



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, NOVEMBER 17, 2022 AT 01:00 PM
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN STREET
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags - Councilmember Atwood Kenjura**
- 3. Proclamation**
 - ♦ 2022 Richard R. Lillie Planning Excellence Award - Development Services Department**
- 4. Citizens Comments**

WORK SESSION - DEPARTMENT UPDATE

- 5. Discussion and Update on the City of Brenham's Fire Department**

WORK SESSION

- 6. Discussion and Update on the City of Brenham Fire Department's False Alarm Response and Fees**

REGULAR SESSION

- 7. Discuss and Possibly Act Upon Resolution No. R-22-041 Authorizing the Acceptance of Funding from the Texas General Land Office (GLO) Regional Mitigation Program Through the Brazos Valley Council of Governments for the State of Texas Community Development Block Grant-Mitigation (CDBG-MIT) Program**

8. **Discuss and Possibly Act Upon A Lease Agreement Between the City of Brenham and Ricoh USA, Inc. for Leased Office Automation Equipment and Authorize the Mayor to Execute Any Necessary Documentation**
9. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Placement of Stop Signs on Prairie Lea Street at Its Intersection with 5th Street**
10. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending the Rate Tarriff Schedule for the City of Brenham's Electric Rates**
11. **Discuss and Possibly Act Upon an Temporary Resale Amendment to the System Water Availability Agreement Between the City of Brenham and Brazos River Authority for the Temporary Resale of Water and Authorize the Mayor to Execute Any Necessary Documentation**
12. **Discuss and Possibly Act Upon a Water Supply Resale Agreement Between the City of Brenham and The Dow Chemical Company Related to the Temporary Resale of Water and Authorize the Mayor to Execute Any Necessary Documentation**
13. **Administrative/Elected Officials Report**

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 salutary 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.

EXECUTIVE SESSION

14. **Section 551.072, Texas Government Code - Deliberation Regarding Real Property - Discussion Regarding the Purchase, Exchange and/or Acquisition of Real Property for City of Brenham Sanitary Sewer Improvements and Facilities**
15. **Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding City of Brenham v. WTG Gas Marketing, Inc.; Cause No. 37573; 335th Judicial District Court, Washington County, Texas**
16. **Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Legal Issues Concerning the City of Brenham Lake Somerville Raw Water Intake Structure, the Federal Emergency Management Agency, and Associated Matters**

17. **Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Aviators Plus, LLC v. City of Brenham, Texas; Cause No. 37896; 21st Judicial District Court, Washington County, Texas**

CERTIFICATION

I certify that a copy of the November 17, 2022 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 St., Brenham, TX on Monday, November 14, 2022 at 10:30 a.m.

Jeana Bellinger, TRMC, CMC

City Secretary

RE-OPEN REGULAR SESSION

18. **Discuss and Possibly Act Upon City of Brenham v. WTG Gas Marketing; Cause No. 37573; 335th Judicial District Court, Washington County, Texas and Associated Matters**

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 Negotiation

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 _____, 2022 at _____ AM PM.

Signature

Title

PROCLAMATION

WHEREAS, The 2022 Certificate of Achievement for the Richard R. Lillie, FAICP Planning Excellence Program was presented to the City of Brenham and its Planning Department. Brenham is one of 44 Texas cities and towns to receive such recognition this year; and

WHEREAS, The Texas Chapter of the American Planning Association continues its program of recognizing planning excellence in municipalities throughout the State. Evaluation criteria include the level of training of Planning Commissioners and professional staff, professional qualifications of the planning staff, breadth and currency of master plan components and completion of other planning-related projects; and

WHEREAS, As Richard R. Lillie was the epitome of the highest standards of planning, this award given in his name, recognizes the professional planning standards exhibited by planning staff and the support of City Council and Planning Commission; and

WHEREAS, The City of Brenham met and exceeded the Chapter's goals for increasing awareness of professional planning in meeting a variety of professional requirements; and

WHEREAS, The City of Brenham is proud to congratulate the Development Services Department for their continued exemplary professional standards to our community;

NOW, THEREFORE, I, Milton Y. Tate Jr., Mayor of the City of Brenham, do hereby proclaim Thursday, November 17, 2022, as

Richard R. Lillie, FAICP Planning Excellence Recognition Day

Milton Y. Tate Jr.
Mayor



Regular City Council
AGENDA ITEM 5.

Agenda Item: Discussion and Update on the City of Brenham's Fire Department

Meeting Type: Regular Meeting-November 17, 2022

Department: Fire Department

Staff Contact: Roger Williams

SUMMARY STATEMENT:

Fire Chief Roger Williams will provide an update to Council on the Fire Department.

ATTACHMENTS:

None

RECOMMENDED ACTION:

No action - discussion only.



Regular City Council
AGENDA ITEM 6.

Agenda Item: Discussion and Update on the City of Brenham Fire Department's False Alarm Response and Fees

Meeting Type: Regular Meeting-November 17, 2022

Department: Fire Department

Staff Contact: Steven Loving

SUMMARY STATEMENT:

Fire Marshal Steven Loving will present information on the Fire Department's false alarm response and fees.

ATTACHMENTS:

(1) PowerPoint Presentation - False Alarms

RECOMMENDED ACTION:

No action - discussion only.

False Alarm Response and Fees

City of Brenham
Ordinances
Sec 17-75

1

Current Ordinance Adopted 08/1989

- 17-75. Fees charged for false Alarms.
- (a) Any person, firm or corporation having a burglar, holdup or any type of intrusion alarms shall not be charged a fee for the first twelve (12) false alarms responded to by the police department within a calendar year; however, said owner shall be charged thirty dollars (\$30.00) for each false alarm so responded to thereafter within a calendar year.
- (b) Any person, firm or corporation having any type of fire alarm shall not be charged a fee for the first twelve (12) false alarms responded to by the fire department within a calendar year; however, said owner shall be charged thirty (\$30.00) for each false alarm so responded to thereafter within a calendar year.
- (c) All payments for false alarms are due on or before the last day of the following month. Any person who is delinquent in the payment of any false alarm charge hereunder for a period of more than fifteen (15) days may be disconnected from alarm monitoring service.
- (d) This fee shall be charged on all false alarms, regardless of whether the alarm is monitored by the City of Brenham.

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College Station Texas Ordinance

- Sec. 12-113 – False Alarms
- An alarm user or subscriber shall be allowed three false alarms in a preceding 12-month period without penalty. After this, a user or subscriber shall be assessed a fee established in Section 2-117
- Section 2-117 All fees, rates and charges provided for in this Code shall be as established by resolution.
- 1-3 False alarms \$00.00
- 4-5 False alarms \$50.00 for each false alarm
- 6-7 false alarms \$75.00 for each false alarm
- 8 or more false alarms \$100.00 for each false alarm

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Sequin Texas Ordinance

Sec. 42-29. - Service charge for false alarms.

A service charge shall be assessed for false alarms as follows:

(1) If within any 12-month period five false alarm notifications are emitted from an alarm site, the city shall assess the permit holder in control of that alarm site a fee established by the city council and set forth in appendix C to this Code for each subsequent false alarm. The city may only consider a false alarm to have occurred if the city has responded to the false alarm within 30 minutes of notification and the city determines from an inspection that the alarm was false. In no event may the city terminate its law enforcement response because of excessive false alarms if false alarm fees are paid in full.

(2) A property owner with an alarm system shall pay a charge assessed under this section within 30 days after receipt of notice by registered mail that it has been assessed. Failure to pay the false alarm fee within 30 days will result in the revocation of the alarm permit. The notice of the penalty charge shall include sufficient information for the property owner to determine that the charge must be paid within 30 days and that if payment is not received the permit may be canceled. The property owner shall have the right to contest any such charge within 30 days of receipt of notice of the penalty charge, and the permit may not be canceled while the charge is being contested.

Article II. Alarm Systems

(b) Service charge for excessive false alarms in any 12-month period, per false alarm

4—5	50.00
6—7	75.00
8+	100.00

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Aransas Pass Texas Ordinance

- Sec. 18-64. - Service charge.
- (a) If within the preceding twelve-month period three (3) false alarm notifications are emitted from an alarm site, the director shall assess the permit holder in control of that alarm site a fee of:
 - (1) Fifty dollars (\$50.00) for the fourth (4th) and fifth (5th) subsequent false alarm notification emitted from the site, or
 - (2) Seventy-five dollars (\$75.00) for the sixth (6th) and seventh (7th) subsequent false alarm notification emitted from the site, or
 - (3) One hundred dollars (\$100.00) for the eighth (8th) and each subsequent false alarm notification emitted from the site.
- (b) The director shall assess the permit holder of a robbery alarm notification a fee of one hundred dollars (\$100.00) for each false robbery alarm notification emitted from the alarm site.
- (c) A permit holder shall pay a fee assessed under this section within thirty (30) days after receipt of notice that it has been assessed.
- (d) The permit holder will be exempt from any fee charged for a false alarm notification which is later shown to have been justified or which was due to a natural or man-made catastrophe or other situation specifically exempted by the director.
- When a permit is renewed, the preceding twelve-month false alarm clock resets.

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Corpus Christi Texas Ordinance

- Sec. 3½-6. - Service fee schedule for false alarms.
- (a) All service fees owed by an applicant must be paid before a permit may be issued or renewed.
- (b) No service fee will be charged within any one-year permit term for the first three (3) false alarm notifications.
- (c) Except as provided in sections 3½-7 and 3½-22 below, a person who is required to obtain a permit shall pay a service fee for each false alarm notification within any one-year permit term as described in the following service fee schedule:

False Alarms	Service Fee
First, second and third	Free
Fourth, and fifth	\$50.00
Sixth, and seventh	\$75.00
Eighth, and subsequent	\$100.00

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Salina Kansas False Alarm Reduction Program: Fee and Fine Table

Description		Fee
Registration and Renewal Fee – Code Required systems		\$50
Registration and Renewal Fee – Non-Code Required systems		\$25
Registration and Renewal Late Fee – any system		\$25
Registration information violation		\$25
Late Fee		\$25
Appeal Fee – Fees Accessed		\$25
Reconnection / Reinstatement Fee		\$25
Service Fee – 1st False Fire Alarm		\$0
Service Fee – 1st Nuisance Fire Alarm		\$0
Failure to Register a Fire Alarm System		\$50
Failure to have System Monitored		\$200
Fire Alarm Business failure to comply with Duties	\$10 per day of violation	\$100 *
Failure to attend System Performance Review		\$100
Failure to Return a Report of Service/Repair		\$200
False Fire Alarm Caused By On Site Alarm Company Employee		\$250
Fine – 2 nd False / Nuisance Fire Alarm		\$25
Fine – 3 rd False / Nuisance Fire Alarm		\$50
Fine – 4 th False / Nuisance Fire Alarm		\$75
Fine – 5 th False / Nuisance Fire Alarm		\$100
Fine – 6 th and above False / Nuisance Fire Alarm(s)		\$150
* \$100 or \$10 per day of violation – which ever is greater		

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Huntsville Texas Ordinance

- Sec. 4-7. - Penalties related to false alarms and noncompliance.
 - (a) If an alarm system transmits more than three false alarm notifications within a 12-month period, the permit holder shall pay a service fee for the fourth and each subsequent false burglar alarm notification according to the fee schedule shown below:
- Residential Alarms:
 - (1) For each response for the first through the 3rd: No fee.
 - (2) For each response after the 3rd through the 5th: \$25.00.
 - (3) For each response after the 5th through the 8th: \$50.00.
 - (4) For each response after the 8th: \$100.00.
- Commercial Alarms:
 - (1) For each response for the first through the 3rd: No fee.
 - (2) For each response after the 3rd through the 5th: \$50.00.
 - (3) For each response after the 5th through the 8th: \$75.00.
 - (4) For each response after the 8th: \$100.00.

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Portland Texas Ordinance

- Sec. 11-136. - Service charge.
- (a) If within any twelve-month period five (5) false burglar alarm notifications are emitted from an alarm site director shall assess the permit holder in control of that alarm site a fee of fifty dollars (\$50.00) for each subsequent false burglar alarm notification emitted from the site. When permits are renewed, each holder will start over again with no false alarms to be carried over into the next twelve-month period from the previous period for which the permit is issued.
- (b) The director shall assess the permit holder of a robbery alarm a fee of eighty-five dollars (\$85.00) for each false robbery alarm notification emitted from the alarm site. When permits are renewed, each permit holder will start over again with no false alarms to be carried over into the next twelve-month period from the previous period for which the permit was issued.
- (c) A permit holder shall pay a fee assessed under this section within thirty (30) days after receipt of notice that it has been assessed.
- (d) The permit holder will be exempt from any fee charged for a false alarm notification which is later shown to have been justified or which was due to a natural or man-made catastrophe or other situation specifically exempted by the director.

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False Alarm Statistics 2022

• False Alarms Responses to Include

Malicious, Mischievous False Call	130
System Malfunction	74
Unintentional (tripping on interior device accidentally, etc.)	104
Other False Alarms (bomb Scares, etc.)	22

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Purposed Ordinances to be affected

Chapter 17 Offenses and Miscellaneous Provisions

- Article V Alarms Systems
- Section 17-75

Chapter 8 Fire Protection and Prevention

- Article 1 General
- Section 8-6 Currently not assigned

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Purposed Change 17-75

Removal of Tac (B)

- (b) Any person, firm or corporation having any type of fire alarm shall not be charge a fee for the first twelve (12) false alarms responded to by the fire department within a calendar year; however, said owner shall be charged thirty (\$30.00) for each false alarm so responded to thereafter within a calendar year.

New TAC (b)

- (b) all payments for false alarms are due on or before the last day of the following month. Any person who is delinquent in the payment of any false alarm charge hereunder for a period of more than fifteen (15) days may be disconnected from alarm monitoring service.

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Purposed New Ordinance Placement to Replace 17-75 TAC (B)

- Section 8-6 through 19 Available.
- This would follow section 8-5 which is titled and addresses Recovering cost for fire protection and emergency service.
- New Ordinance requested would be 8-6

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Purposed Ordinance Change Chapter 17 Article V Alarms Systems

- 17-75. Fee charges for false alarms.
- (a) Any person, firm, or corporation having a burglar, holdup or any type of intrusion alarm shall not be charged a fee for the first twelve (12) false alarms responded to by the police department within a calendar year; however, said owner shall be charged thirty dollars (\$30.00) for each false alarm so responded to there after within a calendar year.
- (b) All payments for false alarms are due on or before the last day of the following month. Any person who is delinquent in the payment of any false alarm charge hereunder for a period of more than fifteen (15) days may be disconnected from alarm monitoring service.
- (c) This fee shall be charge on all false alarms, regardless of whether the alarm is monitored by the City of Brenham.

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City of Brenham Chapter 8 Article 1

• 8-6. Fees Charged for False Alarms

(a) False Alarm as defined means the activation of any fire alarm system subject to this article which results in a response by the fire department and which is caused by intentional or unintentional misuse of the fire alarm system by the owner, its employees, agents, or occupants, and activation of a fire alarm system not caused by heat, smoke or fire, including activations caused by the mechanical failure, malfunction, improper installation, or lack of proper maintenance, or any other alarm activation for which the fire department personnel are unable to determine the apparent cause of the activation. Excluded from this definition are:

- (1) Alarms caused by actions of a communications service provider
- (2) Alarms caused by power outage of more than four (4) hours, severe weather, or other natural disaster
- (3) Alarms activated after the fire alarm business has, in good faith, provided advanced notice to the 911 dispatch center that the fire alarm system would be undergoing installation or modifications and maintenance that could trigger a false alarm signal
- (4) Multiple fire alarms within a twenty-four (24) hour period that could be considered as one (1) alarm with resulting corrective action being taken by the owner or alarm system service provider

(b) Any person, firm, or corporation having any type of fire alarm shall not be charged a fee for the first (5) false alarms responded to by the fire department within a calendar year; however, said owner shall be charged Fifty dollars (\$50.00) for the Sixth (6th) through Tenth (10th) false alarm, Seventy-Five Dollars (75.00), for the Eleventh (11th) false alarm through Fifteenth (15th), \$100.00 for any subsequent false alarms so responded to thereafter within a calendar year.

(c) All payments for false alarms are due on or before the last day of the following month. Any person who is delinquent in the payment of any false alarm charge hereunder for a period of more than fifteen (15) days may be disconnected from alarm monitoring service. Subsequent disconnection from alarm monitoring service may result in violation of the Fire Code and is subject to enforcement of said fire code independently of a violation of this Article.

(d) This fee shall be charge on all false alarms, regardless of whether the alarm is monitored by the City of Brenham

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Table of Fees

False Alarm 1 through 5	NO FEE
False Alarm 6 through 10	\$50.00
False Alarm 11 through 15	\$75.00
False Alarm 16 and subsequent	\$100.00

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Fire Department Alarm Responses

November 09, 2022

- Malicious, Mischievous False Call 130
- System Malfunction 79
- Unintentional tripping of device 110

2021

- Malicious, Mischievous False Call 254
- System Malfunction 113
- Unintentional tripping of device 149

2020

- Malicious, Mischievous False Call 262
- System Malfunction 109
- Unintentional tripping of device 111

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Thank You, for your time and considerations



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Regular City Council
AGENDA ITEM 7.

Agenda Item: Discuss and Possibly Act Upon Resolution No. R-22-041 Authorizing the Acceptance of Funding from the Texas General Land Office (GLO) Regional Mitigation Program Through the Brazos Valley Council of Governments for the State of Texas Community Development Block Grant-Mitigation (CDBG-MIT) Program

Meeting Type: Regular Meeting-November 17, 2022

Department: Public Works

Staff Contact: Dane Rau

SUMMARY STATEMENT:

On October 25, 2022, BVCOG issued a funding letter to the City of Brenham in which the City could receive \$1,044,500 from the State of Texas Community Development Block Grant Mitigation (CDBG-MIT) Program. Throughout the Brazos Valley Region the BVCOG was allocated \$25,041,000 for governmental agencies to use toward infrastructure projects for mitigation needs.

With this news we quickly reacted and with the short turn-around of acceptance or denial we met with Mayor Tate and sent back our intent to secure funds. We had many items that met the 50% Low-Moderate Income (LMI) areas that could use upgrades related to infrastructure improvements. Based on discussions with City staff we will be targeting road and drainage improvements on several streets off Old Chappell Hill Rd. These are still being evaluated by Strand Engineering, but it appears that we are targeting Shepard Lane and Lott Lane. Currently these streets are very narrow and have poor drainage along them. It is our intent to use these funds to provide a wider asphalt roadway and have concrete curb and gutter infrastructure.

With past grants we utilized Strand Engineering as our design team and Public Management as our Grant Administrator. We will make a drastic difference with these funds, and it will be noticed by the many residents who live along these roadways. This area was annexed in 2008 and only minor improvements have been made so this will bring these roadways up to city standards.

We would like to ask Council to officially pass this resolution supporting the acceptance of the \$1,044,500 from BVCOG to utilize for infrastructure needs such as these drainage and roadway improvements.

ATTACHMENTS:

-
- (1) Resolution No. R-22-041
 - (2) BVCOG-MIT MOD Funding Notification Letter

RECOMMENDED ACTION:

Approve Resolution No. R-22-041 authorizing the acceptance of funding from the Texas General Land Office (GLO) Regional Mitigation Program through the Brazos Valley Council of Governments for the State of Texas Community Development Block Grant-Mitigation (CDBG-MIT) Program.

RESOLUTION NO: R-22-041

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, AUTHORIZING THE ACCEPTANCE OF AN ALLOCATION OF GRANT FUNDS RECEIVED BY THE BRAZOS VALLEY COUNCIL OF GOVERNMENTS (BVCOG) FROM THE TEXAS GENERAL LAND OFFICE (GLO) FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT - MITIGATION (CDBG-MIT) PROGRAM; AND AUTHORIZING THE MAYOR AND/OR CITY MANAGER TO ACT AS THE CITY'S AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY'S ACCEPTANCE OF THE ALLOCATION

WHEREAS, the GLO awarded \$25,041,000.00 to the Brazos Valley Council of Governments through the CDBG-MIT Program, to be allocated among its member entities; and

WHEREAS, the City of Brenham is a potential recipient of an allocation of approximately \$1,044,500.00 of these funds; and

WHEREAS, the City of Brenham desires to accept this allocation of funds from BVCOG in order to assist the City with major drainage improvements; and

WHEREAS, it is in the best interest of the City of Brenham to accept this allocation of funds from BVCOG, received under the Community Development Block Grant – Mitigation (CDBG-MIT) Program;

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

1. That the City Council hereby authorizes the acceptance of a Community Development Block Grant – Mitigation (CDBG-MIT) Fund allocation from BVCOG in the approximate amount of \$1,044,500.00.
2. That the projects paid for with these funds will address major drainage improvements at various sites throughout the City of Brenham.
3. That the City will be responsible for any project costs in excess of the funds allocated by BVCOG.
4. That the City Council designates the Mayor and/or City Manager as the City's Authorized Representative to act in all matters in connection with these funds, including but not limited to providing all supporting documentation as may be required by BVCOG or the GLO in connection with the City's acceptance of these funds.

5. That all funds will be used in accordance with all applicable federal, state, local and programmatic requirements including but not limited to procurement, environmental review, labor standards, real property acquisition, fair housing, and civil rights requirements.

RESOLVED this 17th day of November 2022.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



BRAZOS VALLEY COUNCIL OF GOVERNMENTS
P.O. DRAWER 4128 · BRYAN, TEXAS 77805-4128

October 25th, 2022

Michael Parks
Executive Director
3991 E. 29th St.
Bryan, Texas 77802

RE: Regional Mitigation Program - BVCOG MOD Funding Notification

Dear Mayor Tate:

The Texas General Land Office (GLO) allocated \$25,041,000 to the Brazos Valley region as a part of the Regional Mitigation Program. BVCOG has been tasked with developing the method by which the funds will be distributed, also known as a Method of Distribution (MOD), under the State of Texas Community Development Block Grant Mitigation (CDBG-MIT) Action Plan as amended.

BVCOG has posted the MOD for public comment on the BVCOG website. Brenham is included as a **potential** recipient of funding in the amount of \$1,044,500.00. This amount is **subject to will most likely change** as the public participation process continues. The minimum allocation for any entity according to the program requirements is \$500,000. The final MOD will be approved by the BVCOG Board of Directors and sent to the GLO for final approval.

Due to CDBG-MIT grant requirements, the state and the Brazos Valley region are required to reach a threshold tied to benefitting low- and moderate-income (LMI) persons. Therefore, 50% of your funding should be used for projects that benefit LMI persons in your community, according to the preliminary MOD. This amount is also **subject to change** as the public participation process is undertaken and as entities decide whether to receive funding. The above-mentioned public comment period will be open until November 7th @ 5:00 P.M. BVCOG is required to address every comment and deliver the final product to the Board of Directors for approval.

To accept or decline the funds allocated through the MOD, please sign, and return the attached form to BVCOG, via email to Cagan.Baldree@bvcog.org, by November 4th, 2022. Failure to submit the form by the deadline indicates the entity is declining to receive the funds. If you do not have an applicable project, then we are asking that you decline the funds in order to ensure that we can efficiently distribute the funds during the planning process. Once the GLO approves the final MOD, the GLO will post application information at <https://recovery.texas.gov/mitigation/programs/regional-mitigation/index.html>. From this point on in the process, the GLO will be managing the projects.

The process ahead will require a long-term commitment from each respective entity. **Please note that declining to participate in the reception of these funds may exclude Brenham if there are any future allocations or reallocations of funds through this Regional Mitigation Program.** It is recommended each entity carefully consider their decision and officially involve their city council, county commissioners court or other governing board in the decision to accept or decline funds. If you have any questions, call Cagan Baldree @ 979-595-2800, ext. 2028.

Sincerely,

Michael Parks



Regular City Council
AGENDA ITEM 8.

Agenda Item: Discuss and Possibly Act Upon A Lease Agreement Between the City of Brenham and Ricoh USA, Inc. for Leased Office Automation Equipment and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-November 17, 2022

Department: Purchasing

Staff Contact: Kyle Branham

SUMMARY STATEMENT:

In April of 2017 the City of Brenham entered into a 36 month agreement with Xerox for two copiers located at Fire Department and City Hall. At the end of the original term of the contract, the City exercised the dollar buy-out option on these 2 machines. We then entered into a 24 month service/maintenance agreement for these machine that expired in April of 2022. Purchasing reached out to staff to see about possibly replacing these machines and after reviewing the condition and operation of these machines, staff determined they need to be replaced.

In July of 2019 the City of Brenham entered into a 36 month lease agreement with Ricoh for a copier located at City Hall. This machine did not have the dollar buyout option so staff is just replacing the unit with a new unit. A 48 month quote was requested from Ricoh.

The City currently has approximately 15 other Ricoh machines throughout various City Departments and in order to become more uniform staffed requested quotes from Ricoh. Ricoh provided a TXDIR-CPO government contract price for these machines. Ricoh has been a great vendor and is very responsive to request for emergency service. Staffs recommendation is to enter into a four year lease agreement with Ricoh for the copiers located City Hall admin, City Hall downstairs, and Fire Department. Estimated combined annual cost of \$11,916.00.

City Hall Admin: \$419.00/month x 12 months = **\$5,028.00**/annual lease cost, Includes 84,000 black and white images, color billed as used at \$0.0425/image

City Hall First Floor: \$348.00/month x 12 months = **\$4,176.00**/annual lease cost, Includes 24,000 black and white images, color billed as used at \$0.0425/image (**This device will be owned at end of term)

Fire Department: \$226.00/month x 12 months = **\$2,712.00**/annual lease cost, Includes 24,000 black and white images, color billed as used at \$0.0425/image (**This device will be owned at end of term)

ATTACHMENTS:

None

RECOMMENDED ACTION:

Approve a four (4) year lease contract with Ricoh USA, Inc. for office automation equipment for City Hall Administration in the amount of \$5,028.00 per year, City Hall First Floor in the amount of \$4,176.00 per year, and Brenham Fire Department in the amount of \$2,712.00 per year and authorize the Mayor to execute any necessary documentation.



Regular City Council
AGENDA ITEM 9.

Agenda Item: Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Placement of Stop Signs on Prairie Lea Street at Its Intersection with 5th Street

Meeting Type: Regular Meeting-November 17, 2022

Department: Public Works

Staff Contact: Kyle Branham

SUMMARY STATEMENT:

With the recent improvements and additions of infrastructure around the Blinn Campus, mainly the completion of Blinn STEI (Science, Technology, Engineering, and Innovation) Building in 2021, there has been an increase in pedestrian traffic along Prairie Lea St. and 5th St. Blinn reached out to TxDOT and City staff to help increase safety at this intersection. Blinn had a traffic impact analysis performed and a multi-way stop at Prairie Lea St. & 5th St. was recommended. TxDOT, Public Works, along with Fire and PD, reviewed the TIA and has no objection with enhancing this intersection making it a 4-Way stop regulating north and south bound vehicular traffic, at its intersection with 5th St. As we have seen in the past, Brenham PD, along with Blinn PD, will coordinate to enforce these new 'STOP' signs if approved.

Since this is technically a state roadway (FM 389) TXDOT will be installing the stop signs and has indicated this will happen soon. This ordinance will be needed in order for Public Safety to enforce citations in the future.

ATTACHMENTS:

- (1) Ordinance for First Reading
- (2) Map

RECOMMENDED ACTION:

Approve an Ordinance on its first reading authorizing the placement of stop signs on Prairie Lea Street at its intersection with 5th Street.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS REQUIRING THE PLACING OF CERTAIN STOP SIGNS IN THE CITY OF BRENHAM, TEXAS; ESTABLISHING THE LOCATION OF SAID STOP SIGNS; REGULATING THE TRAFFIC AT SAID STOP SIGNS; PROVIDING FOR A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS it is necessary to provide stop signs at certain locations in the City of Brenham to prevent accidents, collisions, and damages; to promote the flow of traffic along and into such streets; and to regulate the same;

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

Section 1. That there shall be established and installed two (2) stop signs on Prairie Lea Street regulating northbound and southbound vehicular traffic, at its intersection with 5th Street.

The stop signs shall be erected at the top of a standard pole, installed in the ground on the right-hand side of the streets identified herein in accordance with the most recent edition of the Texas Manual on Uniform Traffic Control Devices.

Section 2. That every person, firm or corporation, operating a motor vehicle or other vehicle of any kind, in, on, along and into the streets or street intersections designated in Section 1 hereof, upon reaching a stop sign at the location so designated, shall bring said vehicle to a full and complete stop in compliance with the provisions of applicable state law, before proceeding further along said street or into or on said street intersection.

Section 3. That any person, firm or corporation, violating Section 2 hereof, shall be fined a sum of not less than \$1.00 and not more than \$200.00, plus applicable court costs.

Section 4. This Ordinance shall take full force and effect from and after its passage, approval and publication as required by applicable law.

PASSED and APPROVED on its first reading this the ____ day of _____ 2022.

PASSED and APPROVED on its second reading this the ____ day of _____ 2022.

ATTEST:

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary



**Stop Sign Addition at
Prairie Lea St and Fifth St**

1 inch = 66 feet





Regular City Council
AGENDA ITEM 10.

Agenda Item: Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending the Rate Tarriff Schedule for the City of Brenham's Electric Rates

Meeting Type: Regular Meeting-November 17, 2022

Department: Public Utilities

Staff Contact: Alton Sommerfield

SUMMARY STATEMENT:

We are updating our Distributed Generation Manual which provides guidelines for solar and other types of behind-the-meter installation. Customers with excess generation are reimbursed via billing credits based upon the avoided cost of generation which is calculated at the end of each fiscal year based on LCRA generation charges. Our consulting engineer recommends the City of Brenham add a tariff for this avoided cost of Generation calculation.

ATTACHMENTS:

- (1) Ordinance for First Reading
- (2) Proposed Electric Rate Tariff

RECOMMENDED ACTION:

Approve an Ordinance on its first reading amending the rate tarriff schedule for the City of Brenham's electric rates.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING THE RATE TARIFF SCHEDULES FOR DISTRIBUTED GENERATION, AVOIDED COST OF GENERATION RATE (DG-ACGR) AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City Council of the City of Brenham, Texas deems it necessary to change the rates for distributed generation, avoided cost of generation (DG-ACGR), to its customers in order to provide for conditions of utility service which promote health, safety, and welfare of the citizens of Brenham, Texas;

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

SECTION 1.

The City Council of the City of Brenham, Texas, does hereby adopt the Distributed Generation Avoided Cost of Generation Rate (DG-ACGR) Schedule as set forth in the attached Exhibit "A", which is made a part hereof for all purposes pertinent, to be effective on or after December 1, 2022.

SECTION 2.

This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas. The implementation of rates as set forth herein and on the attached Exhibit "A" shall be effective on and after December 1, 2022.

PASSED and APPROVED on its first reading this the ____ day of _____ 2022.

PASSED and APPROVED on its second reading this the ____ day of _____ 2022.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

“EXHIBIT A”

CITY OF BRENHAM

200 WEST VULCAN STREET * P.O. BOX 1059
BRENHAM, WASHINGTON COUNTY, TEXAS 77834-1059

ALL SERVICES	400	490
TARIFF	SECTION NO.	SHEET NO.
ELECTRIC RATE SCHEDULE	DECEMBER 1, 2022	
SECTION TITLE	EFFECTIVE DATE	

**DISTRIBUTED GENERATION
AVOIDED COST OF GENERATION
RATE (DG-ACGR)**

APPLICABILITY

The DG-ACGR applies to City of Brenham customers with Distributed Generations systems that are interconnected and operate in parallel with the City's electric distribution system, and “send energy” in any metering interval in a given month, to the City's electric distribution system. The DG-ACGR will be reviewed and adjusted annually based on the wholesale cost of generation (energy) from the City's wholesale supplier(s). The annual calculation period for the City of Brenham will be aligned with the City of Brenham Fiscal Year Oct 1 – Sept 30.

CALCULATION OF DISTRIBUTED GENERATION AVOIDED COST OF GENERATION RATE

The DG-ACGR will be calculated annually based on the actual cost(s) of wholesale generation (energy) charges for a 12-month period. The goal is to set the DG-ACGR annually to establish an appropriate rate for the reimbursement of energy received by the City of Brenham's electric distribution system from a distributed generation installation on a City of Brenham retail customer's premises. The formula for establishing the annual DG-ACGR is below:

DG-ACGR = Annual Generation Costs (from monthly wholesale power invoices) for 12 calendar months in a year / total annual energy purchases over the same 12-month period.



Regular City Council
AGENDA ITEM 11.

Agenda Item: Discuss and Possibly Act Upon an Temporary Resale Amendment to the System Water Availability Agreement Between the City of Brenham and Brazos River Authority for the Temporary Resale of Water and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-November 17, 2022

Department: Public Utilities

Staff Contact: Alton Sommerfield

SUMMARY STATEMENT:

On September 1, 2019, an agreement was entered into by and between Brazos River Authority (BRA), a river authority of the State of Texas, and the City of Brenham (Purchaser). BRA made available and Purchaser agreed to purchase 774 acre-feet of raw water per fiscal year for municipal purposes. The intent of this agreement was to secure additional water to sustain long-term future growth for the City of Brenham. The term of the Agreement began September 1, 2019 and shall end on August 31, 2045. Purchase price of the 774 acre-feet is \$88/acre-foot or \$68,112.00 annually. The 774 acre-feet of water is in addition to the City's primary water availability agreement for 4,200 acre-feet, of which, 2,777 acre-feet are used annually on average. While securing this water for future use is prudent, the additional water is not needed at this time.

The Temporary Resale amendment to this Agreement allows Purchaser to elect to resell excess water on a temporary basis to a third party (Resale Purchaser) with prior approval of the BRA, in compliance with the BRA's Water Policy. To facilitate the resale, Purchaser requires the addition of temporary diversion points from which Resale Purchaser may access water made available under the Agreement and the authorization to use the water for industrial purposes.

This is the same amendment that was approved by Council on October 15th, 2020.

ATTACHMENTS:

(1) Temporary Resale Amendment to System Water Availability Agreement

RECOMMENDED ACTION:

Approve the Temporary Resale Amendment to System Water Availability Agreement between Brazos River Authority and City of Brenham and authorize the Mayor to execute any necessary documentation.

**TEMPORARY RESALE AMENDMENT TO SYSTEM WATER
AVAILABILITY AGREEMENT BETWEEN BRAZOS RIVER AUTHORITY AND CITY OF
BRENHAM**

This Temporary Resale Amendment ("Amendment") is entered into to be effective as of the ____ day of _____, 2022 ("Effective Date"), by and between Brazos River Authority ("BRA"), a river authority of the State of Texas, City of Brenham ("Purchaser"), and The Dow Chemical Company ("Resale Purchaser"), (collectively, the "Parties").

RECITALS

WHEREAS, BRA and Purchaser entered into a System Water Availability Agreement ("Agreement") with an effective date of September 1, 2019, whereby BRA agreed to make available and Purchaser agreed to purchase 774 acre-feet of raw water per Fiscal Year for municipal purposes; and

WHEREAS, in accordance with Section 33 of the Agreement, Purchaser has requested to temporarily resell 774 acre-feet of raw water made available under the Agreement to Resale Purchaser; and

WHEREAS, to facilitate this resale, Purchaser requires the addition of temporary diversion points from which Resale Purchaser may access water made available under the Agreement and the authorization to use the water for industrial purposes.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to temporarily amend the Agreement as follows:

AMENDMENTS

1. The BRA hereby consents to the temporary resale of 774 acre-feet of water under the Agreement to the Resale Purchaser. Unless terminated earlier consistent with the terms of this Amendment, this consent shall be effective from the Effective Date to August 31, 2023 (the "Termination Date").
2. Until the Termination Date, Resale Purchaser may divert raw water made available under the Agreement at the locations shown on Exhibit "A-1", attached hereto and incorporated by reference herein.
3. Resale Purchaser may utilize the water for industrial purposes.
4. Until the Termination Date, any reference to Exhibit "A" in the Agreement shall also be deemed a reference to Exhibit "A-1".
5. Resale Purchaser hereby agrees to abide by all of the terms and conditions contained in the Agreement and accepts any and all liability for any failure to do so.
6. Resale Purchaser shall be responsible for all coordination with BRA and the Brazos Watermaster related to ordering and stopping releases, coordinating run-of-river diversions if applicable, as well as reporting, metering, and notification requirements under the Agreement, and notwithstanding the foregoing, Resale Purchaser agrees to comply

with all BRA water reporting requirements, water conservation plans, drought contingency plans and TCEQ Brazos Watermaster requirements.

7. This Amendment shall in no way relieve Purchaser from any of its obligations, including payment, under the Agreement, and Purchaser shall be responsible for ensuring that Resale Purchaser complies with all the terms and conditions contained therein and accepts any and all liability for any failure to do so.
8. BRA reserves the right to withdraw its consent of the resale at any time and for any cause without penalty or liability. Upon receipt of such written withdrawal of consent from BRA, Resale Purchaser shall immediately cease diverting BRA water made available under this Amendment.
9. In the event the amount of water made available to Purchaser under the Agreement is reduced for any reason, Resale Purchaser agrees that such reduction shall also result in a reduced amount available under this Amendment.
10. The address for Resale Purchaser, for the purposes of Section 28 of the Agreement, shall be as follows:

The Dow Chemical Company
2301 Brazosport Boulevard
B-3501
Freeport, Texas 77541

11. Capitalized terms used but not defined herein shall have the respective meanings given to them in the Agreement.
12. This Amendment shall commence on the Effective Date and shall continue until the Termination Date. This Amendment shall no longer be of any force or effect after the Termination Date, and the terms and conditions of the Agreement shall be as they were prior to the execution of this Amendment, and Exhibit "A-1" shall be deleted in its entirety. Following the Termination Date, BRA and Purchaser shall be the only parties to the Agreement.

This Amendment shall be deemed a part of the Agreement and shall be binding on the parties. Except as amended herein, the terms and conditions of the Agreement remain in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed, intending to be bound thereby.

BRAZOS RIVER AUTHORITY

By: _____

DAVID COLLINSWORTH

Title: **GENERAL MANAGER/CEO**

Date: _____

Attest: _____

CITY OF BRENHAM

By: _____

Title: _____

Date: _____

Attest: _____

THE DOW CHEMICAL COMPANY

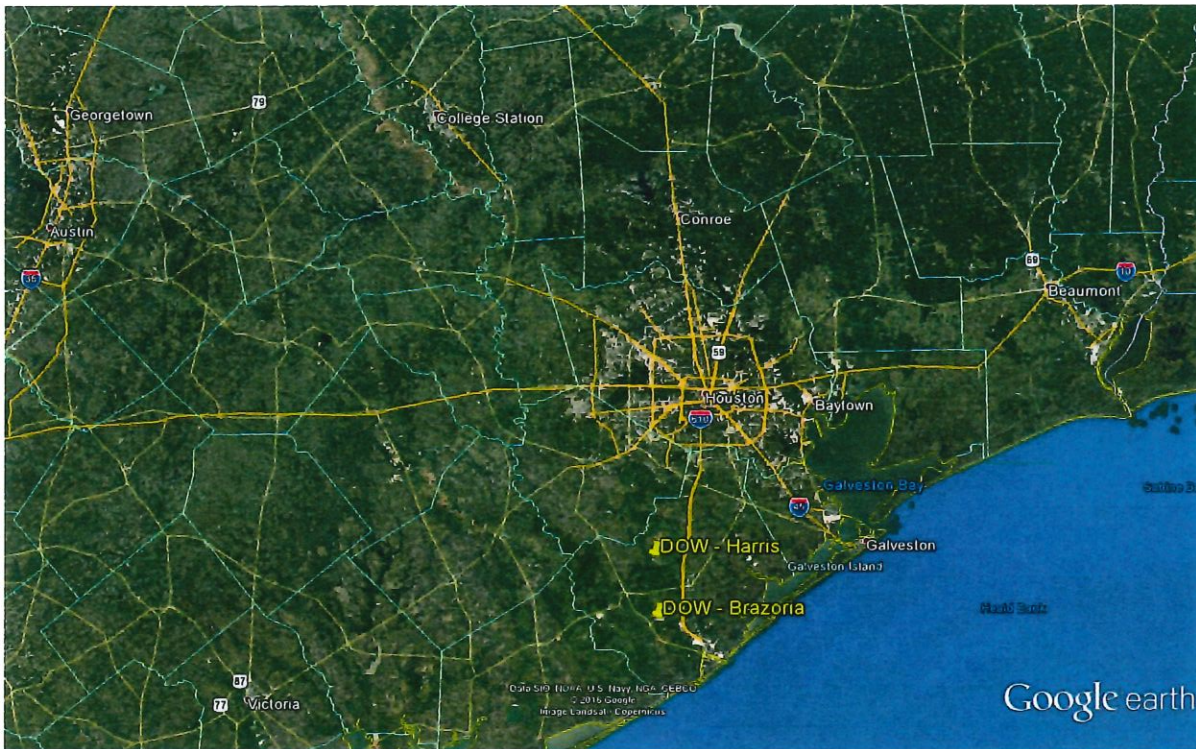
By: _____

Title: _____

Date: _____

Attest: _____

EXHIBIT A-1



RE-SALE AGREEMENT with CITY OF BRENHAM

EXHIBIT A-1: DOW CHEMICAL COMPANY, 774-ACFT (IN)

Contract ID: BRENHAM-DOW 23

Diversion ID: BRENHAM-DOW 23

BRENHAM – DOW - Brazoria

N29.052426 W95.552414, ROST2 ROST2 (1110), Main Stem Brazos River

Lower Basin, Brazoria County, WAP Reach: Richmond Gage to Gulf – Dow Brazoria

BRENHAM – DOW - Harris

N29.243325 W95.562173, ROST2 ROST2 (1110), Main Stem Brazos River

Lower Basin, Brazoria County, WAP Reach: Richmond Gage to Gulf – Dow Harris

Prepared by: Julie Andress, Water Accounting Specialist, 10/12/2022



Regular City Council
AGENDA ITEM 12.

Agenda Item: Discuss and Possibly Act Upon a Water Supply Resale Agreement Between the City of Brenham and The Dow Chemical Company Related to the Temporary Resale of Water and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-November 17, 2022

Department: Public Utilities

Staff Contact: Alton Sommerfield

SUMMARY STATEMENT:

The Temporary Resale Amendment to the Systems Water Availability Agreement allows Purchaser to elect to resell excess water on a temporary basis to a third party (Resale Purchaser) with prior approval of BRA, in compliance with BRA's Water Policy. To facilitate the resale, Purchaser requires the addition of temporary diversion points from which Resale Purchaser may access water made available under the Agreement and the authorization to use the water for industrial purposes.

The Dow Chemical Company desires to purchase the City's excess water on a temporary basis and will pay to the City \$88.00 per acre-foot or \$68,112.00 for the 774 acre-feet of water within thirty days from the effective date of this Agreement. Purchaser will withdraw from the Point of Delivery an amount not to exceed 774 acre-feet of water, as specified under the Agreement between BRA and City. This Agreement is effective upon the BRA approval of the Temporary Resale Amendment and terminates when the Purchaser has withdrawn 774 acre-feet of water or August 31, 2023, whichever occurs first.

ATTACHMENTS:

(1) Water Resale Agreement between the City of Brenham and The Dow Chemical Co.

RECOMMENDED ACTION:

Approve the Water Supply Resale Agreement between the City of Brenham and The Dow Chemical Company and authorize the Mayor to execute any necessary documentation.

**WATER SUPPLY RESALE AGREEMENT
BETWEEN CITY OF BRENHAM
AND THE DOW CHEMICAL COMPANY**

This Water Supply Resale Agreement (“Agreement”) is entered into by and between the **CITY OF BRENHAM, TEXAS**, a Texas home-rule municipal corporation (“City”) and **THE DOW CHEMICAL COMPANY**, a Delaware corporation (“Purchaser”).

Agreement

The City and the Purchaser agree as follows:

Article I. Definitions

In this Agreement:

BRA means the Brazos River Authority.

City means the City of Brenham, Texas.

Contract means a contract between the BRA and City, made and entered into on October 1st, 2019 (effective September 1, 2019), attached hereto and incorporated herein as Exhibit A for all pertinent purposes.

Purchaser means The Dow Chemical Company.

Point of Delivery means the point(s) where the Purchaser will divert Water from the Brazos River as shown on Exhibit A-1 of the Temporary Resale Amendment.

Temporary Resale Amendment means an agreement between BRA, City and Purchaser, dated, attached hereto and incorporated herein as Exhibit B for all pertinent purposes.

Water means the raw water the City has a right to receive under the Contract between the BRA and City.

Article II. Term

2.1. This Agreement is effective upon the BRA approval of the Temporary Resale Amendment (“Effective Date”) and terminates when the Purchaser has withdrawn 774 acre-feet of Water or August 31, 2023, whichever occurs first (“Termination Date”). None of the parties to this Agreement will have any rights or obligations set forth in this Agreement before Effective Date. This Agreement will be null and void if, and at such time as, the BRA does not approve the Temporary Resale Amendment or the BRA terminates the Temporary Resale Amendment for any reason prior to the Termination Date set forth in this Agreement.

Article III. Water Supply Resale

3.1. The City allows the Purchaser to withdraw from the Point of Delivery an amount of Water not to exceed 774 acre-feet of Water, as specified under the Contract between the BRA and City, to supplement the Purchaser's water supplies.

3.2. The Purchaser is not allowed to withdraw any Water before the Effective Date of the Temporary Resale Amendment, and Purchaser must withdraw the Water under this Agreement prior to the Termination Date or at such time as specified by the BRA in the Temporary Resale Amendment.

3.3. Until the Termination Date, the City designates Purchaser as its agent to the BRA for the sole purpose of coordinating the delivery of Water under this Agreement.

3.4. Under this Agreement:

(a) The Purchaser must abide by all of the terms and conditions of the Contract between the BRA and City, attached hereto and incorporated herein as Exhibit A for all pertinent purposes, and the Temporary Resale Amendment between BRA, City and Purchaser, attached hereto and incorporated herein as Exhibit B for all pertinent purposes.

(b) The Water availability is dependent on the provisions specified in the Contract between the BRA and City.

(c) The City does not represent or guarantee that the quality of the Water meets the Purchaser's intended use(s).

(d) The Purchaser must comply with all BRA water reporting requirements.

(e) The Purchaser represents and warrants that it will use the 774 acre-feet of Water under this Agreement for industrial use purposes.

Article IV. Payment

4.1. The Purchaser will pay the City the applicable BRA System Rate of \$88.00 per acre-foot of Water. The Purchaser will pay the City \$68,112.00 for the 774 acre-feet of Water within thirty (30) days from the Effective Date of this Agreement ("Due Date").

4.2. Payment must be delivered by the Due Date to the City's Accounts Receivable Dept at, P.O. Box 1059, Brenham, Texas 77834-1059.

4.3. The City will refund to the Purchaser any amount paid to the City by the Purchaser for Water the BRA is unable to provide as specified under the terms of the Contract between the BRA and City.

Article V. Miscellaneous Provisions

5.1. Notices. All notices and other communications given or made pursuant to this Agreement must be in writing and deemed effective (i) upon personal delivery to the party to be notified; (ii) when sent by facsimile or electronic mail (E-mail) if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day of the date sent; (iii) the first (1st) business day following deposit with any courier service that provides a same day or overnight courier service that guarantees receipted delivery; or (iv) three (3) days after the notice is deposited in the United States mail as certified or registered mail, postage prepaid; in each case addressed to the party to be notified, at the address set forth below or at such other address, facsimile number or electronic mail (E-mail) address for a party as that party may specify in writing to the other party from time to time:

For the City:

City of Brenham
200 W Vulcan St.
Brenham, Texas 77833
Attention: General Manager/Debbie Gaffey
Phone: (979) 337-7510
dgaffey@cityofbrenham.org

With a copy to:
City of Brenham
P.O. Box 1059
Brenham, Texas 77834-1059
Attention: Deputy General Manager/Alton Sommerfield
Phone: (979) 337-7422
asommerfield@cityofbrenham.org

For the Purchaser:

The Dow Chemical Company
2301 Brazosport Blvd., B-3501
Freeport, Texas 77541
Attention: Derek Rester
Phone: 989-238-2151
E-mail: DRester@Dow.com

With a copy to:
Jason Garrard
The Dow Chemical Company
332 Highway 332 E
Lake Jackson, Texas 77566
Phone: 979-238-5595
E-mail: JLGarrard@DOW.com

Either party may change its address or contact information by giving notice, within ten (10) business days, to the other party.

5.2 INDEMNITY/HOLD HARMLESS CLAUSE. THE PURCHASER SHALL COMPLY WITH THE REQUIREMENTS OF THIS AGREEMENT AND ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO. IN ADDITION, THE PURCHASER AGREES TO KEEP, SAVE AND HOLD THE CITY HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST THE CITY, ITS' OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS AGREEMENT OR FOR ANY NEGLIGENT ACT OR OMISSION OF THE PURCHASER RELATED TO THE PROVISION OF WATER MADE AVAILABLE UNDER THIS AGREEMENT OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE PURCHASER OR THE PURCHASER'S AGENTS, SUBCONSULTANT, OR EMPLOYEES.

5.3. Law and Venue. Texas law governs this Agreement and any lawsuit arising out of this Agreement must be filed in a court that has jurisdiction in Washington County, Texas.

5.4. Force Majeure. Neither party is in default if performance of this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the parties.

5.5. Entire Agreement. This Agreement represents the entire agreement between the City and the Purchaser and supersedes all prior negotiations, representations, or contracts, either written or oral between the City and Purchaser. This Agreement may be amended only by written instrument signed by both parties.

CITY OF BRENHAM, TEXAS

THE DOW CHEMICAL COMPANY

Milton Y. Tate, Jr., Mayor

Derek Rester, Production Director

Date: _____

Date: _____

ATTEST:

ATTEST:

Jeana Bellinger, City Secretary

Jason Gerrard, Operations Leader

APPROVED AS TO FORM:

Cary L. Bovey, City Attorney

Exhibit A

**SYSTEM WATER AVAILABILITY AGREEMENT
BETWEEN BRAZOS RIVER AUTHORITY
AND CITY OF BRENHAM**

Exhibit A

SYSTEM WATER AVAILABILITY AGREEMENT

*Brazos River Authority
P. O. Box 7555
Waco, Texas 76714-7555
(254) 761-3100*



CITY OF BRENHAM

**SYSTEM WATER AVAILABILITY AGREEMENT
BETWEEN
BRAZOS RIVER AUTHORITY
AND
CITY OF BRENHAM**

AGREEMENT made and entered into this the 1st day of October 2019, by and between **BRAZOS RIVER AUTHORITY** ("BRA"), a river authority of the State of Texas, and **CITY OF BRENHAM** ("Purchaser") of Washington County, Texas.

1. RECITALS. BRA owns and operates various reservoirs in the Brazos River Basin. BRA also has entered into contracts with the United States of America by virtue of which it has obtained the right to utilize for water supply purposes a portion of the usable storage space in various reservoirs owned and operated by the United States Army Corps of Engineers ("USACE"). BRA is authorized by the State of Texas to store state waters in the reservoirs owned by BRA and various reservoirs owned and operated by the USACE in the Brazos River Basin; BRA has been granted water rights permits and certificates of adjudication by the Texas Commission on Environmental Quality, or its predecessors, and to make such stored waters available for beneficial use. BRA is authorized to operate the System as a hydrologic unit(s) to more efficiently utilize the waters of the Brazos River Basin included in the System and to make water available to meet the needs of BRA's customers.

BRA's System Operation Permit authorization allows BRA to use naturally occurring flows in the basin and return flows from wastewater treatment plants, in conjunction with the water supply in the reservoirs within the BRA water supply system. The uncontrolled natural flow, originating downstream of the BRA's reservoirs during wet times, can be augmented by releases from BRA reservoirs upstream during dry times and collectively achieve a System yield that is greater than the sum of the individual reservoir yields.

Purchaser wishes to contract with BRA to make available 774 acre-feet of Sys Ops Water per Fiscal Year under the terms of this Agreement pursuant to the System-wide pricing methodology, and BRA agrees to make water available to Purchaser pursuant to the terms and conditions herein provided.

2. DEFINITIONS.

- a) The term "Agreement" means this agreement.
- b) The term "Annual Contracted Amount" shall mean the total volume, expressed in acre-feet per Fiscal Year, which BRA agrees to make available and Purchaser agrees to purchase. For this Agreement, the amount is 774 acre-feet.
- c) The term "BRA" shall mean Brazos River Authority.
- d) The term "Board" shall mean the Board of Directors of Brazos River Authority.
- e) The term "Budgeted Cost of Service" shall mean all reasonable economic requirements to develop, operate, maintain, protect and/or expand the System. Specific

costs include, but are not limited to, personnel, operations, capital, infrastructure, financing, administration and overhead.

f) The term "Fiscal Year" shall mean BRA's fiscal year from September 1 through August 31, or such other annual fiscal year period as BRA may later determine.

g) The term "Industrial Use" shall mean the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric, but does not include agricultural use.

h) The term "Irrigation Use" shall mean the use of water for the irrigation of crops, trees, and pasture land, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.

i) The term "Mining Use" shall mean the use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

j) The term "Municipal Use" shall mean the use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes or the use of return flows authorized pursuant to Texas Water Code, §11.042, in lieu of potable water for the preceding purpose, the application of municipal sewage effluent on land, under a Texas Water Code, Chapter 26, permit where:

(A) the application site is land owned or leased by the Chapter 26 permit holder; or

(B) the application site is within an area for which the TCEQ has adopted a no-discharge rule.

k) The term "Overuse" shall mean withdrawal or release of water in excess of the amount contracted.

l) The term "Purchaser" shall mean City of Brenham.

m) The term "Reuse" shall mean the authorized use of any portion of the water sold hereunder that remains unconsumed after the water is used for the purpose authorized herein.

n) The term "Sys Ops Water" shall mean raw water derived from and made available under this Agreement through the issuance of BRA's System Operation Permit.

o) The term "System" shall mean BRA's water supply system and shall include the BRA's facilities, infrastructure and properties insofar as they are related to making water available from the BRA together with all future extensions, improvements, enlargements, and additions to and/or all replacements thereof whether from surface water supplies, groundwater, System Operation Permit, current and/or future TCEQ water right permits or certificates of adjudication, contractual rights to water supply, or a combination thereof, unless specifically excluded from the System by resolution of the Board.

p) The term "System Operation Permit" shall mean Permit No. 5851 issued on November 30, 2016; whereby the BRA is authorized by TCEQ the right to contract for Sys Ops Water with customers in areas designated by TCEQ.

q) The term "System Rate" shall mean the annual rate per acre-foot of water established by BRA from time to time under the system-wide pricing methodology for water made available to Purchaser from the System under this Agreement.

r) The term "TCEQ" shall mean the Texas Commission on Environmental Quality or any successor regulatory bodies, either state or federal, with the power to regulate water rights permitting, water quality, metering and/or reporting within the Brazos River Basin.

3. EFFECTIVE DATE. The effective date of this Agreement is **September 1, 2019.**

4. AVAILABILITY OF WATER. While this Agreement remains in force, BRA agrees to make available to Purchaser for withdrawal from the System an amount of water not to exceed the Annual Contracted Amount; provided however, BRA may curtail the water supplied under this Agreement as required by law or in accordance with the BRA's Drought Contingency Plan. Purchaser agrees that it is contracting to have water made available to it in amounts and at such times and locations as are provided for herein and that the water to be provided under this Agreement is subject to local availability. Purchaser acquires no property right in the water made available to it under this Agreement beyond the right to have the water made available to it for diversion and use under the terms of this Agreement. BRA agrees to make water available from the System, and Purchaser acquires no rights or interests in any of the water supply sources that comprise the System above and beyond those rights that accrue to it as a customer of the System under this Agreement.

5. TYPE OF USE. Purchaser represents, and BRA relies on such representation, that all water to be made available by BRA under this Agreement to Purchaser shall be used solely for municipal purposes.

6. DATE AND PLACE OF PAYMENTS. Payments to be made hereunder shall be made at BRA's office in Waco, McLennan County, Texas. BRA contemplates that by the first day of each Fiscal Year (currently September 1) it will have adopted budgets for BRA for said Fiscal Year and established the System Rate for said Fiscal Year. Payments for water made available each Fiscal Year may be made under one of three payment options from which Purchaser will select at the beginning of each Fiscal Year. Annual payments shall be made on or before September 15 of each year. Quarterly payments shall be made on or before September 15, December 15, March 15, and June 15 of each year. Monthly payments shall be made on or before the fifteenth of each month each year. Quarterly payments or monthly payments shall include a multiplier to be applied to the Annual Contracted Amount to allow BRA to recover interest lost on any unpaid balance plus a service charge for administrative costs, including but not limited to costs involving the billing, accounting, and collecting for the quarterly or monthly payments. The multiplier to recover lost interest revenue and the service charge for administrative costs shall be determined on an annual basis using the method approved by the Board and shall be just and reasonable.

If, in accordance with Section 7b) of this Agreement, BRA increases the payment due from Purchaser during a Fiscal Year, it shall notify Purchaser of any increased amount of payment due for the remainder of the Fiscal Year and the increased amount shall be paid by Purchaser (i) within 30 days after receipt of notice of the increase if Purchaser has already paid all amounts otherwise due to BRA for such Fiscal Year, or (ii) in approximately equal installments added to any further installment amounts owed by Purchaser for the remainder of such Fiscal Year if Purchaser has selected a payment option which resulted in Purchaser still having payments due to BRA during the remainder of such Fiscal Year.

7. UNCONDITIONAL NATURE OF PAYMENT OBLIGATION; PRICE.

a) Purchaser unconditionally agrees to pay BRA annually for the water agreed to be made available to Purchaser hereunder at a price equal to the product of multiplying the System Rate times the Annual Contracted Amount regardless of whether the full Annual Contracted Amount of water is diverted and used by Purchaser.

b) The System Rate shall be established annually by the Board; it shall be calculated by utilizing a Budgeted Cost of Service basis considering the water supply System costs and the acre-feet of long term water sold under contract; and it shall be just, reasonable and non-discriminatory. Purchaser shall be provided at least 15 days' notice of the proposed amount and the meeting date at which the System Rate shall be established and shall be provided an invoice before the payment is due and payable. The System Rate has been established by the Board at a rate of \$79.00 per acre-foot of water agreed to be made available annually to Purchaser for the current Fiscal Year. BRA shall not increase the System Rate other than on a Fiscal Year basis, which determines the System Rate for the following Fiscal Year under this Agreement, except for unforeseeable reasons of a serious or substantial nature. Such reasons include Force Majeure, government legislation or regulations, or permit requirements.

8. SOURCE OF PAYMENTS. The payments to be made hereunder by Purchaser shall constitute operating expenses of Purchaser's water works system or Purchaser's combined water works and sewer system. Purchaser shall charge rates for services of its water works system or its combined water works and sewer systems that will be sufficient to pay the operating and maintenance expenses thereof, including the payments provided for hereunder, and the interest on and principal of, as the same come due and mature, obligations issued by Purchaser now or hereafter payable from the revenues of said system or systems.

9. INTEREST ON PAST DUE PAYMENT. In the event of failure of Purchaser to make any payment to BRA provided to be made in this Agreement at the time when same shall be due, the past due payment shall bear interest at the lesser of the highest rate allowed by applicable law or 18 percent per year.

10. REMEDIES FOR NONPAYMENT OR DEFAULT. Should Purchaser fail to make any payment to BRA when due hereunder or otherwise be in default in performance or compliance of any provision herein, BRA, at its sole option and in addition to and without impairing any other remedy available to it on account of the default, may elect to: (i) suspend its duty to make water available to Purchaser under this Agreement; (ii) terminate this Agreement, by providing written notice of such termination delivered to Purchaser on or before 30 days before the date specified in said notice of termination, provided that the nonpayment or other default with respect to which notice of termination of this Agreement has been given, shall not be cured by the date specified in such notice; or (iii) disable Purchaser's meter and not allow Purchaser to divert water.

In the event, BRA elects to terminate this Agreement for a breach of any of the terms of this Agreement or as provided herein, the Purchaser shall immediately discontinue all diversions and use of water made available hereunder.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

11. REMEDIES FOR OVERUSE. Purchaser recognizes that any diversion of water in excess of its Annual Contracted Amount will impact BRA's ability to make available water to BRA's other raw water customers. Purchaser agrees that if for any reason it needs to exceed the Annual Contracted Amount, Purchaser will give written notice to BRA 30 days in advance of the need for such additional water and in such notice will state the reason for the additional need, the amount of water needed to be made available, and the duration of the need. BRA, in its sole discretion, may make all or a portion of the requested water available. Nothing contained herein shall obligate the BRA to provide water in excess of the Annual Contracted Amount nor should Purchaser rely on additional water being made available in excess of the Annual Contracted Amount except as approved by BRA under the terms stated herein.

In the event that BRA determines that it can make all or a portion of the requested water available without adversely impacting its ability to make water available to its other customers, Purchaser shall pay for such water to be made available in advance of diversion at a rate that is equal to twice the current System Rate.

In the event Purchaser fails to notify BRA of its need for additional water to be made available, and exceeds the Annual Contracted Amount or should Purchaser, after notification of BRA and BRA's determination that additional water is not available for Purchaser's use, nonetheless exceed the Annual Contracted Amount, BRA may elect to: (i) cancel this Agreement by providing written notice of such cancellation delivered to Purchaser on or before thirty (30) days before the date specified in said notice of cancellation; (ii) charge the Purchaser for the overuse at a rate of the lesser of ten times the System Rate or the highest charge allowed by law at the time of breach; and/or (iii) disable Purchaser's meter and not allow Purchaser to divert water.

In the event, BRA elects to terminate this Agreement for a breach for overuse, the Purchaser shall immediately discontinue all diversions of use of water made available hereunder.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

12. DIVERSION POINT(S). Upon execution of this Agreement, the BRA and the Purchaser shall agree on a point(s) of diversion which shall be attached hereto and incorporated by reference herein for all purposes as Exhibit "A". Withdrawal facilities for diversion of water made available under this Agreement shall be solely the responsibility of Purchaser and shall comply with Section 14., below. Subsequent changes regarding the location of the diversion point(s) are in the sole discretion of the BRA and shall only be made by written amendment. Any change in the location of the diversion point(s) without the written consent of BRA is not allowed.

13. DIVERSION RATE. The water to be made available to Purchaser under this Agreement may be diverted from System at daily rates desired by Purchaser provided that BRA shall not be required to make water available for diversion by Purchaser at a daily rate in excess of five times the average daily rate which would result in diversion during a Fiscal Year of the total number of acre-feet of water per year then agreed to be made available for diversion by Purchaser.

14. WITHDRAWAL FACILITIES. The provision of facilities for diversion of the water agreed to be made available by BRA to Purchaser hereunder shall be solely the responsibility of Purchaser, including the right to legally access land to place such facilities. Where applicable, BRA may allow the construction of such facilities on and across BRA land, subject to the conditions, requisites, insurance requirements and/or obligations as established from time to time by the BRA, USACE and/or any other applicable regulatory body. Prior to construction of such facilities, Purchaser shall coordinate with BRA to determine the location, size and type of facilities to be installed. At the termination of this Agreement, all facilities must be removed and the land restored to its original condition in a manner acceptable to BRA.

15. METERING. Purchaser agrees that, at its sole cost and expense, it shall own, install, operate and maintain meters for the accurate measuring of all water diverted by Purchaser under this Agreement in order to aid BRA in accurately reporting water usage to the TCEQ as required by applicable law or regulation. Prior to pumping any water, Purchaser shall allow BRA and any other regulatory agencies access to such meter in order to verify its accuracy. Such meter or meters shall be tested and calibrated for accuracy by and at the expense of Purchaser once each Fiscal Year at intervals of approximately 12 months, and a report of such test and calibration shall be furnished to BRA. BRA shall be given at least two prior days' notice of the time of any test and calibration of Purchaser's meters, or any of them, and BRA shall have the right to have a representative present at each test to observe the test and any adjustments found thereby to be necessary. BRA shall have the right to inspect and check the accuracy of Purchaser's meter or meters at any time during usual business hours after not less than one nor more than five (5) days' notice. In the event any question arises at any time as to the accuracy of any such meter, such meter shall be tested promptly upon demand of BRA, the expense of such test to be borne by BRA if the meter is found to be correct and by Purchaser if it is found to be incorrect. Readings within 5% of accuracy, plus or minus, shall be considered correct. If, as a result of any test, any meter is found to be registering inaccurately (i.e., in excess of 5% of accuracy, plus or minus), the readings of such meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, the period shall be extended back 180 days from the date of the initial BRA demand for meter testing, and the records of readings shall be adjusted accordingly. In addition, Purchaser shall permit BRA to access its meter at all times and releases BRA from any and all liability for disabling the meter in the event Purchaser is in default of this Agreement.

16. REPORTING Purchaser agrees that it will keep accurate records of the daily readings from the meter or meters installed pursuant to Section 15., Metering, above. These records shall be subject to inspection by BRA and/or TCEQ at reasonable times and places. Purchaser shall submit reports to BRA pursuant to BRA and/or TCEQ requirements

at regular time intervals specified by BRA or as required by TCEQ, in addition to any other reporting requirements set forth by BRA and/or TCEQ. In addition to other contractual penalties and/or damages, failure to comply with BRA and/or TCEQ reporting requirements will result in monetary penalties assessed by BRA, TCEQ, and/or any other applicable regulatory body.

17. SYSTEM EXPANSION. Purchaser and BRA understand that BRA may desire to make water available to other customers in a manner or in an amount which may necessitate expansion or enlargement of or additions to the System and that in connection with any such expansion, enlargement or addition, BRA will incur additional costs. The reasonable costs incurred by BRA related to such expansion, enlargement, or addition shall be costs of the System.

18. DROUGHT CONTINGENCY PLAN. Purchaser agrees to abide by any and all policies and/or procedures, adopted from time to time by the BRA, related to water conservation and drought response, including but not limited to: the BRA "Drought Contingency Plan" adopted by the Board on April 29, 2019, or any subsequent Drought Contingency Plan duly adopted by the Board, and any and all drought contingency programs developed by the BRA. If required by applicable law or regulation or by BRA, Purchaser agrees to develop a drought contingency program, submit a copy to the BRA for review, and agrees the water made available and diverted by Purchaser pursuant to this Agreement will be used in accordance with such program. Purchaser recognizes and agrees that should the BRA's Drought Contingency Plan, and the implementation of any requirements thereof, result in the curtailment of water, Purchaser shall be required to immediately reduce the water made available under this Agreement by an amount determined solely by the BRA, and any withdrawal in excess of this amount during the time of drought shall be considered a default by Purchaser. In the event Purchaser furnishes water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to BRA's Drought Contingency Plan and Purchaser's plan shall be met through contractual agreements between Purchaser and the third party providing for the establishment and implementation of a drought contingency program in compliance with such applicable law or regulation.

19. WATER CONSERVATION. It is the intent of the parties to this Agreement to provide to the maximum extent practicable for the conservation of water, and Purchaser agrees that it is a condition of this Agreement that it shall maintain and operate its facilities in a manner that will prevent unnecessary waste of water. BRA, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water conservation. Purchaser agrees to abide by the "Brazos River Authority Water Conservation Plan" adopted by the Board on April 29, 2019, or any subsequent Water Conservation Plan duly adopted by the Board and any Water Conservation Plan developed and adopted by the BRA. In addition, Purchaser agrees to implement its own water conservation plan and submit a copy to the BRA for review. Purchaser further agrees that the water impounded and/or diverted by Purchaser pursuant to this Agreement will be used in accordance with such plans. Purchaser shall implement water conservation measures that provide for the utilization of those reasonable practices, techniques, and technologies that will reduce on a per unit basis the consumption of water, prevent or

reduce the loss or waste of water, improve the efficiency in the use of water, increase the recycling and reuse of water, and prevent the pollution of water, so that a water supply is made available for future and alternative uses. The practices, techniques, and technologies used shall be designed to achieve a level of efficiency of use that is equal to or greater than the level provided for in BRA's Water Conservation Plan. Purchaser further agrees to amend its water conservation plan, as necessary, to reflect amendments in state law, regulations or BRA's water conservation rules and regulations. Purchaser agrees that if a shortage of water results from drought, accident, or other cause, BRA shall divide the water made available to all its customers on a pro rata basis in accordance with the amount of water to which each customer may be entitled or the amount of water to which each customer may be entitled, less the amount of water the customer would have saved if the customer had operated its water system in compliance with the water conservation plan. In the event Purchaser furnishes water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to the BRA's Water Conservation Plan and Purchaser's plan shall be met through contractual agreements between Purchaser and the third party providing for the establishment and implementation of a water conservation program in compliance with such applicable law or regulation.

20. WATER QUALITY. As a further condition of this Agreement, Purchaser also agrees that it will comply with applicable water quality standards of the State in the diversion, use, or discharge of water made available hereunder. BRA, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water quality protection. If required by applicable law or regulation, Purchaser agrees to implement appropriate water quality protection measures including, without limitation, a non-point source water pollution abatement program in accordance with a non-point source water pollution abatement plan.

21. REUSE. All rights to Reuse made available under this Agreement that is either disposed of or discharged or otherwise allowed to flow into a watercourse, reservoir, or other body of state-owned water shall remain with the BRA. Purchaser may not use, sell, or make available to others, any form of Reuse without the express written consent of the BRA. However, Purchaser may directly reuse treated wastewater effluent or untreated water provided that such water has not been previously disposed of or discharged or otherwise allowed to flow into a watercourse, reservoir, or other body of state-owned water.

22. INTERBASIN TRANSFER. Water made available under this Agreement shall not be transferred or used outside of the Brazos River Basin unless Purchaser obtains the express written consent of BRA and obtains all required governmental approvals.

23. SHORTAGES AND YEARLY REPORTS. BRA makes no guarantee that any reservoirs or other sources of supply in the System will be maintained at any specific level at any particular time. Purchaser bears all transportation losses prior to final diversion. It is fully understood by the parties hereto that the level of reservoirs or other sources of supply in the System will vary as a result of weather conditions beyond the control of BRA, the use of water from the System by other water customers of BRA, and in USACE reservoirs, as a result of releases made by the USACE and that this instrument

is merely an agreement to require BRA to make available water when and if water is present in the System, and to allow Purchaser to make withdrawals of the water subject to the general law on distribution and allocation of water during shortages of supply and in conformity with BRA's water rights from the TCEQ and the System.

BRA covenants that it will use its best reasonable efforts in accordance with accepted hydrological engineering practices to provide the quantities of water agreed to be provided herein. In the event of a drought of greater severity than that previously experienced, or if for any other reason water in the System becomes in short supply, Purchaser acknowledges and agrees that BRA may curtail or cutback Purchaser's water utilization. Purchaser acknowledges that it shall hold BRA harmless from any and all liability, damages, claims or actions which may exist as a result of shortages of water to be made available.

24. REDUCTION IN CONTRACTED AMOUNT. Purchaser recognizes and agrees that the Annual Contracted Amount made available is Sys Ops Water and may be reduced by regulatory bodies in charge of issuing such permits. If a regulatory body reduces the amount of water made available to BRA under the System Operation Permit, BRA shall reduce the amount of water made available under this Agreement to Purchaser in a manner that equitably affects all impacted BRA customers.

25. OPERATION OF SYSTEM; BRA'S OTHER CONTRACTS. The right of BRA to maintain and operate the System and at any and all times to impound, release and make available waters therefrom in any lawful manner and to any lawful extent BRA may see fit is recognized by Purchaser; and, except as otherwise provided herein, there shall be no obligation hereunder upon BRA to pump or not pump, store or not to store, or to release and make available or not to release or make available any waters at any time or to maintain any waters at any specified level or to operate the System in any manner not in compliance with applicable laws or regulations, and BRA's water rights. BRA may enter into agreements with other parties regarding the System, including its operation and maintenance and the storage, release and making available water therefrom. BRA makes no representation as to the quality of the water in the System.

26. FORCE MAJEURE. Notwithstanding anything herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, sabotage, major infrastructure failure, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply in the System, strikes or other differences with labor (whether or not within the power of the parties to settle same), decrees, actions or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such party and not due to negligence of such party. Each party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

27. WAIVER. Any waiver at any time by any party of its rights with respect to default or any right granted under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent default or matter.

28. NOTICES AND CERTIFICATIONS. Notices and certifications provided for in this Agreement shall be in writing. The same shall be delivered by standard overnight carriers or postal service, sent postage paid, or hand delivered, to the respective parties at the following addresses:

BRA: Brazos River Authority
P.O. Box 7555
Waco, Texas 76714-7555
or
4600 Cobbs Drive
Waco, Texas 76710
Telephone: 254-761-3100
Email: info@brazos.org

Purchaser: City of Brenham
P. O. Box 1059
Brenham, TX 77834-1059
Telephone: 979-337-7593
Email: logle@cityofbrenham.org

Either party may change its address as shown above by written notice to the other party.

29. OTHER REQUIREMENTS. This Agreement is subject to all conditions, provisions, and limitations included in BRA's water rights from applicable state agencies. Further, this Agreement is subject to all applicable federal, state and local laws, BRA policies and procedures, any and all regulatory requirements, and any other applicable ordinances, rules, orders and regulations of any local, state or federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation of any governmental authority.

30. SEVERABILITY. The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

31. INDEMNITY/HOLD HARMLESS CLAUSE. TO THE EXTENT ALLOWED BY LAW, THE PURCHASER SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD BRA HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO. IN ADDITION, THE PURCHASER AGREES TO KEEP, SAVE AND HOLD BRA HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES,

JUDGMENTS, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST BRA, ITS' OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS AGREEMENT OR FOR ANY NEGLIGENT ACT OR OMISSION OF THE PURCHASER RELATED TO THE PROVISION OF WATER MADE AVAILABLE UNDER THIS AGREEMENT OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE PURCHASER OR THE PURCHASER'S AGENTS, SUBCONSULTANT, OR EMPLOYEES.

32. MULTIPLE CONTRACTS. If Purchaser possesses more than one long-term water supply agreement with the BRA for diversion of water with the same diversion point or a diversion point within the same general location, water use or consumption shall be applied against the oldest contract first, until all quantities of water that may be diverted from such diversion point under that contract have been fully utilized and billed against, and then in like manner to each successive contract in date order, from oldest to most recent. Once water use or consumption has been so applied against all previous contracts, any remaining usage shall be applied against this Agreement.

33. WATER SURPLUS, RESALE AND ASSIGNMENT. Should Purchaser determine that it has water surplus to its anticipated needs from the water to be made available by BRA under this Agreement, Purchaser may provide the BRA with a minimum of ninety days' written notice as to the amount of water no longer needed to be made available to it and, subject to BRA approval, return such water to BRA. If approved by BRA, this Agreement will be amended to reduce the amount of water to be made available to Purchaser, and Purchaser will be relieved of the obligation to make payments for such availability of water beginning on the first day of the next Fiscal Year.

If Purchaser does not wish to return the excess water to the BRA, Purchaser may elect to resell the water on a temporary basis to a third party with prior approval of the BRA, on a form approved by the BRA, and in compliance with the BRA's Water Policy, as in effect at the time of request. Purchaser shall remain responsible for tendering full payment to the BRA in advance of the temporary resale period and agrees to monitor the third party's performance, ensuring compliance with all terms of this Agreement.

The assignment of BRA water by Purchaser is prohibited; provided, however, the Brazos River Authority may allow Purchaser to permanently assign the Agreement to a third party in the event of the following: 1) name changes, restructuring, mergers, acquisitions, assignments, or other transfers of a business, organization or entity; 2) acquisition, transfer of an interest in the Agreement through inheritance, change in marital status, or interfamily transfer; 3) Purchaser has sold the real property underlying the Agreement and the new owner of the real property desires to continue use of Agreement; 4) a court order necessitating the assignment of the Agreement has been issued; or 5) a change in BRA Water Policy. Such assignments will only be approved if the diversion location and use remain are not modified or changed and only on a form acceptable to the BRA.

Additionally, if the Purchaser intends to resell the water under this Agreement, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water is required to implement water conservation measures meeting the requirements of this Agreement.

34. TERM OF AGREEMENT. The term of this Agreement shall begin on the Effective Date, Section 3, and shall end on August 31, 2045. At the sole discretion of the BRA, this Agreement may be renewed thereafter at the written request of Purchaser under the terms and conditions of BRA's standard long-term water availability contract at that time for so long as, and to the extent that, BRA determines it has Sys Ops Water available for purchase.

CITY OF BRENHAM

By Milton Y. Tate, Jr.
Milton Y. Tate, Jr.
Mayor

BRAZOS RIVER AUTHORITY

By David Collinsworth
David Collinsworth
General Manager/CEO

ATTEST:

Jeana Bellinger

ATTEST:

Vance Adams



EXHIBIT A: CITY OF BRENHAM 774-ACFT (MU)

Contract ID: BRENHAM 20

Diversion 1:

BRENHAM 19, N30.30612 W96.536515, SOMT2 SOMT2 (1212),
Lakeside Lake Somerville, Lower Basin, Washington County
WAP Reach: SO Lake Somerville

Prepared by: Julie Andress, Water Accounting Specialist, 7/16/2019

Exhibit B

TEMPORARY RESALE AMENDMENT

**TEMPORARY RESALE AMENDMENT TO SYSTEM WATER
AVAILABILITY AGREEMENT BETWEEN BRAZOS RIVER AUTHORITY AND CITY OF
BRENHAM**

This Temporary Resale Amendment ("Amendment") is entered into to be effective as of the ____ day of _____, 2022 ("Effective Date"), by and between Brazos River Authority ("BRA"), a river authority of the State of Texas, City of Brenham ("Purchaser"), and The Dow Chemical Company ("Resale Purchaser"), (collectively, the "Parties").

RECITALS

WHEREAS, BRA and Purchaser entered into a System Water Availability Agreement ("Agreement") with an effective date of September 1, 2019, whereby BRA agreed to make available and Purchaser agreed to purchase 774 acre-feet of raw water per Fiscal Year for municipal purposes; and

WHEREAS, in accordance with Section 33 of the Agreement, Purchaser has requested to temporarily resell 774 acre-feet of raw water made available under the Agreement to Resale Purchaser; and

WHEREAS, to facilitate this resale, Purchaser requires the addition of temporary diversion points from which Resale Purchaser may access water made available under the Agreement and the authorization to use the water for industrial purposes.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to temporarily amend the Agreement as follows:

AMENDMENTS

1. The BRA hereby consents to the temporary resale of 774 acre-feet of water under the Agreement to the Resale Purchaser. Unless terminated earlier consistent with the terms of this Amendment, this consent shall be effective from the Effective Date to August 31, 2023 (the "Termination Date").
2. Until the Termination Date, Resale Purchaser may divert raw water made available under the Agreement at the locations shown on Exhibit "A-1", attached hereto and incorporated by reference herein.
3. Resale Purchaser may utilize the water for industrial purposes.
4. Until the Termination Date, any reference to Exhibit "A" in the Agreement shall also be deemed a reference to Exhibit "A-1".
5. Resale Purchaser hereby agrees to abide by all of the terms and conditions contained in the Agreement and accepts any and all liability for any failure to do so.
6. Resale Purchaser shall be responsible for all coordination with BRA and the Brazos Watermaster related to ordering and stopping releases, coordinating run-of-river diversions if applicable, as well as reporting, metering, and notification requirements under the Agreement, and notwithstanding the foregoing, Resale Purchaser agrees to comply

with all BRA water reporting requirements, water conservation plans, drought contingency plans and TCEQ Brazos Watermaster requirements.

7. This Amendment shall in no way relieve Purchaser from any of its obligations, including payment, under the Agreement, and Purchaser shall be responsible for ensuring that Resale Purchaser complies with all the terms and conditions contained therein and accepts any and all liability for any failure to do so.
8. BRA reserves the right to withdraw its consent of the resale at any time and for any cause without penalty or liability. Upon receipt of such written withdrawal of consent from BRA, Resale Purchaser shall immediately cease diverting BRA water made available under this Amendment.
9. In the event the amount of water made available to Purchaser under the Agreement is reduced for any reason, Resale Purchaser agrees that such reduction shall also result in a reduced amount available under this Amendment.
10. The address for Resale Purchaser, for the purposes of Section 28 of the Agreement, shall be as follows:

The Dow Chemical Company
2301 Brazosport Boulevard
B-3501
Freeport, Texas 77541

11. Capitalized terms used but not defined herein shall have the respective meanings given to them in the Agreement.
12. This Amendment shall commence on the Effective Date and shall continue until the Termination Date. This Amendment shall no longer be of any force or effect after the Termination Date, and the terms and conditions of the Agreement shall be as they were prior to the execution of this Amendment, and Exhibit "A-1" shall be deleted in its entirety. Following the Termination Date, BRA and Purchaser shall be the only parties to the Agreement.

This Amendment shall be deemed a part of the Agreement and shall be binding on the parties. Except as amended herein, the terms and conditions of the Agreement remain in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed, intending to be bound thereby.

BRAZOS RIVER AUTHORITY

By: _____
 DAVID COLLINSWORTH
Title: **GENERAL MANAGER/CEO**
Date: _____
Attest: _____

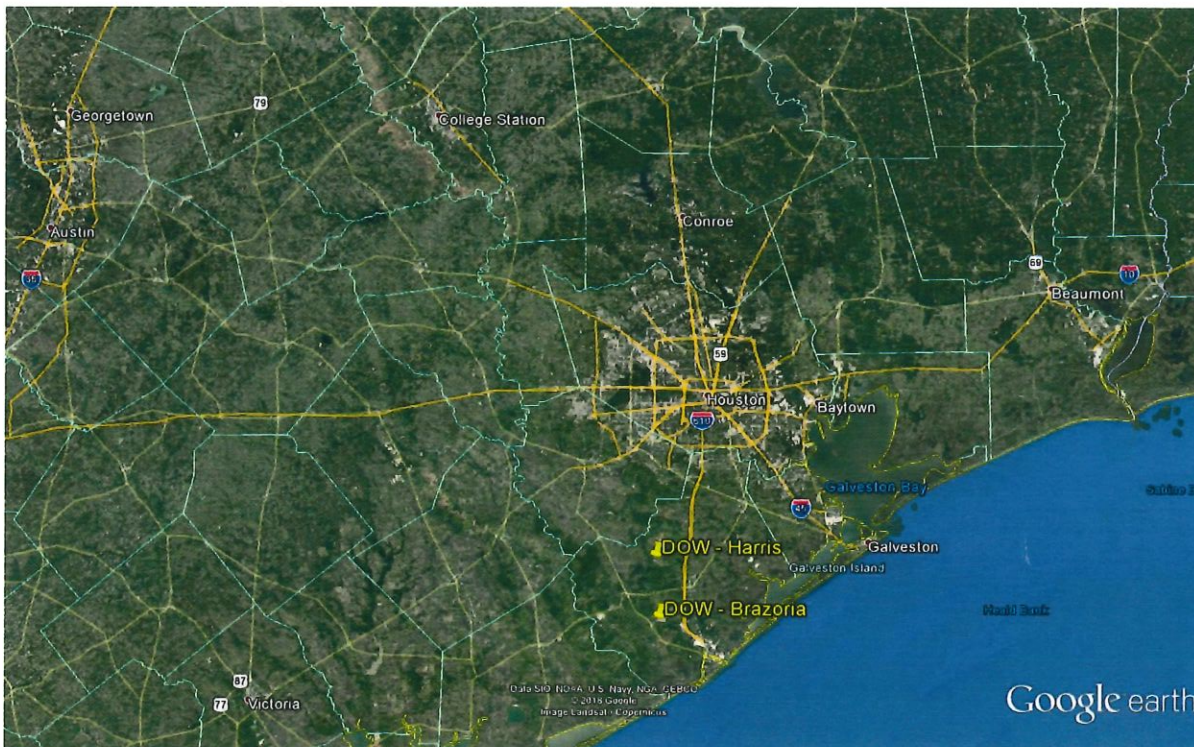
CITY OF BRENHAM

By: _____
Title: _____
Date: _____
Attest: _____

THE DOW CHEMICAL COMPANY

By: _____
Title: _____
Date: _____
Attest: _____

EXHIBIT A-1



RE-SALE AGREEMENT with CITY OF BRENHAM

EXHIBIT A-1: DOW CHEMICAL COMPANY, 774-ACFT (IN)

Contract ID: BRENHAM-DOW 23

Diversion ID: BRENHAM-DOW 23

BRENHAM – DOW - Brazoria

N29.052426 W95.552414, ROST2 ROST2 (1110), Main Stem Brazos River

Lower Basin, Brazoria County, WAP Reach: Richmond Gage to Gulf – Dow Brazoria

BRENHAM – DOW - Harris

N29.243325 W95.562173, ROST2 ROST2 (1110), Main Stem Brazos River

Lower Basin, Brazoria County, WAP Reach: Richmond Gage to Gulf – Dow Harris

Prepared by: Julie Andress, Water Accounting Specialist, 10/12/2022



Regular City Council
AGENDA ITEM 14.

Agenda Item: Section 551.072, Texas Government Code - Deliberation Regarding Real Property - Discussion Regarding the Purchase, Exchange and/or Acquisition of Real Property for City of Brenham Sanitary Sewer Improvements and Facilities

Meeting Type: Regular Meeting-November 17, 2022

Department: Public Utilities

Staff Contact: Debbie Gaffey

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

No action - Executive Session only.



Regular City Council
AGENDA ITEM 15.

Agenda Item: Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding City of Brenham v. WTG Gas Marketing, Inc.; Cause No. 37573; 335th Judicial District Court, Washington County, Texas

Meeting Type: Regular Meeting-November 17, 2022

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

As discussed in Executive Session.



Regular City Council
AGENDA ITEM 16.

Agenda Item: Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Legal Issues Concerning the City of Brenham Lake Somerville Raw Water Intake Structure, the Federal Emergency Management Agency, and Associated Matters

Meeting Type: Regular Meeting-November 17, 2022

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

No action - Executive Session discussion only.



Regular City Council
AGENDA ITEM 17.

Agenda Item: Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Aviators Plus, LLC v. City of Brenham, Texas; Cause No. 37896; 21st Judicial District Court, Washington County, Texas

Meeting Type: Regular Meeting-November 17, 2022

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

No action - Executive Session discussion only.



Regular City Council
AGENDA ITEM 18.

Agenda Item: Discuss and Possibly Act Upon City of Brenham v. WTG Gas Marketing; Cause No. 37573; 335th Judicial District Court, Washington County, Texas and Associated Matters

Meeting Type: Regular Meeting-November 17, 2022

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

Discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

As discussed in Executive Session.