) A list of Parks Department expenditures for the FY2023-24 Proposed General Fund budget was presented to the Board.

4. Discussion and Update on D Bar B Sausage & Meats, LLC Business Expansion in the Southwest Industrial Park, Section III

Economic and Community Development Director Teresa Rosales presented this item. Rosales explained that City staff recently received an inquiry from a contractor who is working with D Bar B Sausage & Meats, LLC (we know them as Kountry Boys Sausage) on a potential expansion to their existing building at 1909 Longwood Drive (R46714) in order to accommodate increased production.

Rosales stated that last year a discussion was had about their other property on Industrial Blvd. but due to the current economic environment, interest rates have made construction on that site cost prohibitive for now. Rosales explained that they do have an immediate need for their tractor/trailer and box truck parking and would like to use this other tract for that purpose. After reviewing the CC&Rs and discussions with Stephanie Doland, this is an appropriate use for this tract. The Board was in favor allowing this use.

5. Discussion and Update on the Lease Agreement with Irby Construction Company for Approximately 28.7 Acres of Land in the Southwest Industrial Park, Section III

Economic and Community Development Director Teresa Rosales presented this item. Rosales advised that she recently received a 30-day notice from Irby Construction Company of their intention to terminate the lease at 2501 Longwood Drive. According to Jaxxon Grisham at Irby, they expect to vacate the property on or before August 14, 2023. Rosales stated that she also reminded Grisham of the clause to ensure that the property is brought back to pre-lease condition; he assured her that it would be.

REGULAR SESSION

6. Discuss and Possibly Act Upon Minutes from the April 20, 2023 and the June 22, 2023 Regular Meetings and the July 6, 2023 Special Meeting

A motion was made by John Hasskarl and seconded by Bill Betts to approve the minutes from the April 20, 2023 and the June 22, 2023 Regular Meetings and the July 6, 2023 Special Meeting as presented.

Chairman Charles Moser called for a vote. The motion passed with the Board voting as follows:

Chairman Charles Moser	Yes
Vice Chairman Darrell Blum	Yes
Board Member Bill Betts	Yes
Board Member Gary Crocker	Yes
Board Member John Hasskarl	Yes
Board Member Jim Kolkhorst	Yes
Board Member Ken Miller	Yes

7. Discuss and Possibly Act Upon the Repurchase of Approximately 2.787 Acres, Owned by Brenham Kitchens, LLC in Accordance with the Terms Outlined in the Restrictions, Covenants, Easements and Conditions of Brenham Business Center and Authorize the President to Execute Any Necessary Documentation

Economic and Community Development Director Teresa Rosales presented this item. Rosales stated that she had a conversation with Brian Smith, owner of Brenham Kitchens, with respect to his intention to construct a building on their property located in the Brenham Business Center (2.787 acres, known as Lot 4B-2). Rosales explained that due to cost estimates for construction and other economic concerns, Smith does not foresee being able to afford to build now or anytime in the foreseeable future. Rosales advised the Board that Smith would be in favor of the BCDC repurchasing the property. Rosales advised the Board that the property was sold in February 2022 for \$139,350.

A motion was made by Bill Betts and seconded by Ken Miller to approve the repurchase of approximately 2.787 acres, owned by Brenham Kitchens, LLC, in the amount of \$139,350.00, in accordance with the terms outlined in the Restrictions, Covenants, Easements and Conditions of Brenham Business Center and authorize the President to execute any necessary documentation.

Chairman Charles Moser called for a vote. The motion passed with the Board voting as follows:

Chairman Charles Moser	Yes
Vice Chairman Darrell Blum	Yes
Board Member Bill Betts	Yes
Board Member Gary Crocker	Yes
Board Member John Hasskarl	Yes
Board Member Jim Kolkhorst	Yes
Board Member Ken Miller	Yes

The Board adjourned into Executive Session at 8:14 a.m.

EXECUTIVE SESSION

8. Texas Government Code, Section 551.071 - Consultation with Attorney and Texas Government Code, Section 551.072 – Deliberation Regarding Real Property – Consultation with Legal Counsel and Deliberation Regarding the Possible Sale, Exchange, Transfer and/or Acquisition of Real Property and Associated Matters Concerning Project Deer in the Southwest Industrial Park, Section III, in the City of Brenham, Texas

9. **Texas Government Code, Section 551.071 - Consultation with Attorney and Texas Government Code, Section 551.072 – Deliberation Regarding Real Property – Consultation with Legal Counsel and Deliberation Regarding the Possible Sale, Exchange, Transfer and/or Acquisition of Real Property and Associated Matters Concerning Project Color Guard in the Southwest Industrial Park, Section III, in the City of Brenham, Texas**

Executive Session adjourned at 9:24 a.m.

RE-OPEN REGULAR SESSION

10. **Discuss and Possibly Act Upon the Possible Sale, Exchange, Transfer and/or Acquisition of Real Property and Associated Matters Concerning Project Color Guard in the Southwest Industrial Park, Section III, in the City of Brenham, Texas and Authorize the President to Negotiate and Execute Any Necessary Documentation**

A motion was made by Jim Kolkhorst and seconded by Darrell Blum authorize the President to negotiate with Project Color Guard for the possible sale, exchange, transfer and/or acquisition of property in the Southwest Industrial Park, Section III, as discussed in Executive Session.

Chairman Charles Moser called for a vote. The motion passed with the Board voting as follows:

Chairman Charles Moser	Yes
Vice Chairman Darrell Blum	Yes
Board Member Bill Betts	Yes
Board Member Gary Crocker	Yes
Board Member John Hasskarl	Yes
Board Member Jim Kolkhorst	Yes
Board Member Ken Miller	Yes

The meeting was adjourned.

Charles Moser
Chairman

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary/BCDC Secretary



To: BCDC Board Members

From: Dane Rau, Director of Public Works

Subject: Discuss and Possibly Act Upon Reallocation of FY 2023-24 Budgeted Funds for the Hohlt Park Synthetic Turf Improvement Project

Date: September 20, 2023

On August 29th, 2023, the City of Brenham along with CEI Engineering opened Request for Proposals for converting four softball infields to turf at Hohlt Park. This item was targeted in the 2022-23 BCDC budget and planned for several years now.

We had a total of 8 RFP's turned in. Only 4 of these met the specifications required in the RFP. We had a committee consisting of Stephanie Doland, Kyle Branham, Casey Redman, Dane Rau, and Dusty Robinson (Parks Board Member) score the RFP's based on (1.) Price-40 pts, (2.) Reputation with Other Projects- 20 pts, (3.) Ability to meet Timeline-20 pts. (4.) Extent to which Goods and Services Meet Owner's Needs- 20 pts.

The results came back with TGS Sports being the top company, scoring 460 pts. We have checked references on TGS Sports, and all have come back positive. They have done fields for West-Orange Stark, Dallas Independent School District and Owasso, Oklahoma to name a few. We would like to award the RFP to TGS Sports and work with them to start conversion in early November. The total project costs for all 4 infields, drainage work, and 4 bullpens is \$1,096,470.00.

The total budgeted amount for Turf Field Renovations in the 2023-24 BCDC budget was \$771,000. In order to move this project forward and complete all 4 infields, we are respectfully asking BCDC to reallocate a portion of the money that was earmarked for a playscape at the Brenham Family Park to cover the additional gap. We originally had \$520,000 earmarked for a playscape at the Brenham Family Park which we have not received our notice to proceed yet. We feel that we can move this project forward and possibly re-budget the playscape in the 2024-25 budget when the timing is aligned better.

We respectfully ask BCDC to re-allocate \$375,000 of the \$520,000 to move forward on the turf fields. With the many softball tournaments that Brenham hosts and the high usage it is important to convert these infields to turf. It also helps Brenham compete for tournaments by offering a solid guarantee that rainouts will be almost eliminated, and games can be played. This is huge for economic factors and consistency of booking fields.

We will work with TGS Sports on any savings as we get started on construction. As stated we will shoot for a late October, early November start in order to be completed by Feb.



RFP 23-006 Hohlt Park Synthetic Turf Improvements Rating Sheet Totals

Committee Member	Pick	TGS	Sports Field	Hellas	Paragon Sports
Dane Rau	TGS	99	90	92	85
Stephanie Doland	TGS	98	86	80	76
Dusty Robinson	Hellas	70	65	85	60
Casey Redman	TGS	98	94	92	90
Kyle Branham	TGS	95	89	90	83
Total Scores		460	424	439	394

NAME OF PROJECT: City of Brenham Hohlt Park Ballfields Synthetic Turf Improvements
 EVALUATION OF PROPOSALS SUBMITTED: August 29, 2023

Criteria Description	Points Available	TGS Sports	Sports Fields Inc.	Callier Construction	Symmetry Sports Construction	RS3	FieldTurf	Hellas Construction	Paragon Sports Construction
Proposal Bond	Yes/No	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Adenda No.1 & No.2 Acknowledged	Yes/No	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Base Proposal Price - North Fields and Bull Pens		\$ 547,770.00	\$ 608,676.00					\$ 636,900.00	\$ 984,810.00
Alternate Proposal No.1 - Southwest Field		\$ 279,700.00	\$ 275,382.00					\$ 305,500.00	\$ 465,352.00
Alternate Proposal No.2 - Southeast Field		\$ 269,000.00	\$ 275,382.00					\$ 305,500.00	\$ 457,226.00
Price of Owner's Selection		1,096,470.00	1,159,440.00					1,247,900.00	1,907,388.00
Price	40								
Reputation of Contractor and Contractor's experience record with projects similar to the scope	20								
Contractor's ability to meet timeline	20								
Extent to which Goods & Services meet Owner Needs	20								
Total Points	100								
RANK				Non-Conforming	Non-Conforming	Non-Conforming	Non-Conforming		



To: BCDC Board Members

From: Dane Rau, Director of Public Works

Subject: Discuss and Possibly Act Upon Reallocation of FY 2023-24 Budgeted Funds for the Aquatic Center-Locker Room Renovations

Date: September 20, 2023

On September 26th, 2023, the City of Brenham along with BBA Architects will open Request for Proposals for Restroom/Locker Room Renovations at the Blue Bell Aquatic Center. This item was also targeted in the 2022-23 BCDC budget, in which \$208,000 was allocated. To date we have spent \$79,735 on this project which includes Architectural fees, ADA/Asbestos Requirements, and we have ordered lockers as they have a 6–8-month lead time.

This leaves the project with \$128,000 left for construction. As of writing this memo we do not know the value of the construction but do anticipate construction to be over this amount. We will provide a recap at the meeting with the RFP's and their values.

We may ask the board to reallocate the additional \$145,000 from the \$520,000 (Brenham Family Park Playscape) or look at ways to keep this project going by using other savings. It is also a possibility we table this item until we can fully evaluate our options if construction costs are way more than we anticipate.

Since the next meeting won't be until November 2nd, we would like to get ahead of this as we will know on September 26th the outcome of the RFP's.

The project consist of new lockers, new flooring, new partitions, upgrade to womens vanity, shower upgrades, hand dryers, additional seating options, upgrade of plumbing fixtures and demo of old items.

MEMORANDUM

To: Brenham Community Development Corporation (BCDC)
Board of Directors

From: Teresa Rosales, Economic & Community Development Director

Subject: Academy Performance Agreement

Date: September 28, 2023

On July 21, 2022, the Economic Development Joint Sub-Committee met to discuss a total incentive to bring Academy to Brenham. The total community investment totals \$1,500,000 upon completion of the facility and receipt of the Certificate of Occupancy. Both the City and County will recognize the tax benefits from this project so the Economic Development Joint Sub-Committee recommended that the \$1,500,000 incentive be shared between the City and County with the City funding \$1,000,000 (\$500,000 by Brenham Community Development Corporation (BCDC) and \$500,000 by the City general fund) and Washington County funding \$500,000.

Academy management and their attorneys have reviewed and agreed to the terms as outlined in the proposed Performance Agreement which is enclosed.

PERFORMANCE AGREEMENT
BETWEEN THE BRENHAM COMMUNITY
DEVELOPMENT CORPORATION
AND ACADEMY, LTD., d/b/a ACADEMY SPORTS + OUTDOORS, INC.

This Performance Agreement (“Agreement”) is made and entered into by and between the Brenham Community Development Corporation (“BCDC”), a Type B Texas economic development corporation organized pursuant to Tex. Rev. Civ. Stat. Ann. art. 5190.6 §4B, as codified in Chapters 501 et seq. of the Texas Local Government Code, or individually as a “Party.”, and Academy, Ltd., a Texas limited partnership d/b/a Academy Sports + Outdoors, Inc., a Delaware corporation (“Academy”), the BCDC and Academy collectively sometimes referred to herein as the “Parties” or individually as a “Party.”

WTNESSETH:

WHEREAS, Chapter 501 et seq., Texas Local Government Code authorizes the BCDC to promote state and local economic development and to stimulate business and commercial activity within the City of Brenham, and permits the BCDC to expend funds to promote new or expanded business development in the City and the surrounding area; and

WHEREAS, Academy seeks to construct and develop approximately 63,244 square feet of retail commercial space as a freestanding building and associated improvements (the “Project”) as shown on the site plan attached hereto as Exhibit “A” and incorporated herein for all purposes pertinent, on approximately 5.95 acres in the Brenham Market Square mixed-use development located on the westbound U.S. Highway 290 East Service Road between Cantey Street and Chappell Hill Street in Brenham, Texas (the “Property”); and

WHEREAS, Academy has presented an economic assistance request to the BCDC that will facilitate design and construction of the Project in a specified time described herein and according to all City of Brenham development and design ordinances, guidelines, rules, and regulations; and

WHEREAS, the development of the Project by Academy will involve a capital investment of at least Eight Million Eight Hundred Thousand and No/100 Dollars (\$8,800,000.00) exclusive of land acquisition costs, but including development, construction costs, and furniture, fixtures and equipment (“FF&E”); and

WHEREAS, the BCDC estimates that the economic benefit of the Brenham community from the Project will consist of approximately forty-one (41) full-time equivalent employee positions, additional sales tax collected and remitted each year during the store’s operation, and additional sales tax paid on new equipment; and

WHEREAS, the BCDC has determined that construction of the Project will positively impact the local economy through expansion of the City’s ad valorem tax base, BCDC’s sales tax revenue, and creation of jobs in the community; and

WHEREAS, the Board of Directors of the BCDC supports the continued growth and expansion of economic development in the City by entering into this Agreement to promote and expand desirable commercial growth within the City; and

WHEREAS, the BCDC is authorized by Chapter 501 et seq., Texas Local Government Code to promote state and local economic development and to stimulate business and commercial activity within the City of Brenham, Texas (“City”). The BCDC board of directors hereby determines and finds that the expenditure of BCDC funds as provided for by this Agreement will promote new or expanded business development in the City and the surrounding area;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1.
AUTHORIZATION AND PROGRAM ESTABLISHMENT

1.01 The BCDC hereby establishes a sales tax reimbursement program (the “Program”) to promote economic development within the City and stimulate business and commercial activity within the City, and the Board of Directors of the BCDC finds and determines that this Agreement will effectuate the purposes of the Program and that Academy’s performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

ARTICLE 2.
DEFINITIONS

- 2.01 The terms “Agreement,” “BCDC,” “Effective Date,” “City,” “Academy,” “Project,” “Property,” “Parties,” and “Program” shall have the meanings provided herein above.
- 2.02 “Sales Tax Revenue” shall mean the actual annual sales tax revenue received by the BCDC for the BCDC’s three-eighth cent (0.375 cent) sales tax assessed on sales attributable to the Project.
- 2.03 “Grant Payment(s)” means the periodic payments made by the BCDC to Academy to reimburse Sales Tax Revenue received by the BCDC from the Project as provided herein.
- 2.04 “Cumulative Total Grant Payment(s)” means the cumulative total of Grant Payments to Academy received from the BCDC related to the Project as provided herein.
- 2.05 “Sales Tax Grant Payment Due Date” means December 1 following the end of each fiscal year of the BCDC in which the BCDC received Sales Tax Revenue from the Project.

ARTICLE 3.
TERM

- 3.01 The term of this Agreement (“Term”) shall commence on the Effective Date herein above and, unless otherwise terminated earlier in accordance with this Agreement, shall terminate on the date that the BCDC has paid Grant Payments pursuant to this Agreement totaling Five Hundred Thousand and No/100 Dollars (\$500,000.00), or December 2, 2033, whichever occurs earlier.

ARTICLE 4.
COVENANTS OF ACADEMY

- 4.01 Covenants Regarding Construction and Development. In consideration of the BCDC agreeing to pay Academy Grant Payments in accordance with the terms, provisions, and conditions of this Agreement, Academy agrees to the following obligations:

- (A) Design and construct the Project in accordance with the statutes, ordinances, rules, and regulations of the City of Brenham, as well as applicable local, county, state, and federal laws. Further, Academy will design and construct the Project in accordance with Exhibit “B” attached hereto and incorporated herein for all purposes pertinent.
- (B) The total investment by Academy in project design, development, installation, construction, and FF&E shall be at least Eight Million Eight Hundred Thousand and No/100 Dollars (\$8,800,000.00). For the purposes of this Section 4.01(B), expenditures made by Academy for the acquisition of the Property shall be excluded in calculating the total amount of investment by Academy in the Project. The parties recognize that capital investment or costs do not necessarily equal taxable value.
- (C) Academy shall timely pay and remain current on all property taxes imposed on the Project, or any portion thereof, subject to appeal rights in accordance with applicable law, and subject to a right to cure any delinquency.
 - 1. Academy shall have the right to protest, contest, or litigate: (a) any assessment of the value of the Project by the Washington County Appraisal District which appraises real or personal property on all or any part of the Project; and (b) any tax imposed on the Project by any taxing authority with jurisdiction that includes the Project.
- (D) Academy shall complete construction of the Project on the Property, obtain a Certificate of Occupancy issued by the City, and be open to the public and fully operational no later than January 1, 2024. Further, during the time this Agreement is in effect, Academy shall continuously occupy the Property and utilize the entirety of the Project, consisting of approximately 63,244 square feet of retail commercial space as a freestanding building and associated improvements, for its sporting goods and related retail business operations. Academy expressly agrees that in the event Academy leases, subleases, or assigns any interest in any portion of the Property to any other person or entity which results in any reduction to the 63,244 square feet intended under this Agreement to be utilized for Academy’s sporting goods and related retail business operations, the BCDC’s Grant Payments to Academy shall be reduced by the same percentage reduction on a pro rata basis.

For example purposes only, if Academy leases, subleases, or assigns any interest in any portion of the Property to any other person or entity which reduces the amount of square feet used for its sporting goods and related retail business operations from 63,244 square feet to 31,622 square feet, equaling a fifty percent (50%) reduction, the BCDC's Grant Payments to Academy shall be reduced by 50% for the year in which the reduction occurs as well as all subsequent years of the Agreement during which a reduction in square footage remains in effect.

- (E) In the event Academy ceases operations at the Property or leases, subleases, or assigns any interest in any portion of the Property to any other person or entity which reduces the amount of square feet used for its sporting goods and related retail business operations from 63,244 square feet to less than 31,622 square feet, or by more than a fifty percent (more than 50% reduction), the BCDC's Grant Payments to Academy shall immediately be suspended and cease, and this Agreement shall automatically terminate without the necessity of any action by the BCDC. In such case, the parties shall enter into discussions in an attempt to negotiate a new agreement related to sales tax reimbursement incentives. Notwithstanding anything to the contrary in this Agreement, the remedies set forth in this section and the immediately preceding section shall be the sole remedies available in the event of a cessation of operations or reduction in square footage.
- (F) [Reserved]

ARTICLE 5. **PROGRAM GRANT**

- 5.01 Subject to Academy complying with its duties and obligations in this Agreement, the BCDC agrees that Academy shall be entitled to receive a percentage share of the BCDC's three-eighth of one percent (0.375 of one percent) Sales Tax Revenue generated by the Project for each year of the Term until the total Grant Payments by the BCDC equal Five Hundred Thousand and No/100 Dollars (\$500,000.00). The parties acknowledge and agree that the Estimated Program Grant Schedule in Section 5.02 sets forth estimations, and the actual amount of the Grant Payments shall be set by the Sales Tax Revenues multiplied by the percentage contribution established in this Agreement. The Cumulative Total Grant Payments of the BCDC shall not exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00). The combined Cumulative Total Grant Payments of the City, County and the Brenham Community Development Corporation shall not exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00).
- 5.02 The percentage annual share of the Sales Tax Revenue shall be eighty percent (80%) throughout the Term of the Agreement, as depicted on the following Estimated Program Grant Schedule. Grant Payments to Academy shall be paid annually according to the Sales Tax Grant Payment Due Date as defined herein above in Article 2 and shall, except as otherwise provided in this Agreement, continue throughout the Term of this Agreement or until the Cumulative Total Grant Payments to Academy under this Agreement total Five Hundred Thousand and No/100 Dollars (\$500,000.00), whichever occurs first. Any sales tax received before October 1, 2023 is excluded from this Agreement. Year 1 is defined as October 1, 2023 through September 30, 2024.

Estimated Program Grant Schedule		
Year	BCDC Sales Tax Revenue	80% of BCDC Sales Tax Revenue
1	\$73,875	\$59,100
2	\$76,091	\$60,873
3	\$78,374	\$62,699
4	\$80,725	\$64,580
5	\$83,147	\$66,518
6	\$85,641	\$68,513
7	\$88,211	\$70,568
8	\$90,857	\$47,149
TOTAL		\$500,000

ARTICLE 6.
AUTHORITY; COMPLIANCE WITH LAW

- 6.01 Academy hereby represents and warrants to the BCDC that it has full lawful right, power, and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Academy and this Agreement constitutes the legal, valid, and binding obligation of Academy, and is enforceable in accordance with its terms and provisions.
- 6.02 Notwithstanding any other provision of this Agreement, Academy shall comply with all federal, state, and local laws and regulations.
- 6.03 Academy certifies that Academy does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If Academy is convicted of a violation under 8 U.S.C. § 1324a(f), that is proven to have occurred during the Term of this Agreement, Academy shall repay the full amount of any Grant Payments made by the BCDC.

ARTICLE 7.
BREACH AND REMEDY; TERMINATION; ADDITIONAL REMEDIES

- 7.01 Except as otherwise provided in this Agreement, should either Party fail to comply with any of the material terms or conditions of this Agreement, and any such failure (hereinafter, a “breach”) specified, remains uncured for thirty (30) days following the breaching party’s receipt of written notice (the “Breach Notice”) from the non-breaching party, delivered in accordance with Section 12.09 herein below, of the event and nature of such breach; provided, however, that if such breach is not reasonably susceptible of cure within such thirty (30) day period and the breaching party has commenced and is continuing to diligently pursue the cure of such breach, then after first advising the non-breaching party

of such cure efforts, the breaching party shall automatically receive an additional thirty (30) day period within which to cure such breach. The non-breaching party may authorize additional time to cure any such breach but is not obligated to grant such additional time. Notwithstanding anything expressed or implied herein to the contrary, no breach shall exist if the failure of either party to fully perform its obligations hereunder is the result of a force majeure event as defined in Article 8 herein below. Further, time for cure of a breach by the breaching party shall be extended by the reasonable time the breaching party is delayed by a force majeure event.

- 7.02 Upon the occurrence and during the continuation of any uncured breach, the BCDC shall have the right to suspend the Grant Payments specified in Article 5 herein above, pursuant to a notice (the “Suspension Notice”) delivered in accordance with Section 12.09 herein below. If the BCDC delivers a Suspension Notice pursuant to this Section 7.02, then Academy shall thereafter have no right to receive the Grant Payments specified in Article 5 herein above unless and until Academy has cured the breach or breaches specified in the Breach Notice.
- 7.03 This Agreement shall terminate upon any one of the following:
- (A) Except as set forth in Section 3.01 above, December 2, 2033, or at such time when the BCDC has paid Grant Payments under this Agreement totaling Five Hundred Thousand and No/100 Dollars (\$500,000.00), whichever occurs first.
 - (B) Subject to the right to cure described in this Article 7, upon written notice from Academy to the BCDC, upon any breach by the BCDC of its obligations specified in this Agreement.
 - (C) Subject to the right to cure described in this Article 7, upon written notice from the BCDC to Academy, upon any breach by Academy of its obligations specified in this Agreement.
- 7.04 Except as provided otherwise herein, in the event this Agreement is terminated due to Academy’s breach of any term or obligation of this Agreement, in addition to any other rights and remedies available to the BCDC, Academy shall make repayment to the BCDC of all monetary benefits provided to Academy pursuant to this Agreement. Repayment shall be made to the BCDC within sixty (60) days of the termination of this Agreement as provided herein. Amounts required to be repaid to the BCDC pursuant to this Agreement shall be repaid with interest, bearing an interest rate of ten percent (10%) per annum, said interest accruing beginning on the date of the original payment by the BCDC to Academy. This Section 7.04 shall survive termination of this Agreement.

ARTICLE 8.
FORCE MAJEURE

- 8.01 Performance of the parties’ obligations under this Agreement shall be subject to extension due to delay by reasons of events of force majeure, and the parties’ obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil

disorder, war, unreasonable delay in issuance of any permit and/or legal authorizations (including engineering approvals by any governmental entity), unreasonable delay in government approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions, pandemic, epidemic, or other public health emergency, or other causes beyond the parties' reasonable control, including but not limited to, any governmental order or restriction, or any court order or judgment resulting from any litigation affecting the Project, Property, or this Agreement.

ARTICLE 9.

GIFT TO PUBLIC SERVANT OR TO ACADEMY REPRESENTATIVE

- 9.01 **No Benefit.** Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer, or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this Section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.
- 9.02 **Right of Reimbursement.** Notwithstanding any other legal remedies, the BCDC may obtain reimbursement for any expenditure made to Academy as a result of the improper offer, agreement to confer, or conferring of a benefit to a BCDC employee or official.

ARTICLE 10.

ASSIGNMENT

- 10.1 Academy may not assign any part of this Agreement without express written approval by the Board of Directors of the BCDC, which approval will not be unreasonably withheld, provided that any approved assignee assumes, in writing, all of Academy's obligations under this Agreement.

ARTICLE 11.

INDEMNIFICATION

- 11.01 ACADEMY EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE BCDC, AND ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AND VOLUNTEERS AGAINST ANY AND ALL THIRD PARTY CLAIMS, LAWSUITS, LIABILITIES, JUDGEMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES, OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF ACADEMY OR ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, EXCEPT TO THE EXTENT**

CAUSED BY THE BCDC, OR ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, OR VOLUNTEERS. Nothing in this paragraph may be construed as waiving any governmental immunity or other defense available to the BCDC under state or federal law except as expressly provided herein. This provision is solely for the benefit of Academy and the BCDC and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

- 11.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The BCDC (including its past, present, and future officers, elected officials, directors, employees, and agents of the BCDC) does not assume any responsibility to any third party in connection with Academy's construction of the Project.

ARTICLE 12. **MISCELLANEOUS MATTERS**

- 12.01 Time is of Essence. Time is of the essence in this Agreement. The Parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 12.02 Applicable Law and Venue. This Agreement is made subject to and in accordance with the City of Brenham Home Rule Charter and ordinances of the City, as amended, and all applicable local, state, or federal laws and regulations. This Agreement is performable in Washington County, Texas. Exclusive venue for any action arising under or involving this Agreement shall lie in the State District Courts of Washington County or if in federal court, the United States District Court for the Western District of Texas.
- 12.03 Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.
- 12.04 Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 12.05 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee, or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.
- 12.06 Governmental Powers. By execution of this Agreement, the BCDC does not waive or surrender any governmental immunities, powers, or rights, except as provided in Chapter 271, Texas Local Government Code.

- 12.07 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 12.08 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without mutual written agreement of the parties to be attached and made a part of this Agreement.
- 12.09 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (1) delivered personally, with a receipt requested therefore; or (2) sent by a nationally recognized overnight courier service; or (3) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below and shall be effective (1) upon receipt of or refusal if delivered personally; (2) one business day after depositing, with such an overnight courier service, or (3) three business days after deposit in the United States mail, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

Academy: Academy Sports + Outdoors
 1540 N. Mason Road
 Katy, Texas 77449
 ATTN: Brian Ferguson

With a copy to: Attorney

BCDC: Brenham Community Development Corporation
 P. O. Box 1059
 Brenham, Texas 77834-1059
 Attn: Carolyn D. Miller, President

With a copy to: Cary L. Bovey
 Bovey & Cochran, PLLC
 2251 Double Creek Drive, Suite 204
 Round Rock, Texas 78664
 cary@boveycochran.com

- 12.10 Amendment. This Agreement may only be amended by mutual written agreement of the parties.
- 12.11 Severability. In the event that any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event that there shall be substituted for such deleted provision a

provision as similar in terms and in effect to such deleted provision as may be valid, legal, and enforceable.

12.12 Attorney's Fees. The parties hereto agree that the prevailing party in any dispute, lawsuit, or legal proceeding between the parties arising out of this Agreement shall be entitled to receive its reasonably attorney's fees and costs.

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**BRENHAM COMMUNITY
DEVELOPMENT CORPORATION**

Carolyn D. Miller, President

ATTEST

Jeana Bellinger, TRMC, CMC
Secretary

APPROVED AS TO FORM

Cary Bovey, City Attorney

**ACADEMY LTD. d/b/a
ACADEMY SPORTS + OUTDOORS**
A Delaware Corporation

By: **ACADEMY MANAGING CO.,
L.L.C.**, a Texas limited liability company, its
general partner

By: _____
Name:
Title:



MEMORANDUM

To: BCDC
From: Shawn Bolenbarr
Subject: Amendment to Professional Services Agreement
Date: 9/20/2023

The City of Brenham entered into a Professional Services Agreement with Strand Associates on April 6, 2023 for engineering services related to the 2023 Business Center Sanitary Sewer Extension, Project #65C-56C. This agreement was for design, bidding related, and construction related services.

The City of Brenham Public Utilities Department would like to amend the agreement to include services for preparation of easement documents. By amending this agreement, Strand Associates will provide all of the needed easement documentation for the whole sewer line extension. Originally it was determined that the easements would be established during the replating process when the land is subdivided and sold. Upon further evaluation, the City of Brenham Public Utilities Department believes that the better approach is to have the easements established during the design phase so that there is no confusion in the future with easement sizing and locations.

The cost for Strand Associates to perform this service is to not exceed \$3,500.00. This service will be based on an hourly rate.

The City of Brenham Public Utilities Department respectfully request that BCDC approve the funding for the amendment to the Professional Services Agreement to include services for preparation of easement documents for the 2023 Business Center Sanitary Sewer Extension, Project #65C-56C, in an amount not to exceed \$3,500.00.

Sincerely,

Shawn Bolenbarr
Public Utilities Project Manager



MEMORANDUM

To: Brenham Community Development Corporation (BCDC)
Board of Directors

From: Teresa Rosales, Economic & Community Development Director

Subject: Capital Real Estate Update

Date: September 28, 2023

Discussions continue with the owners of Capital Real Estate with respect to their inability to utilize the land purchased on that 6.4 acre tract of land (Washington County Appraisal District Tract R53666) purchased from Brenham Community Development Corporation (BCDC) and further described on **Exhibit A**.

Since the purchase and discovery of their intention to construct a building for Sunbelt Rentals, Inc., staff has been working with them to find an alternative property. They have suggested a land swap; however, this is not a workable solution for a variety of reasons including the likelihood that we would not find an exact land match.

This property was sold for \$320,000 and consummated on December 1, 2022.

Staff is requesting board direction on developing steps to repurchase property.



EXHIBIT A

1 inch = 167 feet



6.4 Acre Division out of R53666

