

# HEWITT TEXAS

## CITY COUNCIL SPECIAL CALLED WORKSHOP/MEETING

July 05, 2022 at 6:00 PM

Hewitt City Hall, 200 Patriot Court, Hewitt, TX 76643

### AGENDA

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**Steve Fortenberry**, Mayor, Ward 3

**Michael S. Bancale**, Mayor Pro Tem, At-Large – **Charlie Turner**, Council Member, Ward 1

**Johnny Stephens**, Council Member, Ward 1 – **Johnny Price**, Council Member, Ward 2

**Bob Potter**, Council Member, Ward 2 – **Erica Bruce**, Council Member, Ward 3

The meeting will be streamed live on the city's website at [www.cityofhewitt.com/790/Hewitt-TX-TV](http://www.cityofhewitt.com/790/Hewitt-TX-TV).

#### WORKSHOP MEETING - 6:00 PM

#### WORKSHOP DECLARATION OF A QUORUM AND CALL TO ORDER

#### WORKSHOP AGENDA

1. Presentation and discussion concerning Proposed Budget for FY 2022-2023.

#### WORKSHOP ADJOURNMENT

#### REGULAR MEETING - 7:00 PM

#### DECLARATION OF A QUORUM AND CALL TO ORDER

#### PLEDGE OF ALLEGIANCE

#### PUBLIC COMMENTS

The City Council invites citizens to speak on any topic not already scheduled for a public hearing. The Texas Open Meetings Act prohibits the Council from discussing, responding to, or acting on any comments or items not properly posted on the agenda. [Note: Members of the public who wish to speak must complete a "Public Comment Form" and present it to the City Secretary before the meeting.]

#### REGULAR AGENDA ITEMS

2. Consider approval of minutes of the Workshop/Regular Meeting of June 20, 2022.
3. Presentation of the City Engineer's Report from Miles Whitney, P.E.

Update on pending utility projects

Update on pending street projects

Update on pending drainage projects.

4. Discussion and action authorizing the City Manager to enter into a contract with Walker Partners/Cayote Consulting, LLC for engineering services, including the scope of services and fee schedule.
5. Discussion and possible action on **Ordinance No. 2022-06** amending by replacing and repealing in its entirety Chapter 78, Utilities, Article IX - Industrial Waste, Division 2. - Sanitary Sewer Regulations of the Code of Ordinances of the City of Hewitt.

## **ADJOURNMENT**

I certify that the above notice of meeting was posted on the Public Notice Board located in front of City Hall on June 29, 2022, by 5:00 PM.

## **CITY OF HEWITT**

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Lydia Lopez, TRMC/CMC  
City Secretary

In compliance with the American with Disabilities Act, the City of Hewitt will provide reasonable accommodations for persons attending and/or participating in City Council meetings. The facility is wheelchair accessible, with handicap parking available at the front of the building. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting by calling the City Secretary at 254.296.5602 or by fax at 254.666.6014.

# HEWITT TEXAS

## COUNCIL AGENDA ITEM FORM

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**MEETING DATE:** July 5, 2022

**AGENDA ITEM #:** 2

**SUBMITTED BY:** Lydia Lopez, City Secretary

**ITEM DESCRIPTION:**

Consider approval of minutes of the Workshop/Regular Meeting of June 20, 2022.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

Attached is a draft copy of the meeting minutes. Please review and advise if any corrections are needed.

**FISCAL IMPACT:**

Amount Budgeted – N/A  
Line Item in Budget – N/A

**SUGGESTED MOTION:**

I move approval of the minutes as presented but to allow for corrections.

**ATTACHMENTS:**

Draft minutes

# HEWITT TEXAS

## CITY COUNCIL WORKSHOP/REGULAR MEETING

June 20, 2022 at 5:30 PM

Hewitt City Hall, 200 Patriot Court, Hewitt, TX 76643

### MINUTES

**Steve Fortenberry**, Mayor, Ward 3

**Michael S. Bancale**, Mayor Pro Tem, At-Large – **Charlie Turner**, Council Member, Ward 1

**Johnny Stephens**, Council Member, Ward 1 – **Johnny Price**, Council Member, Ward 2

**Bob Potter**, Council Member, Ward 2 – **Erica Bruce**, Council Member, Ward 3

The meeting will be streamed live on the city’s website at [www.cityofhewitt.com/790/Hewitt-TX-TV](http://www.cityofhewitt.com/790/Hewitt-TX-TV).

#### WORKSHOP MEETING - 5:30 PM

#### WORKSHOP DECLARATION OF A QUORUM AND CALL TO ORDER

Mayor Steve Fortenberry called the Workshop Meeting to order at 5:30 PM and announced all members were present except Council Member Charlie Turner.

#### WORKSHOP AGENDA

1. Open Meetings Act Training - Presented by Associate Attorney Amy DeLong

#### WORKSHOP ADJOURNMENT

**MOTION:** Council Member Erica Bruce moved to adjourn the Workshop Meeting at 6:57 PM.

**SECOND:** Council Member Johnny Price

**AYES:** Bruce, Price, Potter, Stephens, Bancale, and Fortenberry

**NAYES:** None

**ABSENT:** Turner

**MOTION PASSED.**

#### REGULAR MEETING - 7:00 PM

#### DECLARATION OF A QUORUM AND CALL TO ORDER

Mayor Steve Fortenberry called the Regular Meeting to order at 7:01 PM and announced all members were present except Council Member Charlie Turner.

#### PLEDGE OF ALLEGIANCE

#### PUBLIC COMMENTS

The City Council invites citizens to speak on any topic not already scheduled for a public hearing. The Texas Open Meetings Act prohibits the Council from discussing, responding, or acting on any comments

or items that have not been properly posted on the agenda. [Note: Prior to the meeting, the citizen must complete a “Public Comment Form” and present it to the City Secretary.]

Mayor Steve Fortenberry inquired if any citizens submitted public comment forms. City Secretary Lydia Lopez stated she received no public comment forms. No one appeared.

## **REGULAR AGENDA ITEMS**

### **2. CONSIDER APPROVAL OF MINUTES OF THE WORKSHOP/REGULAR MEETING OF JUNE 6, 2022.**

**MOTION:** Mayor Pro Tem Michael Bancale moved approval of minutes as presented but to allow for corrections.

**SECOND:** Council Member Bob Potter

**AYES:** Bruce, Price, Potter, Stephens, Bancale, and Fortenberry

**NAYES:** None

**ABSENT:** Turner

**MOTION PASSED.**

### **3. BRIEFING AND DISCUSSION CONCERNING FINANCIAL STATEMENTS ENDING MAY 31, 2022.**

City Manager Bo Thomas stated that Finance Director Lee Garcia previously sent the May Financial Statements electronically on June 9, 2022, and inquired if Council had any questions. The Council raised no questions or concerns. No action was required.

### **4. AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH CLARK AUCTION COMPANY FOR THE SALE OF SURPLUS ITEMS.**

City Manager Bo Thomas presented.

**MOTION:** Mayor Pro Tem Michael Bancale moved to authorize the City Manager to enter into an agreement with Clark Auction Company.

**SECOND:** Council Member Bob Potter

**AYES:** Bruce, Price, Potter, Stephens, Bancale, and Fortenberry

**NAYES:** None

**ABSENT:** Turner

**MOTION PASSED.**

### **5. DISCUSSION AND ACTION REGARDING ANNUAL CONSUMER PRICE INCREASE (CPI) INCREASE TO SOLID WASTE RATES FOR REPUBLIC SERVICES.**

City Manager Bo Thomas presented.

**MOTION:** Council Member Bob Potter moved to authorize the Consumer Price Increase (CPI) for Republic Services.

**SECOND:** Council Member Erica Bruce

**AYES:** Bruce, Price, Potter, Stephens, Bancale, and Fortenberry

**NAYES:** None

**ABSENT:** Turner

**MOTION PASSED.**

6. **DISCUSSION AND ACTION ON FY 2022-2023 MEMBER FUNDING ASSESSMENTS FOR THE WACO-MCLENNAN COUNTY PUBLIC HEALTH DISTRICT.**  
City Manager Bo Thomas presented.  
**MOTION:** Mayor Pro Tem Michael Bancale moved to approve the funding assessments for the Waco-McLennan County Public Health District for FY 2022-2023.  
**SECOND:** Council Member Erica Bruce  
**AYES:** Bruce, Price, Potter, Stephens, Bancale, and Fortenberry  
**NAYES:** None  
**ABSENT:** Turner  
**MOTION PASSED.**
7. **DISCUSSION AND ACTION ON RESCHEDULING THE COUNCIL MEETING OF JULY 4, 2022.**  
City Manager Bo Thomas presented.  
**MOTION:** Council Member Bob Potter moved to reschedule the Council meeting of July 4, 2022, to July 5, 2022.  
**SECOND:** Mayor Pro Tem Michael Bancale  
**AYES:** Bruce, Price, Potter, Stephens, Bancale, and Fortenberry  
**NAYES:** None  
**ABSENT:** Turner  
**MOTION PASSED.**

**ADJOURNMENT**

**MOTION:** Council Member Erica Bruce moved to adjourn the Regular Meeting at 7:17 PM.  
**SECOND:** Mayor Pro Tem Michael Bancale  
**AYES:** Bruce, Price, Potter, Stephens, Bancale, and Fortenberry  
**NAYES:** None  
**ABSENT:** Turner  
**MOTION PASSED.**

Approved: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Lydia Lopez, City Secretary

\_\_\_\_\_  
Steve Fortenberry, Mayor

# HEWITT TEXAS

## COUNCIL AGENDA ITEM FORM

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**MEETING DATE:** July 5, 2022

**AGENDA ITEM #:** 3

**SUBMITTED BY:** Miles Whitney, P.E.

**ITEM DESCRIPTION:**

Presentation of the report from City Engineer Miles Whitney, P.E.

- Update on pending utility projects.
- Update on pending street projects.
- Update on pending drainage projects.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

The City Engineer will present and respond to any questions regarding the Engineer's Report.

**FISCAL IMPACT:**

Amount Budgeted – N/A  
Line Item in Budget – N/A

**SUGGESTED MOTION:**

No action is required.

**ATTACHMENTS:**

Report

# HEWITT TEXAS

## COUNCIL AGENDA ITEM FORM

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**MEETING DATE:** July 5, 2022

**AGENDA ITEM #:** 4

**SUBMITTED BY:** Bo Thomas, City Manager

**ITEM DESCRIPTION:**

Discussion and action authorizing the City Manager to enter into a contract with Walker Partners/Cayote Consulting, LLC for engineering services, including the scope of services and fee schedule.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

Previously, the City Council authorized the City to negotiate with Walker Partners/Cayote Consulting LLC for engineering, surveying, and construction management services based upon a review of qualifications recommended by a selection committee for the development of a new water well and associated facilities. The attached agreement includes survey, topographic, boundary, preliminary design, final design, project coordination, electrical SCADA design, bidding, and construction management.

**FISCAL IMPACT:**

Amount Budgeted – \$860,350  
Line Item in Budget – Fund 7

**SUGGESTED MOTION:**

I move to authorize the City Manager to enter into an agreement with Walker Partners/Cayote Consulting, LLC for services to develop a new water well and associated facilities.

**ATTACHMENTS:**

Scope of services agreement and fee schedule

## Agreement for Professional Services

This Agreement for Professional Services is made and entered into by and between Walker Partners, LLC, a Texas limited liability company (the "Engineer"), and the City of Hewitt (the "Owner") upon the following terms and conditions.

### 1. SCOPE OF SERVICES

Engineer will provide the services for Commerce Park Water Plant Improvements (the "Project"), which shall consist of the services described on the attached Exhibit A and Treasury ARPA Terms and Conditions on the attached Exhibit B.

### 2. COMPENSATION

Owner agrees to pay Engineer for the services set forth in Exhibit A a lump sum in the amount of \$860,350.00, payable as set forth in Section 3 below. In addition, Owner shall reimburse Engineer for out-of-pocket expenses. Changes in compensation shall be made in accordance with Section 13 of this Agreement, or in accordance with Exhibit A. The terms relating to compensation set forth in Exhibit A shall control over the provisions of this Agreement if inconsistent.

### 3. INVOICES

Engineer will submit monthly invoices for services rendered and Owner will make payments to Engineer within thirty (30) days of Owner's receipt of Engineer's invoice.

Engineer will retain receipts for reimbursable expenses in accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by Owner's auditors upon request.

If Owner disputes any items in Engineer's invoice for any reason, including the lack of supporting documentation, Owner may temporarily delete the disputed item and pay the remaining amount of the invoice. Owner will promptly notify Engineer of the dispute and request clarification and/or correction. After any dispute has been settled, Engineer will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

Owner recognizes that late payment of invoices results in extra expenses for Engineer. Engineer retains the right to assess Owner interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of Engineer's invoice. In the event undisputed portions of Engineer's invoices are not paid when due, ENGINEER shall have the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

### 4. TERMINATION OF AGREEMENT

Owner or Engineer may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. The Engineer will submit the final invoice which will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs Engineer incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

### 5. SERVICES AND INFORMATION FROM OWNER

Owner will provide all criteria and information pertaining to Owner's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. Owner will also provide copies of any Owner-furnished Standard Details, Standard Specifications,

or Standard Bidding Documents which are to be incorporated into the project.

Owner will furnish the services of soils/geotechnical Engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by Engineer. The Owner agrees to bear full responsibility for the technical accuracy and content of Owner-furnished documents and services.

In performing professional Engineering and related services hereunder, it is understood by Owner that Engineer is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the Owner's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the Owner's legal and financial interests. To that end, the Owner agrees that Owner or the Owner's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by Engineer, and will obtain the advice of an attorney, insurance counselor or other consultant as the Owner deems necessary to protect the Owner's interests before Owner takes action or forebears to take action based upon or relying upon the services provided by Engineer.

### 6. STANDARD OF PERFORMANCE

The standard of care for all professional Engineering, consulting and related services performed or furnished by Engineer and its employees under this Agreement will be the care and skill ordinarily used by members of Engineer's profession practicing under the same or similar circumstances at the same time and in the same locality. Other than as set forth above, Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

### 7. RESPONSIBILITY FOR CONSTRUCTION OBSERVATION

a. Construction observation is generally considered an essential element of a complete design professional service. Accordingly, if the Owner directs Engineer to not provide construction observation, the Engineer shall not be responsible for the consequences resulting from matters that reasonably would have been prevented or mitigated had such services been provided.

b. Unless otherwise provided in writing, construction visits and observations are performed to observe the progress and quality of the work completed by the contractor. Such visits are not intended to be an exhaustive check or an inspection of the contractor's work, but rather are to allow Engineer, as an experienced professional, to become familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the contract documents.

Based on such observation, Engineer shall keep Owner informed as to the progress of the work and shall endeavor to guard Owner against deficiencies in the work. If Owner desires more extensive project observation or full-time resident project representation ("RPR") such services may, if agreed to by the parties, be provided as additional services under this Agreement.

Engineer shall not supervise, direct, or have control over the contractor's work, nor have any responsibility for the construction means, methods, techniques, sequences, or procedures selected by the contractor, nor for the contractor's safety precautions or programs associated with the work. These rights and responsibilities are solely those of the contractor.

c. Owner waives any claim against Engineer, and agrees to defend, indemnify and hold Engineer harmless from any claim for injury or loss that results from failure to follow Engineer's plans, specifications or design intent, or for failure to obtain and/or follow Engineer's guidance with respect to any alleged errors, omissions, inconsistencies, ambiguities or conflicts contained within or arising as a result of implementing

Engineer’s plans, specifications or other instruments of service. Engineer does not guarantee the performance of contractor or its subcontractors, employees, or agents, and shall not be responsible for their failure to work in accordance with the contract documents or any applicable laws, codes, rules, or regulations. Owner also agrees to compensate Engineer for any time and expenses incurred by Engineer in defense of any such claim, with such compensation to be based upon the Engineer’s prevailing fee schedule.

d. Owner agrees to include Engineer as an indemnified party in Owner’s construction contracts for the project, which shall protect Engineer to the same degree as Owner. Further, Owner agrees that Engineer shall be listed as an additional insured under the construction contractor’s liability insurance policies.

**8. OPINIONS OF PROBABLE COST (COST ESTIMATES)**

Any opinions of probable project cost or probable construction cost provided by Engineer are made on the basis of information available to Engineer and on the basis of Engineer 's experience and qualifications, and represents its judgment as an experienced and qualified professional Engineer. However, since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Engineer does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost Engineer prepares.

**9. INSURANCE/INDEMNITY**

Engineer agrees to procure and maintain, at its expense, the types of insurance listed below with limits of liability for such insurance as follows:

- 1. By Engineer:
  - a. Workers Compensation Statutory
  - b. Employer’s Liability -
    - 1) Each Accident: \$1,000,000
    - 2) Disease, Policy Limit: \$1,000,000
    - 3) Disease, Each Employee: \$1,000,000
  - c. General Liability -
    - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
    - 2) General Aggregate: \$2,000,000
    - 3) Products & Completed Operations Aggregate: \$2,000,000
    - 4) Personal & Advertising Injury: \$1,000,000
  - d. Excess or Umbrella Liability -
    - 1) Per Occurrence: \$2,000,000
    - 2) General Aggregate: \$2,000,000
  - e. Automobile Liability – Combined Single Limit Each Accident: \$1,000,000
  - f. Professional Liability -
    - 1) Each Claim: \$1,000,000
    - 2) Annual Policy Aggregate: \$2,000,000

Owner shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the Owner.

**10. RE-USE OF DOCUMENTS**

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by Engineer pursuant to this Agreement, are instruments of service with respect to the project. Engineer retains Ownership of all such documents. Owner may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by Owner or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at

Owner's sole risk and without liability or legal exposure to Engineer, and Owner will defend, indemnify and hold harmless Engineer from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by Owner and Engineer.

**11. SUCCESSORS, ASSIGNS AND BENEFICIARIES**

Owner and Engineer, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither Owner nor Engineer will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other. No third party beneficiaries are intended under this Agreement.

**12. SEVERABILITY**

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

**13. CHANGES**

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable sections of this Agreement. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. Engineer will inform Owner of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

**14. CONTROLLING AGREEMENT**

This Agreement shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

**15. CONTROLLING LAW**

This Agreement is to be governed by the law of the state of Texas and venue for any matter arising under this Agreement or relating to the services performed hereunder shall be in McLennan County, Texas.

**16. HAZARDOUS MATERIALS**

Owner represents to Engineer that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, Owner represents that to the best of its knowledge it has disclosed to Engineer the existence of all such hazardous materials, including but not limited to asbestos, PCB’s, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that Engineer’s scope of services do not include services related in any way to hazardous materials. In the event Engineer or any other party encounters undisclosed hazardous materials, Engineer shall have the obligation to notify Owner and, to the extent required by law or regulation, the

appropriate governmental officials, and Engineer may, at its option and without liability for delay, consequential or any other damages to Owner, suspend performance of services on that portion of the project affected by hazardous materials until Owner: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an “arranger,” “operator,” “generator,” or “transporter” of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with Engineer’s services under this Agreement. If Engineer’s services hereunder cannot be performed because of the existence of hazardous materials, Engineer shall be entitled to terminate this Agreement for cause on thirty (30) days written notice. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s sole negligence or willful misconduct.

#### 17. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between Engineer and Owner, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

#### 18. LITIGATION SUPPORT

In the event Engineer is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which Engineer is not a party, Owner shall reimburse Engineer for reasonable costs in responding and compensate Engineer at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

#### 19. UTILITY LOCATION

A local utility locating service shall be contacted by Engineer to make arrangements for all utilities to determine the location of underground utilities. In addition, Owner shall notify Engineer of the presence and location of any underground utilities located on the Owner’s property which are not the responsibility of private/public utilities. Engineer shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The Owner agrees to waive any claim against Engineer and will indemnify and hold Engineer harmless from any claim of liability, injury or loss caused by or allegedly caused by Engineer damaging of underground utilities that are not properly marked or are not called to Engineer’s attention prior to beginning the underground sampling/testing.

#### 20. SCHEDULE FOR SERVICES – OR – TIME OF COMPLETION

Engineer acknowledges the importance to the Owner of the project schedule and agrees to put forth its best professional efforts to perform its services under this proposal in a manner consistent with that schedule. The Owner understands, however, that Engineer’s performance must be governed by sound professional practices. If requested, Engineer will develop a project schedule outlining the duration of each of the items described in the Scope of Services.

#### 21. DISPUTE RESOLUTION

*Arbitration:* Certain disputes (as set for in Section 21(b) below) between Owner and Engineer shall be settled by arbitration in accordance with the *American Arbitration Association* rules effective at the date of this Agreement, subject to the conditions stated below. This Agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Section 21 will be specifically enforceable under prevailing law of any court having jurisdiction.

a. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the *American Arbitration Association*. The demand must be made within a reasonable time after the dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations.

b. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than 100% of the amount payable to Engineer under this Agreement, but not to exceed \$500,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any dispute if the amount in controversy in such dispute is more than 100% of the amount payable to Engineer under this Agreement, but not to exceed \$500,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than 100% of the amount payable to Engineer under this Agreement, but not to exceed \$500,000 (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.

c. With respect to matters resolved in court, OWNER AND ENGINEER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. OWNER AND ENGINEER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

d. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.

e. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.

f. If a dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Section 21 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

**22. LIMITATIONS OF ENGINEER'S LIABILITY**

A. *Engineer's Liability Limited to Amount of Insurance Proceeds:* **Engineer shall procure and maintain insurance as required by and set forth in Section 9 of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by laws and regulation, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs or damages whatsoever arising out of, resulting from, or in any way related to the project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees and consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed amount paid to Engineer by Owner under this Agreement.**

B. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by laws and regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of this Section 22, the Engineer and Engineer's officers, directors, members, partners, agents, employees and consultants shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the project, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, or warranties, express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees or Consultants, or any of them.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Professional Services on the \_\_\_\_ day of \_\_\_\_\_, 2022.

**Engineer:**

WALKER PARTNERS, LLC

By: George E. Walker, Jr.

Name: George E. Walker, Jr.

Title: President/CEO

**Owner:**

CITY OF HEWITT

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

Name: \_\_\_\_\_

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

**Exhibit A**  
**Scope of Services**



## SCOPE AND FEE PROPOSAL

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**To:** City of Hewitt  
**Attn:** Bo Thomas – City Manager  
**From:** Kyle D. Schulze, P.E. – Client Manager  
**Project Name:** Commerce Park Water Plant Improvements  
**Project No.:** 1-03655.00  
**Date:** May 9, 2022  
**Xc:** George E. “Jed” Walker, Jr. P.E., Miles Whitney, P.E.; Project File

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### COMMERCE PARK WATER PLANT IMPROVEMENTS

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Walker Partners, LLC (Engineer/Surveyor) appreciates this opportunity to submit this Proposal to provide professional surveying and civil engineering services to the City of Hewitt (City) in connection with the Commerce Park Water Plant Improvements (Project). Based upon our initial meetings, we understand that the City intends to complete water improvements consisting of a new Trinity Aquifer water well, a new ground storage tank, vertical turbine booster pumps, surge anticipator valve, pressure sustaining valve, standby generator, electrical improvements and associated site piping.

The proposed improvements are planned to be constructed at the existing Commerce Park water plant site located just north of Alliance Parkway and east of Bagby Avenue. A one-million-gallon elevated storage tank and building that houses the liquid ammonium sulfate and chlorine rooms currently reside on the site. A schematic map of the project location is shown on the attached Exhibit A.

The preliminary Engineer’s Opinion of Probable construction cost for the project is estimated to be \$6,596,400.00 (with 15% construction contingency). This estimate is in February of 2022 dollars. The construction cost is attached and reflects a one-million-gallon prestressed concrete ground storage tank, 12-inch dia. water well (500 gpm), 3,000 gallon per minute (GPM) vertical turbine pumps, yard piping, electrical/instrumentation/SCADA improvements, chlorine/LAS upgrades, and other components as initially described above.

It is understood that this project will be partially funded by American Rescue Plan Act (ARPA) funding.

It is also planned for this project to be constructed with two construction contracts. Generally divided with the Water Well as Contract No. 1 and Ground Storage Tank / Pump Station as Contract No. 2.

The scope of services, schedule, and associated fees that Walker Partners proposes to provide for this Project are outlined below:

### 1.00 SCOPE OF SERVICES

#### 1.01 SURVEYING SERVICES

##### A. Topographic / Boundary Survey (Phase 12)

1. Perform Deed Research of Subject Tracts for the purpose of reconciling tract lines.
2. Perform a Boundary Survey based upon North American Datum of 1983 (NAD83) State Plane Coordinates and in accordance with the General Rules of Procedures and Practices as set forth by the Texas Board of Professional Land Surveying and laws of the State of Texas, unless otherwise specified by the City.

3. Include the results of the Boundary Survey in the master design drawing including the existing survey monuments found in the field; depict record easements that may exist.
4. Perform an on-the-ground field survey to obtain the topography (terrain data) and other visible and apparent surface features (manmade or natural) such as ditches, swales, channels, embankments, drainage structures, catch basins and inlets, manholes, above-grade utility appurtenances, pavements, significant trees (hardwoods greater than 8 inches in diameter), fences, building structures, water's edge, etc. For underground utilities, Walker Partners will coordinate with Texas 811. The approximate locations of underground utilities will be shown based upon utility locators' markings.
5. Establish vertical control at the site and place benchmarks based upon North American Vertical Datum of 1988 (NAVD88), unless otherwise specified by client.
6. Prepare a topographic map from the topographic survey depicting the physical features as described above and with elevation contours at a 1-foot interval.

**B. Prepare Sanitary Control Survey Drawing (Phase 16)**

Walker Partners will prepare metes and bounds descriptions along with accompanying drawings of the sanitary control easement to be used as an attachment to easement legal documents (*as prepared by City of Hewitt legal staff*). The description and drawing will be delivered to City of Hewitt legal staff for its use in preparing Easement for filing for record. Walker Partners will set iron rods at the easement corners. It is estimated that the total number of sanitary control easements to be prepared will be two (2).

**1.02 ENGINEERING BASIC SERVICES**

**A. Preliminary Design (Phase 30)**

1. Attend preliminary conferences with the City and other interested parties to define and clarify the City's requirements for the Project.
2. Establish the scope of any soil and foundation investigations or any special surveys and tests which, in the opinion of the Engineer, may be required; assist the City in arranging for such work to be done, for the City's account.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including general permit requirements for the various components of the project.
4. Manage sub-consultants and coordinate their corresponding scope of work during the preliminary design phase.
5. Contact franchise utilities located within the project area and determine the approximate locations of the existing utilities with respect to the new water system improvements. At a minimum, Atmos (gas), AT&T (comm.), Oncor (electric), Grande (comm.), Spectrum (comm.) will be contacted.
  - No potholing of existing below ground utilities is included within the scope of services. If during preliminary design this service is deemed necessary, this additional work will be negotiated with the City.
6. Prepare preliminary design documents on the Project in sufficient detail to indicate clearly the challenges involved and the alternate solutions available to the City, including final design criteria, preliminary drawings, an outline of specifications, and setting forth clearly the Engineer's recommendations.
7. Prepare an updated preliminary Engineer's Opinion of Probable Cost.

8. Furnish the City the required number of copies of the preliminary plan, including preliminary layouts and cost estimates.

**B. Final Design (Phase 40)**

The following is for 2 bid packages (1 for water well, 1 for GST/PS)

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. The Drawings to be prepared with this Phase of the Work, in general, will include the following:
  - General Condition Drawings – these Drawings shall be for informational, permitting, and bidding purposes and shall, in general, consist of the following:
    - i) General Notes and Project Specific Notes
    - ii) Legends, Abbreviations, and Symbols
    - iii) Survey Control Plan
    - iv) Topographic Survey
    - v) Sedimentation and Erosion Control Plan - prepare a Sedimentation and Erosion Control Plan for the project site including recommendations of “best management practices” for controlling sedimentation and erosion on the site during construction activities.
  - Civil Drawings for the project including site plan and grading plan.
    - i) Grading Plan – prepare a Grading Plan for the project. This plan will show existing grades, proposed contours and spot elevations as required; proposed grades at critical features; and proposed finish floor elevation(s).
    - ii) Water System Plan – prepare drawings for the water improvements including, fire hydrants, meters, piping, surge anticipator valves, pressure sustaining valves
  - Mechanical Drawings for the project components.
  - Structural Drawings for the project components.
  - Vertical Turbine Pump Drawings
  - Ground Storage Tank Drawings
  - Details – provide project-specific details and municipality standard details as required for permitting, bidding, and construction purposes.
2. Provide technical criteria, written descriptions, and design data for City’s use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist the City in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
3. Advise the City of any adjustments to the opinion of probable Construction Cost known to Engineer.
4. Prepare and furnish Bidding Documents for review by the City, its legal counsel, and other advisors, and assist the City in the preparation of other related documents.
5. Revise the Bidding Documents in accordance with comments and instructions from the City, as appropriate, and submit final copies of the Bidding Documents, a revised opinion of probable Construction Cost, and any other deliverables to the City within 21 calendar days after receipt of the City’s comments and instructions.

**C. Water Well Design & Project Coordination (Cayote Consulting, LLC) (Phase 100)**

Cayote Consulting, LLC will provide professional engineering services as outlined below:

Preliminary Design / Project Management / Permitting

1. Meetings/Coordination – Meetings as necessary to provide updates, solicit direction, present results, and coordinate with ongoing City activities, including proposed ground storage tank and pump station design.
2. Research – Gathering of planning documents and guides from GWCDs and other governing entities. Development of land use assumptions, conveyance routing, facility siting, etc.
3. Objectives – Coordinated development of well objectives, both conceptual and specific.
4. Ground Water Conservation District Coordination / Final Permitting – Coordination with the GWCD regarding well replacement strategies and moving HUPP to new well location. Coordinate this task with RW Harden

Evaluation of Groundwater Resources and Permitting (R W Harden & Associates)

- a. **Evaluation of Available Data** – Compile and review hydrogeologic information from various public and private sources. Collate and summarize data for use in subsequent tasks.
- b. **Evaluate Groundwater Conservation District Rules and Management Plan** – Review current Southern Trinity Groundwater Conservation District Rules (STGCD or District) rules and management plan. Identify and tabulate rules and/or policies that may affect project production.
- c. **Groundwater Modeling** – Conduct groundwater flow modeling using hydrogeologic data compiled during previous tasks for purposes of permitting. Estimate regional and local-scale aquifer responses to groundwater production.
- d. **Groundwater Conservation District Replacement Well Permitting** – Preparation of submittals associated with obtaining STGCD approval for drilling and production of groundwater from a replacement well. Provide technical support during STGCD review of submittals and Client representation during the well permit hearing.

Final Design Phase

1. Well Characteristics – Develop list of proposed well design characteristics utilizing neighboring well characteristics. Coordinate this task with RW Harden.
2. Final Review with City – Discuss final well design characteristics with the City and coordinate with electrical engineers, planned sizing.
3. Plan Submission to TCEQ – Project plans and specifications to be submitted to TCEQ for "Interim Approvals"

Bidding Phase

1. Project Bidding – Prepare final documents and begin the bidding process of the project.
2. Project Bid Tabulation and Letter of Recommendation – Answer contractor questions, prepare Addenda, prepare bid tabulations, check references, and provide City with a Letter of Recommendation.

Construction Administration Phase

1. Construction Administration – Provide periodic inspection services on key points of the project. Review and provide comments on project submittals, manage project pace.
2. Completed Well Submission Packet to TCEQ – Obtain and prepare all documentation needed to submit for use the completed well packet to TCEQ for interim use approvals, utilizing data obtained during the drilling process.
3. Record Drawings – Provide City with project completion documentation and data needed for O&M operations.

**D. Electrical & SCADA Design (JRSA Engineering) (Phase 101)**

JRSA Engineering will provide professional engineering services to design the electrical, instrumentation and controls systems as outlined below:

Preliminary Design

1. Verify existing equipment sizes and locations.
2. Compare options for well pump normal and emergency power.
3. Provide a preliminary report/ write-up

Final Design Phase

4. Prepare one set of electronic/pdf plans and specifications for bid.
5. Provide submittals for 60%, 90% and 100% and provide review comments.
6. Design the electrical, instrumentation and control, and SCADA systems for the plant additions; including: two transfer booster pumps, a water well pump, and a ground storage tank.
7. Coordinate either an additional electrical service or a larger electrical service for the pump station.
8. Design a single diesel generator to provide emergency power for the well pump and booster pumps.
9. Provide coordination with Walker Partners, Cayote Engineering, and the City of Hewitt. Attend design meetings as required.
10. Preparation of our Engineer's Opinion of Probable Construction Costs for our design.

Construction Administration Phase

1. Shop drawing review
2. Three site visits to report on the progress of construction
3. Provide a final inspection, O&M manual review and the preparation of record drawings

**E. Bidding (Phase 50)**

The following is for 2 bid packages (1 for water well, 1 for GST/PS)

1. Assist the City in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process contractor deposits or charges for the Bidding Documents.
2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
3. Provide information or assistance needed by the City in the course of any negotiations with prospective contractors.
4. Consult with the City as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those

portions of the Work as to which such acceptability is required by the Bidding Documents.

5. Attend the Bid opening, prepare Bid tabulation sheets, and assist the City in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

**F. Construction Administration (Phase 60)**

The following is for 2 construction contracts (1 for water well, 1 for GST/PS)

1. Assist in the preparation of formal Contract Documents.
2. Pre-Construction Conference. Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
3. Schedules. Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
4. Make periodic visits to the site (as distinguished from the continuous services of a resident Project Representative) to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents.

In performing these services, the Engineer will endeavor to protect the City against defects and deficiencies in the work of the contractor, but he cannot guarantee the performance of the contractor, nor be responsible for the actual supervision of construction operations or for the safety measures that the contractor takes or should take.

5. Consult and advise with the City; issue all instructions to the contractor requested by the City; and prepare and issue routine change orders with the City's approval.
6. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the contractor submits. This review is for the benefit of the City and covers only general conformance with the information given by the Contract Documents. The contractor is to review and stamp his approval on submittals prior to submitting to Engineer, and review by the Engineer does not relieve the contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with Contract Documents.
7. Obtain and review monthly and final estimates for payments to contractors, and furnish to the City any recommended payments to contractors and suppliers; assemble written guarantees which are required by the Contract Documents.
8. Conduct, in company with the City, a final inspection of the Project for compliance with the Contract Documents, and submit recommendations concerning project status, as it may affect the City's final payment to the contractors.

**1.03 SPECIAL SERVICES****A. Construction Staking (Phase 65)**

*Baselines and Benchmarks.* As appropriate, the Engineer shall establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed with construction.

**B. Resident Project Representative (RPR) Services (Phase 70)**

Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR will provide part-time representation for the estimated 18 month construction duration – **20-man hours per week for 78 weeks**. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for the City against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

The duties and responsibilities of the RPR are as follows:

1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with the City only with the knowledge of and under the direction of Engineer.
2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
4. Safety Compliance: Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. Liaison:
  - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.

- b. Assist Engineer in serving as the City's liaison with Contractor when Contractor's operations affect the City's on-site operations.
    - c. Assist in obtaining from the City additional details or information, when required for proper execution of the Work.
  6. Clarifications and Interpretations: Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs) or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
  7. Review of Work; Defective Work:
    - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
    - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.; and
    - c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
  8. Records:
    - a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
    - b. Prepare a daily report or keep a diary or logbook, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
    - c. Upon request from the City to Engineer, photograph or video Work in progress or Site conditions.
    - d. Maintain records for use in preparing Project documentation.
    - e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
  9. Reports:

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
  - b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
  - c. Furnish to Engineer and the City copies of all inspection and test reports.
  - d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
10. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
11. Completion:
- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
  - b. Participate in Engineer's visit to the Site in the company of the City and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
  - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of the City or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

**C. Title Search / Title Letter (Phase 102)**

Contract with a Title Company to perform a title search on the deed of the current property owner and make a 70-year "run sheet" of the documents / instruments found. Prepare a Title Letter describing the instruments and summarizing the findings of the title search. Note: no title opinion will be given. Estimated that 2 will be obtained.

**D. Summary Appraisal Reports (Phase 103)**

Summary appraisal reports will be prepared based upon the fee simple market value of the land in a vacant condition. Values shall be assigned to the permanent easement and the temporary construction easement, and consideration shall be given to possible damages on the remainder. Based upon preliminary sizes of tracts, it is assumed that multiple sets of comps will need to be developed. Estimated that 1 will be obtained. Walker Partners will obtain summary appraisal reports from Gene Munn at a maximum of \$4,250.00 per report and will only bill for reports actually completed. Estimated at 2 x \$4,250.00 = \$8,500.00.

**E. Easement Acquisitions (Permanent and Temporary Construction Easements) (Phase 104)**

Millard Real Estate Advisors, Inc. (Mr. Mike Millard) will perform all of the acquisitions duties related to actually acquiring the easements necessary for the completion of this project. These duties will involve reviewing the appraisal district data, performing the deed record checks, making initial contact with the property owners, reviewing the Title Letters, reviewing plats and property descriptions, providing broker’s opinion of costs (if necessary), and negotiating with the property owners (3 visits per owner). Walker Partners estimates that 2 easement will need to be acquired. Walker Partners will utilize Mike Millard to acquire the property required at a maximum of \$2,500.00 per parcel. Estimated at 2 x \$2,500.00 = \$5,000.00

**F. Geotechnical (Langerman Foster Engineering Company) (Phase 105)**

Project Details

The project consists of a new 1MG Ground Storage Tank and Vertical Turbine Pumps. The Tank will be a pre-stressed concrete tank with a diameter of 66 feet, and a height of 40 feet. The Pumps will be constructed on-grade with cans that extend about 10 to 15 feet below grade.

LFE expects the site geology will consist of clay soils to a depth of roughly 5 feet, followed by limestone bedrock. A total of 4 borings will be drilled for subsurface exploration as shown in below Table.

Boring Depths	
Structure	Borings
Ground Storage Tank	3@20-ft
Vertical Turbine Pumps	1@20-ft

Underground Utilities

LFE will contact the Texas 811 system for utility locations; however, be aware that the Texas 811 system only locates buried utilities within existing public easement and right-of-ways. In the event that underground utility locations are not known, LFE can arrange for a vacuum truck to pothole at the boring locations. However, these services would constitute additional costs that are not included in this proposal.

Laboratory Testing and Engineering Report

Upon completion of the LFE field exploration, laboratory tests will be conducted in order to evaluate the classification, strength, and volume change potential of the predominant subsurface materials observed in the borings. The results of the field operations and lab tests will be evaluated by a Texas Licensed Professional Engineer

specializing in geotechnical engineering analysis. Engineering evaluation and recommendations will be limited to providing the following services:

1. Description of field operations and laboratory tests;
2. Description of subsurface materials and conditions including boring logs;
3. Short-term groundwater observations during drilling operations.
4. Geotechnical design criteria for the proposed structures as follows:
  - a. Volume change estimates of expansive soils (Potential Vertical Rise)
  - b. Suitable foundation types and depths
  - c. Allowable bearing values
  - d. Lateral earth pressures for below-grade structures
  - e. General comments concerning excavatability
  - f. Geotechnical seismic criteria
  - g. General earthwork and construction criteria

**2.00 SCHEDULE FOR SERVICES**

Walker Partners acknowledges the importance of the project schedule to the City and agrees to put forth its best professional efforts to perform its services under this proposal in a manner consistent with that schedule. The City understands, however, that Walker Partners’ performance must be governed by sound professional practices. If requested, Walker Partners will be pleased to develop a project schedule outlining each of the items included the above-described scope of services. Per ARPA grant requirements, the federal funds must be obligated no later than December 31, 2024 and expended no later than December 31, 2026.

**3.00 FEES**

**3.01 LUMP SUM FEE**

For the SCOPE OF SERVICES, outlined above, the City agrees to pay Walker Partners a lump sum fee of **(\$860,350.00)** to be invoiced monthly at a percentage of the work completed.

Below is an itemized breakdown of the proposed fees:

<b>Phase No.</b>	<b>Surveying Services</b>	<b>Lump Sum Fee</b>
12	Topographic / Boundary Survey	\$ 10,000.00
16	Prepare Sanitary Control Survey Drawing	\$ 4,000.00
	<b>Surveying Services Subtotal</b>	<b>\$ 14,000.00</b>
<b>Phase No.</b>	<b>Engineering Basic Services</b>	<b>Lump Sum Fee</b>
30	Preliminary Design	\$ 30,450.00
40	Final Design	\$ 247,420.00
100	Water Well Design & Project Coordination (Cayote Consulting)	\$ 171,250.00
101	Electrical & SCADA Design (JRSA)	\$ 61,600.00
50	Bidding	\$ 15,230.00
60	Construction Administration	\$ 87,550.00
	<b>Engineering Basic Services Subtotal</b>	<b>\$ 613,500.00</b>
<b>Phase No.</b>	<b>Special Services</b>	<b>Lump Sum Fee</b>
65	Construction Staking	\$ 6,500.00
70	Resident Project Representative (RPR)	\$ 202,800.00
102	Title Search / Title Letter	\$ 2,000.00
103	Summary Appraisal Reports (Gene Munn)	\$ 8,500.00
104	Easement Acquisitions (Mike Millard)	\$ 5,000.00
105	Geotechnical (Langerman Foster)	\$ 8,050.00
	<b>Special Services Subtotal</b>	<b>\$ 232,850.00</b>
	<b>TOTAL LUMP SUM FEE</b>	<b>\$ 860,350.00</b>

### 3.03 ADDITIONAL SERVICES

Fees for Additional Services not identified in the SCOPE OF SERVICES may be deemed necessary during the course of the project. Payment for additional services will be billed on an hourly basis or at a negotiated fee. Work related to Additional Services will not commence without authorization by the City.

### 4.00 EXCLUSIONS

The following items are excluded from this proposal. If there are questions about any other services not listed here, they shall be clarified prior to approval and acceptance of this proposal.

The proposed engineering services do not include the following:

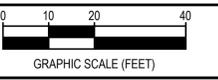
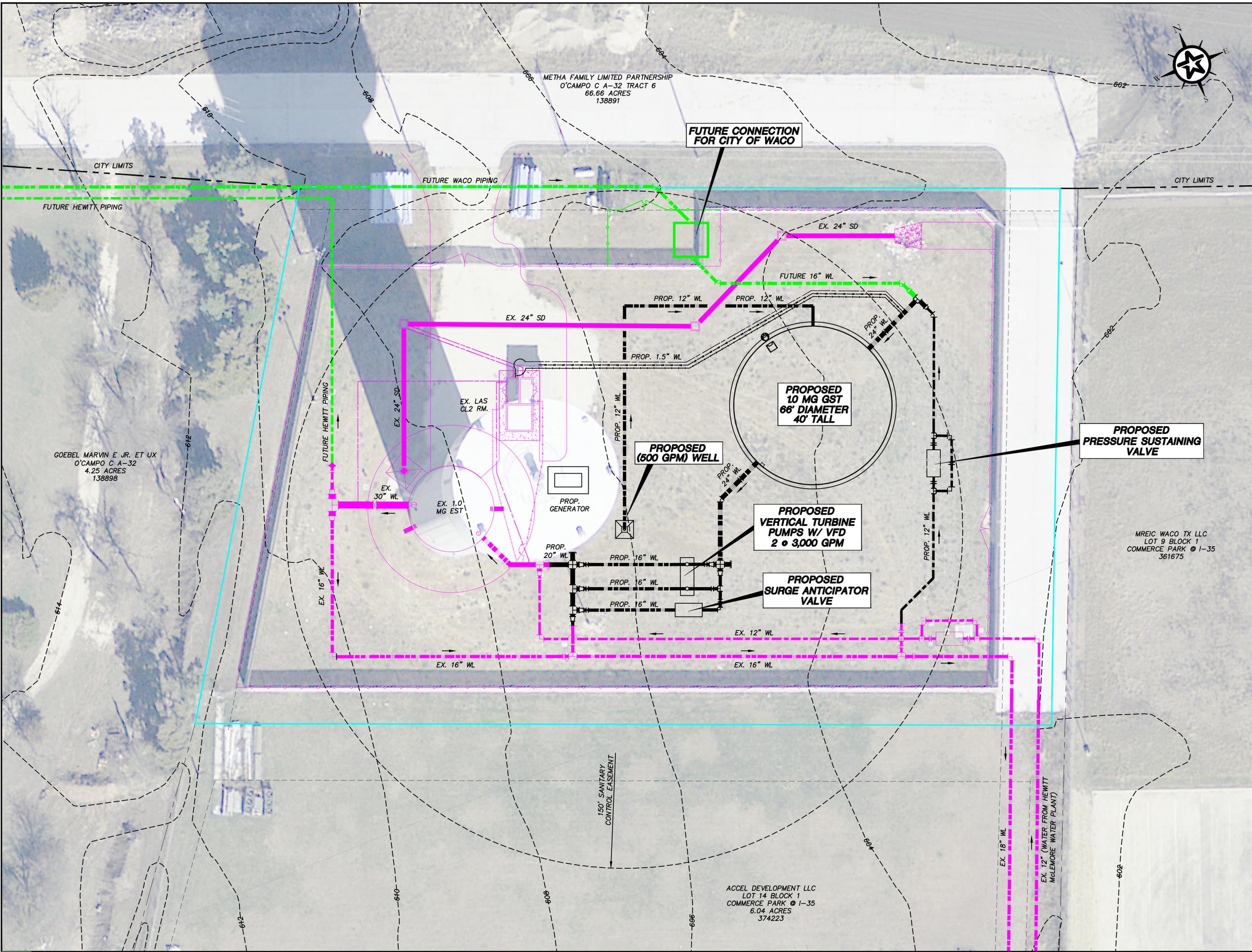
- Construction Materials Testing
- Design work related to LEEDS certification(s)
- Landscape architectural services
- Environmental Investigation
- Wetlands determination and permitting
- Determination of any listed endangered or threatened species
- Determination of any designated critical habitats in the Project area
- Landscape plan and irrigation plans
- Abandonment of private or public easements
- Preparation of easement legal documents
- Filing of documents for public record
- Land Cost for Easement Acquisition.
- Fees required by outside entities for various applications, licenses, or permits.
- Subsurface utility engineering survey
- Assistance to the Owner and/or the Contractor in filing the Notice of Intent (NOI) for the proposed construction activities
- Design of any "dry" utility facilities (i.e. gas, phone, cable TV, etc.)

### 5.00 ACCEPTANCE OF PROPOSAL

If the Scope of Services, Schedule, and Fees outlined herein are acceptable to the City of Hewitt, Walker Partners will prepare a "Standard Form of Agreement for Professional Services" for review, approval, and execution.

### LEGEND

- PROPERTY BOUNDARY
- EXISTING FACILITIES
- PROPOSED IMPROVEMENTS
- FUTURE IMPROVEMENTS



REV. DESCRIPTION DATE

**AYOTE CONSULTING, LLC**  
T.B.P.E. F-16387  
P.O. Box 24189  
WACO, TX 76702 PH. 254-744-3439

**Walker Partners**  
engineers ★ surveyors  
T.B.P.E. Registration No. 8253

**CITY OF HEWITT**

COMMERCE PARK WATER PLANT IMPROVEMENTS

DESIGN SCHEMATIC SITE PLAN

PRELIMINARY FOR REVIEW ONLY

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF PROFESSIONAL ENGINEER KYLE D. SCHULZE #116026 ON THE DATE SHOWN ON THE DATE STAMP. IT IS NOT TO BE USED FOR CONSTRUCTION BIDDING, OR PERMIT PURPOSES.	DESIGNED	KDS
	DRAFTED	ARC
	CHECKED	KDS
	WP PROJECT NO.	1-03655
	COW PROJECT NO.	---
DRAWING NO.		<b>EXH. A</b>

G:\PROJECTS\1-03655\2 ENGINEERING\2.0 CAD\1-03655 SITE PLAN EXHIBIT.DWG, EXH. A DESIGN SCHEMATIC SITE PLAN, 2/1/2022 2:43:36 PM, achids



Engineer's Opinion of Probable Cost  
City of Hewitt  
Commerce Park Water Plant Improvements  
Project No. 1-03655  
February 1, 2022

Item	Description	Quantity	Unit	Unit Price	Total Amount
<b>1.00</b>	<b>General Conditions</b>				
1.01	Mobilization, Barricades & Project Incidentals	1	LS	\$ 250,000.00	\$ 250,000.00
1.02	Stormwater Pollution Prevention Plan	1	LS	\$ 5,000.00	\$ 5,000.00
1.03	Stormwater Pollution Prevention Plan Implementation	1	LS	\$ 5,000.00	\$ 5,000.00
1.04	Trench Safety Plan	1	LS	\$ 1,000.00	\$ 1,000.00
<b>2.00</b>	<b>Water Plant Improvements</b>				
2.01	12" Water Well - 2,055 Feet Deep (500 gpm)	1	LS	\$ 2,750,000.00	\$ 2,750,000.00
2.02	Ground Storage Tank (1 MG Prestressed Concrete)	1	LS	\$ 1,250,000.00	\$ 1,250,000.00
2.03	3,000 gpm Vertical Turbine Pump	2	EA	\$ 125,000.00	\$ 250,000.00
2.04	Yard Piping	1	LS	\$ 150,000.00	\$ 150,000.00
2.05	Electrical/Instrumentation/SCADA	1	LS	\$ 500,000.00	\$ 500,000.00
2.06	Chlorine / LAS System Upgrades	1	LS	\$ 100,000.00	\$ 100,000.00
2.04	Site Work	1	LS	\$ 100,000.00	\$ 100,000.00
2.05	8" Surge Anticipator Valve (adjacent to pumps)	1	LS	\$ 50,000.00	\$ 50,000.00
2.06	8" Pressure Sustaining Valve (McLemore fill line)	1	LS	\$ 50,000.00	\$ 50,000.00
2.07	Standby Generator (including auto transfer switch)	1	LS	\$ 275,000.00	\$ 275,000.00
	Construction Contingency	15%			\$ 860,400.00
<b>Total Estimated Construction Cost</b>					<b>\$ 6,596,400.00</b>

**Exhibit B**  
**Treasury ARPA Terms and Conditions**

U.S. DEPARTMENT OF THE TREASURY  
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Recipient name and address: [Recipient to provide]	DUNS Number: [Recipient to provide] Taxpayer Identification Number: [Recipient to provide] Assistance Listing Number: 21.027
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Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient:

Engineer:

\_\_\_\_\_



Authorized Representative:

Authorized Representative: George E. Walker, Jr.

Title:

Title: President/CEO

Date signed:

Date Signed:

U.S. Department of the Treasury:

\_\_\_\_\_

Authorized Representative:

Title:

Date:

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY  
CORONAVIRUS LOCAL FISCAL RECOVERY FUND  
AWARD TERMS AND CONDITIONS

1. Use of Funds.
  - a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
  - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
  - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
  - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
  - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
  - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
  - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury’s implementing regulation at 31 C.F.R. Part 19.
  - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
  - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.
11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
14. Debts Owed the Federal Government.
- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
  - b. Any debts determined to be owed the federal government must be paid promptly by

Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A Treasury employee responsible for contract or grant oversight or management;
  - v. An authorized official of the Department of Justice or other law enforcement agency;
  - vi. A court or grand jury; or
  - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

# HEWITT TEXAS

## COUNCIL AGENDA ITEM FORM

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**MEETING DATE:** July 5, 2022

**AGENDA ITEM #:** 5

**SUBMITTED BY:** Kevin Reinke, Utilities Director

**ITEM DESCRIPTION:**

Discussion and possible action on **Ordinance No. 2022-06** amending by replacing and repealing in its entirety Chapter 78, Utilities, Article IX - Industrial Waste, Division 2. - Sanitary Sewer Regulations of the Code of Ordinances of the City of Hewitt.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

The City of Waco recently adopted an updated sanitary sewer ordinance approved by Texas Commission on Environmental Quality (TCEQ). Per our wholesale wastewater contract with the City of Waco, we must update our ordinance to reflect at a minimum Waco's requirements within the ordinance approved by TCEQ. In the new ordinance, the pretreatment requirements changed, allowing stricter requirements for industrial discharges into the sanitary sewer system. Another change allows the City of Hewitt to authorize a Waco representative to help investigate unauthorized discharges from a Hewitt customer.

**FISCAL IMPACT:**

Amount Budgeted – N/A  
Line Item in Budget – N/A

**SUGGESTED MOTION:**

I move to approve the adoption of Ordinance No. 2022-06 amending by replacing and repealing in its entirety Chapter 78, Utilities, Article IX – Industrial Waste, Division 2. – Sanitary Sewer Regulations of the Code of Ordinances of the City of Hewitt.

**ATTACHMENTS:**

City of Waco – Approval Letter  
Ordinance No. 2022-06



## Water Utility Services

Post Office Box 2570  
Waco, Texas 76702-2570  
254/299-2450  
Fax: 254/299-2453  
www.waco-texas.com

Item 5.

June 7, 2022

Bo Thomas  
City Manager  
City of Hewitt  
200 Patriot Court  
Hewitt, Texas 76643

Re: Ordinance Approval and Adoption

Dear Mr. Thomas:

The Texas Commission on Environmental Quality (TCEQ) issued a Texas Pollutant Discharge Elimination System (TPDES) permit to the City of Waco, Texas ("the Control Authority" or "CA") on January 24, 2020. Said permit required the Control Authority to submit a modification to its legal authority (i.e., its Sanitary Sewer Use Regulations ordinance) and pretreatment program to include the streamlining rules in order to ensure compliance with pretreatment standards and requirements.

Said modifications to the ordinance were submitted to the TCEQ on October 6, 2020.

Under the Wholesale Wastewater Contract Exhibit B (Sections 1.5 & 1.6), whenever the City of Waco revises its sewer discharge standards, Waco is required to forward a copy of the revision to each Customer City. A copy of Waco's ordinance modification was provided to you on October 7, 2020. Waco requested that you review the draft ordinance and then provide Waco any comments and/or proposed revisions.

On February 9, 2021, the TCEQ notified the CA that the review of the substantial modification is technically complete, and the CA can move forward with obtaining approval and revising ordinances.

On May 12, 2022, the TCEQ notified the CA that the review of the Customer City ordinances is complete, and the CA could move forward with the pretreatment program modification submittal. This submittal must include Waco's and the Customer Cities adopted ordinances.

On February 28, 2022, Hewitt submitted proposed ordinance revisions to Waco that included the minimum required language. **This letter serves as notice that your proposed ordinance revisions are acceptable to the City of Waco.** Therefore, in accordance with the Wholesale Wastewater Contract, you will need to adopt your ordinance revisions within sixty (60) days of receiving this **approval** from Waco.

Please note that on April 5, 2022, the Waco City Council approved Resolution No. 2022-215, which designated the City Manager, or the Deputy City Manager or an Assistant City Manager (if so designated by the City Manager), to conduct any show cause hearing requested under the Code of Ordinances (*Section 26-248 of the Waco Code*), including issuing notices of the hearing, taking evidence, and transmitting a report of the evidence and hearing (with recommendations) to City Council for action thereon. Your City may want to consider bringing this same type of resolution to your City Council if your City does not already have the authority in place.

Should you have any questions or require additional information on this matter, please contact me at 254-299-2446.

Sincerely,



Mistie S. Gonzales  
Pretreatment Coordinator  
City of Waco

Enclosure: City of Waco Resolution No. 2022-215

**RESOLUTION NO. 2022-215**

**WHEREAS**, on October 5, 2021, by Resolution No. 2021-743, the City Council approved a revised ordinance to govern the City’s Pretreatment Program; and

**WHEREAS**, said ordinance allows the City to issue a Notice of Violation to any User for certain actions; and

**WHEREAS**, said ordinance allows for City Council itself to conduct a show cause hearing for a Notice of Violation, or to designate any of its members or any officer or employee of the City to conduct the hearing (including issuing notices of the hearing, taking evidence, and transmitting a report (with recommendations) to City Council),

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

That the City Manager, or the Deputy City Manager or an Assistant City Manager (if so designated by the City Manager), is hereby designated to conduct any Show Cause Hearing requested under Code of Ordinances Section 26-248 (of Article VI (“Sanitary Sewer Use Regulations) of Chapter 26 (“Utilities”)), including issuing notices of hearing, taking evidence, and transmitting a report of the evidence and hearing (with recommendations) to the City Council for action thereon.

That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given as required by law.

**PASSED AND APPROVED** this 5th day of April 2022.

DocuSigned by:  
*Dillion Meek*  
376FA5E0633C407...

Dillon Meek, Mayor  
City of Waco, Texas

**ATTEST:**

DocuSigned by:  
*Patricia W. Ervin*  
1777DC038DFE420...

Patricia Ervin, Interim City Secretary

DocuSigned by:  


**APPROVED AS TO FORM & LEGALITY:**

DocuSigned by:  
*Jennifer Richie* AGA RR  
7D3A67A75D614C3.

Jennifer Richie, City Attorney

**ORDINANCE NO. 2022-06**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEWITT, TEXAS; AMENDING BY REPLACING AND REPEALING IN ITS ENTIRETY CHAPTER 78, UTILITIES, ARTICLE IX – INDUSTRIAL WASTE, DIVISION 2. – SANITARY SEWER USE REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF HEWITT, TEXAS; PROVIDING FOR REGULATIONS REGARDING DIRECT AND INDIRECT CONTRIBUTORS TO THE WASTEWATER SYSTEM AND PROCEDURES RELATED THERETO; PROVIDING PRE-TREATMENT REGULATIONS; PROVIDING FOR INSPECTIONS AND REPORTING; PROVIDING FOR TESTING; PROVIDING FOR ENFORCEMENT OF REGULATIONS; MAKING VIOLATION AN OFFENSE PUNISHABLE BY A FINE OF UP TO \$2,000 AND MAKING EACH DAY OF VIOLATION A SEPARATE OFFENSE; PROVIDING FOR SEVERABILITY, REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED WAS NOTICED AND OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEWITT, TEXAS:**

**WHEREAS**, the Hewitt City Council finds that it is in the best interest of the citizens of the City of Hewitt to create enforceable, detailed and clear uniform requirements for direct and indirect contributors into the wastewater system for the city.

**WHEREAS**, these set regulations will enable the city to comply with all applicable local, state and federal pretreatment laws and regulations.

**SECTION I**

That Chapter 78, UTILITIES, Article IX, Industrial Waste, Division 2. – Sanitary Sewer Use Regulations, is hereby amended by replacement and is repealed in full, to read as follows in “**Exhibit A**” attached.

**SECTION II**

That the terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

**SECTION III**

That all ordinances, codes, regulations, policies and guidelines of and in the City of Hewitt, in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION IV**

That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required by law.

**SECTION V**

That this ordinance shall take effect upon passage and publication in accordance with the City Charter.

**PASSED AND APPROVED on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.**

**CITY OF HEWITT, TEXAS**

\_\_\_\_\_  
Steve Fortenberry, Mayor

Attest:

\_\_\_\_\_  
Lydia Lopez, City Secretary

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Michael W. Dixon, City Attorney

## Exhibit “A”

### Modifications to Article IX (Sanitary Sewer Use Regulations) of Chapter 78 (UTILITIES)

*That Article IX. “Sanitary Sewer Use Regulations” in Chapter 78 “Utilities” of the Code of Ordinances of the City of Hewitt, Texas, Sections 78-461 and 78-462 would be amended in its entirety as follows:*

#### *Division I.- General*

#### **Sec. 78-461. – Purpose and Policy.**

(a) This article sets forth uniform requirements for Users of the Publicly Owned Treatment Works and enables the city to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code (USC) §§ 1251 et seq.) and the General Pretreatment Regulations for Existing and New Sources of Pollution (Title 40 of the *Code of Federal Regulations* [CFR] Part 403).

(b) The objectives of this article are to:

(1) Prevent the introduction of pollutants into the Publicly Owned Treatment Works which will interfere with its operation;

(2) Prevent the introduction of pollutants into the Publicly Owned Treatment Works which will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;

(3) 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) Promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;

(5) Enable the City to comply with its Texas 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; and

(6) Provide for equitable distribution of the cost, operation, maintenance, and improvement of the Publicly Owned Treatment Works.

(c) This article shall apply to all Users of the Publicly Owned Treatment Works. This article authorizes the issuance of individual wastewater discharge permits or general permits; provides for monitoring, compliance, and enforcement activities; establishes

administrative review procedures; and requires User reporting; and assumes that existing customer's capacity will not be preempted.

(d) All discharges shall conform to the requirements of this article.

(e) Administration. Except as otherwise provided herein, the City shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the City may be delegated by the City manager to a duly authorized City employee.

**Sec. 78-462. – Definitions and abbreviations**

(a) The following abbreviations shall have the designated meanings:

BOD – Biochemical Oxygen Demand  
 BMPs – Best Management Practices  
 BMR – Baseline Monitoring Report  
 CA – Control Authority  
 CFR – *Code of Federal Regulations*  
 CIU – Categorical Industrial User  
 COD – Chemical Oxygen Demand  
 EPA – U.S. Environmental Protection Agency  
 FOG- Fats, Oils, and Grease  
 gpd – Gallons per day  
 IU – Industrial User  
 l-Liter  
 mg - Milligrams  
 mg/l – milligrams per liter  
 MTCIU – Middle Tier Categorical Industrial User  
 NPDES-National Pollutant Discharge Elimination System  
 NSCIU – Non-Significant Categorical Industrial User  
 O&M -- Operations and Maintenance  
 POTW – Publicly Owned Treatment Works  
 RCRA – Resource Conservation and Recovery Act  
 SIU – Significant Industrial User  
 SIC - Standard Industrial Classifications  
 SNC – Significant Noncompliance  
 SWDA- Solids Waste Disposal Act (42 USC §§ 6901 et seq.)  
 TPDES – Texas Pollutant Discharge Elimination System  
 TKN – Total Kjeldahl Nitrogen  
 TP-Total Phosphorus  
 TSS – Total Suspended Solids  
 USC – United States Code

(b) Unless a provision explicitly states otherwise, the following words, terms and phrases, when used in this article, shall have the meanings hereinafter designated:

*Act* means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC §§ 1251 et seq.

*Act of God* is an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, or irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

*Animal waste* means and includes:

- (1) Carcasses of animals exposed to pathogens;
- (2) Body parts of animals exposed to pathogens;
- (3) Whole bulk blood and blood products, serum, plasma, and other blood components from animals exposed to pathogens; or
- (4) Bedding of animals exposed to pathogens.

*Approval authority* means the Executive Director of the Texas Commission on Environmental Quality (TCEQ).

*Approved Methods* means the methods for pollutant sampling and analysis set by Part 136 of Title 40 CFR or procedures approved by the EPA.

*Authorized or Duly Authorized Representative of the User* means:

- (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-making or decision-making functions for the corporation; or
  - b. The manager of one or more manufacturing, production or operation 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 or general permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporation 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; or
- (4) The individuals described in subsections (1) through (3) above may designate a Duly 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 on an approved form.

*Automotive oil* means any lubricating oils or greases intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, lawnmower, tractor, trailer, motorcycle, boat, or truck. The term includes oil or grease that is not labeled specifically for that use but is suitable for that use according to generally accepted industry specifications, including those of synthetic composition.

*Best Management Practices (BMPs)* means the schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 78-463(a) and (b) [as reflected in 40 CFR 403.5(a)(1) and (b)]. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge, land application or waste disposal, or drainage from raw material storage.

*Biochemical Oxygen Demand (BOD)* means the quantity of oxygen by weight, expressed in milligrams per liter (mg/l) utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at a temperature of 20 degrees centigrade.

*Blood and blood products* mean all waste bulk human blood, serum, plasma and other blood components.

*Building drain* means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, water and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning three feet outside the inner face of the building wall.

*Building sewer* means the extension from the building drain to the public sewer or other place of disposal (also called house lateral and house connection).

*Bulk* means blood or body fluids in a volume of 100 milliliters (ml) or more.

*Bypass* means the intentional diversion of waste streams from any portion of a User's treatment facility.

*Categorical Pretreatment Standard or Categorical standards* means any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b)

and (c) of the Act (33 USC 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

*Categorical Industrial User* means an Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.

*Chemical Oxygen Demand (COD)* means the measure of the oxygen-consuming capacity of inorganic and organic matter present in the water or wastewater expressed in milligrams per liter (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.

*City* means the City of Hewitt, Texas.

*City Manager* means the City Manager or a designated appointee of the City Manager.

*Clog* means to impede, hinder, or obstruct flow.

*Compliance schedule* means a milestone document of corrective actions developed to assist an industry in regaining compliance through operation and maintenance and/or construction while providing the City and the regulatory agency with progressive reporting and shall be used as a progressive enforcement action for noncompliance.

*Composite sample* means the sample resulting from the combination of individual samples taken at selected intervals based on an increment of either flow or time.

*Control authority* means the City.

*Control manhole* means a manhole giving access to a building sewer at some point before the building sewer discharge mixes with other discharges in the public sewer.

*Cooling water* means the water discharged from any system of condensation, such as air conditioning, cooling, and refrigeration systems.

*Daily Average Limit* means a discharge limit based on the average of sample analysis results taken from an industrial waste source during an operating day.

*Daily maximum or daily discharge (flow)* means the discharge of a pollutant measured during a 24-hour period that reasonably represents the calendar day for purposes of sampling.

*Daily Maximum Limit* means 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.

*Day* means a calendar day of 24 hours measured from midnight to the next midnight.

*Dilution* means the addition of any material, either liquid or non-liquid, or any other method, to attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the national categorical standards or local limits set by this article.

*Direct discharge* means the discharge of treated or untreated wastewater directly to the waters of the state.

*Discharge* means to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, dispose of, or to allow, permit, or suffer any of these acts or omissions.

*Environmental Protection Agency or EPA* means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

*Existing source* means any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

*Fats, oils and greases (FOG)* means organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules, or N-Hexane extractable material not absorbed in Silica gel. These substances are detectable and measurable using analytical test procedures specified in the current edition of 40 CFR 136 or the Federal Register. All are sometimes referred to herein as "grease" or "greases."

*Garbage* means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products.

*Generator* means any person who owns or operates a grease trap/grease interceptor, or whose act or process produces fats, oils, and grease as waste.

*Grab sample* means a sample that is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

*Grease, fats, and oils removal system* means interceptors, separators, traps, or grease recovery devices, which prevents free floating grease, fats, and oils from entering the wastewater system.

*Grease trap or grease interceptor* means a device designed to use differences in specific gravities to separate and retain light density liquids, waterborne fats, oils, and greases prior to the wastewater entering the sanitary sewer collection system. These devices also serve to collect settleable solids, generated by and from food preparation activities or other industrial activities, prior to the water exiting the trap and entering the sanitary sewer collection system. Grease traps

and interceptors are also referred to herein as "grease traps/interceptors." Examples of these devices include oil and water separators and dissolved air flotation systems.

*Grease trap waste* means the material collected in and from a grease trap/interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from de-watering process.

*Hazardous metal* means and includes each of the following metals in its elemental state and any of its compounds expressed as that metal: arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, silver and zinc.

*Indirect discharge* means the introduction of pollutants from any nondomestic source into the wastewater system (including holding tank waste discharged into the system).

*Industrial user* means a source of indirect discharge.

*Industrial waste* means waste resulting from any process of industry, manufacturing, trade or business from the development of any natural resource, any mixture of the waste with water or normal wastewater, or distinct from normal wastewater.

*Infiltration water* means the water that leaks into the sewer.

*Instantaneous Limit* means 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.

*Interference* means a discharge that alone or in conjunction with a discharge or discharges from other sources:

- (1) Inhibits or disrupts the publicly owned treatment works, its treatment processes or operations, or its sludge processes, use or disposal; and
- (2) Therefore is a cause of a violation of the City of Waco, Texas's 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 Clean Water Act; the Solid Waste Disposal Act (SWDA), 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 SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

*Local Limit* means specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

*Medical Waste* means 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.

*Microbiological waste* means:

- (1) Cultures and stocks of infectious agents and associated biologicals;
- (2) Cultures of specimens from medical, pathological, pharmaceutical, research, clinical, commercial, and industrial laboratories;
- (3) Discarded live and attenuated vaccines;
- (4) Disposable culture dishes; or
- (5) Disposable devices used to transfer, inoculate, and mix cultures.

*Middle Tier Categorical Industrial User* may be designated by the City as a Middle Tier Categorical Industrial User if its discharge of categorical wastewater does not exceed the following:

- (1) 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gpd, whichever is smaller as measured by a flow monitoring device;
- (2) 0.01 percent of the design dry weather organic treatment capacity of the POTW; and
- (3) 0.01 percent of the maximum allowable headworks loading for any pollutant for which approved local limits were developed by a POTW.

*Milligrams per liter (mg/l)* means the same as parts per million and is a weight-to-volume ratio. The milligram-per-liter value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.

*Monthly Average* means the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

*Monthly Average Limit* means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

*Municipality* means a Texas municipal corporation that is neither the City of Hewitt, Texas, nor the City of Waco, Texas.

*Natural outlet* means any outlet into a watercourse, ditch, lake or other body of surface water or groundwater.

*New Source* means:

- (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;
  - 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 of 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 subsections (1)b. or (1)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:
    1. Any placement, assembly, or installation of facilities or equipment;
    2. 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 that are intended to be used in its operation within a reasonable time. Options to purchase or contracts that 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.

*Noncontact cooling water* means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product.

*Nonresidential user* means a person other than a residential user.

*Non-sewer waters* mean natural outlets, watercourses, ditches, lakes, receiving waters, underground water, septic tanks, or other bodies of surface water or groundwater which are not part of, or otherwise connected to, the sanitary sewer system of the city.

*Nonsignificant Categorical Industrial User* may be designated by the City as a Nonsignificant Categorical Industrial User if it never discharges more than 100 gpd of total categorical wastewater (excluding noncontact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and meets the following conditions:

- (1) Consistently complies with all applicable categorical standards;
- (2) Submits annual certification statement required in 401 CFR 403.12(q); and
- (3) Never discharges any untreated concentrated wastewater.

*Normal domestic wastewater* means wastewater, excluding industrial wastewater, discharged by a person into sanitary sewers, in which the average concentration of total suspended solids (TSS) is not more than 307 mg/l (and/or 35 mg/l TKN) and BOD is not more than 240 mg/l.

*Overload* means the imposition of organic or hydraulic loading on a treatment facility in excess of its engineered-design capacity.

*Pass through* means a discharge that exits the POTW into waters of the United States in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, are a cause of a violation of any requirement of the City of Waco, Texas's TPDES permit (including an increase in the magnitude or duration of a violation).

*Pathogen* means an agent that causes disease, especially a living microorganism such as a bacterium or fungus.

*Pathological waste* means and includes but is not limited to:

- (1) Human materials removed during surgery, labor and delivery, autopsy, or biopsy, including:
  - a. Body parts;
  - b. Tissues or fetuses;
  - c. Organs;
  - d. Bulk blood;
  - e. Body fluids; or
- (2) Products of spontaneous human abortions, including body parts, tissues, fetuses, organs, bulk blood, and body fluids, regardless of the period of gestation;

- (3) Laboratory specimens of blood and tissue after completion of laboratory examination; or
- (4) Anatomical remains.

*Permit* means an individual wastewater discharge permit, general permit, or sewer use permit.

*Person* means an individual, co-partnership, firm, company, corporation, municipal corporation, partnership, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or its legal representatives, agents or assigns. This definition includes all Federal, State, and local governmental entities.

*pH* means a measure of the acidity or alkalinity of a solution, expressed in standard units.

*Pollutant* means any 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 and industrial, municipal and agricultural waste, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

*Pretreatment* or *treatment* means 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 diluting the concentration of the pollutants unless allowed by an applicable Pretreatment Standard.

*Pretreatment Program* means a program administered by the Publicly Owned Treatment Works that meets the criteria established in this regulation (40 CFR 403.8 and 403.9) and which has been approved by a Regional or State Director in accordance with 40 CFR 403.11 of this regulation.

*Pretreatment Requirements* means any substantive or procedural requirement related to pretreatment imposed on a User, other than a pretreatment standard.

*Pretreatment Standards* or *Standards* mean prohibited discharge standards, categorical pretreatment standards, and local limits.

*Pretreatment Year* means the period between November 1 of one year and October 31 of the following year.

*Process wastewater* means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw materials, intermediate products, finished product, byproduct or waste product.

*Public sewer* means a sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

*Prohibited Discharge Standards or Prohibited Discharges* means absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 78-463 of this article.

*Publicly Owned Treatment Works (POTW)* means a treatment works, as defined by section 212 of the Act (33 USC 1292), which is owned by a state or municipality (as defined by Section 502(4) of the Act) or other political subdivision. This definition includes any devices and system used in the collection, storage, treatment, recycling and reclamation of municipal sewerage or industrial wastes of a liquid nature and any conveyances which convey wastewater to the POTW treatment plant. It includes interceptors and major lift stations conveying wastewaters to the POTW treatment plant. The term POTW shall also mean the municipality and/or City as defined in Section 502(4) of the Act, which shall have jurisdiction over the indirect discharges to its wastewater system and shall also include any sewers that convey wastewaters to the regional POTW from industry entities outside of the City who are, by contract agreement with the City, users of the regional POTW. For the City, the POTW is owned by the City of Waco, Texas.

*Regional POTW* means the publicly owned treatment works owned by the City of Waco, Texas.

*Residential user* shall mean a person discharging normal domestic wastewater from a single-family dwelling, duplex, or other dwelling unit that has complete independent living facilities and that is used solely for residential use and is not used in conjunction with a home occupation.

*Sanitary sewer* means a public sewer that conveys domestic wastewater or industrial wastes, or a combination of both, into which storm water, surface water, groundwater, and other unpolluted wastes are not intentionally passed.

*Septic Tank Waste* means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

*Sewage* means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

*Sewer* means a pipe or conduit for carrying sewage.

*Sewer Use Survey* means a process of identifying and locating industrial users and characterizing their industrial discharge.

*Sharps* means and includes the following material, whether contaminated or not:

- (1) Hypodermic needles;

- (2) Hypodermic syringes with attached needles;
- (3) Scalpel blades;
- (4) Razor blades and disposable razors used in surgery, labor and delivery, or other medical procedures;
- (5) Pasteur pipettes; and/or
- (6) Broken glass from laboratories.

*Significant Changes* include, but is not limited to, changes to a User's manufacturing process, flow volume, production rates, or equipment which has a probability of altering or affecting the characteristics or volume of its wastewater discharge to the POTW.

*Significant User* or *Significant Industrial User (SIU)* means, except as provided in subsection (3) and (4) of this subsection:

- (1) An Industrial User subject to Categorical Pretreatment Standards; or
- (2) An Industrial User that:
  - a. discharges an average of 25,000 gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
  - b. contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
  - c. is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.
- (3) The City may determine that an Industrial User subject to categorical Pretreatment Standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that 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) and the following conditions are met:
  - a. The Industrial User, prior to City's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
  - b. The Industrial User annually submits the certification statement required in Section 78-524(b) [**NOTE: See 40 CFR 403.12(q).**], together with any additional information necessary to support the certification statement; and
  - c. The Industrial User never discharges any untreated concentrated wastewater.

(4) Upon finding that User meeting the criteria in subsection (2) of this part 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 such User should not be considered a significant industrial user.

*Slug, slug discharge, or slug load* means any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in [Section 78-463](#). A slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or permit conditions.

*Special waste from health care facilities* means a solid waste, which if improperly treated or handled, may serve to transmit an infectious disease or diseases and which is comprised of the following:

- (1) Animal waste;
- (2) Bulk blood and blood products;
- (3) Microbiological waste;
- (4) Pathological waste; and
- (5) Sharps.

*Standard industrial classification (SIC)* means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972 Edition, as amended.

*Standard methods* mean the examination and analytical procedures set forth in the latest edition, at the time of analysis, of Standard Methods for the Examination of Water and Wastewater as prepared, approved, and published jointly by the American Public Health Association, the American Water works Association, and the Water Pollution Control Federation.

*Storm sewer* means a public sewer which carries storm and surface waters and drainage into which domestic wastewater or industrial wastes are not intentionally passed.

*Storm water* means any flow occurring during or following any form of natural precipitation and resulting therefrom, including snowmelt.

*Surcharge* means the charge in addition to the established charges for the collection and treatment of normal domestic sewage, which may be made on those permitted significant industrial users, including persons outside of the city limits that the city contracts with, whose waste loadings exceed the normal domestic sewage loading of 240 mg/l BOD and/or 307 mg/l TSS and/or 35 mg/l TKN.

*Total Kjeldahl Nitrogen* means the sum of organic nitrogen, ammonia, and ammonium in the chemical analysis of soil, water and wastewater.

*Total Phosphorus* is a sum parameter that shows the organic and inorganic phosphorous compounds in water.

*Total Suspended Solids or Suspended Solids* means the total suspended matter that floats on the surface of, or in suspension in, water, wastewater, or other liquid, and that is removable by a laboratory filtration device.

*Transporter* means a person who is registered with and authorized by the TCEQ to transport sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste in accordance with 30 Texas Administrative Code §312.142.

*Unpolluted wastewater* means water containing:

- (1) No free or emulsified grease or oil;
- (2) No acids or alkalis;
- (3) No phenols or other substances producing taste or odor in receiving water;
- (4) No toxic or poisonous substances in suspension, colloidal state or solution;
- (5) No noxious or otherwise obnoxious or odorous gases;
- (6) Not more than an insignificant amount in mg/l each of suspended solids and BOD, as determined by the City; and
- (7) Color not exceeding 50 units as measured by the platinum-cobalt method of determination as specified in standard methods.

*Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

*User* means any person, including those located outside the corporate limits of the City, who by any means contributes, causes, or permits the contribution or discharge of wastewater into the wastewater system.

*Waste* means rejected, unutilized, or superfluous substances in liquid, gaseous or solid form resulting from domestic, agricultural or industrial activities.

*Wastewater* means 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.

*Wastewater service charge* means the charge on all users of the public sewer system whose wastes do not exceed in strength the concentration values established as representative of normal wastewater.

*Wastewater system* means and includes all facilities for collection, pumping, treating, and disposing of wastewater and industrial wastes.

*Wastewater Treatment Plant* or *Treatment Plant* means that portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

*Watercourse* means a natural or manmade channel in which a flow of water occurs, either continuously or intermittently, and shall include storm sewers.

*Waters* or *water of the state* means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

*Working day* means a City workday and shall exclude Saturday, Sunday, and City holidays (as amended by the City).

(c) As used in this article, reference to any party or governmental regulatory authority or agency means that entity and its successors and assigns.

(d) As used in this article, reference to any law, statute, rule or regulation means that law, statute, rule or regulation as it currently exists or is hereinafter amended or supplemented.

***That Article IX. “Sanitary Sewer Use Regulations” in Chapter 78 “Utilities” of the Code of Ordinances of the City of Hewitt, Texas, would be amended by replacing the existing Sections 78-463 through 78-470 with the following Sections 78-463 through 78-470, and “Division” titles would be re-named or created as follows:***

## **DIVISION 2. – GENERAL SEWER USE REQUIREMENTS**

### **Sec. 78-463. – 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 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;
- (2) Wastewater having a pH less than 5.5 or more than 10.5, or otherwise causing corrosive structural damage to the POTW or equipment;
- (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in Interference but in no case solids greater than one-half inch in any dimension; examples include, but are not limited to: ashes; cinders; sand; mud; shavings; straw; metal; glass; rags; feathers; tar; plastics; wood; unground garbage; whole blood; paunch manure; Hair and fleshings; Entrails; Paper products, either whole or ground by garbage grinders; Slops; Chemical residues; Paint residues; Bulk solids; and disposable wipes;
- (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either alone or by interaction with other pollutants, will cause Interference with the treatment process or POTW and/or will cause excessive loading of treatment facilities;
- (5) Wastewater having a temperature which causes the temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C), or which will inhibit biological activity in the treatment plant resulting in interference or in such excess that could cause injury to workers;
- (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
- (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) Any trucked or hauled pollutants, except at discharge points designated by the City in accordance with Section 78-475 of this article and or with prior authorization;
- (9) Noxious, poisonous, 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 City of Waco, Texas's NPDES or TPDES permit;
- (11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations. The City may establish, in compliance with

- applicable local, state and federal laws and regulations, guidelines or directives for discharge of radioactive waste into public sewers;
- (12) Storm Water, surface water, ground water, artesian well water, roof run-off, subsurface drainage, condensate, deionized water, noncontact cooling water, swimming pool drainage, unpolluted wastewater, or other unpolluted drainage, unless specifically authorized by the City in writing, in advance of constructing the connection into the sanitary sewer;
- a. The City shall only grant such authorization in unusual circumstances.
  - b. Storm water and other unpolluted drainage shall be discharged into such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the City.
  - c. Unpolluted process or cooling water may be discharged, upon the written approval of the City, to a storm sewer, natural outlet, or the sanitary sewer system.
- (13) Sludges, screenings, or other residues from the pretreatment of industrial wastes, unless specifically authorized by the City;
- (14) Medical Wastes, except as specifically authorized by the City in an individual wastewater discharge permit;
- (15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test;
- (16) Detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW;
- (17) Fats, oils, or greases of animal or vegetable origin to the POTW in excess of an instantaneous limit of 200 mg/l;
- (18) Special waste, including non-biodegradable materials, from health care-related facilities, except as otherwise allowed by state law;
- (19) Hazardous waste prohibited by regulatory agencies;
- (20) Strong acid or iron pickling waste;
- (21) Untreated plating solutions;
- (22) Grease, fats, waxes, oil, plastic or other substances, whether emulsified or not, which:

- a. Will solidify or become discernibly viscous at any temperature between 32 degrees Fahrenheit and 90 degrees Fahrenheit;
  - b. Deposit grease or oil in the sewer lines in such manner as to clog the sewers;
  - c. Overload the user/discharger's skimming and grease handling equipment;
  - d. Are not amenable to biological oxidation and will therefore pass to the receiving waters without being affected by normal sewage treatment processes;
  - e. Have deleterious effects on the treatment process due to the excessive quantities; or
  - f. Cause objectionable odors;
- (23) Objectionable or toxic substances, exerting an excessive chlorine requirement to such a degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established for such materials;
- (24) Dissolved solids interfering with operations of treatment processes;
- (25) Any substance that may:
- a. Deposit grease or oil in the sewer lines in such a manner as to clog the sewers;
  - b. Overload skimming and grease handling equipment; or
  - c. Pass to the receiving waters without being effectively treated by normal wastewater treatment processes due to the non-amenability of the substance to bacterial action;
- (26) Any substance which is:
- a. Not amenable to treatment or reduction by the processes and facilities employed; or
  - b. Amenable to treatment only to such a degree that the treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters;
  - c. 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.
  - d. Garbage. No person may discharge garbage into the wastewater system unless it is shredded to a degree that all particles can be carried freely under the flow

conditions normally prevailing in public sewers. Particles greater than one-half inch in any dimension are prohibited.

The City is entitled to review and approve the installation and operation of any garbage grinder.

#### **Sec. 78-464. - National Categorical Pretreatment Standards**

- (a) Except as provided in this chapter, Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405–471.
- (1) The City may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c) if a pretreatment standard is expressed only in terms of either pollutant mass or concentration in wastewater.
  - (2) The City may impose equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purpose of calculating effluent limitations in accordance with 40 CFR 403.6(c)(2) when the limits in a pretreatment standard are expressed only in terms of mass of pollutant per unit of production.
  - (3) The City may impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e) if wastewater subject to a pretreatment standard is mixed with wastewater not regulated by same standard.
  - (4) The City may grant a variance to a person subject to a categorical pretreatment standard if the person proves under 40 CFR 403.13 that factors relating to the person's discharge are fundamentally different from factors considered by the EPA in developing the categorical pretreatment standard.
  - (5) Where the City's wastewater system achieves consistent removal of pollutants limited by federal pretreatment standards, the City may apply to the approval authority and/or EPA approval, as appropriate, for modification of specific limits in the federal pretreatment standards.  
  
The term "consistent removal" is as defined in 40 CFR 403.7.
  - (6) The City may grant a net gross adjustment to a person subject to a categorical pretreatment standard under 40 CFR 403.15.
  - (7) Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this Section in lieu of the promulgated categorical Standards from which the equivalent limitations were derived.
  - (8) Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum Monthly Average, or 4-day average, limitations. Where such Standards are being applied, the

same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation. [Note: See 40 CFR 403.6(c)(8).]

- (9) Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the City within two business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the City of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long-term average production rate. [Note: See 40 CFR 403.6(c)(9).]
- (b) Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this article for sources in that subcategory, shall immediately supersede the limitation imposed under this article. The City shall notify all affected Users of the applicable reporting requirements under 40 CFR 403.12.
- (c) In the event new or revised federal categorical pretreatment standards are mandated and promulgated by the EPA, the City will analyze such standards and determine which Users are affected thereby. After the City makes such determination, the affected Users shall be notified in writing.
- (d) After receipt of the notice provided in subsection (c) of this section, any User may contest the determination of the City by addressing a letter of protest to the City within 10 calendar days from the date such notice is received. The City, after receipt of the protest, shall review the new standard and respond, in writing, to the protest within 30 calendar days from the receipt of the protest. If, after the completion of this review, the City issues a determination that the new or revised pretreatment standards are applicable to the protesting User, any additional protest must be submitted to a court of competent jurisdiction by the affected User.

#### **Sec. 78-467. - State Pretreatment Standards**

Except as provided in this chapter, Users must comply with pretreatment Standards established by the State of Texas.

#### **Sec. 78-468. - Local Limits**

- (a) The City is authorized to establish Local Limits pursuant to 40 CFR 403.5(c).
- (b) The following pollutant limits are established to protect against Pass Through and Interference. No person shall discharge wastewater containing in excess of the following:
- (1) *Pollutants.* The following are pollutants for purposes of this article:

Pollutant	TBLLs (mg/L)	
	Central WWTP	Bull Hide Creek WWTP
Arsenic (T)	0.03	0.14
Cadmium (T)	0.07	0.06
Chromium, (T)	2.06	2.69
Chromium, Hex	0.41	0.82
Copper, (T)	0.76	0.98
Cyanide (T)	0.57	0.48
Lead (T)	0.36	0.53
Mercury (T)	0.004	0.03
Molybdenum (T)	1.22	0.26
Nickel (T)	0.60	1.84
Selenium (T)	0.08	0.11
Silver (T)	0.47	1.22
Zinc (T)	1.89	2.33

- (2) Surcharge limits. A surcharge may be assessed for waste loadings that exceed 240 mg/l BOD and/or 307 mg/l TSS and/or 35 mg/l TKN and/or 6 mg/L TP.
- (c) The above limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for total metal unless indicated otherwise. The City may impose mass limitations in addition to the concentration-based limitations above.
- (d) The City may develop Best Management Practices (BMPs), by ordinance or in individual wastewater discharge permits or general permits, to implement local limits and the requirements of Section 78-463.
- (e) The City may determine compliance with the local limits based on the analysis of:
  - (1) A grab sample; or
  - (2) A combination of grab samples, time composite samples, or flow composite samples.

**Sec. 78-469. - City’s Right of Revision**

The City reserves the right to establish, by ordinance or in individual wastewater discharge permits or in general permits, more stringent Standards or Requirements on discharges to the POTW consistent with the purpose of this article.

**Sec. 78-470. – Dilution**

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 City 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.

### **DIVISION 3. – PRETREATMENT OF WASTEWATER**

#### **Sec. 78-471. - Pretreatment Facilities**

- (a) Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 78-463 of this article within the time limitations specified by EPA, the State, or the City, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained continuously at the User's expense. Detailed plans and specifications, and any other pertinent information, describing such facilities and operating procedures shall be submitted to the City for review and shall be accepted by the City in writing 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 ordinance.
- (1) With regard to pretreatment facilities required by (a) directly above, if the City determines that a User should not be required to have such facilities because the discharge will not cause operational difficulties or harm the POTW or collection system, it is within the City's discretion to not require the pretreatment facilities.
- (b) Pretreatment facilities are required at User's expense for the discharge into the wastewater system by any User if any waters or wastes discharged by the user:
- (1) Have a five-day BOD greater than 5,000 mg/l; or
  - (2) Contain more than 4,000 mg/l TSS; or
  - (3) Contain more than 200 mg/L of Fats, Oils, and Grease; or
  - (4) Contain more than 1,250 mg/l TKN; or
  - (5) Contain more than 6 mg/L of TP; or
  - (6) Exceed categorical or local limits, or
  - (7) Contain any quantity of substances having the characteristics described in Division 2.
- (c) An average daily flow greater than five percent of the average daily sewage flow of the City shall be subject to the review and approval of the City and pretreatment facilities may be required at owner's expense.
- (d) If a User does not meet the definition of a categorical or significant industrial user and therefore is not required to obtain an individual wastewater discharge permit, the User may still be required to adopt certain pretreatment practices and procedures, such as BMPs, prior to discharge into the wastewater system even though it does not have to obtain a permit. The City shall give the User written notice of its determination of the need for certain practices or procedures to be followed. If the User disagrees, the User may within

10 days of receiving the notice file a request for the City Manager to review the matter. The decision of the City Manager shall be final.

- (e) In lieu of pretreatment facilities, the City may approve a discharge with the payment of fees, or surcharges, to cover the costs to treat and handle the discharge. The City may also assess extra charges, or surcharges, for exceeding BOD and/or TSS levels in lieu of considering the exceedances to be violations. In the City's sole judgment, if the discharge of pollutants interferes with the achievement of the purpose of this article or will likely result in exceedances of standards established by TCEQ or EPA, payment of a surcharge as an alternative to compliance with discharge standards will not be allowed or authorized.
- (f) The City may reject wastes when: (1) the City determines that a discharge or proposed discharge is included under this Section and Section 78-473; and (2) the discharger does not meet the requirements provided in this article.

**Sec. 78-472- Reserved.**

**Sec. 78-473. - Additional Pretreatment Measures**

- (a) Whenever deemed necessary, the City 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 waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of this ordinance.
- (b) The City may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow.
- (c) Grease, oil, and sand interceptors shall be provided when, in the opinion of the City, 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 a type and capacity approved by the City, shall comply with the City's Fats, Oils, and Grease ordinance, and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired in accordance with the City's Fats, Oils, and Grease ordinance by the User at their expense.
- (d) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

**Sec. 78-474. - Accidental Discharge/Slug Discharge Control Plans**

The City shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control Slug Discharges within one year of being designated as a SIU. The City may require any User to develop, submit for approval, and implement such a plan or take

such other action that may be necessary to control Slug Discharges. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the City of any accidental or Slug Discharge, as required by Section 78-516; 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.
- (5) Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the User's facility as necessary to prevent slug discharges.
- (6) Users shall retain, and make available for inspection and copying, all records of activities associated with accidental discharge and slug control plans.

**Sec. 78-475. - Hauled Wastewater**

- (a) Hauled waste may be introduced into the POTW only at locations designated by the City, and at such times as are established by the City. Such waste may include, but is not limited to, sewage sludge, water treatment sludge, domestic septage, and chemical toilet waste. Such waste shall not violate Division 2 of this article or any other requirements established by the City. The City requires waste haulers to obtain a permit or authorization.
- (b) The City may require haulers to obtain individual wastewater discharge permits or general permits. The City may also require generators of hauled waste to obtain individual wastewater discharge permits or general permits. The City also may prohibit the disposal of hauled waste. The discharge of hauled waste is subject to all other requirements of this ordinance. The City may establish operating procedures that are included in such permits and are enforceable as a violation of the permit.
- (c) The City may collect samples of each hauled load to ensure compliance with applicable Standards. The City may require haulers to provide a waste analysis of any load prior to discharge.
- (d) Haulers must provide a waste-tracking form for every load and comply with all operating procedures established by the City for such haulers. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification,

names and addresses of sources of waste, 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.

- (e) Hazardous waste, grit trap waste, sand trap waste, and oil/water separator waste are not authorized.
- (f) A fee may be charged for the dumping of such wastes.

**Sec.78-476. - Upset Provisions.**

**DIVISION 4. – INDIVIDUAL WASTEWATER DISCHARGE PERMITS AND GENERAL PERMITS**

**Sec. 78-477. - Wastewater Analysis**

When requested by the City, a User must submit information on the nature and characteristics of its wastewater within the time frame specified by the City. The City is authorized to prepare a form for this purpose and may periodically require Users to update this information.

**Sec. 78-478. - Individual Wastewater Discharge Permit Requirement**

- (a) No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an individual wastewater discharge permit from the City, except that a Significant Industrial User that has filed a timely application pursuant to Section 78-479 of this article may continue to discharge for the time period specified therein.
- (b) The City may require other Users to obtain individual wastewater discharge permits as necessary to carry out the purposes of this article.
- (c) Any violation of the terms and conditions of an individual wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Divisions 10, 11, and 16 of this article. Obtaining an individual-wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.
- (d) If the user applying for a permit is located outside the corporate limits of the City of Hewitt, then the user will be required to enter into a contract with the City of Hewitt prior to the issuance of the permit. Said contract with the City of Hewitt will require the User to comply with all of the standards in Waco’s pretreatment ordinance, including all permitting, compliance monitoring, reporting, local limits, and enforcement provisions herein.

**Sec. 78-479. - Individual Wastewater Discharge Permitting and General Permits: Existing Connections**

Any User required to obtain an individual wastewater discharge permit or a general permit who was discharging wastewater into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall, within 90 days after said date, apply to the City for an individual wastewater discharge permit or general permit in accordance with Section 78-481 of this article, and shall not cause or allow discharges to the POTW to continue after 90 days of the effective date of this ordinance except in accordance with an individual wastewater discharge permit issued by the City.

#### **Sec. 78-480. - Individual Wastewater Discharge Permitting: New Connections**

Any User required to obtain an individual wastewater discharge permit or a general 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 individual wastewater discharge permit or general permit, in accordance with Section 78-481 of this article, must be filed at least 90 days prior to the date upon which any discharge will begin or recommence.

#### **Sec. 78-481. - Individual Wastewater Discharge Permit Application Contents**

- (a) All Users required to obtain an individual wastewater discharge permit or a general permit must submit with the City an application in the form prescribed by the City and signed by an authorized representative of the User. The City may require Users to submit all or some of the following information:

(1) Identifying Information.

- a. The name of the operator and owner;
- b. Address and location of the facility (and of operator and owner, if different from facility);
- c. Contact information (including mailing address, telephone numbers, fax numbers, and email addresses).

- (2) Environmental Permits. A list of any environmental control permits held by or for the facility.

(3) Description of Operations.

- a. A detailed description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications (SIC number) of the operation(s) carried out by such User according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972 edition, as amended. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes and flow volumes.

- b. Description of activities, facilities, and plant processes on the premises, including all materials that are or could be discharged;
  - c. Types of wastes generated, and 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;
  - d. Number and type of employees, hours of operation, and proposed or actual hours of operation of facility and pretreatment system;
  - e. Type and amount of raw materials processed (average and maximum per day);
  - f. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, and sewer connections and appurtenances by the size, location and elevation;
  - g. Location or proposed location for monitoring all wastes covered by the permit.
- (4) Time and duration of discharges;
- (5) The location for monitoring all wastes covered by the permit;
- (6) Flow Measurement. Information showing the measured 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 waste stream formula set out in Section 78-464(a)(3) [**NOTE: See 40 CFR 403.6(e).**] or for other calculations.
- (7) Measurement of Pollutants.
- a. The categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.
  - b. The nature and concentration of any pollutants in the discharge which are limited or regulated by any city, state, or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis, and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the User to meet applicable pretreatment standards.
  - c. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the City, of regulated pollutants in the discharge from each regulated process. Wastewater constituents and characteristics, including but not limited to, those mentioned in this article and as determined by a reliable analytical laboratory.

- d. Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.
  - e. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 78-520 of this article, or Section 304(g) of the Act and 40 CFR 136. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the City or the applicable Standards to determine compliance with the Standard.
  - f. Sampling must be performed in accordance with procedures set out in Sections 78-520 and 78-521 of this article.
- (8) Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on Section 78-514 [NOTE: See 40 CFR 403.12(e)(2).].
- (9) Any request to be covered by a general permit based on Section 78-482.
- (10) Any other information as may be deemed necessary by the City to evaluate the permit application.
- (11) Where required drawings must be certified by a licensed professional engineer.
- (12) If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, the shortest compliance schedule by which the User will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:
- a. The schedule shall contain increments of progress 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 (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
  - b. No increment referred to in subsection a. above shall exceed nine months.
  - c. Not later than 14 days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the City including, at a minimum, whether or not the User complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the User to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the City.

- (b) Incomplete or inaccurate applications will not be processed and will be returned to the User for revision.

#### **Sec. 78-482. - Wastewater Discharge Permitting: General Permits**

- (a) At the discretion of the City, the City may use general permits to control User's discharges to the POTW if the following conditions are met. All facilities to be covered by a general permit must:
  - (1) Involve the same or substantially similar types of operations;
  - (2) Discharge the same types of wastes;
  - (3) Require the same effluent limitations;
  - (4) Require the same or similar monitoring; and
  - (5) In the opinion of the City, are more appropriately controlled under a general permit than under individual wastewater discharge permits.
- (b) To be covered by the general permit, the User must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general permit, any requests in accordance with Section 78-514(b) for a monitoring waiver for a pollutant neither present nor expected to be present in the Discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general permit until after the City has provided written notice to the User that such a waiver request has been granted in accordance with Section 78-514(b).
- (c) The City will retain a copy of the general permit, documentation to support the POTW's determination that a specific User meets the criteria in subsection (a)(1)–(5) (above) and applicable State regulations, and a copy of the User's written request for coverage for three years after the expiration of the general permit. **[Note: See 40 CFR 403.8(f)(1)(iii)(A)(1) through (5).]**
- (d) The City may not control a User through a general permit where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for IUs whose limits are based on the Combined Waste stream Formula [Section 78-464(a)(3)] or Net/Gross calculations [Section 78-464(a)(6)].

### **Sec. 78-483. - Application Signatories and Certifications**

- (a) All wastewater discharge permit applications, User reports and certification statements must be signed by an Authorized Representative of the User and contain the certification statement in Section 78-524(a).
- (b) If the designation of an Authorized Representative 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 City on the form established by the City prior to or together with any reports to be signed by an Authorized Representative.
- (c) A facility determined to be a Non-Significant Categorical Industrial User by the City pursuant to the definition of SIU in Section 78-462(b) must annually submit the signed certification statement in Section 78-524(b).

### **Sec.-78-484-78-495.-Reserved**

### **Sec. 78-496. - Individual Wastewater Discharge and General Permit Decisions**

The City will evaluate the data furnished by the User and may require additional information. Within 90 days of receipt of a complete permit application and after evaluation and acceptance of the data furnished, the City will determine whether to issue an individual wastewater discharge permit or general permit. The City may deny any application for an individual wastewater discharge or a general permit.

## **DIVISION 5. – INDIVIDUAL WASTEWATER DISCHARGE AND GENERAL PERMIT ISSUANCE**

### **Sec. 78-497. - Individual Wastewater Discharge and General Permit Duration**

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

### **Sec. 78-498. - Individual Wastewater Discharge Permit and General Permit Contents**

An individual wastewater discharge permit or a general permit shall include such conditions as are deemed reasonably necessary by the City 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.

- (a) Permits shall be expressly subject to all provisions of this article and all other applicable regulations, User charges, and fees established by the City. Individual wastewater discharge permits and general permits must contain:
- (1) A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;
  - (2) A statement that the wastewater discharge permit is nontransferable without prior notification to the City in accordance with Section 78-500 of this ordinance, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
  - (3) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;
  - (4) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, number of samples, standards for tests, reporting schedule, and sample type based on Federal, State, and local law.
  - (5) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 78-514(b).
  - (6) 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.
  - (7) Requirements to control Slug Discharge, if determined by the City to be necessary, as well as requirements for notification of slug discharges, notification of any sewer use permit violations, and requirements for resampling and reporting of such.
  - (8) Any grant of the monitoring waiver by the City must be included as a condition in the User's permit.
  - (9) Requirements for an authorized representative to meet the signatory and certification requirements for all applications and industrial user reports and that pretreatment standards are being met on a consistent basis.
  - (10) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the City and affording the City access thereto.
  - (11) Requirements for notification to the City of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater system.

- (12) Statement that the City may make any permit amendment deemed necessary by the City if there is new introduction into the wastewater system of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater system.
- (b) Individual wastewater discharge permits or general permits may contain, but need not be limited to, the following conditions:
- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
  - (2) 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;
  - (3) 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;
  - (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
  - (5) The unit charge or schedule of User charges and fees for the management of the wastewater discharged to the POTW;
  - (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;
  - (7) A statement that compliance with the individual wastewater discharge permit or the general 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 individual wastewater discharge permit;
  - (8) Any compliance schedule requirements;
  - (9) Technical reports and/or discharge reports; and
  - (10) Other conditions as deemed appropriate by the City for the User to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

**Sec. 78-499. - Permit Modification**

- (a) The City may modify an individual wastewater discharge permit or a general 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 individual 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 City's POTW, City personnel, the receiving waters, beneficial sludge use or treated wastewater reuse;
- (5) Violation of any terms or conditions of the individual 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 individual wastewater discharge permit;  
or
- (9) To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 78-500.

#### **Sec. 78-500. - Individual Wastewater Discharge Permit and General Permit Transfer**

Individual wastewater discharge permits or coverage under general permits may be transferred to a new owner or operator only if the permittee gives at least 30-day advance notice to the City and the City approves the individual wastewater discharge permit or the general permit **transfer**. The City may, in its sole discretion, waive the requirement for 30-day notice if the permittee and new owner or operator provide information showing that the 30-day requirement is unreasonable as applied to the specific fact situation. The notice to the City 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 individual wastewater discharge permit.

Failure to provide advance notice of a transfer can render the individual wastewater discharge permit or coverage under the general permit void as of the date of facility transfer. If the City receives an acceptable notice of transfer, the City will provide the new owner or operator with a copy of the existing wastewater discharge permit.

**Sec. 78-501. - Individual Wastewater Discharge Permit and General Permit Revocation**

The City may revoke an individual wastewater discharge permit or coverage under a general permit for good cause, including, but not limited to, the following reasons:

- (1) Failure to notify the City of significant changes to the wastewater prior to the changed discharge;
- (2) Failure to provide prior notification to the City of changed conditions pursuant to Section 78-515 of this article;
- (3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- (4) Falsifying self-monitoring reports and certification statements;
- (5) Tampering with monitoring equipment;
- (6) Refusing to allow the City 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 sewer use 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 the general permit or this ordinance.

Individual wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All individual wastewater discharge permits issued to a User are void upon the issuance of a new individual wastewater discharge permit to that User. The City may, in its sole discretion, allow for a permit transfer (instead of a permit revocation) if the permittee and/or

new owner or operator provide information showing that the permit transfer is reasonable as applied to the specific fact situation.

### **Sec. 78-502. - Individual Wastewater Discharge Permit and General Permit Reissuance**

A User with an expiring individual wastewater discharge permit or general permit shall apply for individual wastewater discharge permit or general permit reissuance by submitting a complete permit application, in accordance with Section 78-481 of this article, a minimum of 90 days prior to the expiration of the User's existing individual wastewater discharge permit or general permit.

### **Sec. 78-503. - Regulation of Waste Received from Another Municipality**

- (a) If a municipality seeks to have the City treat the municipality's wastewater, the City shall require the municipality to submit the following information:
  - (1) A description of the quality and volume of wastewater the municipality will discharge to the City for treatment by the POTW;
  - (2) An inventory of all Users within the municipality whose wastewater will be treated at the POTW; and
  - (3) Such other information as the City may request.
- (b) If the City determines that it will accept wastewater from the municipality for treatment at the POTW, an interlocal agreement shall be executed between the City and the municipality that requires:
  - (1) The municipality to adopt a sewer use ordinance which is at least as stringent as this chapter and the local limits contained herein and requires Baseline Monitoring Reports as described in Section 78-511;
  - (2) The municipality to revise the sewer use ordinance as necessary to reflect changes made to the City's ordinance or local limits;
  - (3) The municipality to submit a revised inventory of all Users within the municipality whose wastewater is to be treated by the POTW;
  - (4) Implementation of pretreatment requirements and specifies which activities, including individual wastewater discharge permit or general permit issuance, inspection and sampling, and enforcement, will be conducted by the municipality, and which of these activities will be conducted by the City, and which of these activities will be conducted jointly by the municipality and City;
  - (5) A User within the municipality to execute an agreement with the City;

- (6) The municipality to provide the City with access to all information that the municipality obtains as part of its pretreatment activities;
- (7) Limits on the nature, quality, and volume of the municipality's wastewater at the point where it discharges to the POTW;
- (8) The municipality to allow the City access to the facilities of Users located within the municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the City;
- (9) Monitoring of the municipality's wastewater discharge; and
- (10) Remedies that may be utilized for breach of the terms of the interlocal agreement.

**Sec.78-504.-78-510.-Reserved**

**DIVISION 6. – REPORTING REQUIREMENTS**

**Sec. 78-511. - Baseline Monitoring Reports**

- (a) Within either 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 Industrial Users currently discharging to or scheduled to discharge to the POTW shall submit to the City a report which contains the information listed in subsection (b) below. At least 90 days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall submit to the City a report which contains the information listed in paragraph (b) 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.

Users that become subject to new or revised categorical Pretreatment Standards are required to comply with the following reporting requirements even if they have been designated as Non-Significant Categorical Industrial Users.

- (b) Users described above shall submit the information set forth below.
  - (1) All information required in Section 78-481(a)(1) a., Section 78-481(a)(2), Section 78-481(a)(3) a., and Section 78-481(a)(6).
  - (2) Measurement of pollutants.
    - a. The User shall provide the information required in Section 78-481(a)(7)(a. –d.).

- b. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
  - c. 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 waste stream formula in 40 CFR 403.6(e) to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;
  - d. Sampling and analysis shall be performed in accordance with Section 78-520;
  - e. The City 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;
  - f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
- (3) Compliance Certification. A statement, reviewed by the User's Authorized Representative as defined in Section 78-462(b) 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 is required to meet the Pretreatment Standards and Requirements.
- (4) 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 such additional pretreatment and/or O&M must be provided. 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 Section 78-512 of this ordinance.
- (5) Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 78-524(a) of this article and signed by an Authorized Representative as defined in Section 78-462(b).

### **Sec. 78-512. - Compliance Schedule Progress Reports**

The following conditions shall apply to the compliance schedule required by Section 78-511(b)(4):

- (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 months;
- (3) The User shall submit a progress report to the City no later than 14 days following each date in the schedule and the final date of compliance including, at 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 months elapse between such progress reports to the City.

#### **Sec. 78-513. - Reports on Compliance with Categorical Pretreatment Standard Deadline**

Within 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 City a report in a format or on a form approved by the City containing the information described in Section 78-481(a)(6) and (7) and 78-511(b)(2) of this article. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 78-464, this report shall contain a reasonable measure of the User's long-term production rate. 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 78-524(a) of this article. All sampling will be done in conformance with Section 78-521.

The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the User into compliance with the applicable pretreatment standards or requirements and the shortest compliance schedule by which the User will provide such additional operation and maintenance and/or pretreatment.

#### **Sec. 78-514. - Periodic Compliance Reports**

- (a) Except as provided in Subsection (c) below, all Significant Industrial Users must, at a frequency and/or date determined by the City, submit no less than twice per year reports indicating the nature, 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 established by the City. In cases where the Pretreatment Standard

requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the City or the Pretreatment Standard necessary to determine the compliance status of the User.

- (b) The City may authorize an Industrial User subject to a categorical Pretreatment Standard or local limit to forego sampling of a regulated pollutant if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization or waiver is subject to the following conditions:
- (1) The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit. **[NOTE: See Section 78-481(a)(8).]**
  - (2) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.
  - (3) The request for a monitoring waiver must be signed in accordance with Section 78-462(b) (Authorized Representative), and include the certification statement in Section 78-524(a). **[Note: See 40 CFR 403.6(a)(2)(ii).]**
  - (4) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
  - (5) Any grant of the monitoring waiver by the City must be included as a condition in the User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the City for three years after expiration of the waiver.
  - (6) Upon approval of the monitoring waiver and revision of the User's permit by the City, the Industrial User must certify on each report with the statement in Section 78-524(c), that there has been no increase in the pollutant in its waste stream due to activities of the Industrial User.
  - (7) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the User's operations, the User must immediately comply with the monitoring requirements of Subsection (a) above, or other more frequent monitoring requirements imposed by the City, and notify the City.

- (8) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.
  - (9) As part of the process to qualify for this waiver or after qualifying, the User may be required to perform additional sampling or provide other information to justify or maintain the waiver.
  - (10) EPA revision of minimum detection levels may require Users to resample and resubmit waiver requests.
- (c) The City may reduce the requirement for periodic compliance reports under this section to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the State. Such an Industrial User may be classified as a Middle Tier Categorical Industrial User if all of the following conditions are met:
- (1) The industrial User's total categorical wastewater flow does not exceed any of the following:
    - a. 0.01 percent of the POTW's design dry-weather hydraulic capacity, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches;
    - b. 0.01 percent of the design dry-weather organic treatment capacity of the POTW; and
    - c. 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical Pretreatment Standard for which approved Local Limits were developed in accordance with Section 78-468 of this article.
  - (2) The Industrial User has not been in significant noncompliance as addressed in Section 78-534 for any time in the past two years;
  - (3) The Industrial User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period pursuant to Division 6;
  - (4) The Industrial User must notify the City immediately of any changes at its facility causing it to no longer meet conditions of (c)(1) or (c)(2) of this section. Upon notification, the Industrial User must immediately begin complying with the minimum reporting in Subsection (a) above; and
  - (5) The City must retain documentation to support the City's determination that a specific Industrial User qualifies for reduced reporting requirements under this

Section (c) for a period of three years after the expiration of the term of the control mechanism.

- (d) All periodic compliance reports must be signed and certified in accordance with Section 78-524(a) of this ordinance.
- (e) 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.
- (f) If a User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the City, using the procedures prescribed in Section 78-521 of this article, the results of this monitoring shall be included in the report.
- (g) Reports may be rejected and returned to the User if the report is incomplete or contains errors.
- (h) Users may send electronic (digital) documents to the City to satisfy the requirements of this Section but will submit an originally signed hardcopy of the report to the City, unless otherwise instructed.

#### **Sec. 78-515. - Reports of Changed Conditions**

Each User must notify the City of any significant changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at least 90 days before the change. If in the sole judgment of the City a change is determined by the City to be non-significant, the City may waive the requirement for the 90-day notice.

- (1) The City 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 78-481 of this article.
- (2) The City may issue an individual wastewater discharge permit or a general permit under Section 78-502 of this article or modify an existing wastewater discharge permit or a general permit under Section 78-499 of this ordinance in response to changed conditions or anticipated changed conditions.

**Sec. 78-516. - Reports of Potential Problems**

- (a) In the case of any upset or any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the City of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, duration and corrective actions taken by the User.
- (b) Within five working days following such discharge, the User shall, unless waived by the City, submit a detailed written report that includes:
  - (1) A description of the discharge and its cause, duration, the time, volume, and location of the discharge;
  - (2) The type and concentration of waste in the discharge;
  - (3) Whether the discharge has been corrected; and
  - (4) The steps being taken or to be taken to reduce, eliminate and prevent a reoccurrence of the discharge.
- (c) The notice required by Subsection (b) above shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.
- (d) A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (a), above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.
- (e) Significant Industrial Users are required to notify the City immediately of any changes at its facility affecting the potential for a Slug Discharge.
- (f) Users shall retain, and make available for inspection and copying, all records of activities associated with this section.
- (g) The User shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, is lost, or it fails.

**Sec. 78-517. - Reports from Non-permitted Users**

All Users not required to obtain an individual wastewater discharge permit or general permit shall provide appropriate reports to the City as the City may require.

**Sec. 78-518. - Notice of Violation/Repeat Sampling and Reporting**

If sampling performed by a User indicates a violation, the User must notify the City within 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 City within 30 days after becoming aware of the violation. Resampling by the User is not required if the City performs sampling at the User's facility at least once a month, or if the City performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the City receives the results of this sampling, or if the City has performed the sampling and the analysis in lieu of the User.

**Sec. 78-519. - Notification of the Discharge of Hazardous Waste**

- (a) 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 Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the User discharges more than 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 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 78-515 of this article. 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 Sections 78-511, 78-513, and 78-514 of this article.
- (b) Dischargers are exempt from the requirements of paragraph (a), above, during a calendar month in which they discharge no more than 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 15 kilograms of non-acute 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.

- (c) 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 City, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
- (d) 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.
- (e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued there under, or any applicable Federal or State law.

### **Sec. 78-520. - 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 Part 136 and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 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 other applicable sampling and analytical procedures, including procedures suggested by the City or other parties approved by EPA.

### **Sec. 78-521. - Sample Collection**

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period. Samples shall be taken at the control manhole provided for in this article, or at the sample point or alternate location as specified in the sewer use permit. If no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected:

- (1) Except as indicated in Sections (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 City. 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, hexavalent chromium, 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, total phenols, sulfides, hexavalent chromium, 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 78-511 and 78-513 [NOTE: See 40 CFR 403.12(b) and (d).], a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, hexavalent chromium, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City may authorize a lower minimum. For the reports required by paragraphs Section 78-514 [NOTE: See 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.
  - (4) Chain of custody forms for samples must be submitted with monitoring data.

#### **Sec. 78-522. - Date of Receipt of Reports**

Written reports will be deemed to have been submitted on the date postmarked. If the reports are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service (but are sent through fax or email, for examples) then the date of receipt of the report shall govern.

#### **Sec. 78-523. – Recordkeeping**

Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, 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 under Section 78-468(d). 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. The City will maintain records of all information resulting from any monitoring activities required by 40 CFR Part 403, including documentation associated with BMPs. These records shall remain available for a period of at least three 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 City.

#### **Sec. 78-524. - Certification Statements**

- (a) Certification of Permit Applications, User Reports and Initial Monitoring Waiver—The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 78-483; Users submitting baseline monitoring reports under Section 78-511(b)(5); Users submitting reports on

compliance with the categorical Pretreatment Standard deadlines under Section 78-513; Users submitting periodic compliance reports required by Section 78-514 and Users submitting an initial request to forego sampling of a pollutant on the basis of Section 78-514(b)(3). The following certification statement must be signed by an Authorized Representative as defined in Section 78-462(b):

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.

(b) Annual Certification for Non-Significant Categorical Industrial Users—A facility determined to be a Non-Significant Categorical Industrial User by the City pursuant to 78-462(b) and 78-483(c) must annually submit the following certification statement signed by an Authorized Representative as defined in 78-462(b). This certification must accompany an alternative report required by the City:

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]:

- i. The facility described as \_\_\_\_\_ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in 78-462(b);
- ii. The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and
- iii. the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based on the following information.

\_\_\_\_\_  
\_\_\_\_\_

(c) Certification of Pollutants Not Present:

Users that have an approved monitoring waiver based on Section 78-514(b) must certify on each report with the following statement that there has been no increase in the pollutant in its waste stream due to activities of the User:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for \_\_\_\_\_ [specify applicable National Pretreatment Standard part(s) under 40 CFR or local limit(s)], I certify

that, to the best of my knowledge and belief, there has been no increase in the level of \_\_\_\_\_ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Section 78-514(a).

**Sec.78-525-78-530.-Reserved**

**DIVISION 7. – COMPLIANCE MONITORING**

**Sec. 78-531. - Right of Entry: Inspection and Sampling**

The City shall have the right to enter the premises of any User at least once per year to determine whether the User is complying with all requirements of this article and any individual wastewater discharge permit, general permit or order issued hereunder. Users shall allow the City ready access to all parts of the premises (including, but not limited to, sewer cleanouts and other points on the internal drainage system) for the purposes of inspection, observation, measurement, testing, sampling, records examination and copying, and the performance of any additional duties. City representatives will bear proper credentials and identification upon request to enter the premises. The facilities may be inspected as deemed necessary by the City to ascertain whether User is in compliance with this article.

- (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 shall be permitted to enter without delay for the purposes of performing specific responsibilities.
- (2) The City 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.
- (3) The City may require the User to install monitoring equipment and facilities as necessary.
  - a. Such sampling and monitoring equipment and facilities, whether a part of the building sewer or part of the internal drainage system, shall be maintained at all times in a safe and proper operating condition by the User at its own expense.
  - b. All devices and equipment used to measure wastewater flow and quality shall be calibrated at least annually (or such other time period as stated in the manufacturer's specifications) to ensure their accuracy.
  - c. The location of the monitoring facilities and equipment shall provide ample room in or near such equipment and facilities to allow accurate sampling and preparation of samples and analysis whether constructed on public or private property.

- d. The monitoring equipment and facilities should be provided in accordance with the City's requirements and all applicable local construction standards and specifications, and such equipment and facilities shall be constructed, installed and maintained at User's expense and in such manner so as to enable the City to perform independent monitoring activities. Construction shall be completed in a reasonable amount of time following written notification by the City.
  - e. The City shall have the right to take independent samples of the User.
- (4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the City and shall not be replaced. The costs of clearing such access shall be borne by the User.
  - (5) Unreasonable delays in allowing the City access to the User's premises shall be a violation of this ordinance.
  - (6) The City will maintain records of all information resulting from any monitoring activities required by 40 CFR Part 403, including documentation associated with BMPs.

#### **Sec. 78-532. - Search Warrants**

If the City 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 ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the City may seek issuance of a search warrant as provided in the Texas Code of Criminal Procedure.

#### **DIVISION 8. – CONFIDENTIAL INFORMATION**

##### **Sec. 78-533. – Confidential Information**

- (a) Information and data on a User obtained from reports, surveys, wastewater discharge permit applications, individual wastewater discharge permits, general permits, and monitoring programs, and from the City's 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 City, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law.
- (b) A claim of confidentiality must be asserted at the time of submission on the application form or other reports or documents by stamping the words "confidential business information" or other appropriate language on each page containing such information. If no claim is made at the time of submission, the City may make the information available

to the public without further notice. If a claim of confidentiality is made and a request for the information is filed by the public, the City will submit the request and information to the state attorney general as required by the Texas Public Information Act. The information or data may be made available upon request to governmental agencies for uses allowed by law, including, but not limited to, the use of the information and data by the city, state, or federal government for the purposes related to the NPDES and/or TPDES program or pretreatment program, for enforcement proceedings involving the person furnishing the report, or for judicial review.

- (c) Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302, shall not be recognized as confidential information and shall be available to the public without restriction.

## **DIVISION 9. – PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE**

### **Sec. 78-534. – Publication of Users in Significant Noncompliance**

- (a) The City 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 a pretreatment year, 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 66 percent or more of all the measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Division 2;
  - (2) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, Daily Maximum Limits, and Monthly Average Limits, as defined by Division 2, 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 Division 2 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the City 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 City's exercise of its emergency authority to halt or prevent such a discharge;

- (5) Failure to meet, within 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 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;
- (8) Any other violation(s), which may include a violation of Best Management Practices (including Accidental Discharge and Slug Control Plans and Toxic Organic Management Plans), which the City determines has the potential to adversely affect the operation or implementation of the local pretreatment program.
- (9) Repeated violations of the local pretreatment program.

## **DIVISION 10. - ADMINISTRATIVE ENFORCEMENT REMEDIES**

### **Sec. 78-535. - Notification of Violation**

When the City finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit, agreement, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may serve upon that User a written Notice of Violation. Within 10 working days of the receipt of such 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 City. Submission of such a 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 City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

### **Sec. 78-536. - Consent Agreements**

The City may enter into Consent Agreements, assurances of compliance, or other 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. Consent Agreements shall have the legal force and effect and shall be judicially enforceable. Such Agreements may include the assessment of certain penalties or fees to cover the costs associated with treating wastewater, monitoring and inspecting the User, or other aspects of the Pretreatment Program. The City may require that a compliance schedule as provided herein be included and followed as a condition of the order. Such Agreement shall not waive a national categorical pretreatment standard.

### **Sec. 78-537. - Show Cause Hearing**

- (a) A User's request for a show cause hearing shall be filed with the City Secretary's office within 10 days of receipt of a notice from the City. The hearing shall be commenced within 30 days of the request for the hearing. The City shall serve the User with a written notice specifying the time and place of a hearing personally or by registered or certified mail (return receipt requested) at least 10 days before the hearing. Service may be made on any agent or officer of a corporation.
- (b) The City may order a User which has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, to appear before a designated official of the City and show cause why the proposed enforcement action should not be taken. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the User.
- (1) 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.
- (2) The notice of the meeting shall be served personally or by registered or certified mail at least 10 working days prior to the hearing. Such notice may be served on any Authorized Representative of the User as defined in Section 78-462(b) and required by Section 78-483(a).
- (c) Procedure for Show Cause Hearing:
- (1) The City Council may itself conduct the hearing and take the evidence, or may designate any of its members or any officer or employee of the City to:
- a. Issue in the name of the City Council notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
  - b. Take the evidence;
  - c. Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the City Council for action thereon.
- (2) After the City Council has reviewed the evidence either by conducting the hearing or through review of a report, it may issue an order to the User responsible for the discharge directing that:
- a. The wastewater service be discontinued following a specified time period unless adequate treatment facilities, devices, or other related appurtenances shall have been installed or existing treatment facilities, devices, or other related appurtenances are properly operated; or

- b. The prior discontinuance of service be continued until adequate treatment facilities, devices, or other related appurtenances shall have been installed or existing treatment facilities, devices, or other related appurtenances are properly operated; and

(3) Further orders and directives as are necessary and appropriate may be issued by the City Council.

### **Sec. 78-538. - Compliance Orders**

When the City finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, general permit, agreement, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City 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. A compliance order may impose fees as authorized by the City including, but not limited to, fees for the increased monitoring and inspection of User, fees to offset the increased costs to treat wastewater, and fees to offset the increased costs to maintain the collection system into which User discharges. A compliance 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.

### **Sec. 78-539. - Cease and Desist Orders**

When the City finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, general permit, agreement, or order issued hereunder, or any other Pretreatment Standard or Requirement, or that the User's past violations are likely to recur, the City 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.

### **Sec. 78-540. - Emergency Suspensions**

- (a) The City may immediately suspend a User's discharge through the suspension of water and/or wastewater service(s) 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, after or contemporaneously with notice to the User. The City 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.

- (b) 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 City 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 City may allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless the termination proceedings in Section 78-541 of this article are initiated against the User.
- (c) 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 City prior to the date of any show cause or termination hearing under Sections 78-537 or 78-541 of this article.
- (d) Nothing in this Section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this Section.

**Sec. 78-541. - Authority to Disconnect; Termination of Discharge or Wastewater Service**

- (a) In addition to the other provisions of this chapter, the City may disconnect or terminate the discharge or wastewater service of any User who violates the following conditions:
  - (1) Violation of individual wastewater discharge permit or general 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;
  - (5) Acids or chemicals damaging to sewer lines or treatment processes are released to the sewer causing rapid deterioration of these structures or interference with proper conveyance and treatment of wastewater;
  - (6) Violation of the Pretreatment Standards in Division 2 of this chapter;

- (7) Failure to provide, operate and maintain, at all times, wastewater pretreatment equipment, as is necessary to comply with this article;
  - (8) Discharging without authorization;
  - (9) Upon the City being informed by a governmental agency that the effluent from the wastewater treatment plant is no longer of a quality permitted for discharge to a watercourse, and it is found that User is delivering wastewater to the City's system that cannot be sufficiently treated or requires treatment that is not provided by the City and/or the POTW as normal domestic treatment;
  - (10) Discharges wastewater at an uncontrolled, variable rate in sufficient quantity to cause an imbalance in the wastewater treatment system;
  - (11) Failure to pay monthly bills for sanitary sewer services when due; or
  - (12) Repeats a discharge of prohibited wastes to public sewers.
- (b) Such User will be notified of the proposed disconnection or termination of its discharge and be offered an opportunity to show cause under Section 78-537 of this article why the proposed action should not be taken. Exercise of this option by the City shall not be a bar to, or a prerequisite for, taking any other action against the User.
  - (c) In the event of an actual or threatened discharge which, in the opinion of the City, presents or may present an imminent or substantial endangerment or danger to the health or welfare of persons or to the environment, causes interference to the wastewater system, or causes the POTW to violate any condition of its TPDES permit, the City may disconnect or terminate wastewater service to such User without prior notice to the User, but shall give written notice after the disconnection or termination. If the User fails to immediately stop or eliminate the contribution, the City shall take such steps as necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the wastewater system or endangerment to any individuals or the environment. After such a disconnection or termination of wastewater service, the User may request a show cause hearing. The City shall reinstate wastewater service to the User upon proof of the elimination of non-complying discharge.

**Sec. 78-542. – Remedies Nonexclusive**

The remedies provided for in this ordinance are not exclusive. The City 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 City may take other action against any User when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any noncompliant User.

**Secs. 78-543—78-550. – Reserved.**

**DIVISION 11. – SUPPLEMENTAL ENFORCEMENT ACTION****Sec. 78-551. - Fees for Late Reports**

A fee as provided in Division 13 may be assessed to any User for late reports. Actions taken by the City to collect late reporting penalties shall not limit the City's authority to initiate other enforcement actions.

**Sec. 78-552. - Performance Bonds**

The City may decline to issue or reissue an individual wastewater discharge permit or a general permit to any User who has failed to comply with any provision of this article, a previous individual wastewater discharge permit, general permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, unless such User first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City to be necessary to achieve consistent compliance.

**Sec. 78-553. - Liability Insurance**

The City may decline to issue or reissue an individual wastewater discharge to any User who has failed to comply with any provision of this article, a previous individual wastewater discharge permit, general permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, unless the User first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

**Sec. 78-554. - Payment of Outstanding Fees and Penalties**

The City may decline to issue or reissue an individual wastewater discharge permit or a general permit to any User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this article, a previous individual wastewater discharge permit, or a previous general permit, or order issued hereunder.

**Sec. 78-555. - Water Supply Severance**

Whenever a User has violated or continues to violate any provision of this article, an individual wastewater discharge permit, a general permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, water service to the User may be severed. Service will recommence, at the User's expense, only after the User has satisfactorily demonstrated its ability to comply.

**Sec. 78-556. - Recovery of Economic Benefit**

- (a) If the City determines that a person has violated this chapter, a permit, enforcement order, or agreement, the City may recover the economic benefit accrued to the person due to the person's non-compliance, including:

- (1) The cost benefit resulting from the delay or avoidance of:
  - a. capital costs that would have been incurred for compliance; and
  - b. operation and maintenance costs that would have been incurred for compliance, including the cost of labor, utilities, chemicals, supplies, replacement parts, overhead, monitoring, permit fees, and other fixed or variable costs;
- (2) A reasonable investment rate of return on the cost benefit calculated under Subsection (1);
- (3) The value of a competitive advantage derived by the person attributable to the person's non-compliance, including increased profit or market share compared to competitors in compliance; and
- (4) Other economic benefit the City may determine.

### **Sec. 78-557. - Environmental Improvement Project Agreement**

When the City determines that enforcement action can be taken against a User because of a compliance issue, the City may offer the User an opportunity to enter into an agreement to take specific action to correct the noncompliance. Rather than assessing a monetary penalty or fee against the User, the City may through an agreement with the User require the User to fund certain improvements or changes to eliminate or minimize future compliance issues. Failure to fulfill the requirements of the agreement will be considered a violation of this chapter separate from the original compliance issue.

**Secs. 78-558—78-569. – Reserved.**

## **DIVISION 12. – AFFIRMATIVE DEFENSE**

### **Sec. 78-570. - Act of God**

If a User can establish that an event that would otherwise be a violation of a statute, rule, order, ordinance, or a permit issued under this article was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit.

### **Sec. 78-571. - Requirements to Establish Affirmative Defense**

- (a) A User who wishes to establish the Act of God affirmative defense shall demonstrate, through relevant evidence that:
  - (1) An event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance occurred, and the sole cause of the event was an act of God, war, strike, riot or other catastrophe; and
  - (2) The User has submitted the following information to the POTW and the City within 24 hours of becoming aware of the event that would otherwise be a violation of a

pretreatment ordinance or a permit issued under the ordinance (if this information is provided orally, a written submission must be provided within five days):

- a. a description of the event, and the nature and cause of the event;
- b. the time period of the event, including exact dates and times or, if still continuing, the anticipated time the event is expected to continue; and
- c. steps being taken or planned to reduce, eliminate and prevent recurrence of the event.

(b) In any enforcement proceeding, the User seeking to establish the Act of God affirmative defense shall have the burden of proving by a preponderance of the evidence that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance, was caused solely by an act of God, war, strike, riot or other catastrophe.

#### **Sec. 78-572. - Bypass of pretreatment facilities**

(a) A User may allow bypass to occur which does not cause effluent limitations to be exceeded, but only if it is also for essential maintenance to assure efficient operations and approved by the City.

(b) Notification of bypass.

(1) *Anticipated bypass.* If the User knows in advance of the need for a bypass, it shall submit prior written notice, at least 10 days before the date of the bypass, to the City if possible.

(2) *Unanticipated bypass.* The User shall immediately orally notify the City and submit a written notice to the city within five days. This report shall specify:

- a. A description of the bypass and its cause, including its duration (including the time, volume, and location of the bypass, and the type and concentration of waste in the bypass);
- b. Whether the bypass has been corrected; and
- c. The steps being taken or to be taken to reduce, eliminate and prevent a reoccurrence of the bypass.
- d. The City may waive the written notice on a case-by-case basis.

(c) Bypass is prohibited and enforcement action may be taken against the User unless the following conditions are met:

(1) All three of the following conditions are met:

- a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage or no feasible alternatives exist. As used in this section, severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can be reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;
  - b. 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 that occurred during normal periods of equipment downtime or preventative maintenance; and
  - c. The User submits the notices required by this section; or
- (2) The City approves the bypass, after considering its adverse effects.

### **DIVISION 13. – PRETREATMENT CHARGES AND FEES**

#### **Sec. 78-573. - Pretreatment Charges and Fees**

- (a) The City may adopt charges and fees to provide for the recovery of costs from Users of the wastewater disposal system and for the implementation and continued operation of the pretreatment program established herein as a part of the annual budget or by resolution, including but not limited to:
  - (1) Reimbursement of costs of setting up and operating the City's pretreatment program;
  - (2) Monitoring, sampling, analysis, inspections, and surveillance procedures;
  - (3) Reviewing accidental discharge procedures and construction;
  - (4) Permit applications;
  - (5) Filing appeals;
  - (6) Consistent removal by the City of pollutants otherwise subject to federal pretreatment standards;
  - (7) Surcharges for wastewater that exceeds certain limitations; and

- (8) Other fees as the City may deem necessary to carry out the requirements contained in this article, such as, but not limited to emergency response fees, special sampling fees, monitoring equipment reset fees, NOV issuance and follow-up, late report, etc.
- (b) These fees relate solely to the matters covered by this chapter and are separate from all other fees, fines, and penalties chargeable by the City or by any other agency.
- (c) The fees shall be paid within 30 days of billing. The fees may be added to the water or sewer account billing.

***That Article IX. "Sanitary Sewer Use Regulations" in Chapter 78 "Utilities" of the Code of Ordinances of the City of Hewitt, Texas, would be amended by re-numbering the following Divisions:***

Subdivision 4 is amended to be Division 14:  
**DIVISION 14. – FATS, OILS, AND GREASE**

Subdivision 5 is amended to be Division 15:  
**DIVISION 15. – NON-SEWER DISCHARGES**

Subdivision 6 is amended to be Division 16.  
**DIVISION 16. – PENALTIES**

**Sec. 78-574. - Liability**

Any person violating any of the provisions of this article, any condition or provision of a permit issued in accordance with this article, or any order or directive of the City authorized under this article, shall become liable to the city for any expense, loss, or damage occasioned by the City by reason of such violation.

**Sec. 78-575. – Criminal Violations**

- (a) Any person who violates any provision of this article, any condition or provision of a permit issued in accordance with this article, or any order or directive of the City authorized under this article, or any other Pretreatment Standard or Requirement, shall be deemed guilty of a misdemeanor punishable as provided in Chapter 1, Sec. 1-12 or as specifically provided in this article. Each day in which any such violation shall continue shall be deemed a separate offense.
- (b) Any person shall be deemed guilty of a misdemeanor punishable as provided in Chapter 1, Sec. 1-12 or as specifically provided in this article, if the person knowingly:
- (1) Makes any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this article, or pursuant to any condition or provision of a permit issued in accordance with this article, or order issued hereunder;

- (2) Falsifies, tampers with, damages, or otherwise renders inoperable monitoring, sampling or surveillance devices, or other equipment used or necessary for monitoring compliance with a permit issued in accordance with this article; or
  - (3) Improperly impedes an inspection procedure required or authorized under this article and/or any permit issued in accordance with this article.
- (c) For a violation described in subsection (1), (2) or (3), the violation is punishable by a criminal fine of not less than \$200.00.
- (d) A person found guilty of damaging a device or equipment as described in subsection (2) shall also be liable for the cost associated with replacing or repairing such device or equipment.
- (e) Reports and other documents required to be submitted or maintained in accordance with 40 CFR 403.12 shall further be subject to Provisions Governing Fraud and False Statements as provided for at 40 CFR 403.12(n).
- (f) **Public Nuisances.** A violation of any provision of this article, any condition or provision of a permit issued in accordance with this article, or any other Pretreatment Standard or Requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the City in accordance with Chapter 78 of this Code. Any person(s) creating a public nuisance shall be subject to the provisions of this article governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance, which shall include, but is not limited to, industrial waste solids accumulation, wastewater odors, vapors, and/or objectionable color(s) of the sanitary and/or storm sewer.

### **Sec. 78-576. – Injunction**

When the City finds that a User has violated, or continues to violate, any provision of this article, any condition or provision of a permit issued in accordance with this article, an agreement, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may petition the appropriate court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the individual wastewater discharge permit, the general permit, order, or other requirement imposed by this ordinance 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.

### **Sec. 78-577. – Civil penalties**

Notwithstanding Sections 78-575 and 78-576 and in addition to any penalty or remedy granted thereunder, any person who violates any provision of this article, any condition of a permit issued

in accordance with this article, or any order or directive of the City authorized under this article, or any other Pretreatment Standard or Requirement, shall be deemed liable for civil penalties as allowed under law. Each violation of a particular section of this ordinance shall constitute a separate offense, and each day such offense continues shall be considered a new violation for purposes of enforcing this ordinance and calculating the amount of civil penalties.

In determining the amount of a civil penalty, the City 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.

**Sec. 78-578. – Cost of recovery fee**

Notwithstanding any provision in this article and in addition to any other penalty or remedy provided for under this article, any person who violates any provision of this article, any condition of a permit issued in accordance with this article, or any order or directive of the City authorized under this article, may be assessed a fee to cover the costs to handle and treat wastes discharged, directly or indirectly, into the public sewer, sanitary sewer, storm sewer, or wastewater system and the cost associated with the requirements of Division 9. If the violation is associated with a sewer user account, the fee may be added on the sewer user account billing.

**Sec.78-579-78-600.-Reserved.**