



**NOTICE OF REGULAR MEETING AGENDA
LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS
211 N. HENRY STREET, LANCASTER, TEXAS**

Monday, March 8, 2021 - 7:00 PM



The Mayor and City Councilmembers will attend via video or audio link due to the COVID-19 emergency situation.

IMPORTANT NOTICE: Due to the COVID-19 (coronavirus) state of emergency and consistent with the Governor's Order regarding modifications to the Texas Open Meetings Act ("TOMA"), and executive orders, the public will not be admitted to the physical meeting location.

Please click the link below for forms:

<https://www.lancaster-tx.com/1413/Notice-Regarding-Public-Participation>

Please click the link below to join the webinar:

https://us02web.zoom.us/webinar/register/WN_aDkyOPbVTPS17ObfsUqicw

The meeting will be broadcast live via video at the following address:

<http://www.lancaster-tx.com/324/Watch-Meetings>

7:00 P.M. REGULAR MEETING:

CALL TO ORDER

INVOCATION: Ministerial Alliance

PLEDGE OF ALLEGIANCE: Councilmember Carol Strain-Burk

PROCLAMATIONS: World Kidney Day, Women's History Month

PUBLIC TESTIMONY/CITIZENS' COMMENTS:

At this time citizens who have pre-registered before the call to order will be allowed to speak on any matter for a length of time not to exceed three minutes. No Council action or discussion may take place on a matter until such matter has been placed on an agenda and posted in accordance with law. Anyone desiring to speak on an item scheduled for a public hearing is requested to hold their comments until the public hearing on that item.

CONSENT AGENDA:

Items listed under the consent agenda are considered routine and are generally enacted in one motion. The exception to this rule is that a Council Member may request one or more items to be removed from the consent agenda for separate discussion and action.

1. Consider approval of minutes from the City Council Regular Meeting held on February 22, 2021.
2. Consider a resolution declaring an unopposed candidate for Mayor in the May 1, 2021 general municipal election, declaring the unopposed candidate elected to office; canceling the election for Mayor at-large; providing for all other provisions of Resolution No. 2021-02-20, as amended, ordering the election to remain in full force and effect.
3. Consider amending Chapter 24 of the City Code of Ordinances "Wastewater Discharge Standards" by Amending Article 24.05.
4. Consider a resolution endorsing the implementation of a Pretreatment Program for the Trinity River Authority Ten Mile Creek Regional Wastewater System.

ACTION:

5. Discuss and consider an ordinance granting a franchise for the collection and removal of industrial solid waste and recyclable materials to FFC Environmental Services Texas, LLC.
6. Discuss and consider a resolution ratifying a grant agreement, in an amount not to exceed one hundred eighty thousand dollars (\$180,000), with DW Distribution, Inc. (DWD) from funds collected from the one-fourth (1/4) of one (1) percent additional sales and use tax for the promotion and development of new and expanded business enterprises, as authorized by state law.
7. Discuss and consider a resolution ratifying the terms and conditions of a contract by and between HMWK, LLC and the Lancaster Economic Development Corporation (LEDC) in an amount not to exceed seventy-five thousand dollars (\$75,000) from funds collected from the one-fourth (1/4) of one (1) percent additional sales and use tax for services to the City relating to the creation of a municipal special-purpose district.
8. Discuss and consider a resolution supporting proposed legislation to create a municipal special-purpose district whose primary purpose is the advancement of economic development and the support of economic activity within the community.

ADJOURNMENT

EXECUTIVE SESSION: The City Council reserves the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the Texas Government Code to seek legal advice concerning such subject.

ACCESSIBILITY STATEMENT: Meetings of the City Council are held in municipal facilities that are wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

PURSUANT TO SECTION 30.06 PENAL CODE (TRESPASS BY HOLDER WITH A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN.

CONFORME A LA SECCION 30.06 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO 411, CODIGO DEL GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO OCULTADA.

PURSUANT TO SECTION 30.07 PENAL CODE (TRESPASS BY HOLDER WITH AN OPENLY CARRIED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A HANDGUN THAT IS CARRIED OPENLY.

CONFORME A LA SECCION 30.07 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO AL AIRE LIBRE CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO H, CAPITULO 411, CODIGO DE GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO AL AIRE LIBRE.

Certificate

I hereby certify the above Notice of Meeting was posted at Lancaster City Hall on March 4, 2021 @ 7:30 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Carey D. Neal, Jr.

Assistant City Manager

LANCASTER CITY COUNCIL

City Council Regular Meeting

1.

Meeting Date: 03/08/2021

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

Goal(s):

- Effective Municipal Operations
- Financially Sound City Government
- Healthy, Safe & Engaged Community
- Sound Infrastructure
- Quality Development
- Professional and Committed City Workforce

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

Consider approval of minutes from the City Council Regular Meeting held on February 22, 2021.

Background:

Attached for your review and consideration are minutes from the City Council Regular Meeting held on February 22, 2021.

Attachments

Draft Minutes 02.22.2021

MINUTES

LANCASTER CITY COUNCIL REGULAR MEETING OF FEBRUARY 22, 2021

The City Council of the City of Lancaster, Texas, met in a called Regular Meeting in the Council Chambers of City Hall on February 22, 2021, at 7:30 p.m. with a quorum present to-wit:

Councilmembers Present (City Hall & Zoom):

Mayor Clyde C. Hairston
Carol Strain-Burk
Deputy Mayor Pro Tem Stanley M. Jaglowski
Marco Mejia
Keithsha C. Wheaton
Mayor Pro Tem Racheal Hill
Betty Gooden-Davis

City Staff Present (City Hall & Zoom):

Opal Mauldin-Jones, City Manager
Carey Neal, Assistant City Manager
Dori Lee, Director of Human Resources
Kenneth Johnson, Fire Chief
Kim Hall, Director of Finance
Nina Neubert, Dispatch Manager
Sam Urbanski, Police Chief
Shane Shepard, Director of Economic Development
Vicki Coleman, Director of Development Services
Alton Dixon, Purchasing Agent
Cheryl Womble, Administrative & Community Relations Supervisor
Crystal Cloud, Utility Billing Manager
John Melton, Library Manager
Keturah Barnett, ICMA Fellow
Kimberli Walker, Court Administrator
Ron Gleaves, Information Technology Manager
David T. Ritter, City Attorney
Sorangel O. Arenas, City Secretary

Call to Order:

Mayor Hairston called the meeting to order at 7:37 p.m. on February 22, 2021.

Invocation:

Bishop Clyde C. Hairston of Miracle Temple Fellowship Church gave the invocation.

Pledge of Allegiance:

Councilmember Gooden-Davis led the pledge of allegiance.

Recognition:

Mayor Hairston acknowledged that the City of Lancaster has received the 2020 Economic Excellence Recognition for Outstanding commitment to excellence and achievement in economic development. The award is presented to organizations annually (by application), by The Texas Economic Development Council, for efforts in continuing to strengthen the knowledge and skills of economic development professionals and volunteers throughout the state. The City of Lancaster previously received the Certificate of Achievement for Economic Excellence in 2018, 2019 and now for 2020.

Public Testimony:

Opal Mauldin-Jones, 211 N. Henry St., shared information on disaster assistance from FEMA; damage assessment from the Texas Division of Emergency Management; Covid-19 vaccine registration centers; drive through for residents to receive food, water, and personal protective equipment to help combat the Covid-19 virus; Black History Month drive through band showcase. Additional information can be found at www.lancaster-tx.com.

Consent Agenda:

City Secretary Arenas read the consent agenda.

1. **Consider approval of minutes from the City Council Special Meeting held on January 19, 2021, Regular Meeting held on January 25, 2021, and Regular Meeting held on February 8, 2021.**
2. **Consider a resolution declaring a local disaster for the City of Lancaster, Texas; providing for the implementation of the City's Emergency Management Plan; providing for a disaster period; and providing an effective date.**
3. **Consider a resolution authorizing the purchase of sixty-four (64) sets of structural firefighting protective clothing from the North America Fire Equipment Co., Inc (NAFECO) through an Interlocal Agreement with the City of Frisco in an amount not to exceed one hundred seventy-five thousand dollars (\$175,000).**

MOTION: Councilmember Strain-Burk made a motion, seconded by Mayor Pro Tem Hill to approve consent items 1 through 3. The vote was 7 for, 0 against.

4. **Discuss and consider a resolution approving the terms and conditions of a Chapter 380 Agreement between the City of Lancaster, Texas, and RW Dallas Midpoint Owner, LLC.**

City Manager Mauldin-Jones shared RW Dallas Midpoint Owner, LLC (RW) owns approximately 26.65 acres on the west side of Dallas Avenue north of Telephone Road and plans to construct a facility totaling approximately five hundred thousand (500,000) square feet for a warehousing/distribution facility. The building will be built on a speculative basis as no leases are in place for the to-be-completed structure. The estimated taxable valuation of the completed project is twenty million dollars (\$20,000,000).

The company has applied for a real property incentive grant in compliance with the City's Incentive Policy.

This agreement requires the developer to occupy the facility within two years of the execution of the agreement and maintain occupancy for the term of the agreement. The project is required to increase and maintain the taxable value of Real Property by twenty million dollars (\$20,000,000).

The incentive consists of a rebate of Real Property Taxes of up to forty-five percent (45%) for a period of five (5) years on the value of improvements, beginning the tax year after the Certificate of Occupancy is issued for the facility. The company must fully exercise the agreement by 2029.

Based on the estimated value of added capital investment submitted by the company and in consideration of real property tax rebates on the value of improvements, the project will generate approximately four hundred fifty-one thousand dollars (\$451,000) in new revenue to the City over the first five-year period and approximately one hundred sixty-four thousand dollars (\$164,000) annually in the following years.

MOTION: Councilmember Mejia made a motion, seconded by Councilmember Gooden-Davis to approve item 4. The vote was 7 for, 0 against.

5. Discuss and consider an ordinance granting a franchise for the collection and removal of industrial solid waste and recyclable materials to FFC Environmental Services Texas, LLC.

City Manager Mauldin-Jones shared Article 13.1400 of the Lancaster Code of Ordinances requires all solid waste operators to obtain a franchise agreement in order to collect, haul, or transport solid waste or industrial solid waste and recyclable materials from commercial properties within the City of Lancaster. It is unlawful for any industrial waste operator to operate within the City of Lancaster without such a franchise. FFC Environmental Services Texas, LLC desires to do business in the City of Lancaster. A street use fee of ten percent (10%) of the gross revenue collected from customers within the City limits by FFC Environmental Services Texas, LLC will be remitted to the city on a monthly basis.

FFC Environmental Services Texas, LLC provides hauling of commercial and industrial recycling. This franchise will allow them to do business in the City of Lancaster for a period of five years, unless the franchise is canceled. In addition, FFC Environmental Services Texas, LLC agrees to carry certain insurance policies for worker's compensation, automobile and public liability in which the City shall be named as additional insured.

In accordance with the Lancaster Charter Article 9, Section 9.06 (C) stating that "No franchise shall ever be granted until it has been approved by the majority of the City Council, after having been read in full at two (2) regular meetings of the City Council", this will count as the first reading of this franchise application.

This is the first reading of this franchise application. The second reading and consideration will be at the next scheduled City Council regular meeting on March 8, 2021.

City Manager Mauldin-Jones read the first reading: An Ordinance of the City of Lancaster, Texas, granting to FFC Environmental Services Texas, LLC, its successors and assigns, the right, privilege, and franchise for the term of five (5) years to use the public streets, highways, or thoroughfares within the city for the purpose of engaging in the business of collecting and transporting solid waste and recyclable materials from commercial and industrial premises and development projects within the city; providing a street use fee; providing insurance requirements; providing for cancellation upon thirty (30) day written notice; providing for delays; providing for notices; providing for assignment by written approval of the city; providing a severability clause; and providing an effective date.

6. Discuss and consider a resolution waiving certain permit fees related to the 2021 Winter Storm Disaster Declaration.

City Manager Mauldin-Jones shared on February 12, 2021, Governor Greg Abbot issued a Disaster Declaration for political subdivisions within Texas and Dallas County Judge Clay Jenkins also issued a local Disaster Declaration on February 15, 2021, as a result of the winter snow and ice storm; and the prolonged freezing temperatures. This unprecedented inclement weather has caused extensive damage to personal property related to bursting water pipes from these freezing temperatures. The Lancaster Code of Ordinances, Chapter 6 Section 6.04.202, requires that the fees for all plumbing work be established by resolution of the governing body. The City's plumbing fees are therefore established in the adopted Master Fee Schedule in Article 3.000 Building Related Fees. Temporarily waiving these adopted fees requires approval of a resolution by the City Council.

To facilitate and expedite the increasing number of plumbing repairs, relaxing the City's established and routine plumbing requirements concerning permit fees and inspections during this declared disaster. Doing so, will provide economic relief to property owners, while these expedited repairs will also ensure a faster restoration of service for customers. For the city's process, all plumbers will be required to register as a contractor and obtain permits for any repair work. However, the fees for the permitted repair work will be waived for a period of 60 days. To further relax the City's standard protocols, staff will accept emailed photos of repair work from plumbing contractors during this emergency period as well. The plumbing permit fee waiver and inspection protocols will be for a 60-day period.

City Manager Mauldin-Jones shared resolution revisions, as recommended by City Attorney Ritter, to read temporarily suspending a portion on the master fee schedule related to plumbing repair related permit fees. for a period not to exceed 60 days.

Councilmember Mejia shared his support for item 6 and encouraged Council and State Officials to start putting money in infrastructure.

Mayor Hairston shared the importance of prioritizing the quality of life.

Deputy Mayor Pro Tem Jaglowski shared the importance of staying informed and voicing the concerns at a State level.

MOTION: Councilmember Mejia made a motion, seconded by Mayor Pro Tem Hill to approve item 6 with the alternate language drafter by City Attorney Ritter. The vote was 7 for, 0 against.

MOTION: Councilmember Strain-Burk made a motion, seconded by Councilmember Mejia to adjourn. The vote was 7 for, 0 against.

The meeting was adjourned at 8:09 p.m.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

LANCASTER CITY COUNCIL

City Council Regular Meeting

2.

Meeting Date: 03/08/2021

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

Goal(s): Healthy, Safe & Engaged Community

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

Consider a resolution declaring an unopposed candidate for Mayor in the May 1, 2021 general municipal election, declaring the unopposed candidate elected to office; canceling the election for Mayor at-large; providing for all other provisions of Resolution No. 2021-02-20, as amended, ordering the election to remain in full force and effect.

Background:

Resolution No. 2021-02-20, approved by City Council on February 8, 2021, ordered the general municipal election for Saturday, May 1, 2021 in accordance with State law. Following the deadlines for an application for a place on the ballot and for the declaration of write-in candidates, Mayor is an uncontested election.

Texas Election Code states the City Council may cancel the election if:

1. A candidate for an office that is to appear on the ballot in that district is unopposed; and
2. If no proposition is to appear on the ballot.

The deadline for write-in candidates was February 16, 2021 at 5:00 p.m. The Election Code states that the City Secretary must provide to the City Council a certification that a candidate for office is unopposed. The Certification of Unopposed Candidate is attached for the following candidate: Clyde C. Hairston (Mayor). Further, there are no write-in candidates, and no propositions are on the ballot.

Operational Considerations:

Upon receiving the Certification of Unopposed Candidate, the City Council may declare the unopposed candidate elected to office, thereby obviating the need for the election for Mayor at-large. Although the statute requires the City Secretary make the certification to the City Council, the City Council is given discretion in declaring the unopposed candidate elected and may hold the election regardless of the unopposed status of the candidate.

Legal Considerations:

The City Attorney has reviewed and approved the resolution declaring the unopposed candidate, and canceling the election.

Public Information Considerations:

This item is being considered at a Regular Meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives:

1. City Council may accept the Certification of Unopposed Candidate and approve the resolution as presented. This action will cancel the Mayor election.
2. City Council may deny the Certification of Unopposed Candidate and the resolution. This action will result in the Mayor election being on the ballot. Voters eligible to cast a ballot would be able to vote for the unopposed candidate.

Recommendation:

Staff recommends that City Council accept the Certificate of Unopposed Candidate for Mayor and approve the resolution declaring the unopposed candidate, Clyde C. Hairston, elected to office, thus canceling the election.

Attachments

Resolution

Spanish Resolution

Certification of Unopposed Candidate

Spanish Certification of Unopposed Candidate

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, DECLARING AN UNOPPOSED CANDIDATE FOR MAYOR IN THE MAY 1, GENERAL MUNICIPAL ELECTION ELECTED TO OFFICE; CANCELLING THE GENERAL MUNICIPAL ELECTION OF A MAYOR AT-LARGE; PROVIDING FOR POSTING THE RESOLUTION AT POLLING PLACES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the general municipal election was called for May 1, 2021 in Resolution No. 2021-02-20 for the purpose of electing a Mayor;

WHEREAS, the City Secretary has certified in writing that there is no proposition on the ballot, that no person has made a declaration of write-in candidacy, and that the candidate for Mayor on the ballot is unopposed for election to office; and

WHEREAS, under these circumstances, Subchapter C, Chapter 2, Election Code, authorizes the City Council to declare the candidate elected to office and cancel the general municipal election for a Mayor at-large.

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

SECTION 1. That the general municipal election for Mayor at-large, is hereby canceled, and the City Secretary is directed to cause a copy of this resolution to be posted on Election Day at each polling place that would have been used in the general municipal election.

SECTION 2. That the following candidate for Mayor, who is hereby unopposed in the May 1, 2021 general municipal election, is declared elected to office, subject to the qualifications under state law and the home rule charter, and shall be issued a certificate of general municipal election following the time of the general municipal election and canvass thereof:

Clyde C. Hairston, Mayor

SECTION 3. That the provisions contained in Resolution No. 2021-02-20, as amended, ordering the May 1, 2021 general municipal election including, but not limited to the publication and posting of notice and providing early voting dates, times and locations, are hereby cancelled; and that the City Secretary is directed to cause a copy of this Resolution to be posted on election day at each polling place used or would have been used in the general municipal election.

SECTION 4. That should any word, phrase, paragraph, or section of this resolution be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this resolution as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the resolution as a whole.

SECTION 5. That this resolution shall take effect immediately from and after its adoption and it is so resolved.

DULY ORDERED by the City Council of the City of Lancaster, Texas this the 8th day of March, 2021.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

RESOLUCION NO.

RESOLUCIÓN DEL CONSEJO DE LA CIUDAD DE LANCASTER, TEXAS, QUE DECLARA SIN OPOSICIÓN AL CANDIDATO PARA ALCALDE EN MAYO 1, 2021 ELECCIÓN MUNICIPAL GENERAL ELEGIDO PARA UN CARGO; CANCELACIÓN DE LA ELECCION GENERALES MUNICIPAL PARA ALCALDE; PROPORCIONAR POR FIJAR LA SOLUCIÓN DE CASILLA; Y PROPORCIONAR UNA FECHA EFECTIVA.

POR CUANTO, la elección municipal general, fue llamado para el 1 de mayo de, 2021, Resolución No. 2021-02-20 con el fin de elegir a un alcalde;

POR CUANTO, la Secretaría del Ayuntamiento ha certificado por escrito que no hay una propuesta en la papeleta, que ninguna persona ha hecho una declaración de candidatura de escritura-en, y que el candidato para Alcalde en la papeleta son sin oposición para la elección de cargos; y

POR CUANTO, en estas circunstancias, subcapítulo C, Capítulo 2, Código de Elecciones, autoriza al Ayuntamiento una declaración de que el candidato elegido para el cargo y cancelar la elección municipal general para un individual para Alcalde.

AHORA, POR LO TANTO, SE RESUELVE EL CONSEJO MUNICIPAL DE LA CIUDAD DE LANCASTER, TEXAS:

SECCIÓN 1. Que la elección municipal general para un Alcalde, queda cancelada, y la secretaria de la ciudad está dirigida a causar una copia de esta resolución que será publicado el día de elecciones en cada lugar de votación que habría sido utilizado en la elección general municipal.

SECCIÓN 2. Que el siguientes candidato para Alcalde, que son por este medio sin oposición en el 1 de mayo, 2021 la elección general municipal, se declara elegido para un cargo, sin perjuicio de las calificaciones bajo la ley estatal y la carta de la regla casa, y deberá se emitirá un certificado de elección municipal general que siguió a la hora de la elección municipal general y escrutinio de los mismos:

Clyde C. Hairston, Mayor

SECCIÓN 3. Que las disposiciones contenidas en Resolución No. 2021-02-20, modificada, ordenando el 1 de mayo, 2021 elección municipal general, incluyendo, pero no limitado a la publicación y publicación de la notificación y que proporcionan fechas de votación anticipada, horas y lugares, son por este medio cancelado; y que la Secretaría del Ayuntamiento se dirige a causar una copia de esta Resolución que se publicó, el día de la elección en cada lugar de votación utilizado o se habría utilizado en la elección general municipal.

SECCIÓN 4. Eso debería cualquier palabra, frase, párrafo o sección de esta resolución se consideró inconstitucional, ilegal o no válida, la misma no afectará a la validez de esta resolución en su totalidad, o cualquier parte o disposición de los mismos que no sea la parte así lo decide inconstitucional, ilegal o no válida, y no afectará a la validez de la resolución en su conjunto.

SECCIÓN 5. La presente resolución comenzará a regir inmediatamente desde y después de su adopción y se haya solucionado.

DEBIDAMENTE ORDENADO por el Consejo Municipal de la Ciudad de Lancaster, Texas el día de hoy 8 de Marzo de 2021.

DOY FE:

APROBADO:

Sorangel O. Arenas, Secretaria de la Ciudad

Clyde C. Hairston, Alcalde

APROBADA EN FORMA:

David T. Ritter, Abogado de la Ciudad

Certification of Unopposed Candidate
by the City Secretary

STATE OF TEXAS
COUNTY OF DALLAS
CITY OF LANCASTER

I, the undersigned, Sorangel O. Arenas, certify that I am the City Secretary of the City of Lancaster, Texas, and the authority responsible for preparing the ballot for the May 1, 2021 general municipal election. I further certify that no proposition is to appear on the ballot at the general municipal election, no person has made a declaration of write-in candidacy, and the following candidate is unopposed:

Clyde C. Hairston, Mayor

WITNESS MY HAND AND SEAL OF OFFICE in Lancaster, Texas, this 8th day of March 2021.



Sorangel O. Arenas,
City Secretary
City of Lancaster, Texas



La certificación de candidatos sin oposición
por la Secretaria de la Ciudad

ESTADO DE TEXAS
CONDADO DE DALLAS
CIUDAD DE LANCASTER

Yo, el abajo firmante, Sorangel O. Arenas, certifico que yo soy la Secretario Municipal de la Ciudad de Lancaster, Texas, y la autoridad encargada de preparar el boleto para el 1 de mayo 2021 las elecciones municipales generales. Además, certifico que ninguna proposición puede ser que aparezca en el boleto de la elección, ninguna persona ha hecho una declaración de la escritura en la candidatura, y el candidato siguiente por unanimidad:

Clyde C. Hairston, Mayor

FE DE MI FIRMA Y SELLO DE LA OFICINA en Lancaster, Texas, el día 8 de Marzo 2021.



Sorangel O. Arenas
Secretaria de la Ciudad
Ciudad de Lancaster, Texas



LANCASTER CITY COUNCIL

City Council Regular Meeting

3.

Meeting Date: 03/08/2021

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

Goal(s): Sound Infrastructure

Submitted by: Andrew Waits, Director of Public Works

Agenda Caption:

Consider amending Chapter 24 of the City Code of Ordinances "Wastewater Discharge Standards" by Amending Article 24.05.

Background:

The City of Lancaster discharges wastewater to the Trinity River Authority (TRA) Ten Mile Creek Wastewater Treatment Plant. In Fiscal Year 2021, the Trinity River Authority underwent streamlining and program modification as defined by Title 40 Section 403.18 of the Code of Federal Regulations. The new Industrial Wastewater Ordinance provides the City of Lancaster the authority to enforce compliance to discharge wastewater to TRA in accordance to the streamlining and program modifications as defined by Title 40 Section 403.18 of the Code of Federal Regulations.

Operational Considerations:

The Trinity River Authority requests all participating cities adopt the updated Industrial Wastewater Ordinance. The updated ordinance includes the following changes:

1. Clarifies pretreatment terminology and definitions.
2. Updates toxic pollutant limits as reflected in the TRA discharge permit.
3. Clarifies the notification process for reports and significant changes to pretreatment operations.
4. Clarifies the process for pretreatment permit applications, user reports and enforcement responses.

Legal Considerations:

The City Attorney has reviewed and approved the ordinance as to form.

Public Information Considerations:

This item is being considered at a Regular Meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Fiscal Impact:

The City Council may by appropriate resolution from time to time adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pretreatment Program, which may include:

1. Fees for wastewater discharge permit applications including the cost of processing such applications;
2. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;
3. Fees for reviewing and responding to accidental discharge procedures and construction;
4. Fees for filing appeals;

5. Recovery of administrative and legal costs associated with enforcement activity taken by the Director to address industrial user noncompliance.
6. Other fees as the City may deem necessary to carry out the requirements contained herein.

Options/Alternatives:

1. City Council may approve the ordinance, as presented.
2. City Council may deny the ordinance.

Recommendation:

Staff recommends approval of the ordinance, as presented.

Attachments

Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AMENDING CHAPTER 24 OF THE CODE OF ORDINANCES BY AMENDING ARTICLE 24.05; DEFINING TERMS; PROVIDING REGULATIONS FOR WATER QUALITY IN THE CITY; PROVIDING FOR ENFORCEMENT; REGULATING THE DISCHARGE OF WASTE INTO THE SANITARY SEWER SYSTEM OF THE CITY; PROVIDING REGULATIONS FOR THE ACCEPTABLE DISCHARGE CONCENTRATIONS OF BIOLOGICAL OXYGEN DEMAND AND SUSPENDED SOLIDS; PROVIDING FOR THE USE OF CERTAIN APPROVED STANDARD METHODS IN SAMPLING INDUSTRIAL WASTE DISCHARGES; PROVIDING GENERAL SEWER USE REQUIREMENTS; REQUIRING PRETREATMENT OF WASTEWATER; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND (\$5,000.00) DOLLARS PER DAY FOR VIOLATIONS; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS

SECTION 1 – That Chapter 24, Article 24.05, of the Code of Ordinances, City of Lancaster, Texas, is hereby amended to read as follows.

“ARTICLE 24.05”

Wastewater Discharge Standards

SECTION 24.05.001 General Provisions; Purpose and Policy

- (a) This article sets forth uniform requirements for users of the Publicly Owned Treatment Works for the City of Lancaster and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code §§ 1251 *et seq.*) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). The objectives of these articles are:
 - (1) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;
 - (2) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
 - (3) To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

- (4) To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;
 - (5) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and
 - (6) To enable the Control Authority to comply with the National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.
- (b) This article shall apply to all users of the Publicly Owned Treatment Works. This article authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; and requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

SECTION 24.05.002Administration

Except as otherwise provided herein, the Director of Public Works (Director) shall administer, implement, and enforce the provisions of these articles. Any powers granted to or duties imposed upon the Director may be delegated by the Director to other personnel.

SECTION 24.05.003Abbreviations

The following abbreviations, when used in this article, shall have the designated meanings:

- BMP - Best Management Practice
- BMR - Baseline Monitoring Report
- BOD - Biochemical Oxygen Demand
- CFR - Code of Federal Regulations
- CIU - Categorical Industrial User
- COD - Chemical Oxygen Demand
- EPA - U.S. Environmental Protection Agency
- gpd - gallons per day
- IU - Industrial User

- mg/l - milligrams per liter
- NAICS - North American Industrial Classification System
- NPDES - National Pollutant Discharge Elimination System
- NSCIU - Non-Significant Categorical Industrial User
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- ROCRWS- Trinity River Authority of Texas Red Oak Regional Wastewater System
- SIC - Standard Industrial Classification
- SIU - Significant Industrial User
- SNC - Significant Noncompliance
- TCEQ - Texas Commission on Environmental Quality
- TRA - Trinity River Authority
- TMCRRWS - Trinity River Authority of Texas Ten Mile Creek Regional Wastewater System
- TPDES - Texas Pollutant Discharge Elimination System
- TSS - Total Suspended Solids
- TTO - Total Toxic Organics
- U.S.C. - United States Code

SECTION 24.05.004 Definitions

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated.

- (a) Act or “the Act.” The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*
- (b) Approval Authority. The Executive Director of the Texas Commission on Environmental Quality (TCEQ) where the state has been delegated NPDES permit authority and has an approved pretreatment program.
- (c) Authorized Representative of the User.
 - (1) If the user is a corporation:
 - (A) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - (B) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (2) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.
 - (3) If the user is a Federal, State, or Local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
 - (4) The individuals described in subsections (1) through (3), above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.
- (d) Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 24.05.006 (a) and (b) [40 CFR 403.5(a)(1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

- (e) Biochemical Oxygen Demand or BOD. The quantity of oxygen, expressed in mg/l, utilized in the biochemical oxidation of organic matter by standard methods.
- (f) Building Sewer. The extension from the building drain to the public sewer system or other place of disposal. (Also called the building lateral or connection).
- (g) Categorical Industrial User (CIU). An Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.
- (h) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which apply to a specific category of users and which appear in 40 C.F.R. Chapter I, Subchapter N, Parts 405 - 471.
- (i) Chemical Oxygen Demand or COD. Measure of the oxygen consuming capacity of inorganic or organic matter present in the water or wastewater expressed in mg/l as the amount of oxygen consumed from a chemical oxidant in a specific test, but not differentiating between stable and unstable organic matter and thus not necessarily correlating with biochemical oxygen demand.
- (j) City. The City of Lancaster or the City Council of Lancaster or any authorized person acting in its behalf.
- (k) Composite Sample. A sample that is collected over time, formed either by continuous sampling or by mixing discrete samples. The sample may be composited either as a time composite sample: composed of discrete sample aliquots collected at constant time intervals providing a sample irrespective of stream flow; or as a flow proportional composite sample: collected either as a constant sample volume at time intervals proportional to flow, or collected by increasing the volume of each aliquot as the flow increases while maintaining a constant time interval between the aliquots.
- (l) Control Authority. Trinity River Authority of Texas as holder of the TPDES permit. .
- (m) Control Manhole. A manhole giving access to a building sewer at some point before the building sewer discharge mixes with other discharges in the public sewer.
- (n) Control Point. The point of access to a course of discharge before the discharge mixes with other discharges in the public sewer.
- (o) Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

- (p) Director of Public Works, the Director. The person designated by the City who is charged with certain duties and responsibilities by this ordinance. The term also means a duly authorized representative of the Director of Public Works.
- (q) Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, or other duly authorized official of said agency.
- (r) Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to the source if the standard is thereafter promulgated in accordance with Section 307 of the Act.
- (s) Extra-jurisdictional user. A User the City has determined requires a permit to discharge, other than a local government, which is located outside the jurisdiction of the City, and which discharges or plans to discharge to the POTW.
- (t) Grab Sample. A sample which is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
- (u) Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.
- (v) Industrial Waste Charge. A financial assessment made on those persons who discharge waste into the City's sewage system.
- (w) Instantaneous Maximum Allowable Discharge Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
- (x) Interference. A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and therefore is a cause of a violation of the Control Authority's NPDES or TPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: Section 405 of the Act, the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.
- (y) Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

- (z) Milligrams Per Liter. (mg/l) shall mean the same as parts per million and is weighted to volume ratio; the milligrams per liter value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.
- (aa) Monthly Average. The sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
- (bb) National Pollution Discharge Elimination System or NPDES Permit. A permit issued pursuant to Section 402 of the Act. (33 U.S.C. §1342).
- (cc) National Prohibited Discharge Standard or Prohibited Discharge Standard. Any regulation developed under the authority of Section 307 (b) of the Act and 40 CFR, Section 403.5.
- (dd) Natural Outlet. Any outlet into a watercourse, pond, ditch, lake, or other body of surface or ground water.
- (ee) New Source.
 - (1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act, which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 - (A) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - (B) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (C) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
 - (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (1)(B) or (C) above but otherwise alters, replaces, or adds to existing process or production equipment.
 - (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- (A) Begun, or caused to begin, as part of a continuous onsite construction program:
 - (i) Any placement, assembly, or installation of facilities or equipment; or
 - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- (B) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.
- (ff) Noncontact Cooling Water. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- (gg) Normal Wastewater. Wastewater of the City for which the average concentration of suspended solids and five-day BOD is established at and does not exceed 250 mg/l.
- (hh) North American Industry Classification System (NAICS). A system used by the Federal Government for collecting and organizing industry-related statistics. The NAICS codes are updated every five years to stay current with industry developments.
- (ii) Overload. The imposition of organic or hydraulic loading on a treatment facility in excess of its engineered design capacity.
- (jj) Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any discharge requirement of the Control Authority's NPDES or TPDES permit, including an increase in the magnitude or duration of a violation.
- (kk) Permit to Discharge Industrial Wastewater or Permit. A document issued to a specific user expressing the terms and conditions whereby the user is authorized to discharge wastewater to the sanitary sewer system.
- (ll) Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.
- (mm) pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

- (nn) Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural, and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
- (oo) Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes, by process changes, or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
- (pp) Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.
- (qq) Pretreatment Standards or Standards. Pretreatment standards shall mean pollutant concentration discharge limitation requirements or standards, categorical pretreatment standards, and local limits. National Pretreatment Standard means any pretreatment regulations containing pollutant discharge limits that have been established or will be established for industrial users by the United States Environmental Protection Agency.
- (rr) Process Wastewater. Water that comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, waste product, or wastewater, and/or as defined in a National Pretreatment Standard.
- (ss) Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 24.05.006 of this article.
- (tt) Publicly Owned Treatment Works or POTW. A “treatment works”, as defined by Section 212 of the Act (33 U.S.C. § 1292), which is owned by the City and/or the Control Authority. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.
- (uu) Sanitary Sewer. A public sewer that conveys domestic wastewater or industrial wastes or a combination of both, and into which storm water, surface water, groundwater, and other unpolluted waste are not intentionally passed.
- (vv) Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- (ww) Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).

(xx) Shall is mandatory; May is permissive or directory.

(yy) Significant. A change or deviation of twenty percent (20%) or more.

(zz) Significant Industrial User.

(1) SIUs

(A) A user subject to categorical pretreatment standards; or

(B) A user that:

- (i) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
- (ii) Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
- (iii) Is designated as such by the Director on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(C) Upon a finding that a user meeting the criteria in Subsection (B) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that the user should not be considered a significant industrial user.

(2) NSCIUs

(A) The City may determine that an Industrial User subject to categorical Pretreatment Standards is a Non-Significant Categorical Industrial User (NSCIU) upon finding the IU meets the following criteria:

- (i) The Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard);
- (ii) The Industrial User is required by a categorical Pretreatment Standard to not discharge categorical wastewater unless the City has determined there is no potential for the Industrial User to discharge the prohibited

categorical wastewater;

- (iii) The Industrial User is subject to numeric categorical Pretreatment Standard(s) and does not discharge categorical wastewater unless the City has determined there is no potential for the Industrial User to discharge categorical wastewater;

(B) The following conditions must be met for an Industrial User classified as a NSCIU:

- (i) The Industrial User, prior to City's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
- (ii) The Industrial User annually submits the certification statement required in Section 24.05.014(f)(3) [see 40 CFR 403.12(q)], together with any additional information necessary to support the certification statement; and
- (iii) The Industrial User never discharges any untreated concentrated wastewater.

- (aaa) Slug load or Slug Discharge. Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in Section 24.05.006. A Slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to accidental spill or a non-customary batch discharge, which has a reasonable potential to cause Interference or Pass Through, or in any way violate the POTW's regulations, Local Limits or Permit conditions.
- (bbb) Standard Industrial Classification (SIC) Code. A classification pursuant to the *Standard Industrial Classification Manual* issued by the United States Office of Management and Budget.
- (ccc) State. The State of Texas.
- (ddd) Storm Sewer. A public sewer which carries storm, ground, and surface waters and drainage, and into which domestic wastewater or industrial wastes are not intentionally passed.
- (eee) Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.
- (fff) Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

- (ggg) Total Toxic Organics (TTO). The sum of the masses or concentration of the toxic organic compounds listed in 40 CFR122 Appendix D, Table 2, excluding pesticides, found in an industrial user's discharge at a concentration greater than 0.01mg/L. Only those parameters reasonably suspected to present, if any, shall be analyzed for local limit compliance if required by the PWD. For categorical SIU's, with categorical TTO monitoring requirements, TTO parameter selection is specific to the federal category.
- (hhh) Toxic Pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administration of the EPA under the provisions of the CWA, Section 307(a) or other Acts.
- (iii) TPDES. Texas Pollutant Discharge Elimination System permit program of the Texas Commission on Environmental Quality with federal regulatory authority to act on an approved pretreatment program
- (jjj) Trap. A device designed to skim, settle or otherwise remove grease, oil, sand, flammable waste, or other harmful substances.
- (kkk) Trinity River Authority (Authority). A governmental agency of the State of Texas and a body politic and corporate created as a conservation and reclamation district including, but not limited to, the authority to operate sewage gathering transmission and disposal service, to charge for such services, and to make contracts in reference thereto with municipalities, including the City of Lancaster.
- (lll) User or Industrial User (IU). A source of indirect discharge.
- (mmm) Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
- (nnn) Wastewater Service Surcharge. The charge on all users of the public sewer system whose wastes exceed in strength the concentration values established as representative of normal wastewater.
- (ooo) Wastewater Treatment Plant or Treatment Plant. The portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.
- (ppp) Watercourse. A natural or manmade channel in which a flow of water occurs, either continuously or intermittently.
- (qqq) Waters of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.

SECTION 24.05.005 Applicability; conflicting agreements or contracts

- (a) All discharges shall conform to the requirements of this article.
- (b) This article shall take precedence over any terms or conditions of agreements or contracts between the City and the users, including commercial, industrial, special districts, or Federal agencies or installations, which are inconsistent with this article, and over the terms and conditions of any previous ordinance which is inconsistent with this article.

SECTION 24.05.006 Prohibited Discharges

- (a) General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.
- (b) Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
 - (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
 - (2) Wastewater having corrosive properties capable of causing damage or injury to structures, equipment and/or personnel of the POTW, as per the specific prohibition in the applicable local limits in Section 24.05.008 .
 - (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference;
 - (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
 - (5) Wastewater having a temperature greater than 150°F (65°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C);
 - (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference and/or pass through, and in amounts specified in section 24.05.008 of this Ordinance.

- (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
- (8) Trucked or hauled pollutants, except at discharge points designated by the Director in accordance with Section 24.05.012(d).
- (9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
- (10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the applicable NPDES or TPDES permit;
- (11) Wastewater containing any radioactive wastes or isotopes in a manner that will permit a transient concentration higher than 100 microcuries per liter, except in compliance with applicable State or Federal regulations;
- (12) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, and unpolluted wastewater, unless specifically authorized by the Director;
- (13) Sludges, screenings, or other residues from the pretreatment of industrial wastes;
- (14) Medical wastes, except as specifically authorized by the Director, that do not cause or contribute to Pass Through and/or Interference.
- (15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
- (16) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
- (17) Fats, oils, or greases of animal or vegetable origin in concentrations greater than that specified in applicable local limits in Section 24.05.008.
- (18) A discharge of water, normal domestic wastewater, or industrial waste which in quantity of flow exceeds, for a duration of longer than fifteen minutes, more than four times the average twenty four hour flow during normal operation;
- (19) Insecticides and herbicides in concentrations that are not amenable to treatment;
- (20) Garbage that is not properly shredded to such an extent that all particles will be carried freely under the flow conditions normally prevailing in wastewater mains, with no particle having greater than one-half (1/2) inch cross-sectional dimension;

- (21) Wastewater or industrial waste generated or produced outside the City, unless approval in writing from the Director has been given to the person discharging the waste; or
- (22) Without the approval of the Director, a substance or pollutant other than industrial waste, normal domestic wastewater, septic tank waste, or chemical toilet waste that is of a toxic or hazardous nature, regardless of whether or not it is amenable to treatment, including but not limited to bulk or packaged chemical products.

(c) Processing and Storage.

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

SECTION 24.05.007 National Categorical Pretreatment Standards

The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.

- (1) Where a categorical pretreatment standard is expressed in terms of either the mass or the concentration of a pollutant in wastewater, the Director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c)(1).
- (2) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- (3) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
- (4) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

SECTION 24.05.008 Local Limits

- (a) The following pollutant limits are established to protect against pass through and interference and apply at the point where the wastewater is discharged to the POTW. No person shall discharge, or cause or permit to be discharged, wastewater containing in excess of the following instantaneous maximum allowable discharge limits:
 - (1) Toxic Pollutants specified in the following table:

Toxic Pollutant	TRA TMCROWS Instantaneous Maximum Allowable Discharge Limit (mg/L)	TRA ROCROWS Instantaneous Maximum Allowable Discharge Limit (mg/L)
Arsenic	0.30	0.100
Barium	-	1.000
Cadmium	0.10	0.100
Chromium	4.00	1.000
Copper	2.40	1.500
Cyanide	1.71	2.0
Lead	2.00	1.000
Manganese	-	1.500
Mercury	0.0002	0.005
Molybdenum	3.74	-
Nickel	4.94	1.000
Selenium	0.27	0.050
Silver	0.16	0.100
Zinc	10.0	2.000
Oil and Grease	200	100
Total Toxic Organics	2.13	1.0
pH	5.5 to 11.0 Standard Units	6.0 to 10 Standard Units

- (2) All concentrations for metallic substances are for “total” metal unless indicated otherwise. The Director may impose mass limitations in addition to the concentration-based limitations above.

SECTION 24.05.009 Right of Revision

The City reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

SECTION 24.05.010 Dilution of Discharge

No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Director may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

SECTION 24.05.011 Plant Loading

No industry shall discharge wastewater containing a BOD or TSS loading that causes the City's prorata share of the total BOD or TSS loading to the POTW system to exceed the City's prorata share of the total flow to the POTW system. (Example: if the City contributes 25% of the total wastewater flow to the System, the City's cumulative BOD or TSS loading to the System, as measured at the City's points of entry to the System, shall not exceed 25% of the total BOD or TSS loading to the System.)

Any industry with a wastewater strength that will cause the City's cumulative wastewater loading, at the City's points of entry, to exceed the City's prorata share of the total wastewater loading based upon flow, shall be required to install pretreatment facilities to reduce its wastewater strength to an acceptable level.

SECTION 24.05.012 Pretreatment of Wastewater

(a) Pretreatment Facilities.

Users shall provide wastewater treatment as necessary to comply with this article and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in this article within the time limitations specified by EPA, the State, or the Director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Director for review, and shall be acceptable to the Director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the City under the provisions of this article.

(b) Additional Pretreatment Measures

- (1) Whenever deemed necessary, the Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this article.
- (2) The Director may require any person discharging into the POTW to install and maintain, on his property and at his expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
- (3) Grease, oil and sand interceptors shall be provided when in the opinion of the Director they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil or sand, except that such interceptors shall not

be required for residential users. All interception units shall be of type and capacity approved by the Director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly as needed by the user at their expense.

- (4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.
- (5) The Director may develop Best Management Practices (BMPs), and require Users to implement such BMPs if necessary to protect the POTW. Such BMPs would be supplemental and not used as a replacement for compliance with Local Limits listed in Section 24.05.008 and Prohibited Discharge Standards in Section 24.05.006.

(c) Accidental Discharge/Slug Control Plans.

The Director shall evaluate whether each SIU needs an accidental discharge/slug control plan or other action to control Slug Discharges no later than (1) one year of the SIU determination. The Director may require any user to develop, submit for approval, and implement such a plan. All the activities associated with Slug Control evaluation and results are to be kept in the Industrial User file. An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including nonroutine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the Director and Control Authority of any accidental or slug discharge as required by this article; and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include but are not limited to inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(d) Hauled Wastewater

- (1) Septage waste may be introduced into the POTW only at locations designated by the Director, and at such times as are established by the Director. Such waste shall not violate any other requirements established by the City. The Director may require septic tank waste haulers to obtain wastewater discharge permits.
- (2) Every generator of septage waste shall produce a manifest for each load to be hauled. Septage waste haulers must be provided with a copy of the manifest form for every load. This form shall include at a minimum the name and address of the generator, the waste hauler, permit number, truck identification, disposal site and

volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents and whether any wastes are RCRA hazardous wastes. The generator shall retain a completed manifest in its business office for three (3) years after disposal.

SECTION 24.05.013 Discharge Permit Required; Application; Issuance

(a) Wastewater Analysis

When requested by the Director, a user must submit information on the nature and characteristics of its wastewater. The Director is authorized to prepare a form for this purpose and may periodically require users to update this information.

(b) Wastewater Discharge Permit Requirement

- (1) No SIU or NSCIU shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Director , who may disallow any or all discharges until a wastewater discharge permit is issued, except that a SIU or a NSCIU that has filed a timely application pursuant to Section (c) of this section may continue to discharge for the time period specified therein.
- (2) The Director may require other users to submit a completed permit application or survey form, including monitoring data, and to obtain wastewater discharge permits as necessary to carry out the purposes of this article. To determine the status of a user in relation to this ordinance, users may be required to perform sampling as specified by the Director.
- (3) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this article and subject the wastewater discharge permittee to the sanctions set out in this article. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements with any other requirements of Federal, State, and local law.

(c) Existing Connections

Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this article and who wishes to continue such discharges in the future, shall, within ninety (90) days after said date, apply to the Director for a wastewater discharge permit in accordance with this article, and shall not cause or allow discharges to the POTW to continue after ninety (90) days of the effective date of this article except in accordance with a wastewater discharge permit issued by the Director.

(d) New Connections

Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with this article, must be filed a minimum of ninety (90) days prior to the date upon which any discharge will begin or recommence.

(e) Application Contents

All users required to obtain a wastewater discharge permit must submit a permit application. The Director may require all users to submit as part of an application the following information:

- (1) All information required by Section 24.05.015(a)(2) of this article;
- (2) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
- (3) Number and type of employees, hours of operation, and proposed or actual hours of operation;
- (4) Each product produced by type, amount, process or processes, and rate of production;
- (5) Type and amount of raw materials processed (average and maximum per day);
- (6) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- (7) Time and duration of discharges; and
- (8) Any other information as may be deemed necessary by the Director to evaluate the wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

(f) Signatories and Certification

- (1) An authorized representative of the user must sign all wastewater discharge permit applications, user reports, and enforcement responses. Wastewater discharge permit applications and user reports as identified in 40 CFR §403.12(b), (d), (e), and (h), must contain the following certification statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed

to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

- (2) If the designation of an Authorized Representative of the User is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the Director prior to or together with any reports to be signed by an Authorized Representative of the User.
- (3) A facility determined to be a NSCIU by the Director pursuant to 24.05.004(zz)(2) must annually submit the signed certification statement signed in accordance with the signatory requirements in 24.05.004(c). This certification must accompany an alternative report required by the Director.

“Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR ____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

- (A) The facility described as _____[facility name] met the definition of a Non-Significant Categorical Industrial as described in 24.05.004(zz)(2); [Note: See 40 CFR 403.3(v)(2)]
- (B) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.
- (C) This compliance certification is based on the following information:

_____”

(g) Issuance or Denial

The Director t will evaluate the data furnished by the user and may require additional information. Within a reasonable time from receipt of a complete wastewater discharge permit application, the Director will determine whether or not to issue a wastewater discharge permit. The Director may deny any application for a wastewater discharge permit.

SECTION 24.05.014 Conditions of Discharge Permit

(a) Duration

A wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the Director. Each wastewater discharge permit will indicate a specific date upon which it will expire.

(b) Contents

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

(1) Wastewater discharge permits must contain:

- (A)** A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
- (B)** A statement that the wastewater discharge permit is nontransferable without prior notification to the City in accordance with subsection (d), and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
- (C)** Effluent limits, including Best Management Practices based on applicable pretreatment standards;
- (D)** Self-monitoring, sampling, reporting, notification, and record-keeping requirements including those for BMPs. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law;
- (E)** A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law; and
- (F)** Requirements to control Slug Discharge, if determined by the Director to be necessary.

(2) Wastewater discharge permits may contain, but need not be limited to, the following conditions:

- (A) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- (B) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- (C) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;
- (D) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
- (E) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
- (F) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- (G) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit;
- (H) Requirements to implement BMPs, if determined by the Director to be necessary; and
- (I) Other conditions as deemed appropriate by the Director to ensure compliance with this article, and State and Federal laws, rules, and regulations.

(c) Modification

The Director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (1) To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;
- (2) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of the wastewater discharge permit issuance;
- (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

- (4) Information indicating that the permitted discharge poses a threat to the POTW, City personnel, or the receiving waters;
- (5) Violation of any terms or conditions of the wastewater discharge permit;
- (6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
- (7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
- (8) To correct typographical or other errors in the wastewater discharge permit; or
- (9) To reflect a transfer of the facility ownership or operation to a new owner or operator.

(d) Transfer

Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives a minimum of sixty (60) days advance notice to the Director and the Director approves the wastewater discharge permit transfer. The notice to the Director must include a written certification by the new owner or operator which:

- (1) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- (2) Identifies the specific date on which the transfer is to occur; and
- (3) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

(e) Revocation

The Director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (1) Failure to notify the Director of significant changes to the wastewater prior to the changed discharge;
- (2) Failure to provide prior notification to the Director of changed conditions pursuant to this article;

- (3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- (4) Falsifying self-monitoring reports;
- (5) Tampering with monitoring equipment;
- (6) Refusing to allow the Director timely access to the facility premises and records;
- (7) Failure to meet effluent limitations;
- (8) Failure to pay fines;
- (9) Failure to pay sewer charges;
- (10) Failure to meet compliance schedules;
- (11) Failure to complete a wastewater survey or the wastewater discharge permit application;
- (12) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
- (13) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this article.

Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

- (f) **Reissuance**
A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 24.05.013, a minimum of sixty (60) days prior to the expiration of the user's existing wastewater discharge permit.
- (g) **Regulation of Waste Received from Other Jurisdictions**
 - (1) A municipality which contributes wastewater to the POTW, shall enter into an interlocal agreement with the City prior to contributing such wastewater.
 - (2) Prior to the City entering into an interlocal agreement as provided in subsection (1), the City may request the following information from the contributing municipality:
 - (A) A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;

- (B) An inventory of all Users located within the contributing municipality that are discharging to the POTW; and
 - (C) Such other information as the City may deem necessary.
- (h) Extra-jurisdictional users
 - (1) An extra-jurisdictional user shall apply for a permit in accordance with this article at least ninety (90) days prior to discharging to the POTW
 - (2) This section does not apply to extra-jurisdictional users in jurisdictions which have an agreement with the City pursuant to subsection (g).
 - (2) A wastewater discharge permit issued to an extra-jurisdictional user shall be in the form of a contract, and must include, at a minimum, the components found in 40 CFR 403.8(f)(1)(iii) and shall require the approval of the City's council. An extra-jurisdictional user shall agree to all the terms of this ordinance and the terms of its wastewater discharging contract in accordance with the procedures set forth in section 24.05.014(b) of this article prior to discharging into the POTW.

SECTION 24.05.015 REPORTING REQUIREMENTS

- (a) Baseline Monitoring Reports
 - (1) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the Director a report which contains the information listed in subsection (2), below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that will become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the Director a report which contains the information listed in subsection (2), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
 - (2) Users described above shall submit the information set forth below.
 - (A) Identifying Information. The name and address of the facility, including the name of the operator and owner.
 - (B) Environmental Permits. A list of any environmental control permits held by or for the facility.

- (C) Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications and/or North American Industry Classifications (NAICS) of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
- (D) Flow Measurement. Information showing the measured or estimated average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).
- (E) Measurement of Pollutants.
- (i) The categorical pretreatment standards applicable to each regulated process (and any new categorically regulated processes for Existing Sources.)
 - (ii) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the Director, of regulated pollutants in the discharge from each regulated process.
 - (iii) Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.
 - (iv) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in this article. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the Director or the applicable Standards to determine compliance with the Standard.
 - (v) If discharge flow conditions are representative of daily operations, the User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this section. The Director may require additional representative sampling to be conducted.
 - (vi) Representative samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 304.6(e) to evaluate compliance with Pretreatment Standards.

- (vii) The Director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.
- (viii) The baseline report shall indicate the time, date and place of sampling and method of analysis, and shall certify that such sampling and analysis is representative of normal work cycle and expected pollutant discharges to the POTW.
- (ix) Sampling must be performed in accordance with procedures set out in this article.
- (F) Certification. A statement, reviewed by the user's authorized representative of the user and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment are required to meet the pretreatment standards and requirements.
- (G) Compliance schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide the additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in subsection (b)below.
- (H) Signature and certification. All baseline monitoring reports must be signed and certified in accordance with Section 24.05.013(f).

(b) Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by subsection (a)(2)(G):

- (1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (2) No increment referred to above shall exceed nine (9) months;
- (3) The user shall submit a progress report to the Director no later than fourteen (14) days following each date in the schedule and the final date of compliance including,

as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

- (4) In no event shall more than nine (9) months elapse between the progress reports to the Director.

(c) Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the Director a report containing the information described in subsection (a)(2)(D)-(F). For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. In cases where the Categorical Pretreatment Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the applicable Categorical Pretreatment Standard necessary to determine the compliance status of the User. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 24.05.013(f). All sampling will be done in conformance with subsection (k) of the article.

(d) Periodic Compliance Reports

- (1) All significant industrial users shall, at a frequency determined by the Director but in no case less than twice per year, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Categorical Pretreatment Standard or the Director requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the Director or the applicable Categorical Pretreatment Standard necessary to determine the compliance status of the User. All periodic compliance reports must be signed and certified in accordance with Section 24.05.013(f).
- (2) All Non-significant Categorical Industrial Users (NSCIU) shall submit a report annually in the month specified by the Director. The report shall be completed according to the City's current reporting requirements, including the submittal of the applicable certification statement found in Section 24.05.013(f) of this ordinance.
- (3) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean,

and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

- (4) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Director, using the procedures prescribed in this section, the results of this monitoring shall be included in the report.

(e) Reports of Changed Conditions

Each user must notify the Director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater a minimum of thirty (30) days prior to the change.

- (1) The Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 24.05.013.
- (2) The Director may issue a wastewater discharge permit under Section 24.05.013 or modify an existing wastewater discharge permit under Section 24.05.014 in response to changed conditions or anticipated changed conditions.
- (3) For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty percent 20% or greater, and the discharge of any previously unreported pollutants.

(f) Reports of Potential Problems

- (1) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the Director and the Control Authority of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- (2) Within five (5) days following such discharge, the user shall, unless waived by the Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall this notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this article.
- (3) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in subsection (1), above. Employers shall ensure that all employees, who

may cause such a discharge to occur, are advised of the emergency notification procedure.

- (4) SIUs are required to notify the Director immediately of any changes at its facility affecting the potential for a Slug Discharge.

(g) Reports from Unpermitted Users

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Director as the Director may require.

(h) Notice of Violation/Repeat Sampling and Reporting

If sampling performed by a user indicates a violation, the user must notify the Director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director within thirty (30) days after becoming aware of the violation. The user is not required to resample if the Director monitors at the user's facility at least once a month, or if the Director samples between the user's initial sampling and when the user receives the results of this sampling or if the Director has performed the sampling and analysis in lieu of the user.

(i) Notification of the Discharge of Hazardous Waste

- (1) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under subsection (e), above. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of subsections (a), (b), and (d) above.
- (2) Dischargers are exempt from the requirements of subsection (1), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of

hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

- (3) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the Director, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of that substance within ninety (90) days of the effective date of such regulations.
- (4) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued thereunder, or any applicable Federal or State law.

(j) Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR 136, and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question sampling and analyses shall be performed by using validated analytical methods or any applicable sampling and analytical procedures, including procedures suggested by the Director, TCEQ, or other parties approved by EPA.

(k) Sample Collection

- (1) Except as indicated in subsections (2) and (3) below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Director. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters

unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

- (2) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- (3) For sampling required in support of baseline monitoring and 90-day compliance reports required in Sections 24.05.015(a) and 24.05.015(c) [40 CFR 403.12(b) and (d)], a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data does not exist; for facilities for which historical sampling data are available, the Director may authorize a lower minimum. For the reports required by Section 24.05.015(d), (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.

(l) Timing

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

(m) Record Keeping

Users subject to the reporting requirements of this article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with Best Management Practices established in this ordinance. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the Director.

SECTION 24.05.016 COMPLIANCE MONITORING

(a) Right of Entry: Inspection and Sampling

The Director and/or Control Authority, TCEQ, or EPA or their authorized representative shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this article and any wastewater discharge permit or

order issued hereunder. Users shall allow the inspecting person ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- (1) Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City, Control Authority, TCEQ, or EPA will be permitted to enter without delay for the purposes of performing specific responsibilities.
- (2) The Director and/or Control Authority shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations. Sampling performed by the POTW to monitor compliance shall be at the expense of the industrial user.
- (3) The Director may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated annually to ensure their accuracy.
- (4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected or sampled shall be promptly removed by the user at the written or verbal request of the Director and shall not be replaced. The costs of clearing the access shall be borne by the user.
- (5) Unreasonable delays in allowing the inspecting or sampling person access to the user's premises shall be a violation of this article.
- (6) In accordance with 40 CFR 403, the City shall inspect and monitor each Significant Industrial User a minimum of once per year. If the City elects to perform compliance monitoring for the Significant Industrial User then the City will monitor the industry a minimum of semiannually.
- (7) The City shall inspect each NSCIU a minimum of once per year. If the City elects to perform compliance monitoring for the NSCIU then the City will monitor the industry a minimum of one time each permit cycle.

(b) Search Warrants

If the Director and/or Control Authority has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any permit or order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Director and/or Control Authority may seek issuance of a search warrant from an appropriate court.

SECTION 24.05.017 CONFIDENTIAL INFORMATION

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the Director and/or Control Authority, that the release of that information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that the information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall only be available pursuant to the requirements of the Texas Public Information Act, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES or TPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics, and other effluent data as defined by 40 CFR 2.302, will not be recognized as confidential information and will be available to the public without restriction.

SECTION 24.05.018 PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE

The Director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (3), (4), or (8) of this Section) and shall mean:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Sections 24.05.006 - 24.05.011;
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Sections 24.05.006 - 24.05.011 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a Pretreatment Standard or Requirement as defined by Sections 24.05.006 - 24.05.011 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the Director determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

- (4) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Director's exercise of its emergency authority to halt or prevent such a discharge;
- (5) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance; or
- (8) Any other violation(s), which may include a violation of Best Management Practices, which the Director determines will adversely affect the operation or implementation of the local pretreatment program.

SECTION 24.05.019 ADMINISTRATIVE ENFORCEMENT REMEDIES

(a) Notification of Violation

When the Director finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may serve upon that user a written Notice of Violation. Within ten (10) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(b) Consent Order

The Director may enter into Consent Orders, assurance of compliance, or similar documents establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action to be taken by the User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 24.05.019 (d) and (e) of this ordinance and shall be judicially enforceable. Issuance of a consent order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(c) Show Cause Hearing

The Director may order a user which has violated or continues to violate any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(d) Compliance Order

When the Director finds that a user has violated or continues to violate any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer, and pretreatment or control of the quantities and rates of discharge of wastewater to bring the discharge within the limits of this article. An order may not extend the deadline for compliance established for a pretreatment standard or requirement; nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(e) Cease and Desist Orders

When the Director finds that a user has violated or continues to violate any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

- (1) Immediately comply with all requirements; and
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(f) Emergency Suspensions

The Director may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Director may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

- (1) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless the termination proceedings in subsection (g) are initiated against the user.
- (2) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director prior to the date of any show cause or termination hearing under subsections (c) or (g) of this section.

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(g) Termination of Discharge

In addition to the provisions in Section 24.05.014, any user who violates the following conditions is subject to discharge termination:

- (1) Violation of wastewater discharge permit conditions;
- (2) Failure to accurately report the wastewater constituents and characteristics of its discharge;
- (3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

- (4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
- (5) Violation of the pretreatment standards in Sections 24.05.006 – 24.05.011.
Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under subsection (c) hereof why the proposed action should not be taken. Exercise of this option by the Director shall not be a bar to, or a prerequisite for, taking any other action against the user.

SECTION 24.05.020 JUDICIAL ENFORCEMENT REMEDIES

(a) Injunctive Relief

When the Director finds that a user has violated or continues to violate any provision of this article, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the City may petition the District Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this article on activities of the user. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(b) Civil Penalties

- (1) A user who has violated, or continues to violate, any provision of this article, shall be liable to the City for a civil penalty not to exceed One Thousand Dollars (\$1,000) per violation, per day, provided that a civil penalty not to exceed Five Thousand Dollars (\$5,000) per violation per day may be imposed for a violation of any point source effluent limitation of this article or the discharge of a pollutant, other than from a non-point source, into the sewer system of the City.
- (2) The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.
- (3) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- (4) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(c) Criminal Prosecution; Criminal Responsibility

- (1) A user who violates intentionally, knowingly, recklessly, or negligently any provision of this article, a wastewater discharge permit, further regulations and procedures established by the City or an administrative order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than Two Thousand Dollars (\$2,000) per violation, per day.
- (2) A user who introduces intentionally, knowingly, recklessly, or negligently any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to the same penalty in subsection (1). This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.
- (3) A user who makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this article, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter shall, upon conviction, be punished by a fine of not more than Two Thousand Dollars (\$2,000) per violation.
- (4) Criminal Responsibility. A person is criminally responsible for a violation of this article if that person intentionally, knowingly, recklessly or negligently:
 - (A) Commits or assists in the commission of a violation, or causes or permits another person to commit a violation; or
 - (B) Owns or manages the property or facilities determined to be the cause of the illegal discharge under Sections 24.05.006, 24.05.007, 24.05.008, 24.05.012, and 24.05.013.

(d) Remedies Nonexclusive

The remedies provided for in this article are not exclusive. The Director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the Director may take other action against any user when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any noncompliant user.

(e) Applicability of More Stringent Regulations

- (1) If national pretreatment standards, categorical or otherwise, more stringent than the discharge limits prescribed in this article are promulgated by the United States Environmental Protection Agency for certain industries, the more stringent national

pretreatment standards will apply to the affected industrial user. A violation of the more stringent national pretreatment standards will also be considered a violation of this article.

- (2) Applicability of more stringent discharge limits. An industrial user within the city who discharges industrial waste ultimately received and treated by another governmental entity pursuant to a wholesale wastewater contract or a reciprocal agreement with the city is subject to the following additional rules:
 - (A) If the governmental entity has more stringent discharge limits than those prescribed by this article, or by a discharge permit issued hereunder, because the United States Environmental Protection Agency requires the more stringent discharge limits as part of the governmental entity's wastewater pretreatment program, the more stringent discharge limits shall prevail.
 - (B) The Director is authorized to issue a discharge permit to an industrial user affected by Subsection (A), to ensure notice of and compliance with the more stringent discharge limits. If the industrial user already has a discharge permit, the Director may amend the permit to apply and enforce the more stringent discharge limits. An industrial user shall submit to the Director an expected compliance date and an installation schedule if the more stringent discharge limits necessitate technological or mechanical adjustments to discharge facilities or plant processes.
 - (C) If the Director chooses not to issue or amend a permit under Subsection (B), the Director shall notify the affected industrial user in writing of the more stringent discharge limits and their effective date. Regardless of whether or not a permit is issued or amended, an industrial user shall be given a reasonable opportunity to comply with the more stringent discharge limits.
 - (D) The more stringent discharge limits cease to apply upon termination of the City's wholesale wastewater contract or reciprocal agreement with the governmental entity, or upon modification or elimination of the limits by the government entity or the United States Environmental Protection Agency. The Director shall take the appropriate action to notify the affected industrial user of an occurrence under this Subsection (D).
- (3) Variances in compliance dates. The Director may grant a variance in compliance dates to an industry when, in the Director opinion, such action is necessary to achieve pretreatment or corrective measures. In no case shall the Director grant a variance in compliance dates to an industry affected by national categorical pretreatment standards beyond the compliance dates established by the United States Environmental Protection Agency.
- (4) Authority to regulate. The Director may establish regulations, not in conflict with this article or other laws, to control the disposal and discharge of industrial waste into the wastewater system and to ensure compliance with the City's pretreatment

enforcement program with all applicable pretreatment regulations promulgated by the United States Environmental Protection Agency. The regulations established shall, where applicable, be made part of any discharge permit issued to an industrial user by the Director.

SECTION 24.05.021 AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

(a) Act of God.

- (1) For purposes of this section, “Act of God” means an event that would otherwise be a violation that is caused solely by an act of God, war, strike, riot, or other catastrophe is not a violation.
- (2) An “Act of God” shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (3), below are met.
- (3) A user who wishes to establish the affirmative defense of the “Act of God” shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (A) A violation occurred and the user can identify the cause(s) of the “Act of God”;
 - (B) The facility was at the time being operated in a prudent workman like manner and in compliance with applicable operation and maintenance procedures; and
 - (C) The user has submitted the following information within twenty-four (24) hours of becoming aware of the “Act of God”:
 - (i) A description of the indirect discharge and cause of noncompliance;
 - (ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - (iii) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (4) In an enforcement proceeding, the user seeking to establish the occurrence of an Act of God, war, strike, riot or other catastrophe shall have the burden of proof.
- (5) Users will have the opportunity for a judicial determination on any claim of an “Act of God” only in an enforcement action brought for noncompliance with categorical pretreatment standards.

- (6) In the event that an Act of God, war, strike, riot, or other catastrophe has been established, the user shall control production of all discharges to the extent possible until such time as the reduction, loss, or failure of its treatment facility is restored or an alternative method of treatment is provided.

(b) Bypass

- (1) For the purpose of this section:

- (A) “Bypass” means the intentional diversion of waste streams from any portion of a user’s treatment facility.
- (B) “Severe property damage” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (2) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (3) and (4) of this section.

- (3) Bypass Notifications

- (A) If a user knows in advance of the need for a bypass, it shall submit prior notice to the Director, at least ten (10) days before the date of the bypass, if possible.
- (B) A user shall submit oral notice to the Director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

- (4) Bypass

- (A) Bypass is prohibited, and the Director may take an enforcement action against a user for a bypass, unless

- (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (iii) The user submitted notices as required under subsection (3) of this section.
- (B) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in paragraph (4)(A) of this section.

SECTION 24.05.022 Fees

- (a) The City Council may by appropriate resolution from time to time adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pretreatment Program, which may include:
 - (1) Fees for wastewater discharge permit applications including the cost of processing such applications;
 - (2) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;
 - (3) Fees for reviewing and responding to accidental discharge procedures and construction;
 - (4) Fees for filing appeals;
 - (5) Recovery of administrative and legal costs associated with enforcement activity taken by the Director to address industrial user noncompliance.
 - (6) Other fees as the City may deem necessary to carry out the requirements contained herein.
- (b) These fees relate solely to the matters covered by this article and are separate from all other fees, fines, and penalties chargeable by the City;
- (c) Surcharge.

The city may surcharge industrial users for the treatment of abnormal strength wastes. Water or wastes having 1) a five day biochemical oxygen demand greater than two hundred fifty (250) parts per million (ppm) by weight, or 2) containing more than two hundred fifty (250) parts per million by weight of total suspended solids, shall be subject to the review and approval of the Director. Where the Director has approved the admission of (1) and/or (2) above into the POTW, that discharge may be subject to a surcharge as determined by the Director. In no case shall a discharge be accepted that will prevent the POTW from meeting its NPDES or TPDES limits. The surcharge will be assessed according to the formula in Section 24.04.082 of this article.

SECTION 2. That all ordinances of the City of Lancaster in conflict with the provisions of this ordinance be, and the same are hereby, repealed and all other provisions of the ordinances of the City of Lancaster not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or the Code of Ordinances, or any part or provision thereof, other than the parts thereof decided to be invalid, illegal or unconstitutional.

SECTION 4.

These rules shall be in full force and effective ten (10) days after the date of final approval from the State.

DULY PASSED by the City Council of the City of Lancaster, Texas, on the 8th day of March, 2021.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

Sec. 24.04.082 Same Computation

The following surcharge schedule, all of which is designated as a user charge, will be implemented:

$$\text{Surcharge} = Q \div 1,000,000 \times 8.34 \times [a (\text{Biochemical Oxygen Demand} - 250)] + [b (\text{Total Suspended Solids} - 250)] \times 1.10$$

Where:

- Q = Flow of wastewater in gallons.
- 8.34 = Weight in pounds of one gallon of water.
- 250 = Normal [limits] of biochemical oxygen demand or normal limits of total suspended solids in domestic wastewater expressed in milligrams per liter.
- 1.10 = Administrative overhead recovery factor.
- a = Unit cost of treatment per pound of biochemical oxygen demand.
- b = Unit cost of treatment per pound of total suspended solids.

This formula is based on a unit charge for BOD and a unit charge for TSS as established by the city council.

LANCASTER CITY COUNCIL

City Council Regular Meeting

4.

Meeting Date: 03/08/2021

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

Goal(s): Sound Infrastructure

Submitted by: Andrew Waits, Director of Public Works

Agenda Caption:

Consider a resolution endorsing the implementation of a Pretreatment Program for the Trinity River Authority Ten Mile Creek Regional Wastewater System.

Background:

The City of Lancaster discharges wastewater to the Trinity River Authority (TRA) Ten Mile Creek Regional Wastewater Treatment Plant. As required by Title 40 Section 303.8 (f) (5) of the Code of Federal Regulations, the City of Lancaster shall have an enforcement response plan to address wastewater discharge emergencies and violations.

Operational Considerations:

The Trinity River Authority requires all participating cities to adopt the updated Pretreatment Response Plan. The updated plan includes the following changes:

1. Clarifies the responsibilities between the City of Lancaster and the Trinity River Authority as related to sampling and inspections.
2. Clarifies the responsibilities between the City of Lancaster and the Trinity River Authority as related to screening, submission and tracking compliance for data reports.
3. Clarifies the responsibilities between the City of Lancaster and the Trinity River Authority as related to enforcement actions.

Legal Considerations:

The City Attorney has reviewed and approved the Emergency Response Plan and resolution as to form.

Public Information Considerations:

This item is being considered at a Regular Meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Fiscal Impact:

The City of Lancaster may assess fees related to Article 24.05 Wastewater Discharge Standards Section 24.05.023 fees outlined in the City of Lancaster Code of Ordinances.

Options/Alternatives:

1. City Council may approve the resolution, as presented.
2. City Council may deny the resolution.

Recommendation:

Staff recommends approval of the resolution, as presented.

Attachments

Resolution

Enforcement Response Plan

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ENDORSING THE IMPLEMENTATION OF A CONTINUING PRETREATMENT PROGRAM AND AN ENFORCEMENT RESPONSE PLAN AS REQUIRED BY TITLE 40 PART 403 OF THE CODE OF FEDERAL REGULATIONS (CFR), FOR THE TEN MILE CREEK REGIONAL WASTEWATER SYSTEM.

WHEREAS, on June 26, 1978, the United States Environmental Protection Agency published a rule (Amended January 28, 1981) which established mechanisms and procedures for enforcing National Pretreatment Standards controlling the introduction of waste from non-domestic sources into Publicly Owned Treatment Works (POTWs); and

WHEREAS, this Rule, published in the Code of Federal Regulations (CFR) at 40 CFR 403.8, requires that a Pretreatment Program be developed for the Regional Wastewater System, and

WHEREAS, the Trinity River Authority of Texas, as the owner and operator of a POTW, must comply with Rule 40 CFR 403; and

WHEREAS, the City, as a contracting party of the Ten Mile Creek Regional Wastewater System, has entered into an Amendatory Wastewater Contract with the Trinity River Authority of Texas whereby the City has enacted ordinances that are necessary to implement and enforce the National Pretreatment Standards; and

WHEREAS, Rule 40 CFR 403 (f) (i) requires a statement or resolution reflecting the endorsement or approval of the councils responsible for supervising and/or funding the POTW; and the City hereby uses its legal authority to adopt the enforcement response plan attached hereto as exhibit "1".

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

That the City of Lancaster, Texas, hereby endorses the implementation of a pretreatment program as required by Title 40 CFR 403 for the Regional Wastewater System with such program to continue as long as Title 40 CFR 403 remains in effect, and adopts the enforcement response plan as part of that pretreatment program.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 8th day of March 2021.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

**TRINITY RIVER AUTHORITY OF TEXAS
TEN MILE CREEK
REGIONAL WASTEWATER SYSTEM**

ENFORCEMENT RESPONSE PLAN

CITY OF LANCASTER

[March 8, 2021]

**TRINITY RIVER AUTHORITY OF TEXAS
TEN MILE CREEK REGIONAL WASTEWATER SYSTEM
CITY OF LANCASTER**

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1.	Trinity River Authority-Contracting Party NOV Request Example
2.	Contracting Party NOV Example
3.	Contracting Party Cease and Desist Order Example
4.	Contracting Party Consent Order Example
5.	Contracting Party Show Cause Order Example
6.	Contracting Party Compliance Order Example

I. OVERVIEW AND PURPOSE

- A. The United States Environmental Protection Agency (EPA) promulgated regulations to require all Publicly Owned Treatment Works (POTWs) to adopt an Enforcement Response Plan (ERP) as part of their Approved Pretreatment Program. These regulations are found in Title 40 of the Code of Federal Regulations (CFR) §403.8(f)(5). The purpose of the ERP is to provide consistent enforcement responses for similar violations and circumstances. The ERP describes violations, defines a range of appropriate enforcement actions based on the nature and severity of the violation and other relevant factors, and identifies personnel responsible for finalizing enforcement responses. All users discharging non-domestic waste to the POTW are subject to the provisions of this ERP.
- B. Definitions are found in the City of Lancaster (City) Code of Ordinances, Chapter 24, Article 24.05, Sections 24.05.003-.004 or defined in the text. Titles and formats of forms and reports currently in use or in the City's files may vary from those herein, but the functions will be consistent with the terminology and definitions in this document.

C. List of Acronyms

• AO	Administrative Order
• BMP	Best Management Practices
• CA	Control Authority
• CFR	Code of Federal Regulations
• CIU	Categorical Industrial User
• EPA	United States Environmental Protection Agency
• ERG	Enforcement Response Guide
• ERP	Enforcement Response Plan
• EMNR	Executive Manager Northern Region
• Gpd	Gallons per Day
• IU	Industrial User
• IUMI	Industrial User Master Inventory
• NOV	Notice of Violation
• NPDES	National Pollutant Discharge Elimination System
• NSCIU	Non-significant Categorical Industrial Users
• POTW	Publicly Owned Treatment Works
• TRA	Trinity River Authority
• SA	Staff Attorney
• SIU	Significant Industrial User
• SNC	Significant Noncompliance
• TAC	Texas Administrative Code
• TCEQ	Texas Commission on Environmental Quality
• TMCRWS	Ten Mile Creek Regional Wastewater System
• TPDES	Texas Pollutant Discharge Elimination System
• TSC	Technical Services Contract
• TSM	Technical Services Manager

II. IDENTIFICATION OF RESPONSIBLE PERSONNEL

A. CONTROL AUTHORITY

The Control Authority (CA) is the Trinity River Authority of Texas (TRA) as the operator of a multi-jurisdictional regional wastewater facility, Ten Mile Creek Regional Wastewater System (TMCRRWS), which provides wastewater transportation and treatment, by contract, to individual Contracting Parties. The CA also implements an Approved Pretreatment Program as part of its existing Texas Pollutant Discharge Elimination System (TPDES) or National Pollutant Discharge Elimination System (NPDES) permit requirements. TRA's enforcement capabilities originate from the contractual obligations of the Contracting Party. The Contracting Party will initiate and pursue any enforcement actions against an Industrial User (IU).

1. Executive Manager Northern Region

The Executive Manager Northern Region (EMNR), or designated representative, is responsible for the operation and maintenance of the receiving wastewater treatment plant. The EMNR, or designated representative is also responsible for meeting TPDES or NPDES requirements.

2. Staff Attorney

The Staff Attorney (SA) is responsible for both the review of and commentary on any potential or ongoing judicial proceedings that the CA may become involved in pertaining to the pretreatment program. The Staff Attorney also supplies legal counsel as needed on other issues, such as the CA's legal obligations and rights.

3. Technical Services Manager

The Technical Services Manager (TSM) is responsible for the overall staffing and funding of the CA's pretreatment program. The TSM is responsible for the development and implementation of the Approved Pretreatment Program and appoints designated personnel for ongoing duties and tasks.

B. CONTRACTING PARTY

A Contracting Party is a member city that contracts with the CA for services. The City Lancaster is a Contracting Party of the CA. All contracts include wastewater treatment. Pursuant to this wastewater contract, Contracting Parties are responsible for the overall implementation of the Approved Pretreatment Program within their jurisdiction. The Contracting Party is responsible for maintaining a City Ordinance that grants adequate legal authority to maintain, implement, and enforce the Approved Pretreatment Program. This Ordinance must contain current local limits. The Contracting Party must provide to the CA, in a timely manner, all relevant documents pertaining to the current IU's, as well as newly identified IU's. The CA shall receive from the Contracting Party a copy of all significant industrial users' (SIUs) and non-significant categorical industrial users' (NSCIUs) permit applications and industrial wastewater permits. Further, the Contracting Party shall furnish to the CA all documents and records as necessary, when required by the CA to demonstrate compliance by all IUs. The Contracting Party must initiate and follow

through with all IU enforcement.

1. Director of Public Works

The Director of Public Works (Director), or the duly authorized representative of the Director, is the designated official that is responsible for ongoing implementation and monitoring of the Approved Pretreatment Program within the City's jurisdiction. The Director, or the duly authorized representative of the Director, will also serve as the contact for the CA.

2. TRA-Contracting Party Technical Services Contract

The TRA may assist the Contracting Party through a Technical Services Contract (TSC) that delineates pretreatment services, and/or laboratory services provided to assist the Contracting Party with certain implementation aspects of the Approved Pretreatment Program within their jurisdiction. This includes such things as IU survey activities, reviewing IU permit applications, assistance with drafting wastewater permits, conducting IU inspections, sampling, and reviewing IU reports. TRA will provide support services for legal activities; however, the TRA will rely, through contractual obligations, upon the Contracting Parties to bring legal action and enforcement against noncompliant IUs. The TSM and associated TRA staff will initiate the TSC and its subsequent renewals with the Contracting Party. Both the TRA and the Contracting Party sign the TSC contract.

III. INDUSTRIAL USER INVENTORY

A. Industrial User Master Inventory

Contracting Parties shall maintain an Industrial User Master Inventory (IUMI) list that contains existing and potential IUs. The Contracting Party will conduct ongoing updates to the IUMI to allow for the identification of new IUs. The CA will periodically request a copy of the IUMI. The TRA, through the TSC, can conduct the procedures for maintaining the IUMI for the Contracting Party. IU identification procedures shall consist of a combination of the following:

1. Review of City water use records,
2. Review of building permits issued in commercial/industrial areas,
3. Review of area phone books,
4. Review of the industrial list service for manufacturing facilities within the Contracting Party's jurisdiction,
5. On-site inspections of commercial/industrial areas to detect and define any new industries; and
6. An IU Survey, performed by the Contracting Party a minimum of once every five (5) years.

B. Coordination of IU Information

In order to form a close association with the Contracting Party and to receive the appropriate information required to maintain a current IUMI, it is necessary to designate personnel responsible for the transfer of data. A TRA representative will coordinate with the Director, or the duly authorized representative of the Director, to obtain information concerning new IUs.

IV. COMPLIANCE MONITORING PROCEDURES

It is the intent and purpose of the TMCRWS's Approved Pretreatment Program that compliance monitoring activities be established to identify noncompliance with pretreatment standards. Compliance monitoring and its results must be done appropriately as to ensure it can be used as admissible evidence in any judicial proceedings that may result due to noncompliance. Sample monitoring and inspections assist in determining the compliance status of an IU.

A. Sample Monitoring

Sampling requirements, analytical methods, time schedules for submission of data to the Contracting Party, certification statement requirements, and other reporting requirements are established and set forth in the issued permits of IUs. Regardless of the permitted IU self-monitoring, the Contracting Party has legal authority to conduct sampling events to evaluate and verify compliance. Sample collection and analysis shall be in accordance with the City's Code of Ordinances, Chapter 18, Article IV, Sections 18-179 and 18-180 and 40CFR §136 unless otherwise specified in an applicable Categorical Pretreatment Standard. All analytical results submitted to demonstrate compliance shall meet the requirements of Title 30 of the Texas Administrative Code Chapter 25, Environmental Testing Laboratory Accreditation and Certification.

1. Submitting Monitoring Data

The Director, or the duly authorized representative of the Director, and the CA, receives monitoring data in the following ways:

- a. The permitted IU collects self-monitoring data and forwards the data to the Contracting Party. The Contracting Party, if required, will forward the self-monitoring data to the CA as required. Additionally, with the TSC, the TRA can receive self-monitoring data directly from the permitted IU; and/or
- b. The Director, or the duly authorized representative of the Director, samples the permitted IU. The Contracting Party, if required, will forward the monitoring data to the CA as required. Additionally, with the TSC, the TRA can sample the permitted IU to assist the Contracting Party.

2. Sample Frequency Requirements

The Director, or the duly authorized representative of the Director, identifies in the permit self-monitoring requirements for the IU. In some instances, the permit directs the IU to sample parameters at different frequencies with additional independent verification sampling by the Contracting Party. Optionally, an IU's permit can indicate the Contracting Party will conduct the sampling. This allows the Contracting Party to fulfil sample requirements for the IU as well as independent verification sample requirements for the Contracting Party. The following details the minimum requirements for SIUs and NSCIUs.

a. SIU Requirements

i. Permit Requires the SIU to Conduct Self-Monitoring

1) SIU Monitoring Requirements

The SIU will self-monitor for the parameters at the frequency identified in their permit if the permit requires the SIU to conduct its own self-monitoring. At a minimum, the permit will direct an SIU to conduct self-monitoring semiannually for some or all parameters. Semiannual monitoring means sample collection occurs once in the first six months of the Pretreatment Year and once in the second six months of the Pretreatment Year. Some SIUs may have been approved through the permit to have a reduction in sampling frequency for certain parameters to once per permit cycle. In this instance, the SIU samples once per permit cycle for those identified parameters.

2) Contracting Party Monitoring Requirements

The Director, or the duly authorized representative of the Director, will sample the SIU's effluent, at minimum, annually for parameters in the permit with a frequency designation of semiannual or greater. Annual monitoring means sample collection will occur once in the Pretreatment Year. The Director, or the duly authorized representative of the Director, will sample the SIU's effluent once per permit cycle for parameters identified in the permit with this frequency designation. The TRA, through the TSC, can conduct the sample monitoring for the Contracting Party.

ii. Permit Identifies that the Contracting Party Conducts Self-Monitoring in lieu of the SIU ("Sampling in lieu of")

1) SIU Monitoring Requirements

The SIU does not sample. The permit identifies the Contracting Party with all monitoring responsibilities.

2) Contracting Party Monitoring Requirements

The Director, or the duly authorized representative of the Director, will sample for the parameters at the frequency identified in the SIU's permit. At a minimum, the permit will identify semiannual sampling for

some or all parameters. As stated above, semiannual monitoring means sample collection occurs once in the first six months of the Pretreatment Year and once in the second six months of the Pretreatment Year. Some SIUs may have been approved through the permit to have a reduction in sampling frequency for certain parameters to once per permit cycle. In this instance, the Director, or the duly authorized representative of the Director, samples once per permit cycle for those identified parameters. The TRA, through the TSC, can conduct the sample monitoring for the Contracting Party.

b. NSCIU Requirements

i. Permit Identifies only Self-Monitoring for Contracting Party

1) NSCIU Monitoring Requirements

The NSCIU does not sample. The permit will identify the Contracting Party has sample monitoring responsibilities. The NSCIU will have to meet a flow restriction of <100 gallons per day (gpd) of categorical wastewater.

2) Contracting Party Monitoring Requirements

The Director, or the duly authorized representative of the Director, will sample the NSCIU's effluent once per permit cycle. This monitoring allows the Contracting Party to verify the NSCIU is not discharging untreated concentrated wastewater. Untreated concentrated wastewater means wastewater discharges over the categorical limit. If representative sampling is unachievable at the permitted outfall(s) due to no flow or insufficient flow, sampling personnel documents such conditions on the chain of custody. In this instance, the NSCIU is compliant with its effluent limitations. The TRA, through the TSC, can conduct the sample monitoring for the Contracting Party.

3. Sample Data Review

The Director, or the duly authorized representative of the Director, is responsible for reviewing all sampling data to determine its validity and the IU's compliance status. Also, the TRA, through the TSC, can review all sampling data for the Contracting Party. In this instance, TRA will inform the Director, or the duly authorized representative of the Director, of the compliance status of the IU based on the data.

4. Resample Requirements for Violations

Violations may result in increased sampling frequency. Within thirty (30) calendar days of becoming aware of a discharge limit violation, the SIU or NSCIU will be resampled for the parameter in question. Resampling will not be required if sampling is already being performed at a frequency of at least once per month or additional sampling has already been conducted between the time when the

initial sampling was conducted and the time when the sampling results were received.

B. Inspections

The CA's Approved Pretreatment Program provides procedures for conducting inspections at permitted IUs.

1. Contracting Party Inspection Frequency for SIU and NSCIU

The Director, or the duly authorized representative of the Director, shall conduct inspections at each of the permitted IUs at a minimum frequency of one inspection event per year. In addition, the TRA through the TSC, can conduct the inspection at permitted IUs for the Contracting Party.

Additionally, the Director, the duly authorized representative of the Director, or the TRA, if contracted to conduct pretreatment services, will conduct inspections more often if deemed necessary. Other reasons to conduct an inspection can be for purposes of reviewing IU construction activities, and/or to investigate noncompliance issues.

2. Documentation of an Inspection

For each inspection, the Contracting Party will complete the inspection form approved under the CA's Approved Pretreatment Program. During inspections, the Contracting Party will commonly review the following:

- a. Manufacturing processes and waste treatment units;
- b. Chemical storage areas and amounts of chemicals kept on site;
- c. Comparison of water usage with semi-annual reports, permit applications, and/or water use records;
- d. Need for development or update of a slug control plan;
- e. Need for the development of a Toxic Organic Management Plan or assessment of how well the current plan is implemented; and
- f. Need for or adherence to best management practices (BMPs) required by the Director, or the duly authorized representative of the Director, or Categorical Pretreatment Standard.

3. Addressing Deficiencies

The Director, or the duly authorized representative of the Director, will inform the IU of any deficiencies identified in the inspection process and will follow proper enforcement action identified in the Enforcement Response Guide (ERG).

4. Access Denied

The Director, the duly authorized representative of the Director, CA, State and/or Federal agent will obtain a warrant if the IU does not allow entry/access or denies copies of records after displaying the proper credentials.

V. PROCEDURES TO SCREEN AND TRACK COMPLIANCE DATA

A. Contracting Party and Control Authority Responsibilities for Screening Data

The methods and designated personnel responsible for tracking the compliance status of IUs are defined in this ERP. The Contracting Party and/or CA will have responsibilities associated with screening all notices, reports, and data from the IUs. The Contracting Party will address identified violations with appropriate responses as required by this ERP and ERG.

1. Contracting Party Responsibilities

The Contracting Party is responsible for complying with the CA's Approved Pretreatment Program requirements including, issuing permits, conducting inspections, sample monitoring, receiving required reports, and the evaluation of incidents of noncompliance. The role of the Director, or the authorized representative of the Director, will vary based on whether the Contracting Party has entered a TSC with the TRA to assist with implementation of the CA's Approved Pretreatment Program.

a. Contracting Party Without a TSC

The Director, or the duly authorized representative of the Director, will screen data and reports for violations as soon as possible after receipt of the data and/or report, in order to initiate any necessary enforcement action in the timeframe identified in the ERG. As part of this evaluation process, the Director, or the duly authorized representative of the Director, will track non-discharge violations, such as reporting deficiencies or falsification. In addition, the Director, or the duly authorized representative of the Director, will address incomplete or inaccurate reports with an appropriate response and follow-up enforcement actions if necessary. All enforcement actions undertaken by the Contracting Party will follow the guidelines of this ERP and the ERG. The Contracting Party will submit, as required, reports to the CA in a timely manner.

i. SNC Tracking and Public Notice Responsibilities

The Contracting Party shall publish IUs in the month specified in the CA's TPDES or NPDES permit using the criteria for determining Significant Noncompliance (SNC) found in the Contracting Party's Ordinance or at 40 CFR §403.8(f)(2)(viii)(A)-(H), whichever is more stringent.

1) Determining SNC

SNC status of permitted IUs for criteria at 40 CFR §403.8(f)(2)(viii)(A) and (B) shall be determined quarterly in accordance with the following EPA Memorandums:

- Cook, M. (September 9, 1991), *Application and Use of the Regulatory Definition of Significant Noncompliance for Industrial Users*.
- Charles, M. (January 17, 1992), *Determining Industrial User Significant Noncompliance – One Page Summary*

2) Documenting SNC

- a) The Director, or the duly authorized representative of the Director, will document the calculation of the criteria at 40 CFR §403.8(f)(2)(viii)(A) and (B) each quarter and retain this documentation with the SIU file system.
- b) The Director, or the duly authorized representative of the Director, will evaluate the SNC status of permitted IUs for criteria at 40 CFR §403.8(f)(2)(viii)(C)–(H) at the time of each violation. The Contracting Party will document the reports associated with the qualifying violations and retain this documentation in the SIU file system.
- c) The Director, or the duly authorized representative of the Director, will evaluate the SNC status of unpermitted IUs for criteria at 40 CFR §403.8(f)(2)(viii)(C)(D) and/or (H) at the time of each violation. The Contracting Party will document the reports associated with the qualifying violation and retain this documentation in the SIU file system.

3) SNC Notification to CA and SNC Public Notice

- a) Each quarter, the Director, or the duly authorized representative of the Director, shall submit an update on the SNC status of each permitted SIU and if applicable, any unpermitted IUs, to the CA.
- b) The Contracting Party shall publish in the month specified in the CA's TPDES or NPDES permit those IUs which are in SNC. Once published, the Director, or duly authorized representative of the Director, shall forward to the CA an original newspaper publication of the public notice or copy of the newspaper publication with official affidavit of the list of IUs that meet the criteria of SNC. The newspaper publication provided to the CA must include the name of the newspaper and the publication date of the list.

b. Contracting Party With an Existing TSC

If the TRA is providing contractual pretreatment services to the Contracting Party, the TRA will screen data and reports for violations as soon as possible after receipt of the report/data. When the TRA detects a violation of an IU permit condition and/or the violation qualifies for SNC, TRA will notify the Director, or duly authorized representative of the Director. Exhibit 4 provides a notification example. The Director, or duly authorized representative of the Director, will initiate any necessary enforcement action in a timely manner by following the guidelines of this ERP and the ERG.

i. SNC Tracking and Public Notice Responsibilities

Although the TRA will conduct the evaluation of SNC, the Contracting Party is responsible for publishing IUs in the month specified in the CA's TPDES or NPDES permit. SNC will be determined using the criteria for determining SNC found in the Contracting Party's Ordinance or at 40 CFR §403.8(f)(2)(viii)(A)-(H), whichever is more stringent.

1) Determining SNC

The TRA will evaluate SNC status of permitted IUs for criteria at 40 CFR §403.8(f)(2)(viii)(A) and (B) quarterly in accordance with the following EPA Memorandums:

- Cook, M. (September 9, 1991), *Application and Use of the Regulatory Definition of Significant Noncompliance for Industrial Users*.
- Charles, M. (January 17, 1992), *Determining Industrial User Significant Noncompliance – One Page Summary*.

2) Documenting SNC

- a) The TRA will document the calculation of the criteria at 40 CFR §403.8(f)(2)(viii)(A) and (B) each quarter, and the TRA will retain this documentation with the TRA Contracting Party's file system.
- b) The TRA will evaluate the SNC status of permitted IUs for criteria at 40CFR §403.8(f)(2)(viii)©–(H) at the time of each violation. The TRA will document the reports associated with qualifying violations, and the TRA will retain this documentation in the TRA Contracting Party's SIU file system.
- c) The TRA will evaluate the SNC status of unpermitted IUs for criteria at 40 CFR §403.8(f)(2)(viii)(C)(D) and/or (H) at the time of each violation. The TRA will document the reports associated with qualifying violations, and the TRA will retain this documentation in the TRA Contracting Party's file system.

3) SNC Notification to the Contracting Party and SNC Public Notice

- a) The TRA will identify and notify the Director, or the duly authorized representative of the Director, when IUs are in SNC. The Director, or the duly authorized representative of the Director, will then notify the IUs of their SNC status. At the end of the Pretreatment Year, the TRA will submit a list of IUs that are considered to be in SNC to the Director, or the duly authorized representative of the Director, for publication.
- b) The Contracting Party shall publish in the month specified in the CA's TPDES or NPDES permit, the IUs who are in SNC. Once published, the Director, or the duly authorized representative of the Director, shall forward an original newspaper publication of the public notice or copy of the newspaper publication with an official affidavit of the list of IUs that meet the criteria of SNC to the CA. The newspaper publication provided to the CA must include the name of the newspaper and the publication date of the list.

2. CA Responsibilities

The Contracting Party is responsible for submitting to the CA all IU documents required by the wastewater contract and the CA's Approved Pretreatment Program. The CA is responsible for screening these documents received from the Contracting Party in a timely manner and notifying the Director, or the duly authorized representative of the Director, of any deficiencies. The CA will file documents from the Contracting Party in the TRA Contracting Party IU file system. The CA will submit required reports on compliance to the Approval Authority. The CA may also provide pretreatment and laboratories services to the Contracting Party on a contractual basis to assist the Contracting Party in its compliance verification activities identified in this ERP. The Contracting Party will be responsible for conducting enforcement actions.

B. Contracting Party and Control Authority Responsibilities for Submission of Data

1. Contracting Party Responsibilities

a. Contracting Party Without a TSC

The Director, or the duly authorized representative of the Director, is responsible for maintaining complete files on each permitted IU and applicable unpermitted IUs. The Contracting Party will note the date of receipt on all notices, reports, and data received from IUs. The Director, or the duly authorized representative of the Director, will submit to the CA copies of documents required by the wastewater contract or the CA's Approved Pretreatment Program as necessary.

b. Contracting Party with a TSC

If the TRA is providing contractual pretreatment services to the Contracting Party, the TRA will directly receive and review notices, reports and data

submitted by permitted IUs and unpermitted IUs. The TRA will maintain complete files on each permitted IU and applicable unpermitted IUs. The Director, or the duly authorized representative of the Director, will forward any enforcement documents, signed wastewater permits, and other documents related to IUs which were not sent directly to TRA. The TRA will note the date of receipt on all notices, reports, and data received from IUs. The TRA is responsible for reviewing incoming notices, reports, and data from Contracting Parties and/or IUs. The TRA will address incomplete reports in accordance with procedures outlined in this ERP.

2. CA Responsibilities

The CA will note the date of receipt on all notices, reports, and data from Contracting Parties. All notices, data, and reports sent and received by the CA are kept in a file system that contains additional delineated IU files. The CA will adhere, at minimum, to document review as stipulated in the wastewater contract. The CA will notify the Director, or the duly authorized representative of the Director, of any reporting deficiencies. The Contracting Party will address incomplete reports according to procedures outlined in this ERP and the CA's Approved Pretreatment Program.

3. Tracking Information

The CA and/or Contracting Party will track dates associated with IU notices, data, and reports with a computer, a monthly update log, and/or the IU files. The CA and/or Contracting Party will address incomplete reports according to procedures outlined in this ERP. The following notices and reports require date tracking:

- a. Notification of a violation from a permittee within twenty-four (24) hours of the permittee becoming aware of the violation;
- b. Compliance schedule progress reports;
- c. Baseline monitoring reports, including required BMP compliance information (Categorical Industrial User [CIU] and NSCIU only);
- d. Ninety (90) day compliance reports, including required BMP compliance information (CIU and NSCIU only);
- e. Periodic reports on continued compliance, including any applicable self-monitoring and required BMP compliance information (SIU and NSCIU);
- f. NSCIU annual reports and certification statement;
- g. Notifications of changed discharge;
- h. Permit applications;
- i. Notices of potential problems, including slug loading;

- j. Notices of changes at the permitted facility affecting the potential for slug discharge;
- k. Notifications of hazardous waste discharge;
- l. Requested inspection follow up reports;
- m. Thirty (30) day re-sampling for effluent related noncompliance, and
- n. Other reports as required by permit and/or requested by the Director, or the duly authorized representative of the Director, from permitted IUs and unpermitted IUs.

VI. RESPONSE CRITERIA

This ERP establishes a proper range of enforcement responses that identify many common discharge and non-discharge violations. The Contracting Party will often choose from between several applicable responses. The Contracting Party will consider, among other factors, the following criteria when determining a proper response to IU violations:

- A. Magnitude of the violation;
- B. Duration of the violation;
- C. Effect on the receiving water;
- D. Effect on the POTW, its treatment processes or operations, or its sludge processes, use or disposal;
- E. Compliance history of the IU,
- F. Economic benefit to the IU of noncompliance; and
- G. Good Faith of the IU

“Good Faith” means the Contracting Party’s perception of the IU’s honest intention to remedy any noncompliance, combined with actions that reflect this intention. An IU’s demonstrated willingness to comply may predispose the Contracting Party to select less stringent enforcement responses. “Good Faith” will not eliminate the necessity for enforcement action. Compliance with any previous enforcement orders will not necessarily demonstrate “Good Faith”.

VII. ENFORCEMENT RESPONSES

- A. Severity of Violation

The Contracting Party may initially rely on informal actions such as telephone calls or Notices of Violation (NOVs) where violations are not significant, or do not result in immediate harm. However, when the violation is significant, or when the IU does not promptly undertake corrective action, the Contracting Party shall respond with more severe enforcement actions. In either case, enforcement response will promote a return to compliance in a timely manner.

For Contracting Parties with a TSC, the TRA can provide enforcement guidance based on the requirements of this ERP, but the Director, or the duly authorized representative of the Director, must conduct formal enforcement actions.

1. Determining Magnitude of the Violation

The Director, or the duly authorized representative of the Director, will determine if IU violations are significant or not significant. In addition, the Director, or the duly authorized representative of the Director, will assess the severity of the violation for impact on the POTW and receiving stream. Finally, the Director, or the duly authorized representative of the Director, will evaluate the frequency in regards to the same type of violation.

a. Significant Violations

A significant violation meets the criteria for classifying an IU as in SNC, as defined in the City's Ordinance, and requires additional supplemental enforcement action of public notice. The Director, or the duly authorized representative of the Director, will respond to significant violations based on severity, which requires evaluating the violation for harmful impact to the POTW.

b. Harm

An IU violation is considered to cause harm if it has negative impacts on the POTW that interfere, harm, or damage POTW personnel, equipment, processes, operations, or cause biosolids contamination resulting in increased disposal costs. Additionally, an IU violation that has the potential to affect the receiving stream, impact the receiving stream, and/or contributes to a violation of the CA's TPDES or NPDES permit is considered harmful.

c. Recurring Violations

Recurring violations indicate that chronic problem(s) exist(s) at the IU. The Director, or the duly authorized representative of the Director, will escalate its enforcement response when follow-up activities indicate either the violation persists or the IU is not achieving satisfactory progress.

Recurring, for purposes of this ERP, means three noncompliant events for each separate parameter or non-effluent violation over a twelve (12) month period from the date of the initial same type violation. For example, three recurring zinc violations would be evaluated separately from other recurring effluent violations and other recurring non-effluent violations. The Director, or the duly authorized representative of the Director, shall increase enforcement

on the third violation for the same type of noncompliant event, unless the second violation qualifies as a significant violation and/or a violation that will harm the POTW.

2. Consistent Compliance

The Director, or the duly authorized representative of the Director, conducts enforcement actions to remedy IU violations of the CA's Approved Pretreatment Program and return the IU to consistent compliance in a timely manner. For purposes of this ERP, consistent compliance means no IU violations of the same type in a twelve (12) month period.

B. Enforcement Response Evaluation

The Contracting Party may use several initial and follow-up actions in responding to noncompliance issues. Which response, or combination of responses the Contracting Party uses will depend on the violation's severity, event duration, effect on the environment and/or POTW, the IU's economic benefit received from remaining in noncompliance, and the IU's compliance history including past "Good Faith" in taking corrective action. The Director, or the duly authorized representative of the Director, may assess penalties to IUs committing significant violations based upon the economic benefit received. The following document may be used to calculate the amount of the penalty.

- United States Environmental Protection Agency. *Guidance Manual for POTW's to Calculate the Economic Benefit of Noncompliance*, Office of Water Enforcement and Permits. (September 1990)

C. Enforcement Response Actions

The Director, or the duly authorized representative of the Director, will use the ERG to determine an appropriate enforcement action. When the IU fails to return to compliance following the initial enforcement response, the Contracting Party will escalate its enforcement in a follow-up action in response to subsequent noncompliance within the guidelines provided in this ERP. Possible enforcement actions are as follows:

1. Informal Notice

This is an informal communication between the Contracting Party with the IU to discuss noncompliance. This discussion is a starting point for situations that are not a significant violation. This can be a verbal or written notification. For Contracting Parties with a TSC, the TRA can provide informal notice, but must also inform the Director, or the duly authorized representative of the Director, of the notification.

2. Notice of Violation (See Exhibit 2)

The NOV is an official communication from the Contracting Party to the noncompliant IU informing the IU of a pretreatment violation. The purpose of the

NOV is to notify the IU of the violation(s) and to request a response within a given time period, usually within ten (10) business days.

3. Review meeting

A review meeting is a meeting between the IU and Contracting Party usually preceding an increased enforcement action. This meeting can be at the request of the IU and/or Contracting Party. The meeting serves as an avenue for discussion of the current situation and/or the sequence of events on impending action. For Contracting Parties with a TSC, the Director, or the duly authorized representative of the Director, can have the TRA conduct a review meeting on behalf of the Contracting Party. In this instance, the TRA will provide a summary of the meeting to the Director, or the duly authorized representative of the Director.

4. Compliance Schedule

A compliance schedule is a schedule that contains increments of progress in the form of milestones and corresponding dates for the commencement and completion of those milestones. Milestones are often major events leading to the construction and operation of additional pretreatment required for the IU to meet an applicable Pretreatment Standards. Such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation. An IU's permit or an administrative order (AO) may contain a compliance schedule. In addition, the Director, or the duly authorized representative of the Director, can require a standalone compliance schedule.

5. Administrative Order

An Administrative Order (AO) is an enforcement documents that direct an IU to undertake and/or cease specific activities. The Director, or the duly authorized representative of the Director, may or may not negotiate the terms of the AO with the IU. The AO may incorporate compliance schedules, civil or criminal penalties, and termination of service orders. There are four types of AOs that the Contracting Party may utilize alone or in combination.

a. Cease and Desist Order (See Exhibit 3)

A Cease and Desist Order directs an IU to cease illegal unauthorized discharges immediately or terminate its discharge altogether. The Director, or the duly authorized representative of the Director, uses this order in situations where the discharge could cause harm such as interference or pass-through at the treatment plant, or otherwise causes an emergency at the treatment plant or in the collection system. The Contracting Party can order immediate cessation of any discharge to its collection system, regardless of an IU's compliance status and may revoke any wastewater discharge permits held by the IU. If the user fails to comply with the order, the Contracting Party may take independent action to halt the discharge, such as terminating water service, conducting physical severance, or blocking the IU's connection point.

b. Consent Order (See Exhibit 4)

A Consent Order is an agreement between the Contracting Party and the IU normally containing three elements:

- i. Compliance schedule(s);
- ii. Stipulated fines or remedial actions; and
- iii. Signatures of the Contracting Party and IU representatives.

c. Show Cause Order (See Exhibit 5)

A Show Cause Order directs the IU to appear before the Contracting Party to explain its noncompliance, and show cause as to why more severe enforcement actions against the IU should not be pursued. The CA may be present during the hearing. The Director, or the duly authorized representative of the Director, can use this order to investigate violations of previous AOs.

d. Compliance Order (See Exhibit 6)

A Compliance Order directs the IU to achieve or restore compliance by a date specified in the order. The Director, or the duly authorized representative of the Director, need not discuss the terms of this order with the IU prior to issuance. The Contracting Party may use this order to require an IU to develop management practices, spill prevention programs, and any other Approved Pretreatment Program requirements.

6. Civil Litigation

Civil litigation is the formal process of filing a lawsuit(s) against an IU to secure court ordered actions to correct violations and to secure penalties for violations including the recovery of costs to the POTW impacted by the noncompliance. Civil litigation also includes enforcement measures that require involvement or approval by the courts, such as injunctive relief and settlement agreements. The Contracting Party can pursue civil litigation when the corrective action required is costly and complex, or when the IU is unmanageable and/or unwilling to cooperate.

- a. The following three general situations demonstrate when civil litigation is an appropriate enforcement action:
 - i. Situations in which injunctive relief is necessary to halt or prevent discharges which threaten human health or the environment, or interfere with the POTW;
 - ii. Situations in which efforts to restore compliance through cooperation with the IU have failed and a court supervised settlement (consent decree) is necessary to enforce Approved Pretreatment Program requirements;
 - iii. Situations in which it is necessary to impose civil penalties and/or to recover losses incurred due to the noncompliance.
- b. The Contracting Party will utilize three types of civil litigation either alone or in conjunction. They are as follows:

- i. Consent Decree

A consent decree is an agreement between the Contracting Party and the IU reached after the Contracting Party files a lawsuit. The consent decree is signed by the judge assigned to the case. The Contracting Party uses a consent decree when the violator is willing to acknowledge and correct the noncompliance and the Contracting Party and the violator agree on the penalty. The agreement can be formalized prior to a full hearing on the issue(s).

- ii. Injunction

An injunction is a court order that directs parties to follow an established procedure and/or to refrain from specific actions. A Contracting Party uses an injunction if the delays involved in filing a suit would result in irreparable harm. A cease and desist order may be used in place of injunctive relief.

- iii. Civil Penalties and Cost Recovery

Civil penalties and cost recovery are forms of reimbursement to the Contracting Party and/or the CA by the IU to pay for all expenses incurred while responding to noncompliance. This may include restoration of the physical treatment plant and collection system, payment for medical treatment of injured personnel, and indemnification for all fines assessed for NPDES or TPDES permit violations. Civil penalties and cost recovery may be court ordered.

7. Criminal Prosecution

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of Ordinance provisions that are punishable, upon conviction, by citation/fines and/or imprisonment. The purpose is to punish

established noncompliance through court proceedings and to deter future noncompliance.

a. Citations

City Ordinance allows the Contracting Party to issue citations as court summons for Class C Misdemeanors. Maximum fines should be the maximum allowed by state law, currently \$2,000 per day, per violation. If applicable, the Contracting Party can pursue higher charges under the appropriate state law, which could result in higher fines or imprisonment.

8. Termination of Wastewater Services

Termination of wastewater service is the revocation of an IU's privilege to discharge industrial wastewater into the Contracting Party's wastewater system. Termination may be accomplished by physical severance or blocking of the industry's connection to the collection system, by issuance of an AO that requires the IU to terminate its discharge, or by a court ruling. The Contracting Party should consider termination of wastewater service as an appropriate response to IUs that have not responded adequately to previous enforcement remedies. The Contracting Party issues a notice to the IU, when possible, to fulfill the due process requirements associated with service termination and enables the IU to halt production in time to avoid backflows, spills, and other harm to the IU's facility, as well as time to look for alternative means of wastewater disposal.

9. Supplemental Enforcement Actions

The Director, or the duly authorized representative of the Director, shall determine on an individual basis to use supplement enforcement responses to reinforce the compliance obligations of IUs. The three categories below identity these supplemental actions:

a. Public Notice

As a requirement of 40 CFR §403.8(f)(2)(viii) there will be an annual publication of a list of IUs which were in SNC. The Director, or the duly authorized representative of the Director, shall evaluate IUs for SNC four times a year, in accordance with EPA guidelines as shown in the "rolling" quarter's method for SNC criteria at 40 CFR §403.8(f)(2)(viii)(A) and (B). In addition, he Director, or the duly authorized representative of the Director, shall evaluate IUs for SNC at the time of the qualifying violation for criteria 40 CFR §403.8(f)(2)(viii)(A)-(H). Publication of the list satisfies the public's right to know of violations affecting the immediate environment and causing additional expenditures of public funds to operate and maintain the POTW. Additionally, publication discourages IUs from committing pretreatment violations.

b. Increased Monitoring and Reporting

The Director, or the duly authorized representative of the Director, may increase surveillance activities (i.e., sampling and inspections) when an IU

demonstrates a history of noncompliance. Additionally, the Director, or the duly authorized representative of the Director, may require the IU to conduct more self-monitoring and reporting until the problem is corrected and consistent compliance is demonstrated. Increased monitoring should be ordered for a specified time period or until a compliance milestone is achieved.

c. Cost Recovery for Damages, Abatement, and Remediation

Users or responsible persons may be required to make reimbursement to the Contracting Party and/or CA to pay for all expenses incurred in responding to violations. This may include restoration of the physical treatment plant and collection system, repairs or replacement of equipment, payment for medical treatment of injured personnel, and indemnification for all fines assessed for NPDES or TPDES permit violations. This may also include costs for abatement, cleanup, or remediation from prohibited discharges to the sanitary sewer or any area that drains to the sanitary sewer. The Contracting Party may conduct cost recovery through administrative action or court ordered civil penalties.

VIII. ENFORCEMENT RESPONSE GUIDE

The ERG shall serve as a matrix describing violations and indicates a range of appropriate enforcement options. It defines the range of enforcement actions based on the nature and severity of the violations and other relevant factors and will promote consistent and timely use of enforcement remedies. The guide allows the Contracting Party to select from several alternative initial and follow-up actions. When an IU fails to return to compliance following enforcement response, the Contracting Party shall escalate its enforcement response.

A. The Contracting Party shall consider the following criteria when determining a proper enforcement action:

1. Magnitude of the violation;
2. Duration of the violation;
3. Effect of the violation on the receiving water;
4. Effect of the violation on the POTW processes and sludge disposal;
5. Compliance history of the IU;
6. Economic benefit to the IU of noncompliance; and
7. . Good Faith of the IU.

B. The attached ERG identifies types of common violations the Contracting Party anticipates, determines which responses are appropriate for many of the common discharge and non-discharge violations, identifies initial and follow-up responses to

the violations, and designates personnel responsible for administering each of these responses. The following guidelines are a tool and will be used as follows:

1. Locate the type of violation in the first column and identify the most accurate description of the violation in the second column.
2. Assess the appropriateness of the recommended response(s) in the second column. First offenders or IUs demonstrating "Good Faith" efforts may merit a more lenient response. Similarly, repeat offenders or those demonstrating negligence may require an escalated response.
3. Apply the chosen enforcement action to the IU from the third column. Specify if any supplemental enforcement actions are chosen.
4. Determine appropriate personnel for the enforcement action. The fourth column indicates personnel responsible for delivery each response.
5. Follow-up with escalated enforcement action if the IU does not respond or violations continue.

ENFORCEMENT RESPONSE GUIDE SUMMARY OF ACTION			
Violation	Nature of the Violation	Enforcement Action	Personnel
1. Failure to apply for discharge permit <u>Applies to:</u> Unpermitted Users	Not Significant, if classified as SIU-non CIU	<ul style="list-style-type: none"> - Informal Notice with Application - NOV with Application 	Director ^e
	Significant, if classified as CIU	<ul style="list-style-type: none"> - NOV with Application - Review Meeting with Application 	
	Recurring	<ul style="list-style-type: none"> - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
2. Failure to apply for renewal discharge permit <u>Applies to:</u> Permitted Users	Not Significant; Has not submitted application within specified time frame required in permit	<ul style="list-style-type: none"> - Informal Notice 	Director ^e
	Significant; >45 days late in submitting application in regards to specified time frame required in permit	<ul style="list-style-type: none"> - NOV - Review Meeting - AO - Criminal Prosecution 	
	Significant Permit is expired; IU continues to discharge	<ul style="list-style-type: none"> - Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service 	
3. Late reports <u>Applies to:</u> Permitted Users	Not Significant; <45 days	<ul style="list-style-type: none"> - Informal Notice - NOV 	Director ^e
	Significant; >45 days	<ul style="list-style-type: none"> - NOV - Review Meeting 	
	Recurring; Not Significant; > 45 Days	<ul style="list-style-type: none"> - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
	Recurring; Significant; > 45 Days	<ul style="list-style-type: none"> - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	

ENFORCEMENT RESPONSE GUIDE SUMMARY OF ACTION			
Violation	Nature of the Violation	Enforcement Action	Personnel
4. Failure to properly sign reports with certification statement. Designated signatory must sign required report, or report is incomplete. <u>Applies to:</u> Permitted Users Dental Dischargers	First and Second Occurrence	- Informal Notice	Director ^e
	Recurring	- NOV - Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service	
5. Failure to report changed discharge or changed conditions <u>Applies to:</u> Permitted Users	Significant; No Harm	- NOV - Review Meeting	Director ^e
	Recurring; Significant; No Harm	- Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service	
	Significant; Harm	- AO - Civil Litigation - Criminal Prosecution - Terminate Service	
	Recurring; Significant; Harm	- Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service	

ENFORCEMENT RESPONSE GUIDE SUMMARY OF ACTION			
Violation	Nature of the Violation	Enforcement Action	Personnel
6. Failure to report discharge of hazardous waste <u>Applies to:</u> Unpermitted Users Permitted Users	Significant; No Harm	- NOV - Review Meeting	Director ^e
	Recurring; Significant; No Harm	- Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service	
	Significant; Harm	- AO - Civil Litigation - Criminal Prosecution - Terminate Service	
	Recurring; Significant; Harm	- Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service	
7. Missed dates in compliance schedules <u>Applies to:</u> Unpermitted Users undergoing permit process Permitted Users	Missed milestone by < 45 days; Not Significant	- Informal Notice - NOV	Director ^e
	Recurring; Not Significant	- NOV - Review Meeting - Civil Litigation - Criminal Prosecution - Terminate Service	
	Missed milestone by >45 days; Significant	- NOV - Review Meeting	
	Recurring; Significant; Missed final milestone with no reasonable cause for delay	- AO - Civil Litigation - Criminal Prosecution - Terminate Service	

ENFORCEMENT RESPONSE GUIDE SUMMARY OF ACTION			
Violation	Nature of the Violation	Enforcement Action	Personnel
8. Falsification of Information to POTW <u>Applies to:</u> Unpermitted Users Permitted Users	Good Faith; No intent; No Harm	<ul style="list-style-type: none"> - Informal Notice - Review Meeting 	Director ^e
	Proven; No Harm	<ul style="list-style-type: none"> - Review Meeting - AO - Civil Litigation - Criminal Prosecution 	
	Proven; Harm	<ul style="list-style-type: none"> - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
9. Violation of pretreatment standards (effluent limitations, BMPs, etc) <u>Applies to:</u> Permitted Users	Not Significant; No Harm	<ul style="list-style-type: none"> - Informal Notice - NOV - Compliance Schedule 	Director ^e
	Significant; No Harm	<ul style="list-style-type: none"> - NOV - Review Meeting - Compliance Schedule 	
	Recurring; Not Significant or Significant; No Harm	<ul style="list-style-type: none"> - Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
	Significant; Harm	<ul style="list-style-type: none"> - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
	Recurring; Significant; Harm	<ul style="list-style-type: none"> - Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service 	

ENFORCEMENT RESPONSE GUIDE SUMMARY OF ACTION			
Violation	Nature of the Violation	Enforcement Action	Personnel
<p>10. Failure to sample or monitor correctly if IU is required to conduct self-monitoring</p> <p><u>Applies to:</u></p> <p>Permitted Users</p>	Failure to monitor all pollutants as required by permit	<ul style="list-style-type: none"> - Informal Notice and require retest - NOV and require retest 	Director ^e
	Recurring, Failure to monitor all pollutants as required by permit	<ul style="list-style-type: none"> - NOV - Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
	Improper sampling procedure and/or improper analysis method	<ul style="list-style-type: none"> - Informal Notice and require retest - NOV and require retest 	
	Recurring, improper sampling procedure and/or improper analysis method	<ul style="list-style-type: none"> - NOV - Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
	Failure to monitor in correct location	<ul style="list-style-type: none"> - Informal Notice and require retest - NOV and require retest 	
	Recurring, failure to monitor in correct location	<ul style="list-style-type: none"> - NOV - Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
<p>11. Failure to report required or voluntary monitoring of any regulated pollutant at permitted sampling location</p> <p><u>Applies to:</u></p> <p>Permitted Users</p>	Not Significant	<ul style="list-style-type: none"> - Informal Notice - NOV 	Director ^e
	Significant or Recurring	<ul style="list-style-type: none"> - NOV - Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	

ENFORCEMENT RESPONSE GUIDE SUMMARY OF ACTION			
Violation	Nature of the Violation	Enforcement Action	Personnel
12. Failure to develop and or implement BMP required by permit <u>Applies to:</u> Permitted Users	Not Significant; No Harm	- Informal Notice - NOV	Director ^e
	Significant; No Harm	- NOV - Review Meeting	
	Recurring; Not Significant or Significant; No Harm	- Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service	
	Significant; Harm	- AO - Civil Litigation - Criminal Prosecution - Terminate Service	
	Recurring; Significant; Harm	- Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service	
13. Violates prohibited discharge criteria or specific discharge prohibitions <u>Applies to:</u> Permitted Users	Not Significant; No Harm	- NOV	Director ^e
	Significant; No Harm	- NOV - Review Meeting	
	Recurring; Not Significant or Significant; No Harm	- Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service	
	Significant; Harm	- AO - Civil Litigation - Criminal Prosecution - Terminate Service	

	Recurring; Significant; Harm	<ul style="list-style-type: none"> - Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service 	
ENFORCEMENT RESPONSE GUIDE SUMMARY OF ACTION			
Violation	Nature of the Violation	Enforcement Action	Personnel
14. Slug load discharges <u>Applies to:</u> Unpermitted Users Permitted Users	No Harm	<ul style="list-style-type: none"> - Informal Notice - Slug Control Plan 	Director ^e
	Recurring; No Harm	<ul style="list-style-type: none"> - NOV and Slug Control Plan - Review Meeting and Slug Control Plan - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
	Harm	<ul style="list-style-type: none"> - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
	Recurring; Harm	<ul style="list-style-type: none"> - Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service 	
15. Violation of local limit or prohibited discharge criteria <u>Applies to:</u> Unpermitted Users	No Harm	<ul style="list-style-type: none"> - Informal Notice - Permit Application 	Director ^e
	Recurring; Not Significant or Significant; No Harm	<ul style="list-style-type: none"> - NOV and Permit Application - Review Meeting and Permit Application 	
	Significant; Harm	<ul style="list-style-type: none"> - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
	Recurring; Significant; Harm	<ul style="list-style-type: none"> - Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service 	

16. Failure to allow access to the facility, facility area, or facility records <u>Applies to:</u> Unpermitted Users Permitted Users	Entry denied or consent withdrawn; Copies of records denied	- Obtain warrant and return to IU	Director ^e
ENFORCEMENT RESPONSE GUIDE SUMMARY OF ACTION			
Violation	Nature of the Violation	Enforcement Action	Personnel
17. Failure to install and/or maintain monitoring equipment <u>Applies to:</u> Permitted Users	Not Significant	- Informal Notice - NOV	Director ^e
	Significant	- NOV - Review Meeting	
	Recurring Not Significant	- NOV - Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service	
	Recurring; Significant	- AO - Civil Litigation - Criminal Prosecution - Terminate Service	
18. Failure to properly operate and/or maintain treatment equipment <u>Applies to:</u> Permitted Users	Not Significant; No Harm	- Informal Notice - NOV	Director ^e
	Significant; No Harm	- NOV - Review Meeting	
	Recurring; Not Significant or Significant; No Harm	- Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service	

	Significant; Harm	<ul style="list-style-type: none"> - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
	Recurring; Significant; Harm	<ul style="list-style-type: none"> - Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service 	

ENFORCEMENT RESPONSE GUIDE SUMMARY OF ACTION			
Violation	Nature of the Violation	Enforcement Action	Personnel
19. Wastestreams are diluted in lieu of proper treatment <u>Applies to:</u> Permitted Users	Good Faith; No intent; No Harm	<ul style="list-style-type: none"> - Informal Notice - NOV 	Director ^e
	Recurring or Proven; No Harm	<ul style="list-style-type: none"> - Review Meeting - AO - Civil Litigation - Criminal Prosecution - Terminate Service 	
	Proven; Harm	<ul style="list-style-type: none"> - Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service 	
20. Failure to maintain sample point that allows for and does not interfere with representative sample collection <u>Applies to:</u> Permitted Users	First and Second Occurrence	<ul style="list-style-type: none"> - Informal Notice 	Director ^e
	Recurring	<ul style="list-style-type: none"> - NOV - Review Meeting - AO - Citation - Civil Litigation - Criminal Prosecution - Terminate Service 	
21. Inadequate recordkeeping <u>Applies to:</u>	IU's recordkeeping/files are incomplete and/or missing documents, Good Faith	<ul style="list-style-type: none"> - Informal Notice - NOV 	Director ^e

Permitted Users	IU's recordkeeping/files continue to be incomplete and/or missing documents or No Good Faith	<ul style="list-style-type: none"> - NOV - Review Meeting - AO - Citation - Civil Litigation - Criminal Prosecution - Terminate Service 	
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ENFORCEMENT RESPONSE GUIDE SUMMARY OF ACTION			
Violation	Nature of the Violation	Enforcement Action	Personnel
22. Failure to mitigate noncompliance or halt production <u>Applies to:</u> Permitted Users	Good Faith effort demonstrated Recurring or No Good Faith	-Review Meeting -AO - AO - Citation - Civil Litigation - Criminal Prosecution - Terminate Service	Director ^e
23. Any other violation not elsewhere described in the Enforcement Response Guide	Any	- NOV - Review Meeting - AO - Show Cause Order - Civil Litigation - Criminal Prosecution - Terminate Service	Director ^e
a. All violations may be subject to supplemental enforcement actions as defined in this ERP and include public notice, increased monitoring and reporting, and cost recovery for damages, abatement and remediation.			
b. All violations will be identified and documented within approximately ten (10) business days of receiving compliance information.			
c. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or termination of service.			
d. The city's enforcement actions will include specified date(s) at which the city expects a response from a user that has violated provisions of the ordinance. All violations will normally be addressed by the user within ten (10) to thirty (30) business days of the identification of noncompliance. The city will pursue users return to compliance as quickly as seems practical, taking into account as many factors as appropriate for the situation.			
e. Director of Public Works or the duly authorized representative of the Director of Public Works.			

[Insert TRA File Number]

[Insert Date]

[Insert Contract Party Pretreatment Representative Name]

[Insert Contract Party Pretreatment Representative Title]

City of [Insert name of City]

[Insert Street Address]

[Insert City], Texas [Insert Zip Code]

Dear [Mr./Ms.] [Insert Contracting Party Representative Last Name]:

Monitoring activities were conducted at [Insert name of SIU as it appears on Permit]. The enclosed analysis indicates noncompliance with the [Insert name of SIU as it appears on Permit]'s "Permit to Discharge Industrial Wastewaters to the Sanitary Sewer" at the time of the monitoring activity. [Note this opening paragraph can be adjusted to accommodate or explain other types of violations besides a violation(s) of a numeric permit limit.]

The City of [Insert name of City] (City) is responsible for the administration and enforcement of Ordinance No. [Insert all current Ordinance Nos. that were approved for the City under the TRA-TMCRWS Pretreatment Program]. The City and the Trinity River Authority (TRA) must also comply with the Environmental Protection Agency's (EPA) General Pretreatment Regulations (40CFR §403) and the Ordinance.

Therefore, a Notice of Violation (NOV) should immediately be sent to the industry with a request to submit within ten (10) business days of receiving this notice a report containing the following :

1. The problems(s) per the NOV issued.
2. The possible cause(s) of the problem(s).
3. The steps being taken to minimize or curtail the reoccurrence of the problem(s).

A copy of the NOV issued to the industry and the industry's report must be sent to the TRA's Pretreatment Division within one (1) month of the City's receipt of the TRA monitoring report.

The NOV must also be addresses by the City as to what its actions against the industry may be. This may entail a progressive enforcement, a fine, etc. Progressive enforcement is an essential part of the pretreatment enforcement program as required by the General Pretreatment Regulations.

[Insert Contract Party Pretreatment Representative Name]

[Insert Date of Letter]

[Insert TRA File Number]

Page 2

It is not the intent of the TRA to cause undue hardship for the industries in your City; however, enforcement of Ordinance No. *[Insert all current Ordinance Nos. that were approved for the City under the TRA-TMCRWS Pretreatment Program]* is a requirement of the TRA Ten Mile Creek Regional Wastewater System's (TMCRWS) Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010984001.

Sincerely,

[Insert Name of TRA Environmental Specialist]

Environmental Specialist

Enclosure *[Enclose a copy of the summary of the results identifying noncompliance and lab report if needed]*

cc: *[Insert Name]*, Manager, TMCRWS

[Insert Name], Environmental Supervisor, CRWS

[Insert Date]

[Insert SIU's Designated Signatory's Name]

[Insert SIU's Designated Signatory's Title]

[Insert name of SIU as it appears on the City's issued permit]

[Insert Street Address]

[Inset City], Texas [Insert Zip Code]

Re: Noncompliant Wastewater Discharge

Dear [Mr./Ms.] [Insert SIU's Designated Signatory's Last Name]:

Monitoring activities were conducted on [insert date(s) of sample collection event that is in noncompliance] at [Insert name of SIU as it appears on the City's issued permit] "Permit to Discharge Industrial Wastewater to the Sanitary Sewer" at the time of the monitoring activity.

This letter shall serve as an OFFICIAL NOTICE OF VIOLATION

[Note the opening paragraph and the "To Wit:" section can be adjusted to accommodate or explain other types of violations besides a violation(s) of a numeric permit limit.]

To Wit:

<u>Date</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Result</u> <u>(mg/L)</u>	<u>Daily Limit</u> <u>(mg/L)</u>	<u>Monthly Limit</u> <u>(mg/L)</u>
01/02/2014	Oil and Grease	001	205	200	NA

A report addressing the following must be submitted within ten (10) business days of the receipt of this letter:

1. Nature of the violation;
2. Cause(s) or possible cause(s) of problem(s) which resulted in the violation(s), and
3. Corrective action(s) taken to ensure compliance.

This notification shall not relieve the user of any expense, loss, damage, or other liability which may have incurred as a result of damage to the City's collection line, POTW, or any other damage to person(s) or property, nor shall this notification relieve the user of any fine, civil penalties, or other liabilities which may be imposed.

[Insert SIU's Designated Signatory's Name]

[Insert Date of Letter]

Page 2

It is not the intent of the City or the Trinity River Authority (TRA) to cause undue hardship for its industries; however, enforcement of Ordinance No. *[Insert all current Ordinance Nos. that were approved for the City under the TRA-TMCRWS Pretreatment Program]* is a requirement of the TRA Ten Mile Creek Regional Wastewater System's (TMCRWS) Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010984001.

Sincerely,

[Insert Contract Party Pretreatment Representative Name]

[Insert Contract Party Pretreatment Representative Title]

Enclosure *[Enclose a copy of the summary of the results identifying noncompliance and lab report if needed]*

cc: *[Insert Name of Normal onsite contact]*, *[Insert Title of this contact]*, *[Insert Name of SIU]*
[Insert Name], Environmental Specialist, TRA

on the quality of the wastewater it discharges to the sanitary sewer.

- 4a. *[Insert name of Industry]* is subject to the City Industrial Wastewater Ordinance, *[Insert all current Ordinance Nos. that were approved for the City under the TRA-TMCRWS Pretreatment Program]* which contains prohibitions, restrictions and other limitations on the quality of the wastewater it discharges to the sanitary sewer.
5. Pursuant to the ordinance *[Insert “and the above-referenced permit” if the User is permitted]*, data is routinely collected or submitted on the compliance status of *[Insert name of Industry]*.
6. This data shows that *[Insert name of Industry]* has violated the Industrial Wastewater Ordinance in the following manner:

[Note the violations could vary from examples provided below]

- a. *[Insert name of Industry]* has continuously violated its *[Insert either “permit limits” if user is permitted or “ordinance limits” if user is not permitted]* for *[Insert Pollutant Type; e.g., copper and zinc]* in each sample collected from *[Insert Date]* to *[Insert Date]*.
- b. *[Insert name of Industry]* has also failed to comply with an administrative compliance order requiring the installation of a pretreatment system and the achievement of compliance with its permit limits by *[Insert Date]*.
- c. *[Insert name of Industry]* has failed to appear at a show cause hearing pursuant to an order requiring said attendance.

ORDER

THEREFORE, BASED ON THE ABOVE FINDINGS, *[INSERT NAME OF INDUSTRY]* IS HEREBY ORDERED TO:

1. Within 24 hours of receiving this order, cease all non-domestic discharges into the City's sanitary sewer. Such discharges shall not recommence until such times as *[Insert name of Industry]* is able to demonstrate that it will comply with its current *[Insert “permit limits” if the User is permitted or “ordinance limits” if not permitted]*.
2. Failure to comply with this order may subject *[Insert name of Industry]* to having its connection to the sanitary sewer sealed by the City and assessed the costs therefore.
3. Failure to comply with this order shall also constitute a further violation of the Industrial

Exhibit 3 - Contracting Party Cease and Desist Order Example

Wastewater Ordinance and may subject *[Insert name of Industry]* to civil or criminal penalties or such other enforcement response as may be appropriate.

4. This order, entered this ____ day of _____ 20____, shall be effective upon receipt by *[Insert name of Industry]*.

Signed: _____

[Insert Name of Director of Public Works]

Director of Public Works

City of Lancaster

[Insert address of Director of Public Works]

CITY OF LANCASTER

IN THE MATTER OF * CONSENT ORDER

*

[INSERT NAME OF INDUSTRY] * DIRECTOR OF PUBLIC WORKS

[INSERT ADDRESS OF INDUSTRY] * [INSERT ADDRESS OF PUBLIC WORKS

* Director]

CONSENT ORDER

WHEREAS, the City of Lancaster pursuant to the powers, duties and responsibilities vested in and imposed upon the Director of Public Works by provisions of the City's Industrial Wastewater Ordinance, have conducted an ongoing investigation of *[Insert name of Industry]* and has determined that:

1. The City of Lancaster (hereafter, "City") discharges wastewater to the Trinity River Authority Ten Mile Creek Regional Wastewater Treatment System which has implemented a pretreatment program to control industrial discharges in accordance with the Texas Pollutant Discharge Elimination System Permit No. WQ0010984001.
2. *[Insert name of Industry]* discharges non-domestic wastewater containing pollutants into the sanitary sewer system of the City of Lancaster and is an industrial user as defined by the City's Industrial Wastewater Ordinance.
3. *[Insert name of Industry]* is subject to the City Industrial Wastewater Ordinance, *[Insert all current Ordinance Nos. that were approved for City under the TRA-TMCRWS Pretreatment Program]* which contains prohibitions, restrictions and other limitations on the quality of the wastewater it discharges to the sanitary sewer.
4. *[Insert name of Industry]* has consistently violated the pollutant limits in its wastewater discharge permit as set forth in Exhibit I, attached hereto.
5. Therefore, to insure that *[Insert name of Industry]* is brought into compliance with its permit limits at the earliest possible date, IT IS HEREBY AGREED AND ORDERED, BETWEEN *[INSERT NAME OF INDUSTRY]* AND THE DIRECTOR OF PUBLIC WORKS, FOR THE CITY OF LANCASTER, that *[Insert name of Industry]* shall:

Exhibit 4 – Contracting Party Consent Order Example

[Note, the tasks that an industrial user will need to accomplish to return to compliance can vary and the City may have additional requirements. The contents of a Consent order are going to be unique depending on the situation. The City can also choose to add additional penalties if steps are not completed; Two Example formats are given below. First example addresses the use of a compliance schedule. The second example places specific milestones/requirements in the body of the Consent Order].

Example 1:

- a. By *[Insert Date]*, submit a Compliance Schedule to the City with detailed timely increments of progress (hereafter, milestone) for the purpose of bringing *[Insert name of Industry]* into compliance with its wastewater discharge permit. Each milestone will need to have a specific start and completion date.
- b. Within *[Insert milestone report due dates, due date cannot be more than 14 days]* working days after each date, *[Insert name of Industry]* must submit to the City, in writing, a process report detailing the measures taken to comply with the requirements of the milestone.
- c. Beginning in *[Insert Month, Year]*, *[Insert name of Industry]* shall self-monitor at *[Identify location; e.g. Outfall 001]* for *[Insert parameter(s); e.g. copper and zinc]* using 40 CFR Part 136 approved methodologies at least *[insert frequency, e.g., once a month]*, and submit those results by *[Insert a timeframe of submittal]* for a period of *[insert duration]*.
- d. By *[Insert Date]*, *[Insert name of Industry]* must achieve compliance with the limits set forth in the industry's permit to discharge industrial wastewater to the sanitary sewer system.
- e. *[Insert name of Industry]* shall pay a maximum of One Thousand Dollars (\$1000.00) for each and every day it fails to comply with the schedule set out in items a through d above. *[Insert how payment shall be made, to whom, and by what timeframe within the City, e.g., The \$1,000 per day penalty shall be paid to the cashier of the City's Water Department within 5 days of being demanded by the City].*

Example 2:

- a. By *[Insert Date]*, obtain the services of a registered professional engineer specializing in wastewater treatment for the purposes of designing a pretreatment system, which will

Exhibit 4 – Contracting Party Consent Order Example

- bring *[Insert name of Industry]* into compliance with its wastewater discharge permit.
- b. By *[Insert Date]*, submit plans and specifications for the proposed pretreatment system to the City for review.
 - c. By *[Insert Date]*, install the pretreatment system in accordance with the plans and specifications submitted in item b above.
 - d. Beginning in *[Insert Month, Year]*, *[Insert name of Industry]* shall self-monitor at *[Identify location; e.g. Outfall 001]* for *[Insert parameter(s); e.g. copper and zinc]* using 40 CFR Part 136 approved methodologies at least *[insert frequency]*, and submit those results by *[Insert a timeframe of submittal]* for a period of *[Insert duration]*.
 - e. By *[Insert Date]*, *[Insert name of Industry]* must achieve compliance with the limits set forth in the industry's permit to discharge industrial wastewater to the sanitary sewer system.
 - f. *[Insert name of Industry]* shall pay a maximum of One Thousand Dollars (\$1000.00) for each and every day it fails to comply with the schedule set out in items a through e above. *[Insert how payment shall be made, to whom, and by what timeframe within the City, e.g., The \$1,000 per day penalty shall be paid to the cashier of the City's Water Department within 5 days of being demanded by the City.]*.
4. In the event *[Insert name of Industry]* fails to comply with any of the deadlines set forth. *[Insert name of Industry]* shall within *[Specify number of days]* working day(s) after expiration of the deadline, notify the City in writing. This notice shall describe the reasons for *[Insert name of Industry]* failure to comply, the additional amount of time needed to complete the remaining work, and the steps to be taken to avoid future delays. This notification in no way excuses *[Insert name of Industry]* from its responsibility to meet any later milestones required by this Consent Order.
 5. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve *[Insert name of Industry]* of its obligation to comply with its wastewater discharge permit, which remains in full force and effect. The City reserves the right to seek any and all remedies available to it under Section *[List applicable Ordinance Section Numbers]* of the City's Industrial Wastewater Ordinance for any violation cited by this order.
 6. Violation of this Consent Order shall constitute a further violation of the City's Industrial Wastewater Ordinance and subjects *[Insert name of Industry]* to all penalties described by

Exhibit 4 - Contracting Party Consent Order Example

Section *[List applicable Ordinance Section Numbers]* of the Industrial Wastewater Ordinance.

7. Nothing in this Consent Order shall be construed to limit any authority of the City to issue any other orders or take any other action which it deems necessary to protect the wastewater treatment plant, the environment or the public health and safety.

SIGNATORIES

FOR *[INSERT NAME OF INDUSTRY]*

Date

[Insert Designated Signatory's Name]
[Insert Name of Industry]

FOR CITY OF LANCASTER

Date

[Insert Name of Director of Public Works]
Director of Public Works
City of Lancaster
[Insert address of Director of Public Works]

CITY OF LANCASTER

IN THE MATTER OF

*

* ADMINISTRATIVE

[INSERT NAME OF INDUSTRY]

* SHOW CAUSE ORDER

[INSERT ADDRESS OF INDUSTRY]

*

LEGAL AUTHORITY

The following findings are made and order issued pursuant to the powers, duties and responsibilities vested in and imposed upon the Director of Public Works by provisions of the City's Industrial Wastewater Ordinance. This order is based on findings of violation of the conditions of the wastewater discharge permit issued under the City's Industrial Wastewater Ordinance.

FINDINGS

1. The City of Lancaster (hereafter, "City") discharges wastewater to the Trinity River Authority Ten Mile Creek Regional Wastewater Treatment System which has implemented a pretreatment program to control industrial discharges in accordance with the Texas Pollutant Discharge Elimination System Permit No. WQ0010984001.
2. [Insert name of Industry] discharges non-domestic wastewater containing pollutants into the sanitary sewer system of the City of Lancaster.
3. [Insert name of Industry] is a "significant industrial user" as defined by the City's Industrial Wastewater Ordinance.
4. [Insert name of Industry] was issued a wastewater discharge permit on [Insert the issuance date on the current wastewater permit] which contains prohibitions, restrictions, and other limitations on the quality of the wastewater it discharges to the sanitary sewer.
5. Pursuant to the ordinance and the above-referenced permit, data is routinely collected or submitted on the compliance status of [Insert name of Industry].
6. This data shows that [Insert name of Industry] has violated its wastewater discharge permit in the following manner: [Note the following are examples]
 - a. [Insert name of Industry] has violated its permit limits for [Insert Pollutant Type; e.g., copper and zinc] in each sample collected on [Insert Date] for a total of [Insert number

of violations] separate violations of this permit.

- b. *[Insert name of Industry]* has failed to submit a periodic compliance report due *[Insert Date]*.
- c. All of these violations satisfy the City's definition of significant violation.

ORDER

THEREFORE, BASED ON THE ABOVE FINDINGS, *[INSERT NAME OF INDUSTRY]* IS HEREBY ORDERED TO:

- 1. Appear at a meeting with the Director of Public Works to be held on *[Insert Date]*, at *[Insert Time]* in *[Insert Description of meeting location, e.g., the Water Department Conference Room at the City of Lancaster Municipal Building]*.
- 2. At this meeting, the industry must demonstrate why the City should not pursue judicial enforcement action against the industry at this time.
- 3. This meeting will be closed to the public.
- 4. Representatives of *[Insert name of Industry]* may be accompanied by legal counsel if they so choose.
- 5. Failure to comply with this order shall also constitute a further violation of the Industrial Wastewater Ordinance and may subject *[Insert name of Industry]* to civil or criminal penalties or such other appropriate enforcement response as may be appropriate.
- 6. This order, entered this ____day of _____ 20____, shall be effective upon receipt by *[Insert name of Industry]*

Signed: _____

[Insert Name of Director of Public Works]

Director of Public Works

City of Lancaster

[Insert address of Director of Public Works]

CITY OF LANCASTER

IN THE MATTER OF

*

*

[INSERT NAME OF INDUSTRY]

* ADMINISTRATIVE

[INSERT ADDRESS OF INDUSTRY]

* COMPLIANCE ORDER

LEGAL AUTHORITY

The following findings are made and order issued pursuant to the powers, duties and responsibilities vested in and imposed upon the Director of Public Works by provisions of the City's Industrial Wastewater Ordinance. This order is based on findings of violation of the conditions of the wastewater discharge permit issued under the City's Industrial Wastewater Ordinance.

FINDINGS

1. The City of Lancaster (hereafter, "City") discharges wastewater to the Trinity River Authority Ten Mile Creek Regional Wastewater Treatment System which has implemented a pretreatment program to control industrial discharges in accordance with the Texas Pollutant Discharge Elimination System Permit No. WQ0010984001.
2. [Insert name of Industry] discharges non-domestic wastewater containing pollutants into the sanitary sewer system of the City of Lancaster.
3. [Insert name of Industry] is a "significant industrial user" as defined by the City's Industrial Wastewater Ordinance.
4. [Insert name of Industry] was issued a wastewater discharge permit on [Insert the issuance date on the current wastewater permit] which contains prohibitions, restrictions and other limitations on the quality of the wastewater it discharges to the sanitary sewer.
5. Pursuant to the ordinance and the above-referenced permit, data is routinely collected or submitted on the compliance status of [Insert name of Industry].
6. This data shows that [Insert name of Industry] has violated its wastewater discharge permit in the following manner: [Note the following are examples]
 - a. [Insert name of Industry] has violated its permit limits for [Insert Pollutant Type; e.g., copper and zinc] in each sample collected on [Insert Date] for a total of [Insert number

of violations] separate violations of this permit.

- b. *[Insert name of Industry]* has failed to submit a periodic compliance report due since *[Insert Date]*.
- c. All of these violations satisfy the City's definition of significant violation.

ORDER

THEREFORE, BASED ON THE ABOVE FINDINGS, *[INSERT NAME OF INDUSTRY]* IS HEREBY ORDERED TO:

[Note, the tasks that an industrial user will need to accomplish to return to compliance can vary and the City may have additional requirements. The contents of a Compliance Order are going to be unique depending on the situation.]

- 1. Within *[Insert a specific number of days, e.g. 180]* days, install pretreatment technology which will adequately treat *[Insert name of Industry]*'s wastewater to a level which will comply with its wastewater discharge permit.
- 2. Within *[Insert a specific number of days, e.g. 5]* days submit all periodic compliance reports due since *[Insert Date]*.
- 3. Within *[Insert a specific number of days, e.g. 10]* days, pay to the cashier's office of the Municipal Court, City of Lancaster, a fine of \$2,000.00 for the above-described violations in accordance with *[List applicable Ordinance Section Number from Industrial Wastewater Ordinance]*, of the Industrial Waste Ordinance.
- 4. Report, on a monthly basis, the wastewater quality and the corresponding flow and production information as described on Page *[Insert appropriate page number of permit]* of the wastewater discharge permit, *[Insert Permit No.]* for a period of one year from the effective date of this order.
- 5. All reports and notices required by this order shall be sent in writing to the City and copied to the Trinity River Authority of Texas at the following addresses:

[Insert Name of Director of Public Works] [Insert Name of TRA Environmental Specialist]

Exhibit 6 - Contracting Party Compliance Order Example

Director of Public Works

Environmental Specialist

City of Lancaster

Trinity River Authority of Texas

[Insert address of Director of Public Works] 6500 W. Singleton Blvd.

Dallas, Texas 75212

6. This order does not constitute a waiver of the wastewater discharge permit which remains in full force and effect. The City of Lancaster reserves the right to seek any and all remedies available to it under Section [List applicable Ordinance Section Number from Industrial Wastewater Ordinance] of the Industrial Wastewater Ordinance for any violation cited by this order.
7. Failure to comply with the requirements of this order shall constitute a further violation of the Industrial Wastewater Ordinance and may subject [Insert name of Industry] to civil or criminal penalties or such other appropriate enforcement response as may be appropriate.
8. This order, entered this ____day of _____ 20____, shall be effective upon receipt by [Insert name of Industry]

Signed: _____

[Insert Name of Director of Public Works]

Director of Public Works

City of Lancaster

[Insert address of Director of Public Works]

LANCASTER CITY COUNCIL

City Council Regular Meeting

5.

Meeting Date: 03/08/2021

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

Goal(s): Financially Sound City Government

Submitted by: Carey Neal, Jr., Assistant City Manager

Agenda Caption:

Discuss and consider an ordinance granting a franchise for the collection and removal of industrial solid waste and recyclable materials to FFC Environmental Services Texas, LLC.

Background:

Article 13.1400 of the Lancaster Code of Ordinances requires all solid waste operators to obtain a franchise agreement in order to collect, haul, or transport solid waste or industrial solid waste and recyclable materials from commercial properties within the City of Lancaster. It is unlawful for any industrial waste operator to operate within the City of Lancaster without such a franchise. FFC Environmental Services Texas, LLC desires to do business in the City of Lancaster.

Operational Considerations:

FFC Environmental Services Texas, LLC provides hauling of commercial and industrial recycling. This franchise will allow them to do business in the City of Lancaster for a period of five years, unless the franchise is canceled. In addition, FFC Environmental Services Texas, LLC agrees to carry certain insurance policies for worker's compensation, automobile and public liability in which the City shall be named as additional insured.

In accordance with the Lancaster Charter Article 9, Section 9.06 (C) stating that "No franchise shall ever be granted until it has been approved by the majority of the City Council, after having been read in full at two (2) regular meetings of the City Council", this will count as the first reading of this franchise application.

This is the second reading and consideration of this franchise application.

Legal Considerations:

The City Attorney has reviewed and approved the attached ordinance and franchise agreement as to form.

Public Information Considerations:

This item is being considered at a Regular Meeting of the City Council, noticed in accordance with the Texas Open Meetings Act.

Fiscal Impact:

A street use fee of ten percent (10%) of the gross revenue collected from customers within the City limits by FFC Environmental Services Texas, LLC will be remitted to the city on a monthly basis.

Options/Alternatives:

1. City Council may conduct the second reading and approve the franchise agreement.
2. City Council may deny the franchise agreement.

Recommendation:

Staff recommends the second reading and approval of the ordinance granting a franchise agreement to FFC Environmental Services Texas, LLC.

Attachments

Ordinance

Franchise Agreement

Application

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, GRANTING TO FFC ENVIRONMENTAL SERVICES TEXAS, LLC, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AND FRANCHISE FOR THE TERM OF FIVE (5) YEARS TO USE THE PUBLIC STREETS, HIGHWAYS, OR THOROUGHFARES WITHIN THE CITY FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF COLLECTING AND TRANSPORTING SOLID WASTE AND RECYCLABLE MATERIALS FROM COMMERCIAL AND INDUSTRIAL PREMISES AND DEVELOPMENT PROJECTS WITHIN THE CITY; PROVIDING A STREET USE FEE; PROVIDING INSURANCE REQUIREMENTS; PROVIDING FOR CANCELLATION UPON THIRTY (30) DAY WRITTEN NOTICE; PROVIDING FOR DELAYS; PROVIDING FOR NOTICES; PROVIDING FOR ASSIGNMENT BY WRITTEN APPROVAL OF THE CITY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, FFC Environmental Services Texas, LLC (hereinafter "Company") desires to provide for the collection, removal and disposal of solid waste (recyclable materials) generated by businesses in the City; and

WHEREAS, FFC Environmental Services Texas, LLC has made application to the City requesting a franchise be granted permitting Company the use of public streets, highways, and thoroughfares within the City of Lancaster for the purposes of performing such services; and

WHEREAS, the City Council desires to grant to Company the right, privilege, and franchise for the term of five years to use the public streets, highways, and/or thoroughfares within the City for the purpose of engaging in solid waste collection, removal, and disposal.

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

SECTION 1. That the City Council hereby grants to FFC Environmental Services Texas, LLC, its successors and assigns, the right, privilege and franchise for the term of five (5) years to use the public streets, highways and/or thoroughfares within the City for the purpose of engaging in the business of collecting and transporting solid waste and recyclable materials from commercial and industrial premises and development projects within the City. This Franchise shall include and incorporate by reference the contents of Article 13.1400 of the City's Code of Ordinances regulating solid waste removal.

SECTION 2. That Company shall remit on the 15th day of each month a street use fee of ten (10%) percent of the gross revenue collected from customers within the City limits of Lancaster. City reserves the right to audit Company's records at any time with seven (7) days prior notice.

SECTION 3. That Company shall assume the risk of loss or injury to property or persons arising from any of its operations under this franchise and agrees to indemnify and hold harmless City from all claims, demands, suits, judgments, costs or expenses, including expenses of litigation and attorney's fees arising from any such loss or injury. Company agrees to carry insurance during the entire term of this franchise as follows: (a) Worker's compensation insurance covering all employees of such franchisee engaged in any operation covered by this ordinance. (b) Automobile and public liability insurance in amounts not less than those established as maximum recovery limits under the TEXAS CIVIL PRACTICE & REMEDIES CODE, or in accordance with any contract with the City, whichever is higher. Such policies of insurance shall be issued by companies authorized to conduct business in the State of Texas, and shall name the City as an additional insured. Certificates evidencing such insurance contracts shall be deposited with the City. The policy limits provided herein shall change in accordance with the provisions for maximum liability under the TEXAS CIVIL PRACTICE & REMEDIES CODE and the laws of the State of Texas relating to worker's compensation insurance.

SECTION 4. That this franchise may be cancelled by either party, with or without cause, at any time, upon thirty (30) days notice in writing, delivered by registered mail or in person. All written notices described herein shall be sent certified mail, postage prepaid, and addressed as follows:

Info to the City:

City of Lancaster
ATTN: City Manager
P. O. Box 940
Lancaster, TX 75146

Info to the Company:

FFC Environmental Services Texas, LLC
ATTN: Inigo Sanz
500 Simpson Stuart Road
Dallas, TX 75241

SECTION 5. That in the event that either party is delayed or hindered in or prevented from the performance of any required act by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, war or other reason of a similar nature not the fault of the party delayed in performing work or doing acts required under this ordinance, then performance of that act shall be excused for the period of the delay and the period for the performance of that act shall be extended for an equivalent period.

SECTION 6. That no assignment of this franchise shall be valid or binding unless the assignment is in writing approved by the City of Lancaster.

SECTION 7. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 8. This Ordinance shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 22nd day of February 2021.

ATTEST:

Sorangel O. Arenas, City Secretary

APPROVED:

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

CITY OF LANCASTER

COUNTY OF DALLAS

§
§
§
§

**SOLID WASTE DISPOSAL FRANCHISE
AGREEMENT**

THIS AGREEMENT is made and entered into this 8th day of March, 2021 by and between the City of Lancaster, Texas (hereinafter "City") and FFC Environmental Services Texas, LLC (hereinafter "Company").

WITNESSETH:

WHEREAS, the City desires to enter into an agreement providing for the disposal of solid waste and recycle generated by businesses in the City; and

WHEREAS, the Company desires to enter into a franchise agreement (hereinafter "Franchise") with the City to provide for the collection and removal of solid waste;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the City and Company agrees as follows:

1. This Franchise shall be effective as of the first day of April, 2021 and shall continue in effect for a period of five (5) years. This Franchise shall include and incorporate by reference the contents of Article 13.1400 of the City's Code of Ordinances regulating solid waste removal.

2. Company shall remit on the fifteenth day of each month a street use fee of ten (10) percent of the gross revenue billed from customers within the City limits of Lancaster. City reserves the right to audit Company's records at any time with seven days prior notice.

3. Company shall assume the risk of loss or injury to property or persons arising from any of its operations under this franchise and agrees to indemnify and hold harmless City from all claims, demands, suits, judgments, costs or expenses, including expenses of litigation and attorney's fees arising from any such loss or injury. Company agrees to carry insurance during the entire term of this agreement as follows:

(a) Worker's compensation insurance covering all employees of such franchisee engaged in any operation covered by this agreement.

(b) Automobile and public liability insurance in amounts not less than those established as maximum recovery limits under the Texas Civil Practice and Remedies Code, or in accordance with any contract with the city, whichever is higher.

Such policies of insurance shall be issued by companies authorized to conduct business in the State of Texas, and shall name the city as an additional insured. Certificates evidencing such insurance contracts shall be deposited with the city. The policy limits provided herein shall change in accordance with the provisions for maximum liability under the Texas Civil Practice and Remedies Code and the laws of the State of Texas relating to worker's compensation insurance.

4. This Franchise may be cancelled by either party, with or without cause, at any time, upon thirty (30) days' notice in writing delivered by registered mail or in person.

5. In the event that either party is delayed or hindered in or prevented from the performance of any required act by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, war or other reason of a similar nature not the fault of the party delayed in performing work or doing acts required under the terms of this agreement, then performance of that act shall be excused for the period of the delay and the period for the performance of that act shall be extended for an equivalent period.

6. All written notices described herein shall be mailed certified, and addressed to:

If to the CITY:
City of Lancaster
ATTN: City Manager
P. O. Box 940
Lancaster, Texas 75146-0946

If to the Company:
FFC Environmental Services Texas, LLC
ATTN: Inigo Sanz
10077 Grogans Mill Road, Suite 466
The Woodlands, Texas 77380

7. No assignment of this Franchise shall be valid or binding unless the assignment is in writing approved by the City of Lancaster.

8. This Franchise contains all the terms and conditions agreed on by the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Franchise, shall be deemed to exist or to bind any of the parties.

9. This Franchise shall be executed in duplicate by the parties, each to have the full force and effect of an original for all purposes.

IN WITNESS WHEREOF, that parties hereto have executed this **FRANCHISE** as of the day and year first written above.

FFC Environmental Services Texas, LLC
(company name)

By: _____
(authorized agent signature)

(print name)

Its: _____
(title)

City of Lancaster, Texas

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney



CITY OF LANCASTER
SOLID WASTE HAULERS
Franchise Application



Solid waste franchise fee is 10% of the gross revenue collected from customers within the City limits of Lancaster. The payment is made monthly on the fifteenth of each month. The payment must be accompanied with the City's monthly report form.

This permit allows a company to use the public streets, highways, or thoroughfares within the City of Lancaster for the purpose of engaging in the business of collecting and transporting solid waste and recyclable materials from commercial and industrial premises and development projects within the City.

Please complete the following information and return to the City Secretary's Office, 211 N. Henry St., Lancaster, Texas, 75146. This franchise, if approved by City Council, shall expire on April 1, 2026.

Business Name: FCC Environmental Services Texas, LLC

Owner's (President, CEO, etc.) Name: INIGO SANZ

Title: CEO

Representative's Name: _____

Title: _____

Location Address: 5200 Simpson Stuart Rd, Dallas, TX, 75241

Mailing Address: 10077 Grogans Mill Rd, Suite 466, The Woodlands, TX 77380

Phone Number: 832-460-3560

Type of Business: Waste and Recycling

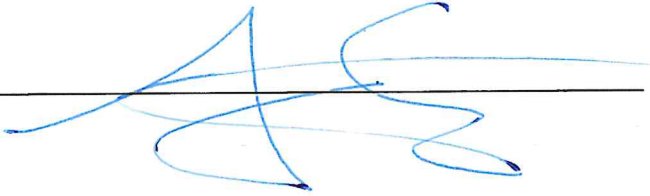
Is the business a: Corporation _____ Association _____ Partnership _____

Other (name the type) LLC

Authorized Signature: _____

Date: 2/4/2021

I INIGO SANZ, as CEO of FCC ENVIRONMENTAL SERVICES TEXAS, L
(Owner's Name) (Title) (Company Name)
understand and agree to the terms of this franchise. I assign JEFF MORLEY
(Name)
as representative of FCC ENVIRONMENTAL SOL. TEXAS in dealing with the requirements
(Company Name)
of this permit.



State of Texas

County of Montgomery

Before me, a notary public, on this day personally appeared Inigo Sanz,
known to me to be the person whose name is subscribed to the foregoing document and,
being by me first duly sworn, declared that the statements therein are true and correct.
Given under my hand and seal of office this 5th day of February, 2021.

Maria F Naumann
Notary Public Signature



LANCASTER CITY COUNCIL

City Council Regular Meeting

6.

Meeting Date: 03/08/2021

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

Goal(s): Financially Sound City Government
Quality Development

Submitted by: Shane Shepard, Director of Economic Development

Agenda Caption:

Discuss and consider a resolution ratifying a grant agreement, in an amount not to exceed one hundred eighty thousand dollars (\$180,000), with DW Distribution, Inc. (DWD) from funds collected from the one-fourth (1/4) of one (1) percent additional sales and use tax for the promotion and development of new and expanded business enterprises, as authorized by state law.

Background:

DWD is a regional light manufacturing operation that builds door units for residential construction. The company has been in business for over sixty (60) years and is expanding their warehousing and distribution at their current facility. They are splitting off manufacturing operations and moving them to Lancaster. The Lancaster location allows DWD the capacity to expand manufacturing operations by three hundred percent (300%). The expected average wage at the new Lancaster facility is \$50,000. DWD also operates facilities in Round Rock, Oklahoma City and Arlington, in addition to Desoto.

DWD submitted a request for one hundred eighty thousand dollars (\$180,000) to offset a portion of development costs related to a facility that they plan to lease, subject to this incentive, located at 2001 Daniieldale Road. DWD plans to lease a minimum of one hundred eighty-five thousand nine hundred (185,900) square feet of a building that is currently vacant. DWD agrees to maintain a taxable value of business personal property at the facility of a minimum of two million dollars (\$2,000,000).

DWD will be required to meet the following obligations:

1. **Occupation of Facility** – DWD agrees to occupy the facility within twelve (12) months of approval of the incentive request by City Council;
2. **Certificate of Occupancy** – DWD agrees to obtain a Certificate of Occupancy for the facility within twelve (12) months of approval of the incentive request by City Council;
3. **Documentation of Costs** – DWD agrees to document costs associated with occupancy of the building. A maximum of one hundred eighty thousand dollars (\$180,000) is available for reimbursement of the allowable expenditures. Rebated funds will be limited to reimbursements of actual expenditures for eligible expenditures. Receipts totaling an amount of at least one hundred eighty thousand dollars (\$180,000) for said purchases must be submitted to the City of Lancaster, Department of Economic Development. Grant expenditures may be less if eligible costs are less than one hundred eighty thousand dollars (\$180,000);
4. **Job Creation** – DWD agrees to add no fewer than sixty (60) jobs within twelve months of City Council approval of this Agreement;
5. **Capital Investment** – DWD must maintain a minimum taxable business personal property valuation of two million dollars (\$2,000,000);

6. **Payment of City Fees** – DWD is required to pay all City-related development fees for the project; and
7. **Reporting** – DWD is required to submit annual reports for the term of this Agreement documenting expenditures, and employment rolls.

Operational Considerations:

The administrative elements of monitoring the incentive agreement are well within the scope of staff activities.

Legal Considerations:

The City Attorney has reviewed and approved the resolution and agreement as to form.

Public Information Considerations:

This item is being considered at a meeting of the City Council, noticed and held in accordance with the Texas Open Meetings Act. At the March 3, 2021, special meeting of the Economic Development Corporation, the item was approved.

Fiscal Impact:

The total incentive cost will not exceed one hundred eighty thousand dollars (\$180,000) over the term of the agreement. Adequate funds are available in the Lancaster Economic Development Corporation account balance, however, were not budgeted for the current fiscal year when the first payment is anticipated to be requested.

Options/Alternatives:

1. City Council may approve the resolution, as presented.
2. City Council may deny the resolution.

Recommendation:

Staff concurs with the Lancaster Economic Development Corporation and recommends approval.

Attachments

Resolution

Exhibit A - Performance Agreement

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT GRANT AGREEMENT BY AND BETWEEN THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER TEXAS, (LEDC) AND DW DISTRIBUTION, INC. (DWD) AND AUTHORIZING THE LEDC TO ENTER INTO A FORMAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, DW Distribution, Inc. seeks to lease and move its manufacturing operations to a recently completed building located at 2001 Daniieldale Road; a location within the City of Lancaster, Texas; and

WHEREAS, pursuant to Lancaster Economic Development Corporation (hereinafter "LEDC") Resolution 2021-01-03, which was passed and approved on the 3rd of March, 2021 by the Board of Directors of the LEDC, providing an incentive grant to DW Distribution, Inc.; and

WHEREAS, the City of Lancaster and LEDC recognize the importance of their continued role in economic development in the community of Lancaster; and

WHEREAS, the City of Lancaster and LEDC are authorized by state law to issue grants in order to promote local economic development by stimulating the local economy; and

WHEREAS, an Economic Development Grant Agreement containing the terms of the grant of incentives from the LEDC is appropriate.

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

SECTION 1. . The City Council of the City of Lancaster, Texas ratifies the March 3, 2021 actions of the Board of Directors of the LEDC approving a Grant Agreement by and between DW Distribution, Inc. and the Lancaster Economic Development Corporation, as set forth in and incorporated by reference as Exhibit A.

SECTION 2. The City Council authorizes the LEDC to enter into the Grant Agreement with DW Distribution, Inc.

SECTION 3. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 8th day of March, 2021.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

EXHIBIT A PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between **DW DISTRIBUTION, INC., a** Texas corporation, (hereinafter referred to as “Developer”), and the **LANCASTER ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “LEDC”), is made and executed on the following recitals, terms and conditions.

WHEREAS, LEDC is a Type A economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended (also referred to as the “Act”), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (F) recycling facilities; . . . (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities”; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; and

WHEREAS, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless LEDC enters into an Agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by LEDC’s investment; a schedule of capital investments to be made as consideration for any direct incentives provided by LEDC to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

WHEREAS, Developer has applied to LEDC for financial assistance necessary occupy and commence operations at its spec building to be constructed within the city limits of the City of Lancaster, Texas; (“the Facility”) on real property owned by the Developer (“the Property”) and

WHEREAS, the LEDC’s Board of Directors have determined the financial assistance provided to Developer for Facility operations located on the Property is consistent with and meets the definition of “project” as that term is defined in Sections 501.101 and 501.103 of the Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152

of the Texas Local Government Code; and

WHEREAS, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Lancaster, Texas, to approve all programs and expenditures of LEDC, and accordingly this Agreement is not effective until City Council has approved this Agreement at a City Council meeting called and held for that purpose.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LEDC and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until **February 19, 2023**, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.
- (c) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a certificate of occupancy (or its local equivalent) for the Facility.
- (d) **City.** The word “City” means the City of Lancaster, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 211 N. Henry Street, Lancaster, Texas 75146.
- (e) **Developer.** The word “Developer” means **DW DISTRIBUTION, INC.** a Texas corporation, its successors and assigns, whose address for the purposes of this Agreement is 1200 E. Centre Park Blvd., DeSoto, TX 75115.

- (f) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the Developer and LEDC, following approval by their respective Council and Board.
- (g) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (h) **Facility.** The word “Facility” means Developer’s warehousing/office facilities constructed on the Property. In order to qualify as the “Facility” under this Agreement, the facility must meet all of the following criteria: (1) be located within the City; (2) contain at least 185,900 square feet, (3) maintain a taxable value for business personal property of at least \$2,000,000; and (4) improvements to the Facility must be completed and a Certificate of Occupancy obtained within twelve (12) months from the Effective Date of the Agreement and maintained throughout the Term of this Agreement.
- (i) **Full-Time Equivalent Employment Positions.** The words “Full-Time Equivalent Employment Position(s)” mean a job: (i) with an average annual wage of at least \$45,000; and (ii) requiring a minimum of one thousand nine hundred and twenty (1,920) hours of work averaged over a twelve-month period with such hours also to include any vacation and sick leave.
- (j) **LEDC.** The word “LEDC” means the Lancaster Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is P.O. Box 940, Lancaster, Texas 75146.
- (k) **Program Payment.** The words “Program Payment” mean the economic development funds provided by the LEDC to Developer in accordance with the Agreement.
- (l) **Property.** The word “Property” means Developer’s ±14.75-acre tract or tracts of land located at 2001 Daniieldale Road in Nathan P. Pierce Survey, Abstract No. 1132, City of Lancaster, Dallas County, Texas, as generally described and/or depicted in ***Exhibit A*** of this Agreement, which is attached hereto and incorporated herein for all purposes, together with any other adjacent land owned or hereafter acquired by Developer.
- (m) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.

Developer covenants and agrees with LEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Occupation of Facility.** Developer covenants and agrees to occupy the Facility within twelve (12) months of the Effective Date of this Agreement.

- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained a Certificate of Occupancy from the City for the Facility located on the Property within twelve (12) months of the Effective Date of this Agreement.
- (c) **Operation of Facility.** Developer covenants and agrees to maintain and actively Operate the Facility located on the Property beginning within twelve (12) months of the Effective Date of this Agreement and during the remainder of the Term of this Agreement.
- (d) **Payment of City Fees.** Developer covenants and agrees to pay to the City all City-related development fees for the development of the Property, construction of the Facility and for Facility Operations. Those fees include (but may not be limited to) the following: special use permit fees, building permit fees, sign permit fees, plan review fees, plumbing, heating and electrical permit fees, grading permit fees, architectural review fees, variance application fee, and zoning change fee. Further, Developer covenants and agrees to submit to the LEDC invoices, receipts, or other documentation indicating the amount of City-related development fees paid for the development of the Property in a reimbursable amount (as defined below in Section 5(a)).
- (e) **Definition of and Documentation of Machinery/Infrastructure Costs.** Developer covenants and agrees to obtain accurate invoices, receipts, and other written documentation regarding the amount of machinery and infrastructure costs actually incurred and paid for the development of the Property and construction of the Facility. Those costs include the following machinery costs: costs of sound-abatement equipment for the facility including dust collector silencer/muffler, acoustic treatment, and acoustic engineering/design costs, and infrastructure costs for street, sewer and water improvements to the Property in support of the Facility. All costs for which reimbursement is sought must be actual paid and incurred costs. Further Developer covenants and agrees to submit to the LEDC invoices, receipts, or other documentation indicating the amount of City-related development fees paid for the development of the Property in a reimbursable amount (as defined below in Section 5(b)).
- (f) **Full-Time Equivalent Employment Positions.** Developer covenants and agrees to establish not fewer than sixty (60) new Full-Time Equivalent Employment positions within twelve (12) months of the Effective Date of this Agreement as documented by payroll rolls submitted annually on the anniversary of the day of the Effective Date of this Agreement, such positions to be maintained throughout the Term of this Agreement and to provide complete reports to the LEDC on an annual basis verifying the employment for each preceding calendar year by January 30th of each year after receiving a Certificate of Occupancy for the Facility. Developer covenants and agrees to make best efforts to hire Lancaster residents within the term of the agreement.
- (g) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and

between Developer and LEDC.

- (h) **Business Personal Property Valuation.** Developer covenants and agrees that the value of Business Personal Property at the Facility will meet Dallas Central Appraisal District values of at least two million dollars (\$2,000,000) for each valuation year beginning the with first full tax-year after obtaining a Certificate of Occupancy for the Facility. Developer will also provide BPP reports to LEDC on an annual basis for each preceding calendar year by January 30th of the following year after obtaining a Certificate of Occupancy from the City.
- (i) **Annual Reports.** Developer will provide City with an Annual Report within thirty (30) days of the first seven (7) years of the anniversary of the Effective Date of this Agreement, containing the following information: (1) evidence of payment of property taxes for Business Personal Property for Facility for proceeding year; (2) evidence of payment of all City fees associated with finish-out of building (first report only); (3) documentation of machinery costs including invoices and evidence of payment (first report only); and (4) employment roll including identification number, city of residence and annual salary for preceding year.

SECTION 5. AFFIRMATIVE COVENANTS OF LEDC.

LEDC covenants and agrees with the Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Reimbursement for Payment of City Fees.** LEDC covenants and agrees within thirty (30) days of receipt and acceptance of Developer's invoices, receipts, and other documentation indicating the amount of City fees paid in accordance with Section 4(d) of this Agreement and submitted no later than June 1, 2022, that LEDC will reimburse Developer for one hundred percent (100%) of cost of City fees actually incurred and paid, up to a maximum amount (together with Section 5(b) incentives) of **One Hundred Eighty Thousand and no/100 dollars (\$180,000.00).**
- (b) **Reimbursement for Machinery/Infrastructure Costs.** LEDC covenants and agrees within thirty (30) days of receipt of Developer's invoices, receipts, and other documentation indicating the amount of infrastructure costs paid in accordance with Section 4(e) of this Agreement and submitted no later than February 28, 2021, that LEDC will reimburse Developer for one hundred percent (100%) of all qualifying machinery/ infrastructure costs for the Property and/or Facility actually incurred and paid, up to a maximum amount (together with Section 5(a) incentives) of **One Hundred Eighty Thousand and no/100 dollars (\$180,000.00).**
- (c) **Timing of Payment.** An initial Program Payment of up to a maximum of one hundred and fifty thousand and no/100 dollars (\$150,000.00) shall be payable within sixty (60) days of receipt and acceptance of Developer's invoices, receipts and other documentation

indicating the amount of City fees paid in accordance with Section 4(d) of the Agreement, and qualifying machinery/infrastructure costs paid in accordance with Section 4(e) of the Agreement, and submitted within sixty (60) days of obtaining a Certificate of Occupancy and no later than June 1, 2022. A second Program Payment of up to a maximum of thirty thousand and no/100 dollars (\$30,000.00) shall be payable upon the first anniversary of receipt of the Certificate of Occupancy for the Facility.

(d) Maximum LEDC Payment under this Agreement. The Parties agree that, notwithstanding anything to the contrary in this Agreement or any other Agreement involving the Facility and/or Property, LEDC's maximum payment to Developer (provided all conditions precedent to payment set forth herein are met) shall be **One Hundred Eighty Thousand and no/100 Dollars (\$180,000.00)**. **The Parties expressly agree that the total maximum possible Program Payment under Sections 5(a) and 5(b) is a total of \$180,000.00, and not two separate \$180,000.00 Program Payments.**

SECTION 6. CESSATION OF ADVANCES

If LEDC has made any commitment to make any advance of financial assistance to Developer, whether under this Agreement or under any other agreement, LEDC shall have no obligation to advance or disburse any financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs and is not cured within the time period provided in Section 8.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or LEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or LEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and LEDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the LEDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (e) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or

contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from LEDC and/or Dallas County Central Appraisal District is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have ninety (90) days to cure a default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate, institute cessation of Program Payments or claw back provisions as set forth herein, or maintain a cause of action for damages caused by the event(s) of default. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by LEDC to Developer pursuant to Section 5 of this Agreement shall become immediately due and payable by Developer to the LEDC.

SECTION 9. INDEMNIFICATION.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts or federal courts for Dallas County,

Texas.

- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party, with the exceptions of an assignment from Developer to a Lender for initial project funding and an assignment to an Approved Assignee. A copy of any such assignment shall be provided to LEDC within thirty (30) days of execution. Should consent be withheld by the LEDC, Developer may terminate this Agreement upon written notice to the LEDC. Notwithstanding anything herein to the contrary, upon such Notice from Developer, such termination shall not be deemed a Default under this Agreement.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. LEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (h) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:

if to Developer:

DW Distribution, Inc.
1200 E. Centre Park Blvd.
DeSoto, TX 75115

if to LEDC:

Lancaster Economic Development Corporation
P.O. Box 940
Lancaster, Texas 75146
Attn: Shane Shephard

- (i) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (k) **Undocumented Workers.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date LEDC notifies Developer of the violation.
- (l) In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85th Leg., R.S. (2017)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (m) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S.B. 252, 85th Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (n) **Estoppel Certificate.** Upon written request by Developer to LEDC, LEDC will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.

[The Remainder of this Page Intentionally Left Blank]

DEVELOPER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND DEVELOPER AGREES TO ITS TERMS. THIS PERFORMANCE AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

DEVELOPER:

DW DISTRIBUTION, INC.

a Texas corporation,

By: _____

Nathan Potter

CEO

Date Signed: _____

STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

This instrument was acknowledged before me on the ____ day of March, 2021, by _____ of DW Distribution, Inc., a Texas corporation, on behalf of said Texas corporation.

Notary Public, State of Texas

LEDC:

***LANCASTER ECONOMIC
DEVELOPMENT CORPORATION,***
a Texas non-profit corporation

By: _____

Ted Burk

President

Date Signed: _____

ATTEST:

Secretary

STATE OF TEXAS

§

§

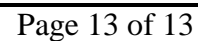
COUNTY OF DALLAS

§

This instrument was acknowledged before me on the _____ day of March, 2021, by Ted Burk, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, on behalf of said Texas corporation.

Notary Public, State of Texas

[Legal Description and/or Depiction of Property]



LANCASTER CITY COUNCIL

City Council Regular Meeting

7.

Meeting Date: 03/08/2021

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

Goal(s): Financially Sound City Government
Quality Development

Submitted by: Opal Mauldin-Jones, City Manager

Agenda Caption:

Discuss and consider a resolution ratifying the terms and conditions of a contract by and between HMWK, LLC and the Lancaster Economic Development Corporation (LEDC) in an amount not to exceed seventy-five thousand dollars (\$75,000) from funds collected from the one-fourth (1/4) of one (1) percent additional sales and use tax for services to the City relating to the creation of a municipal special-purpose district.

Background:

The City of Lancaster is considering the creation of a municipal special purpose district whose primary purpose is the advancement of economic development and the support of economic activity within the community including manufacturing and distribution activity. Creation of the district is governed by state law including Sections 52 and 52a, Article III, and Section 59, Article XVI, of the Texas Constitution, and the creation of a special-purpose district requires enabling legislation to be passed by the state legislature.

HMWK, LLC., is a firm that specializes in drafting legislation and performing professional services related to the creation of special-purpose districts. The agreement includes professional services fees in an amount not to exceed seventy-five thousand dollars (\$75,000), which includes expenses and the following:

- Drafting and finalizing special purpose district-creation legislation at the direction of the City;
- Identifying and monitoring legislation and regulations affecting the City's interests with specific emphasis on Lancaster's regulatory, economic development and sales and use tax position;
- Promoting legislative, regulatory and executive governmental services before state policy and regulatory organizations as directed;
- Facilitating meetings between City representatives and key state and local officials and agency administrators/regulators;
- Working with City officials, its governmental affairs team and allies (including key local business interests) to ensure, to the extent appropriate and feasible, a coordinated strategy and effort; and
- Providing Texas governmental affairs services as directed before the Texas Legislature, Executive Administration and other regulatory agencies concerning items and issues surrounding and resulting from activities of the 87th Session of the Texas Legislature relevant to the special-purpose district.

As the Legislature has the sole discretion to pass or deny the enabling legislation, and there are many pieces of legislation proposed for a brief legislative session, there is no guarantee that this effort will result in action by the Texas Legislature and Governor. However, if legislation is approved, it will

strengthen the economic position of the city and further our efforts to retain, recruit and finalize economic development within our community.

Legal Considerations:

The City Attorney has reviewed and approved the resolution and agreement as to form.

Public Information Considerations:

This item is being considered at a meeting of the City Council, noticed and held in accordance with the Texas Open Meetings Act. At the March 3, 2021, special meeting of the Economic Development Corporation, the board approved the agreement.

Fiscal Impact:

The contract, if fully exercised, totals seventy-five thousand dollars (\$75,000) from the LEDC fund.

Options/Alternatives:

1. City Council may approve the resolution, as presented.
2. City Council may deny the resolution.

Recommendation:

Staff recommends approval of the item, as presented.

Attachments

Resolution

Exhibit A - Contract

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION AND HMWK, LLC IN AN AMOUNT NOT TO EXCEED \$75,000.00 FOR SERVICES RELATING TO THE CREATION OF A MUNICIPAL SPECIAL-PURPOSE DISTRICT; AUTHORIZING THE LEDC TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Lancaster Economic Development Corporation ("LEDC") desires to contract with HMWK, LLC to provide services to the City of Lancaster, Texas ("City") related to the potential creation of a municipal special purposes district, as authorized by state law including Sections 52 and 52a, Article III and Section 59, Article XVI of the Texas Constitution, to promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the commercial areas of the City; and

WHEREAS, on March 3, 2021, the Board of Directors of LEDC passed and approved Resolution 2021-03-02 authorizing the LEDC to enter into an Agreement with HMWK, LLC for services in an amount not to exceed \$75,000.00 related to the potential creation of a municipal special-purpose district within the City, including drafting proposed State legislation establishing the special-purpose district and lobbying efforts related to the creation of the proposed special purpose district by the 87th Session of the Texas Legislature; and

WHEREAS, the City of Lancaster and LEDC recognize the importance of their continued role in economic development in the community of Lancaster; and are authorized by state law to promote local economic development by stimulating the local economy; and

WHEREAS, the City Council of the City of Lancaster Texas finds it is in the best interest of the citizens of the City to ratify the actions of the LEDC Board of Directors at the March 3, 2021 LEDC Meeting and to authorize the LEDC to enter into and execute an Agreement with HMWK, LLC which will benefit the City through the provision of services related to the potential creation of a municipal management district within the City.

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

SECTION 1. The City Council of the City of Lancaster, Texas ratifies the March 3, 2021 actions of the Board of Directors of the LEDC approving an Agreement by and between HMWK, LLC and the LEDC, as set forth in and incorporated by reference as Exhibit "A".

SECTION 2. The City Council authorizes the LEDC to enter into the Agreement with HMWK, LLC and to execute the Agreement;

SECTION 3. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 8th day of March, 2021

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

EXHIBIT A

CONTRACT

The following will constitute the sole state governmental affairs representation contract between HMWK, LLC ("HMWK" hereinafter) and the Lancaster Economic Development Corporation. ("LEDC" hereinafter), or its successor in interest. This Agreement will not affect the existing contract between HMWK and the City of LEDC, Texas ("City") for provision of the draft stage special-purpose district legislation for the fee of \$7,500.

- A. Upon execution of this contract, LEDC shall engage the services of HMWK, on a nonexclusive basis, as an independent contractor with the responsibility for providing state governmental affairs and tax policy services to the City. It is understood that the City may also designate LEDC staff and elected officials to work with HMWK to accomplish the special-purpose district legislative goals. Such services may initially include, but are not limited to, the following:
1. Finalize the draft-stage special-purpose district legislation at the direction of City. Identify and monitor legislation and regulations affecting City's interests with specific emphasis on it's regulatory, economic development and sales and use tax position.
 2. Legislative, regulatory and executive governmental affairs services before state policy and regulatory organizations as directed. HMWK will provide tax policy and governmental affairs services to and on behalf of City before the Governor's office of Economic Development, Texas Comptroller's office and other policy organizations as directed by City.
 3. Facilitate meetings between City representatives and key, state and local officials and agency administrators / regulators.
 4. Work with City officials, its lead governmental affairs team and allies, including key local business interests to ensure, to the extent appropriate and feasible, a coordinated strategy and effort.
 5. Provide City with Texas governmental affairs services as directed before the Texas Legislature, Executive Administration and other regulatory agencies concerning items and issues surrounding and resulting from activities of the 87th Session of the Texas Legislature.
- B. For such engagement outlined in A(1)-(5), LEDC will pay HMWK the sum of SIXTY SEVEN THOUSAND FIVE HUNDRED and no/100 DOLLARS (\$67,500.00) for activities associated with the 87th Legislative Session and any subsequent special sessions as called by the Governor. The fee shall be paid in 6 equal monthly installments of \$11,250 beginning March 15, 2021. The fee shall not cover expenses such as air courier, reproduction, postage, entertainment, and travel costs, which shall be billed and payable by LEDC subject to prior approval by LEDC if in excess of \$100.00, and with a maximum not-to-exceed sum of SEVENTY-FIVE THOUSAND and no/100 DOLLARS (\$75,000.00).

- C. It is understood that HMWK will function as an independent contractor and will hold themselves out as such and will be without authority to obligate LEDC or City for indebtedness or other legal obligation.
- D. All governmental affairs activities by HMWK on behalf of City and/or LEDC will be done in a prompt manner and in accordance with all applicable federal, state and local laws and regulations and professional standards. City and/or LEDC shall not require HMWK to perform any action or take part in any activity that is illegal or contrary to applicable federal, state and local laws and regulations and professional standards.
- E. It is understood that HMWK will be responsible for all appropriate filings including registration and activity reports to comply with all required state ethics and lobbying laws.
- F. The effective date of this contract is March 9, 2021, and it shall terminate on December 31, 2021; provided, however, that this contract can be extended by mutual agreement between LEDC and HMWK.
- G. Notwithstanding any other provision in this contract either party may terminate this contract without cause by giving written notice at least thirty (30) days prior to the date of termination. Any payment due for a period which has been interrupted by termination of this contract shall be pro-rated for the number of days the contract remained in effect. Except for such partial payment, no further payments will be due from LEDC.
- H. The parties agree that this Agreement shall be interpreted via the laws of the State of Texas, and any legal action brought regarding the services or subject matter of this Agreement shall be brought in a court of competent jurisdiction located in Dallas County, Texas.

HMWK, LLC
John Kroll, Principal
March 9, 2021

Lancaster Economic Development Corporation
Ted Burk, Board President
March 9, 2021

LANCASTER CITY COUNCIL

City Council Regular Meeting

8.

Meeting Date: 03/08/2021

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

Goal(s): Financially Sound City Government
Quality Development

Submitted by: Shane Shepard, Director of Economic Development

Agenda Caption:

Discuss and consider a resolution supporting proposed legislation to create a municipal special-purpose district whose primary purpose is the advancement of economic development and the support of economic activity within the community.

Background:

The City is working with HMWK, LLC to assist in drafting legislation to create a municipal special-purpose district that will improve the competitiveness of Lancaster in attracting new economic development investments and improving economic equity for the community. The special purpose district would reduce statutory limitations to large project grant funding, improve and clarify how the City may benefit from projects and program opportunities.

Legal Considerations:

The City Attorney has reviewed and approved the resolution and agreement as to form.

Public Information Considerations:

This item is being considered at a Regular Meeting of the City Council, noticed and held in accordance with the Texas Open Meetings Act.

Options/Alternatives:

1. City Council may approve the resolution, as presented.
2. City Council may deny the resolution.

Recommendation:

Staff recommends approval of the resolution, as presented.

Attachments

Resolution

Exhibit A - Summary

Draft Legislation

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, SUPPORTING LEGISLATION RELATING TO THE CREATION OF A MUNICIPAL SPECIAL-PURPOSE DISTRICT.

WHEREAS, the creation of a municipal special-purpose district, as authorized by state law including Sections 52 and 52a, Article III and Section 59, Article XVI of the Texas Constitution, will promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the commercial areas of the City; and

WHEREAS, the City Council of the City of Lancaster, Texas finds it is in the best interest of the citizens of the City to support legislation which will benefit the City through the provision of services related to the potential creation of a municipal special-purpose district within the City whose primary purpose is the advancement of economic development and the support of economic activity within the community including manufacturing and distribution activity; and

WHEREAS, the City Council of the City of Lancaster, Texas finds that the proposed special-purpose district would serve as a public use and benefit.

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

SECTION 1. The City Council of the City of Lancaster, Texas supports legislation to create a municipal special-purpose district whose primary purpose is the advancement of economic development and the support of economic activity within the community including manufacturing and distribution activity.

SECTION 2. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 8th day of March, 2021.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

Exhibit A

Summary of Issues/Proposed Legislation

Summary: The City is working with HMWK Global <https://hmkwglobal.com/who-we-are/> to assist in drafting legislation to create a municipal special-purpose district that makes Lancaster more competitive in attracting new economic development deals and improving economic equity for the community. The proposed legislation creates a special-purpose district that reduces state limitations to large project grant funding and improves and clarifies how the City may financially benefit from these projects. The legislation will look at the following programs:

- **The Texas Enterprise Fund.** <https://gov.texas.gov/business/page/texas-enterprise-fund>

The Texas Enterprise is often called the “Texas Deal Closing Fund”. It is a fund that the Governor can grant at his discretion. Support from the state of Texas can result in millions of dollars of financial incentives to a company. This program was instrumental in Metroplex deals such as the State Farm Headquarters and Toyota Headquarters. Previously, nearly 70% of the Texas Enterprise Funds grants in the Metroplex went to projects located north Interstate 30.

The Texas Enterprise Fund grant criteria requires that the company receiving the funds pay above the average county wage. Implementation of this policy is set administratively, not legislatively mandated. Qualifying projects in Lancaster for Texas Enterprise Fund grants is very difficult because of this administrative policy. For example: A company evaluating a move to Lancaster must have an average wage of \$67,704. If the same company wanted to locate in Red Oak in Ellis County, they qualify for the program if the average employee wage is \$45,000.

This policy is inherently unfair to communities like Lancaster that are located in counties where average wages are high because of jobs located on the other side of the county when median wages are more reflective of communities in the adjacent county. The median wage in Lancaster is \$34,248. The median wage in Red Oak is \$37,447. Lancaster and Red Oak share the same workforce market. If Lancaster and Red Oak were competing for a company that hired 1,000 employees and paid \$65,000 each and all incentives were the same, Red Oak would have the advantage because the company would qualify for the Texas Enterprise Fund if they were anywhere in Ellis County. However, the same company would not qualify for the funds if they located to Lancaster due to a higher county average wage. Dallas County has higher wages due to downtown Dallas, parts of Irving, and the northern Dallas sector. This factor is unique to the southern sector of Dallas County and was allegedly one of several deciding factors why Lindt Chocolate did not locate to Lancaster (500 jobs paying \$50,000 each) approximately four years ago.

The proposed legislation is designed to help Lancaster be competitive to adjacent neighbors in Ellis County.

- **Sales Tax Sourcing.** Currently, when a Texas consumer purchases a product online and that order is fulfilled in Lancaster, the sales tax associated with that order goes to the City where it is sent. This legislation will allow sales tax to be sourced to Lancaster, where the item is fulfilled. This will allow Lancaster to collect the sales tax from orders that are fulfilled at the Wayfair fulfillment center and the future Walmart fulfillment centers. In addition, when the consumer is in Lancaster and the fulfillment is elsewhere, the sales tax will still come to Lancaster.

The draft legislation is enclosed for your convenience. Please make note that this is the draft and will likely change due to legislative processes, however, in spirit, will remain the same.

Governing Board of the Special Purpose District.

The Special Purpose District will be governed by the Mayor, Mayor Pro tem, Mayor Deputy Pro tem, City Manager, Finance Director, Economic Development Director, and Parks Director. The reason for the two latter is because their operations are fully or partially funded by the effected sales tax. The consultant shared that legislatures are hesitant to establish boards that would result in a quorum of City Council. All proposed board members that are not Council Members are ultimately governed by City Council, giving Council the ultimate authority.

The process.

The timeline to file the legislation is tight. The process requires for the Governor to be notified of the filing of the legislation 30 days prior to it being filed. This notification requires proof of publication of the intent to file in our newspaper of record.

The consultant is requesting that we publish as soon as possible and notify the governor the following day. On the March 8th City Council meeting, Council will be presented with a resolution supporting the bill. You will also be presented with the cost of the consultant - \$75,000. Council may still vote the resolution down and the process will end. If the Council passes the resolution along with the request to pay the consultant, Senator West may file the bill.

Positive Impacts

If the bill passes, Lancaster will become more competitive in attracting new economic development deals and improving economic equity for the community. The proposed legislation creates a special-purpose district that reduces state limitations to large project grant funding and improves and clarifies how the City may financial benefit from these projects. If the legislation is adopted and works as anticipated it will result in additional sales tax revenue, however, the amount is unknown. The revenue can offset the costs of damaged infrastructure caused by increased truck traffic generated by fulfillment centers and freight lines. Increased sales tax collections directly benefit the general fund, LEDC and Quality of Life fund. Increased revenues, if and when they accrue, may be used to increase the quality of life within the community for the Lancaster resident workers who are employed at the companies.

Negative Impacts

It is difficult to predict the consequences of this legislation. The only other known location within the state with a similar arrangement is Dickinson, Texas. That community's policy was challenged by the State Comptroller and was found allowable. Sales tax collections are a major point of consideration for many local jurisdictions, especially with recent limitations in property tax collections. In theory, sourcing sales tax collections to the fulfillment center will marginally reduce sales tax collections in other localities where products are shipped.

S.B. xxxx

87Rxxxx JDK

By: _____ .B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Lancaster Logistics District;
providing authority to issue bonds; providing authority to impose
assessments, fees, or taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. CHAPTER xxxx. LANCASTER LOGISTICS DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. xxxx.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "City" means Lancaster.

(3) "County" means Dallas County.

(4) "Director" means a board member.

(5) "District" means the Lancaster Logistics District.

(6) "Registered Business Project" means a private sector
company located in the District that maintains a Texas Sales Tax
permit for its location in the District and that has registered
with the District for eligible incentive programs.

Sec. xxxx.002. NATURE OF DISTRICT. The Lancaster Logistics
District is a special district created under Sections 52 and 52-

1 a, Article III, and Section 59, Article XVI, Texas Constitution.

2 Sec. xxxx.003. PURPOSE; DECLARATION OF INTENT. (a) The
3 creation of the district is essential to accomplish the purposes
4 of Sections 52 and 52-a, Article III, and Section 59, Article XVI,
5 Texas Constitution, and other public purposes stated in this
6 chapter. By creating the district, and in authorizing the city
7 and other political subdivisions to contract with the district,
8 the legislature has established a program to accomplish the public
9 purposes set out in Section 52-a, Article III, Texas Constitution.

10 (b) The creation of the district is necessary to promote,
11 develop, encourage, and maintain employment, commerce,
12 transportation, housing, tourism, recreation, the arts,
13 entertainment, economic development, safety, and the public
14 welfare in the district.

15 (c) This chapter and the creation of the district may not be
16 interpreted to relieve the city or county from providing the level
17 of services provided as of the effective date of the Act enacting
18 this chapter to the area in the district. The district is created
19 to supplement and not to supplant city and county services provided
20 in the district.

21 Sec. xxxx.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a)
22 The district is created to serve a public use and benefit.

23 (b) All land and other property included in the district
24 will benefit from the improvements and services to be provided by

1 the district under powers conferred by Sections 52 and 52-a,
2 Article III, and Section 59, Article XVI, Texas Constitution, and
3 other powers granted under this chapter.

4 (c) The district is created to accomplish the purposes of a
5 municipal management district and a county development district as
6 provided by general law and Sections 52 and 52-a, Article III, and
7 Section 59, Article XVI, Texas Constitution.

8 (d) The creation of the district is in the public interest
9 and is essential to further the public purposes of:

10 (1) developing and diversifying the economy of the
11 state;

12 (2) eliminating unemployment and underemployment; and

13 (3) developing or expanding transportation and
14 commerce.

15 (e) The district will:

16 (1) promote the health, safety, and general welfare of
17 residents, employers, potential employees, employees, visitors,
18 and consumers in the district, and of the public;

19 (2) provide needed funding for the district to
20 preserve, maintain, and enhance the economic health and vitality
21 of the district territory as a community and business center; and

22 (3) promote the health, safety, welfare, and enjoyment
23 of the public by:

24 (A) improving, landscaping, and developing

1 certain areas in or adjacent to the district; and

2 (B) providing public services and facilities in or
3 adjacent to the district that are necessary for the restoration,
4 preservation, and enhancement of scenic beauty.

5 (f) Pedestrian ways along or across a street, whether at
6 grade or above or below the surface, and street lighting, street
7 landscaping, parking, and street art objects are parts of and
8 necessary components of a street and are considered to be a street
9 or road improvement.

10 Sec. xxx.005. DISTRICT TERRITORY. (a) The district is
11 composed of the territory described by Section 2 of the Act
12 enacting this chapter.

13 (b) The boundaries and field notes of the district contained
14 in Section 2 of the Act enacting this chapter form a closure. A
15 mistake in the field notes or in copying the field notes in the
16 legislative process does not affect the district's:

17 (1) organization, existence, or validity;

18 (2) right to borrow money or issue any type of bonds or
19 other obligations described by this Chapter for a purpose for which
20 the district is created or to pay the principal of and interest on
21 the bonds or other obligations;

22 (3) right to impose or collect an assessment or collect
23 other revenue;

24 (4) legality or operation; or

1 (5) right to contract.

2 Sec. xxxx.006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES.

3 (a) All or any part of the area of the district is eligible to be
4 included in:

5 (1) a tax increment reinvestment zone created under
6 Chapter 311, Tax Code;

7 (2) a tax abatement reinvestment zone created under
8 Chapter 312, Tax Code;

9 (3) an enterprise zone created under Chapter 2303,
10 Government Code; or

11 (4) an industrial district created under Chapter 42,
12 Local Government Code.

13 (b) If the city or county creates a tax increment
14 reinvestment zone described by Subsection (a), the county or city
15 and the board of directors of the zone, by contract with the
16 district, may grant money deposited in the tax increment fund to
17 the district to be used by the district for:

18 (1) the purposes permitted for money granted to a
19 corporation under Section 380.001(a), Local Government Code; and

20 (2) any other district purpose, including the right to
21 pledge the money as security for any bonds or other obligations
22 issued by the district under this Chapter; and

23 (3) funding services provided by the city to the area
24 in the district.

1 Sec. xxxx.007. APPLICABILITY OF MUNICIPAL MANAGEMENT
2 DISTRICTS LAW. Except as otherwise provided by this chapter,
3 Chapter 375, Local Government Code, applies to the district.

4 Sec. xxxx.008. CONSTRUCTION OF CHAPTER. This chapter shall
5 be liberally construed in conformity with the findings and purposes
6 stated in this chapter.

7
8 SUBCHAPTER B. BOARD OF DIRECTORS

9 Sec. xxxx.051. GOVERNING BODY; TERMS. (a) The district is
10 governed by a board of seven directors.

11 (b) Except as provided by Section xxxx.052, directors serve
12 staggered four-year terms, with three or four directors' terms
13 expiring June 1 of each odd-numbered year.

14 Sec. xxxx.052. INITIAL DIRECTORS. (a) On or after the
15 effective date of the Act enacting this chapter, the city shall
16 appoint as initial directors seven persons holding the following
17 positions: Mayor, Mayor Pro tem, Deputy Mayor Pro tem, City
18 Manager, Finance Director, Economic Development Director, and
19 Director of Type-B Economic Development Corporation.

20 (b) Initial directors serve until the earlier of:

21 (1) the date permanent directors are appointed under
22 Section xxxx.053; or

23 (2) the fourth anniversary of the effective date of the
24 Act enacting this chapter.

1 Sec. xxxx.053. APPOINTMENT OF VOTING DIRECTORS. The Mayor
2 and members of the governing body of the city shall appoint voting
3 directors from the persons holding positions described in
4 xxxx.052(a) of this Chapter. A person is appointed if a majority
5 of the members of the governing body, including the mayor, vote to
6 appoint that person.

7 Sec. xxxx.054 NONVOTING DIRECTORS. The board may appoint
8 nonvoting directors to serve at the pleasure of the voting
9 directors.

10 Sec. xxxx.055 QUORUM. For the purposes of determining the
11 requirements for a quorum of the board, the following are not
12 counted:

13 (1) a board position vacant for any reason, including
14 death, resignation, or disqualification;

15 (2) a director who is abstaining from participation in
16 a vote because of a conflict of interest; or

17 (3) a nonvoting director.

18 Sec. xxxx.056 COMPENSATION. A director is not entitled to
19 receive fees of office.

20
21 SUBCHAPTER C. POWERS AND DUTIES

22 Sec. xxxx.101. GENERAL POWERS AND DUTIES. The district has
23 the powers and duties necessary to accomplish the purposes for
24 which the district is created.

1 Sec. xxxx.102. IMPROVEMENT PROJECTS AND SERVICES. The
2 district may provide, design, construct, acquire, improve,
3 relocate, operate, maintain, and finance using any funds available
4 to the district, or contract with a governmental or private entity
5 to provide design, construct, acquire, improve, relocate, operate,
6 maintain, and finance any improvement or service authorized under
7 this chapter or Chapter 375 Local Government Code.

8 Sec. xxxx.103. DEVELOPMENT CORPORATION POWERS. The district,
9 using funds available to the district, may exercise the powers
10 given to a development corporation under Chapter 505, Local
11 Government Code, including the power to own, operate, acquire,
12 construct, lease, improve, or maintain a project that may be
13 undertaken in accordance with that chapter.

14 Sec. xxxx.104. NONPROFIT CORPORATION. (a) The board by
15 resolution may authorize the creation of a nonprofit corporation
16 to assist and act for the district in implementing a project or
17 providing a service authorized by this chapter.

18 (b) The nonprofit corporation:

19 (1) has each power of and is considered to be a local
20 government corporation created under Subchapter D, Chapter 431,
21 Transportation Code; and

22 (2) may implement any project and provide any service
23 authorized by this chapter.

24 (c) The board shall appoint the board of directors of the

1 nonprofit corporation. The board of directors of the nonprofit
2 corporation shall serve in the same manner as the board of
3 directors of a local government corporation created under
4 Subchapter D, Chapter 431, Transportation Code, except that a board
5 member is not required to reside in the district.

6 Sec. xxxx.105. AGREEMENT; GRANTS. (a) As provided in Chapter
7 375, Local Government Code, the district may make an agreement
8 with or accept a gift, grant, or loan from any person.

9 (b) The implementation of a project is a governmental function
10 or service for the purposes of Chapter 791, Government Code.

11 Sec. xxxx.106 LAW ENFORCEMENT SERVICES. As provided in
12 Chapter 375, to protect the public interest, the district may
13 contract with a qualified party, including the City, for the
14 provision of law enforcement services in the district for a fee.

15 Sec. xxxx.107 MEMBERSHIP IN CHARITABLE ORGANISATIONS. The
16 district may join and pay dues to a charitable or nonprofit
17 organization that performs a service or provides an activity
18 consistent with the furtherance of a district purpose.

19 Sec. xxxx.108. ECONOMIC DEVELOPMENT PROGRAMS. (a) The
20 district may engage in activities that accomplish the economic
21 development purposes of the district.

22 (b) The district may establish and provide for the
23 administration of one or more programs to promote state or local
24 economic development and to stimulate business and commercial

activity in the district, including programs to:

(1) make loans and grants of public money; and

(2) provide district personnel and services.

(c) The district may create economic development programs and exercise the economic development powers that:

(1) Chapter 380, Local Government Code, provides to municipalities; and

(2) Subchapter A, Chapter 1509, Government Code, provides to municipalities.

(d) Qualified Business Projects within the district are eligible to receive benefits under Texas Government Code §481.078 Texas Enterprise Fund with a wage requirement not to exceed 75% of the prevailing county wage for other eligible projects within the County.

Sec. xxxx.109. NO EMINENT DOMAIN. The district may not exercise the power of eminent domain.

Sec. xxxx.110. TAX AND ASSESSMENT ABATEMENTS. The district may designate reinvestment zones and may grant abatements of district taxes or assessments on property within such zones.

Sec. xxxx.111 PARKING FACILITIES. (a) The district may acquire, lease as a lessor or lessee, construct, develop, own, operate, and maintain parking facilities or a system of parking facilities, including lots, garages, parking terminals, or other structures or accommodations for parking motor vehicles off the

1 streets and related appurtenances.

2 (b) The district's parking facilities serve the public
3 purposes of the district and are owned, used, and held for a public
4 purpose even if leased or operated by a private entity for a term
5 of years.

6 (c) The district's parking facilities are necessary
7 components of a street and are considered to be a street or road
8 improvement. The development and operation of the district's
9 parking facilities may be considered an economic development
10 program.

11 Sec. xxxx.112 WATER DISTRICT POWERS. The district has the
12 powers provided by the general laws relating to conservation and
13 reclamation districts created under Section 59, Article XVI, Texas
14 Constitution, including Chapters 49 and 54, Water Code.

15 Sec. xxxx.113. ROAD DISTRICT POWERS. The district has the
16 powers provided by the general laws relating to road districts and
17 road utility districts created under Section 52(b), Article III,
18 Texas Constitution, including Chapter 441, Transportation Code.

19 Sec. xxxx.114. PUBLIC IMPROVEMENT DISTRICT POWERS. The
20 district has the powers provided by Chapter 372, Local Government
21 Code, to a municipality or county.

22 Sec. xxxx.115. CONTRACT POWERS. The district may contract
23 with a governmental or private entity, on terms determined by the
24 board, to carry out a power or duty authorized by this chapter or

S.B. xxxx

to accomplish a purpose for which the district is created.

Sec. xxxx.116. MUNICIPAL DEVELOPMENT DISTRICT POWERS. The district has the powers of a municipal development district provided by Chapter 377, Local Government Code including the power to own, operate, acquire, construct, lease, improve, or maintain a project described by that chapter.

SUBCHAPTER C-1. IMPROVEMENT PROJECTS AND SERVICES

Sec. xxxx.151. IMPROVEMENT PROJECTS AND SERVICES. The district may provide, design, construct, acquire, improve, relocate, operate, maintain, or finance an improvement project or service, including tourism and visitor facilities, using any money available to the district, or contract with a governmental or private entity and reimburse that entity for the provision, design, construction, acquisition, improvement, relocation, operation, maintenance, or financing of an improvement project, service, or cost, for the provision of credit enhancement, or for any cost of operating or maintaining the district or the issuance of district obligations authorized under this chapter, Chapter 372, 375, or 377, Local Government Code, or Chapter 49 or 54, Water Code.

Sec. xxxx.152. LOCATION OF IMPROVEMENT PROJECT. An improvement project may be inside or outside the district.

Sec. xxxx.154. IMPROVEMENT PROJECT AND SERVICE IN DEFINABLE

1 AREAS. (a) The district may undertake an improvement project or
2 service authorized by this chapter using any money available to
3 the district.

4 (b) The district may provide or secure the payment or
5 repayment of any cost or expense related to the establishment,
6 administration and operation of the district and the district's
7 cost or share of the costs of a district contractual obligation or
8 debt through:

9 (1) a lease, installment purchase contract, or other
10 agreement with any person; or

11 (2) the imposition of taxes, user fees, concessions,
12 rentals, or other revenue or resources of the district.

13
14 that confers a special benefit on one or more definable areas
15 in the district that share a common characteristic or use and levy
16 and collect a special assessment on benefited property in the
17 district in accordance with:

18 (1) Chapter 372, Local Government Code; or

19 (2) Chapter 375, Local Government Code.

20
21 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS; ASSESSMENTS

22 Sec. xxxx.201. MONEY USED FOR IMPROVEMENTS, SERVICES, OR
23 OTHER EXPENSES. (a) The district may undertake and provide an
24 improvement project or service authorized by this chapter using

any money available to the district.

(b) The district may provide or secure the payment or repayment of any cost or expense related to the establishment, administration, and operation of the district and the district's costs or share of the costs of a district contractual obligation or debt through:

(1) a lease, installment purchase contract, or other agreement with any person; or

(2) the imposition of taxes, user fees, concessions, rentals, or other revenue or resources of the district.

Sec. xxxx.202. BORROWING MONEY; OBLIGATIONS. (a) The district may borrow money for a district purpose, including the acquisition or construction of improvement projects authorized by this chapter and the reimbursement of a person who develops or owns an improvement project authorized by this chapter, without holding an election by issuing bonds, notes, time warrants, credit agreements, or other obligations, or by entering into a contract or other agreement payable wholly or partly from an assessment, a contract payment, a grant, revenue from a zone created under Chapter 311 or 312, Tax Code, sales and use taxes, hotel occupancy taxes, other district revenue, or a combination of these sources.

(b) An obligation described by Subsection (a):

(1) may bear interest at a rate determined by the board; and

1 (2) may include a term or condition as determined by
2 the board.

3 Sec. xxxx.203. ASSESSMENTS. (a) Except as provided by
4 Subsection (b), the district may impose an assessment on property
5 in the district, regardless of whether the property is contiguous,
6 to pay for an obligation described by Section xxxx.202 or for an
7 improvement project authorized under Section xxxx.151 in the
8 manner provided for:

9 (1) a district under Subchapter A, E, or F, Chapter
10 375, Local Government Code; or

11 (2) a municipality or county under Subchapter A,
12 Chapter 372, Local Government Code.

13 (b) The district may:

14 (1) adopt procedures for the collection of assessments
15 under this chapter that are consistent with the procedures for the
16 collection of a hotel occupancy tax under Chapter 351, Tax Code;
17 and

18 (2) pursue remedies for the failure to pay an
19 assessment under this chapter that are available for failure to
20 pay a hotel occupancy tax under Chapter 351, Tax Code.

21 (c) The district may not impose an assessment on a
22 municipality, county, or other political subdivision.

23 Sec. xxxx.204. IMPACT FEES; EXEMPTION. (a) The district
24 may impose an impact fee on property in the district, including an

impact fee on residential property, according to the benefit received by the property.

(b) An impact fee for residential property must be for the limited purpose of providing capital funding for:

(1) public water and wastewater facilities;

(2) drainage and storm water facilities; and

(3) streets and alleys.

(c) The district may not impose an impact fee on the property, including equipment and facilities, of a public utility provider or a cable operator as defined by 47 U.S.C. Section 522.

Sec. xxxx.206. RATES, FEES, AND CHARGES. The district may establish, revise, repeal, enforce, and collect rates, fees, and charges for the enjoyment, sale, rental, or other use of:

(1) an improvement project;

(2) a product resulting from an improvement project; or

(3) another district facility, service, or property.

Sec. xxxx.205. PUBLIC SERVICE USER CHARGES. The district may establish user charges related to various public services, including:

(1) the collection and treatment of wastewater;

(2) the operation of storm water facilities, including the regulation of storm water for the protection of water quality in the district; or

(3) the provision of septic tank maintenance services

1 inside and outside the district.

2 (4) the provision of road improvements by vehicles that
3 do not qualify as passenger vehicles.

4 Sec. xxxx.206. COSTS FOR IMPROVEMENT PROJECTS. The district
5 may undertake separately or jointly with other persons all or part
6 of the cost of an improvement project, including an improvement
7 project:

8 (1) for improving, enhancing, and supporting public
9 safety and security, fire protection and emergency medical
10 services, and law enforcement in or adjacent to the district;

11 (2) for improving, enhancing, providing, or supporting
12 tourism, recreation, housing, the arts, entertainment, or economic
13 development; or

14 (3) that confers a general benefit on the entire district or
15 a special benefit on a definable part of the district

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19 SUBCHAPTER E. TAXES AND BONDS

20 Sec. xxxx.251. CONSENT OF CITY REQUIRED. The district may
21 not issue a bond until the city by ordinance or resolution has
22 consented to the issuance of the bond.

23 Sec. xxx.252. ELECTIONS REGARDING TAXES OR BONDS. (a) The
24 district may issue, without an election, bonds and other

1 obligations secured by assessments, contract payments, sales and
2 use taxes, hotel occupancy taxes, or any other revenue from any
3 source other than ad valorem taxes.

4 (b) The district must hold an election in the manner provided
5 by Chapters 49 and 54, Water Code, to obtain voter approval before
6 the district may impose an ad valorem tax or issue bonds payable
7 from ad valorem taxes.

8 (c) The district may not issue bonds payable from ad valorem
9 taxes to finance a road project unless the issuance is approved by
10 a vote of a two-thirds majority of the district voters voting at
11 an election held for that purpose.

12 Sec. xxxx.253. OPERATION AND MAINTENANCE TAX. (a) If
13 authorized by a majority of the district voters voting at an
14 election held under Section xxxx.301, the district may impose an
15 operation and maintenance tax on taxable property in the district
16 in accordance with Section 49.107, Water Code.

17 (b) The board shall determine the tax rate. The rate may
18 not exceed the rate approved at the election.

19 (c) Notwithstanding Subsection (a), Section 49.107(f), Water
20 Code, does not apply to the district.

21 Sec. xxxx.254. CONTRACT TAXES. (a) In accordance with
22 Section 49.108, Water Code, the district may impose a tax other
23 than an operation and maintenance tax and use the revenue derived
24 from the tax to make payments under a contract after the provisions

of the contract have been approved by a majority of the district voters voting at an election held for that purpose.

(b) A contract approved by the district voters may contain a provision stating that the contract may be modified or amended by the board without further voter approval.

Sec. xxxx.255. TAXES FOR BONDS AND OTHER OBLIGATIONS. At the time bonds or other obligations payable wholly or partly from ad valorem taxes are issued:

(1) the board shall impose a continuing direct annual ad valorem tax, without limit as to rate or amount, for each year that all or part of the bonds are outstanding; and

(2) the district annually shall impose an ad valorem tax on all taxable property in the district in an amount sufficient to:

(A) pay the interest on the bonds or other obligations as the interest becomes due;

(B) create a sinking fund for the payment of the principal of the bonds or other obligations when due or the redemption price at any earlier required redemption date; and

(C) pay the expenses of imposing the taxes.

Sec. xxxx.256. TAX ABATEMENT. The district may enter into a tax abatement agreement in accordance with the general laws of this state authorizing and applicable to a tax abatement agreement by a municipality.

SUBCHAPTER G. SALES AND USE TAX

Sec. xxxx.301. MEANINGS OF WORDS AND PHRASES. A word or phrase used in this subchapter that is defined by Chapters 151 and 321, Tax Code, has the meanings assigned by Chapters 151 and 321, Tax Code.

Sec. xxxx.302. APPLICABILITY OF CERTAIN TAX CODE PROVISIONS.

(a) The provisions of Subchapters C, D, E, and F, Chapter 321, Tax Code, relating to municipal sales and use taxes apply to the application, collection, and administration of a sales and use tax imposed under this subchapter to the extent consistent with this chapter, as if references in Chapter 321, Tax Code, to a municipality referred to the district and references to a city council referred to the board.

(b) A Registered Business Project under this Chapter meets the requirements under Chapter 321.002(a)(3)(A) for all purposes under Chapter 321.

(c) Sections 321.401-321.404, Tax Code, do not apply to a tax imposed under this subchapter.

Sec. xxxx.303. AUTHORIZATION; ELECTION. (a) The district shall adopt, reduce, or repeal the sales and use tax authorized by this subchapter at an election in which a majority of the voters of the district voting in the election approve the adoption, reduction, or repeal of the tax, as applicable.

1 (b) The board by order shall call an election to adopt,
2 reduce, or repeal a sales and use tax. The election shall be held
3 on the first authorized uniform election date that occurs after
4 the time required by Section 3.005, Election Code.

5 (c) The district shall provide notice of the election and
6 shall hold the election in the manner prescribed by Chapter 54,
7 Water Code, for bond elections for municipal utility districts.

8 (d) The ballots shall be printed to provide for voting for
9 or against the following appropriate proposition:

10 (1) "Adoption of a percent district sales and use
11 tax in the district";

12 (2) "Reduction of the district sales and use tax in the
13 district from percent to percent"; or

14 (3) "Repeal of the district sales and use tax in the
15 district."

16 Sec. xxxx.304. EFFECTIVE DATE OF TAX. A tax imposed under
17 this subchapter or the repeal or reduction of a tax under this
18 subchapter takes effect on the first day of the first calendar
19 quarter that occurs after the date the comptroller receives the
20 copy of the resolution as required by Section 323.405(b), Tax Code.

21 Sec. xxxx.305. SALES AND USE TAX RATE. (a) On adoption of
22 the tax authorized by this subchapter, there is imposed a tax of
23 at the rate approved at the election held under Section xxxx.303
24 percent on the receipts from the sale at retail of taxable items

S.B. xxxx

in the district, and an excise tax on the use, storage, or other consumption in the district of taxable items purchased, leased, or rented from a retailer in the district during the period that the tax is in effect.

(b) The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sales price of the taxable item.

(c) The board may not adopt or increase a tax authorized under this subchapter if the adoption or increase would cause the combined tax rate of all local sales and use taxes in any location in the district to exceed the maximum amount authorized by law.

Sec. xxxx.306. EXAMINATION AND RECEIPT OF INFORMATION. The district may examine and receive information related to the imposition of a sales and use tax to the same extent as if the district were a municipality.

Sec. xxxx.307. ALTERNATIVE METHOD OF IMPOSITION. Notwithstanding any other provision of this subchapter, the district may impose the sales and use tax as provided by Subchapter F, Chapter 383, Local Government Code, instead of as provided by the other provisions of this subchapter.

SUBCHAPTER H. HOTEL OCCUPANCY TAX

Sec. xxxx.401. DEFINITION. In this subchapter, "hotel" has the meaning assigned by Section 156.001, Tax Code.

Sec. xxxx.402. APPLICABILITY OF CERTAIN TAX CODE PROVISIONS.

(a) In this subchapter:

(1) a reference in Chapter 351, Tax Code, to a municipality is a reference to the district; and

(2) a reference in Chapter 351, Tax Code, to the city council is a reference to the board.

(b) Except as inconsistent with this subchapter, Subchapter A, Chapter 351, Tax Code, governs a hotel occupancy tax authorized by this subchapter, including the collection of the tax, subject to the limitations prescribed by Sections 351.002(b) and (c), Tax Code.

Sec. xxxx.403. TAX AUTHORIZED; TAX RATE. (a) The district may impose a hotel occupancy tax for the purposes described by Section xxxx.405.

(b) The amount of the tax may not exceed seven percent of the price paid for a room in a hotel.

Sec. xxxx.404. INFORMATION. The district may examine and receive information related to the imposition of hotel occupancy taxes to the same extent as if the district were a municipality.

Sec. xxxx.405. USE OF HOTEL OCCUPANCY TAX. The district may use the proceeds from a hotel occupancy tax imposed under this subchapter for any of the district's purposes and for the purposes.

SUBCHAPTER I. MUNICIPAL ANNEXATION AND DISSOLUTION

1 Sec. xxxx.451. DISSOLUTION. (a) Except as provided by
2 Subsection (b), the board:

3 (1) may dissolve the district; and

4 (2) shall dissolve the district on receipt of a written
5 petition requesting dissolution signed by the owners of 75 percent
6 of the acreage of real property in the district.

7 (b) The board may not dissolve the district until the
8 district's outstanding indebtedness or contractual obligations
9 have been repaid or discharged.

10 (c) After the board dissolves the district, the board shall
11 transfer ownership of all district property and assets to city.

12 Sec. xxxx.452. COLLECTION OF ASSESSMENTS AND OTHER REVENUE.

13 (a) If the dissolved district has bonds or other obligations
14 outstanding secured by and payable from assessments or other
15 revenue, the city succeeds to the rights and obligations of the
16 district regarding enforcement and collection of the assessments
17 or other revenue.

18 (b) The city shall have and exercise all district powers to
19 enforce and collect the assessments or other revenue to pay:

20 (1) the bonds or other obligations when due and payable
21 according to their terms; or

22 (2) special revenue or assessment bonds or other
23 obligations issued by the city to refund the outstanding bonds or
24 obligations of the district.

1 Sec. xxxx.253. ASSUMPTION OF ASSETS AND LIABILITIES. (a)

2 After the city dissolves the district, the city assumes the
3 obligations of the district, including any bonds or other debt
4 payable from assessments or other district revenue.

5 (b) If the city dissolves the district, the board shall
6 transfer ownership of all district property to the city.

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9 SECTION 2. The Lancaster Logistics District initially
10 includes all the territory contained in the following area: MEETS
11 AND BOUNDS HERE....

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13 SECTION 3. (a) The legal notice of the intention to introduce
14 this Act, setting forth the general substance of this Act, has
15 been published as provided by law, and the notice and a copy of
16 this Act have been furnished to all persons, agencies, officials,
17 or entities to which they are required to be furnished under
18 Section 59, Article XVI, Texas Constitution, and Chapter 313,
19 Government Code.

20 (b) The governor, one of the required recipients, has
21 submitted the notice and Act to the Texas Commission on
22 Environmental Quality.

23 (c) The Texas Commission on Environmental Quality has filed
24 its recommendations relating to this Act with the governor,

1 lieutenant governor, and speaker of the house of representatives
2 within the required time.

3 (d) All requirements of the constitution and laws of this
4 state and the rules and procedures of the legislature with respect
5 to the notice, introduction, and passage of this Act have been
6 fulfilled and accomplished.

7 SECTION 4. This Act takes effect September 1, 2021.
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