

# AGENDA

## Regular City Council Meeting

7:00 PM - Tuesday, March 16, 2021

Terrell Police Headquarters, 1100 N. State Highway 34,  
Terrell, TX



**Mayor Rick Carmona**

### Council Members

District 2 - Grady Simpson

District 3 - Mayrani Velazquez

District 4 - Charles Whitaker

District 5 - Tim Royse

**City Manager Mike Sims**

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NOTICE IS HEREBY GIVEN that the Terrell City Council will conduct a Regular City Council Meeting at 7:00 p.m. on Tuesday, March 16, 2021, at Terrell Police Headquarters located at 1100 State Highway 34 North. The meeting is open to the public with limited seating in the Rosenbaum Room. Recommendations of the CDC regarding social distancing will be practiced during the course of the public meeting to slow the spread of the Coronavirus (COVID-19).

If you choose not to attend in person and you wish to submit public comments, email support@cityofterrell.org and title the email "Public Comment". All public comments submitted by 12:00 pm on Tuesday, March 16, 2021 will be provided to the City Council members and read into the record for the Tuesday, March 16, 2021 City Council Meeting.

Page

### 1. CALL TO ORDER

### 2. INVOCATION

Pastor Nickie Chance

### 3. PLEDGE TO AMERICAN FLAG AND TEXAS FLAG.

### 4. MAYOR AND COUNCIL COMMUNITY RECOGNITION AND EVENTS

### 5. ADOPTION OF MINUTES

5.1. Discuss and Consider Minutes of the Special City Council Meeting and Workshop on February 23, 2021, the Special City Council Meeting and Workshop on March 2, 2021, and the Regular City Council Meeting on March 2, 2021. 6 - 13

[Special City Council Meeting and Workshop - Feb 23 2021 - Minutes - Pdf](#)

[Special City Council Meeting and Workshop - Mar 02 2021 - Minutes - Pdf](#)

[Regular City Council - Mar 02 2021 - Minutes - Pdf](#)

## **6. HEAR REMARKS FROM VISITORS.**

*This time is set aside on the agenda to invite any person to address the Council on issues not subject to a public hearing. Routine administrative matters are best discussed with the appropriate City Staff before bringing them to the Council. Prior to the meeting, please complete a "Citizen Participation Form" and present it to the City Secretary. In accordance with the Texas Open Meetings Act, Section 551.042, the City Council cannot discuss, consider, or take action on matters not listed on the agenda. Speakers should limit their comments to 3 minutes and are asked to speak into the microphone provided, identifying themselves for the record. The total amount of time set aside for this place on the agenda is 15 minutes. Comments of a personal nature directed at the Council or Staff are inappropriate.*

## **7. BOARDS AND COMMISSIONS**

7.1. Discuss and Consider Tax Increment Reinvestment Zone No. 1 and 14 - 16 Power Center Board Appointments.

[council board responsibilities](#)

[TIF-PC](#)

7.2. Discuss and Consider Planning and Zoning Commissioner 17 - 21 Reappointments.

[Agenda Item Report - AIR-21-011 - Pdf](#)

[council board responsibilities](#)

7.3. Discuss and Consider Zoning Board of Adjustments Reappointments. 22 - 26

[Agenda Item Report - AIR-21-012 - Pdf](#)

[council board responsibilities](#)

7.4. Discuss Appointments to Naming Committee. 27 - 28

[Resolution No. 1011](#)

## **8. PUBLIC HEARING**

8.1. Discuss Overview of Public Hearings.

8.2. Conduct a Public Hearing to Receive Comments Regarding Amending Chapter 12, Utilities, Of The Terrell City Code Of Ordinances By The Addition Of Section 12-21, On Site Sewage Facilities, Providing For Severability, Providing An Effective Date, And Finding And Determining That The Meeting At Which This Ordinance Was Considered Was Open To The Public As Required By Law. 29 - 32  
[Ordinance No. 2859](#)

8.3. Discuss and Consider Ordinance No. 2859, An Ordinance Of The City Council Of The City Of Terrell, Kaufman County, Texas, Amending Chapter 12, Utilities, Of The Terrell City Code Of Ordinances By The Addition Of Section 12-21, On Site Sewage Facilities, Providing For Severability, Providing An Effective Date, And Finding And Determining That The Meeting At Which This Ordinance Was Considered Was Open To The Public As Required By Law.

8.4. Conduct a Public Hearing to Receive Comments Regarding Amending Chapter 12, Utilities, Of The Terrell City Code Of Ordinances By The Addition Of Section 12-21A, On Site Sewage Facilities Inspections And Permitting, Providing For Severability, Providing A Penalty, Providing An Effective Date, And Finding And Determining That The Meeting At Which This Ordinance Was Considered Was Open To The Public As Required By Law. 33 - 35  
[Ordinance No. 2860](#)

8.5. Discuss and Consider Ordinance No. 2860, An Ordinance Of The City Council Of The City Of Terrell, Kaufman County, Texas, Amending Chapter 12, Utilities, Of The Terrell City Code Of Ordinances By The Addition Of Section 12-21A, On Site Sewage Facilities Inspections And Permitting, Providing For Severability, Providing A Penalty, Providing An Effective Date, And Finding And Determining That The Meeting At Which This Ordinance Was Considered Was Open To The Public As Required By Law.

8.6. Conduct a Public Hearing to Receive Comments Regarding Amending The Terrell City Code Of Ordinances, Appendix 1, Fee Schedule, Section 28, Sewer Service Rates And Charges By Adding Paragraph (7), OSSF Installation Fees; Providing For The Repeal Of Conflicting Ordinances; Providing For Severability; Providing An Effective Date; And Finding And Determining That The Meeting In Which This Ordinance Was Considered Was Open To The Public As Required By Law.

8.7. Discuss and Consider Ordinance No. 2861, An Ordinance Of The City Of Terrell, Kaufman County, Texas Amending The Terrell City Code Of 36 - 37

Ordinances, Appendix 1, Fee Schedule, Section 28, Sewer Service Rates And Charges By Adding Paragraph (7), OSSF Installation Fees; Providing For The Repeal Of Conflicting Ordinances; Providing For Severability; Providing An Effective Date; And Finding And Determining That The Meeting In Which This Ordinance Was Considered Was Open To The Public As Required By Law.

[Ordinance No. 2861](#)

8.8.	Conduct A Public Hearing To Receive Comments Regarding A Final Plat (RP 21-01) Of The Jaquez Addition, Lots 1 & 2, Block No. 580, Terrell Rev Addition. Being A Replat Of Lot 2R, Block No. 580, Of The Terrell Rev Addition, City Of Terrell, Kaufman County. The Property Is Also Known As 0 Mineral Wells Street, Terrell Texas. The Property Is Currently Zoned As Single Family 7.5 (SF-7.5) District.	38 - 43
	<a href="#"><u>Agenda Item Report - AIR-21-014 - Pdf</u></a>	
8.9.	Discuss and Consider A Final Plat (RP 21-01) Of The Jaquez Addition, Lots 1 & 2, Block No. 580, Terrell Rev Addition. Being A Replat Of Lot 2R, Block No. 580, Of The Terrell Rev Addition, City Of Terrell, Kaufman County. The Property Is Also Known As 0 Mineral Wells Street, Terrell Texas. The Property Is Currently Zoned As Single Family 7.5 (SF-7.5) District.	
8.10.	Conduct A Public Hearing To Receive Comments Regarding A Change In Zoning (ZC 21-02) From Retail (R) To Single-Family Residential 7.5 (SF-7.5). The Property Is Described As Lot C, Block 4, Out Of The Terrell Terrace Addition, City Of Terrell, Kaufman County, Texas And Is Also Known As 301 9th Street.	44 - 50
	<a href="#"><u>Agenda Item Report - AIR-21-013 - Pdf</u></a>	
8.11.	Discuss and Consider A Change In Zoning (ZC 21-02) From Retail (R) To Single-Family Residential 7.5 (SF-7.5). The Property Is Described As Lot C, Block 4, Out Of The Terrell Terrace Addition, City Of Terrell, Kaufman County, Texas And Is Also Known As 301 9th Street.	

## **9. BUSINESS ITEMS**

9.1.	Discuss and Consider Dump Truck Lease.	51 - 61
	<a href="#"><u>DUMP TRUCKS LEASE PURCHASE PRESENTATION</u></a>	
	<a href="#"><u>Resolution No. 1021</u></a>	
9.2.	Discuss and Consider Resolution No. 1019, A Resolution Authorizing Continued Participation With The Steering Committee Of Cities Served By Oncor; And Authorizing The Payment Of Six Cents Per Capita To The Steering Committee To Fund Regulatory And Legal Proceedings And Activities Related To Oncor Electric Delivery Company, LLC.	62 - 72
	<a href="#"><u>Resolution No. 1019</u></a>	

9.3. Discuss and Consider Bank Depository Services Proposal. 73 - 75  
[Agenda Item Report - AIR-21-018 - Pdf](#)

## **10. DISCUSSION ITEMS**

10.1. Discuss Ordinance No. 2862 Updating the Industrial Pretreatment Regulations. 76 - 144  
[Agenda Item Report - AIR-21-015 - Pdf](#)

10.2. Discuss Award for Consultant Services for 2021 CDBG Grant Application and Administration Services 145 - 160  
[Agenda Item Report - AIR-21-016 - Pdf](#)

10.3. Discuss Resolution 1020 Authorizing Application for a Community Development Grant Project 161 - 163  
[Agenda Item Report - AIR-21-017 - Pdf](#)

## **11. ADJOURN.**

I, the undersigned authority, do hereby certify that the above NOTICE OF MEETING of the Governing Body of the City of Terrell is a true and correct copy of said NOTICE, which has been posted on the front OUTDOOR BULLETIN BOARD CABINET FOR AGENDAS of the Terrell City Hall, Terrell, Texas, a place convenient and readily accessible to the General Public and on the website at [cityoterrell.org](http://cityoterrell.org), and which has been continuously posted for a period of seventy-two (72) hours prior to the date and time said meeting was convened.

Posted Friday, March 12, 2020 –5:00 p.m.

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Dawn Steil, City Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at 972-551-6600 for further information. Braille is not available.

Council Reserves the Right to Adjourn into Executive Session to Seek Legal Counsel on a Matter Which the Canon of Legal Ethics Demands to Preserve the Attorney-Client Privilege Pursuant to Section 551.071(2) of the Texas Government Code.



# MINUTES

## Special City Council Meeting and Workshop Meeting

5:30 PM - Tuesday, February 23, 2021

City Council Chambers, 201 E. Nash Street, Terrell, TX

The City of Terrell Council conducted a Special City Council Meeting and Workshop on Tuesday, February 23, 2021 at 5:30 PM in the City Council Chambers, 201 E. Nash Street, Terrell, TX.

**COUNCIL  
PRESENT:** Mayor Rick Carmona  
District 5 Tim Royse  
District 2 Grady Simpson  
District 3 Mayrani Velazquez  
District 4 Charles Whitaker

**COUNCIL  
ABSENT:**

**STAFF PRESENT:** City Manager Mike Sims  
City Secretary Dawn Steil  
Assistant City Attorney Greg Shumpert

### 1 CALL TO ORDER

Mayor Rick Carmona called the meeting to order.

### 2 INVOCATION

Charles Whitaker gave the invocation.

### 3 PLEDGE TO AMERICAN FLAG AND TEXAS FLAG.

Mayor Rick Carmona led the pledge.

### 4 MAYOR AND COUNCIL COMMUNITY RECOGNITION AND EVENTS

Mayor Rick Carmona recognized the City of Terrell staff and first responders for their hard work during the winter storm.

Charles Whitaker thanked the water department and first responders for their hard work.

Tim Royse thanked Epic Life Church and First Christian Church, First Assembly, Rockwall and Brin Church of Christ, Terrell Police Department for providing warming stations and food during the winter storm.

Mayrani Velazquez thanked Adopt-A-Block food ministry for distributing food to those in need during the winter storm.

Grady Simpson thanked the Terrell Fire Department for their assistance in District 2 during a personal emergency.

Mike Sims thanked the City Engineering, Utilities Department and Public Works Departments for their hard work during the winter storm.

## 5 HEAR REMARKS FROM VISITORS.

No one came forward to speak.

## 6 BOARDS AND COMMISSIONS

a) Discuss and Consider Planning and Zoning Board Appointments.

**Mayrani Velazquez moved to appoint Gabriel Cabrera to the Planning and Zoning Board, with Charles Whitaker seconding the motion. Carried by the following votes:**

**Ayes: Tim Royse, Grady Simpson, Mayrani Velazquez, and Charles Whitaker**

b) Discuss and Consider Zoning Board of Adjustments Appointments.

**Mayrani Velazquez moved to appoint Ashley Carmona Fivecoat and Matthew Hancock to the Zoning Board of Adjustments, with Tim Royse seconding the motion. Carried by the following votes:**

**Ayes: Tim Royse, Grady Simpson, Mayrani Velazquez, and Charles Whitaker**

c) Discuss Tax Increment Reinvestment Zone No. 1/Power Center Board Appointments.

**City Secretary Dawn Steil presented this item to Council for discussion.**

## 7 BUSINESS ITEMS

a) Discuss Short Term Borrowing Strategy.

**City Manager Mike Sims presented this item to Council for discussion.**

b) Discuss and Consider Resolution No. 1006, A Resolution Of The Of The City Council Of The City Of Terrell Texas Authorizing The Funding For Downtown Building Renovation.

**Tim Royse moved to approve Resolution No. 1006, A Resolution Of The Of The City Council Of The City Of Terrell Texas Authorizing The Funding For Downtown Building Renovation, with Mayrani Velazquez seconding the motion. Carried by the following votes:**

**Ayes: Tim Royse, Grady Simpson, Mayrani Velazquez, and Charles Whitaker**

c) Discuss and consider final plat (FP 21-01) for Lots 5, 6, 7, Block 5 for the Crossroads at Terrell, Phase 2A. Along with plat, Crossroads Parkway will be extended throughout the frontage of the property.

**Grady Simpson moved to approve final plat (FP 21-01) for Lots 5, 6, 7, Block 5 for the Crossroads at Terrell, Phase 2A. Along with plat, Crossroads Parkway will be extended throughout the frontage of the property, with Charles Whitaker seconding the motion. Carried by the following votes:**

**Ayes: Tim Royse, Grady Simpson, Mayrani Velazquez, and Charles Whitaker**

## 8 DISCUSSION ITEMS

a) Discuss City Hall Renovation Update.

**City Manager Mike Sims presented this item to Council for discussion.**

- b) Discuss Strategic Plan Overview.

**City Manager Mike Sims presented this item to Council for discussion.**

- c) Discuss Housing Department Strategic Plan.

**Housing/Finance Director Jamarcus Ayers presented this item to Council for discussion.**

- d) Discuss Finance Department Strategic Plan.

**Housing/Finance Director Jamarcus Ayers presented this item to Council for discussion.**

- e) Discuss Human Resources Department Strategic Plan.

**Director of Human Resources Carol Holland presented this item to Council for discussion.**

**9 ADJOURN.**

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E. Rick Carmona, Mayor

Attest:

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Dawn Steil, City Secretary



# MINUTES

## Special City Council Meeting and Workshop Meeting

5:00 PM - Tuesday, March 2, 2021

City Council Chambers, 201 E. Nash Street, Terrell, TX

The City of Terrell Council conducted a Special City Council Meeting and Workshop on Tuesday, March 2, 2021 at 5:00 PM in the City Council Chambers, 201 E. Nash Street, Terrell, TX.

**COUNCIL  
PRESENT:** Mayor Rick Carmona  
District 5 Tim Royse  
District 2 Grady Simpson  
District 3 Mayrani Velazquez  
District 4 Charles Whitaker

**COUNCIL  
ABSENT:**

**STAFF PRESENT:** City Manager Mike Sims  
City Secretary Dawn Steil  
Assistant City Attorney Greg Shumpert

**1 CALL TO ORDER**

Mayor Rick Carmona called the meeting to order.

**2 INVOCATION**

Charles Whitaker gave the invocation.

**3 PLEDGE TO AMERICAN FLAG AND TEXAS FLAG.**

Mayor Rick Carmona led the pledge.

**4 MAYOR AND COUNCIL COMMUNITY RECOGNITION AND EVENTS**

City Engineer Steve Rogers and Assistant City Engineer Mike Mikeska recognized the entire Utilities staff for their hard work during the winter storm.

**5 HEAR REMARKS FROM VISITORS.**

*No one came forward to speak.*

**6 DISCUSSION ITEMS**

a) Discuss Engineering/Utilities Department Strategic Plan.

**City Engineer Steve Rogers and Assistant City Engineer Mike Mikeska presented this item to Council for discussion.**

7 **ADJOURN INTO EXECUTIVE SESSION IN ACCORDANCE WITH SECTION 551 OF THE TEXAS GOVERNMENT CODE TO DISCUSS THE FOLLOWING:**  
Section 551.071 Consultation With Attorney Regarding Pending or Contemplated Litigation.  
Section 551.072 Deliberations Regarding Real Property.

8 **RECONVENE INTO REGULAR SESSION AND CONSIDER ACTION, IF ANY, ITEMS DISCUSSED IN EXECUTIVE SESSION.**  
No action taken.

9 **ADJOURN.**

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E. Rick Carmona, Mayor

Attest:

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Dawn Steil, City Secretary



# MINUTES

## Regular City Council Meeting

7:00 PM - Tuesday, March 2, 2021

City Council Chambers, 201 E. Nash Street, Terrell, TX

The City of Terrell City Council conducted a Regular City Council meeting on Tuesday, March 2, 2021 at 7:00 PM in the City Council Chambers, 201 E. Nash Street, Terrell, TX.

**COUNCIL PRESENT:** Mayor Rick Carmona  
 District 2 Grady Simpson  
 District 3 Mayrani Velazquez  
 District 4 Charles Whitaker  
 District 5 Tim Royse

**COUNCIL ABSENT:**

**STAFF PRESENT:** City Manager Mike Sims  
 City Secretary Dawn Steil

### 1 CALL TO ORDER

Mayor Rick Carmona called the meeting to order.

### 2 INVOCATION

Charles Whitaker gave the invocation.

### 3 PLEDGE TO AMERICAN FLAG AND TEXAS FLAG

Mayor Rick Carmona led the pledge.

### 4 MAYOR AND COUNCIL COMMUNITY RECOGNITION AND EVENTS

Mayor Rick Carmona mentioned the recognition at the Workshop meeting tonight of the Water Department staff for their outstanding job during the winter storm.

### 5 ADOPTION OF MINUTES

- a) Discuss and Consider Minutes from the Special City Council Meeting and Workshop on February 2, 2021, the Regular City Council Meeting on February 2, 2021, and the Special City Council Meeting and Workshop on February 9, 2021.

**Mayrani Velazquez moved to approve the Minutes from the Special City Council Meeting and Workshop on February 2, 2021, the Regular City Council Meeting on February 2, 2021, and the Special City Council Meeting and Workshop on February 9, 2021, with Charles Whitaker seconding the motion. Carried by the following votes:**

**Ayes: Grady Simpson, Mayrani Velazquez, Charles Whitaker, and Tim Royse**

**6 HEAR REMARKS FROM VISITORS.**

Thomas Brown, 515 College Mound Road, Terrell, TX, to express his concern regarding the current state of College Mound Road. He requested that Council consider reconstructing the street. Mr. Brown also thanked the City Council and the City of Terrell leadership for the good job they have done.

**7 PUBLIC HEARING**

- a) Conduct A Public Hearing To Receive Comments Regarding An Ornamental Sign Cap (Street Topper ST 20-01) In Honor Of "Patricia Ann Dean" To Be Placed On The Existing City Of Terrell Street Signs Located On The Northeast Corner Of South Rockwall Ave And Hamilton Dr. And Southeast Corner Of Hamilton Drive And Adams Drive.

**Municipal Development Director Charles Fenner made opening comments.**

**Mayor Rick Carmona opened the Public Hearing.**

**Rachael Dean Gardner, 2327 Mallory Lane, Lancaster, TX, came forward to speak in support of the Street Topper honoring Patricia Ann Dean.**

**Mayor Rick Carmona closed the Public Hearing.**

- b) Discuss and Consider Recommendation From Planning and Zoning Board to Approve the Patricia Dean Street Topper Petition.

**Grady Simpson moved to approve the Recommendation From Planning and Zoning Board to Approve the Patricia Dean Street Topper Petition, with Charles Whitaker seconding the motion. Carried by the following votes:**

**Ayes: Grady Simpson, Charles Whitaker, Mayrani Velazquez, and Tim Royse**

**8 COVID-19 BUSINESS**

- a) Discuss Caseload Update.  
**Emergency Management Coordinator Dustin Conner presented this item to Council for discussion.**
- b) Discuss Vaccination Hub Update.  
**Emergency Management Coordinator Dustin Conner presented this item to Council for discussion.**

**9 DISCUSSION ITEMS**

- a) Discuss March City Council Meeting Schedule.  
**City Secretary Dawn Steil presented this item to Council for discussion.**
- b) Discuss Bank Depository Services Request For Proposal.  
**Housing/Finance Director Jamarcus Ayers presented this item to Council for discussion.**
- c) Discuss Monthly Financial Report.  
**Housing/Finance Director Jamarcus Ayers presented this item to Council for discussion.**

**10 BUSINESS ITEMS**

a) Discuss and Consider Resolution No. 1014, A Resolution Of The City Council Of The City Of Terrell, Texas, Approving And Authorizing Publication Of Notice Of Intention To Issue Certificates Of Obligation.

**Tim Royse moved to approve Resolution No. 1014, A Resolution Of The City Council Of The City Of Terrell, Texas, Approving And Authorizing Publication Of Notice Of Intention To Issue Certificates Of Obligation., with Mayrani Velazquez seconding the motion. Carried by the following votes:**

**Ayes: Grady Simpson, Mayrani Velazquez, Charles Whitaker, and Tim Royse**

b) Discuss and Consider Dump Truck Lease.

**Charles Whitaker moved to table item 10.2, with Grady Simpson seconding the motion. Carried by the following votes:**

**Ayes: Grady Simpson, Mayrani Velazquez, Charles Whitaker, and Tim Royse**

**11 INFORMATIONAL REPORTS**

The following items are informational with no presentation.

a) Discuss National Incident Based Reporting System (NIBRS) Report.  
b) Discuss Fire Department Incident Report.

**12 ADJOURN INTO EXECUTIVE SESSION IN ACCORDANCE WITH SECTION 551 OF THE TEXAS GOVERNMENT CODE TO DISCUSS THE FOLLOWING:**

Section 551.072 Deliberations Regarding Real Property.

Section 551.087 Deliberations Regarding Economic Development Negotiations.

**13 RECONVENE INTO REGULAR SESSION AND CONSIDER ACTION, IF ANY, ITEMS DISCUSSED IN EXECUTIVE SESSION.**

No action taken.

**14 ADJOURN.**

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E. Rick Carmona, Mayor

Attest:

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Dawn Steil, City Secretary

## Council Board Responsibilities

<b>Board</b>	<b>Council Member</b>
Airport	Rick Carmona
Animal Advisory Board	Grady Simpson
Building Standards	Tim Royse
Civil Service	Grady Simpson
Economic Development	Rick Carmona
Library	Charles Whitaker
Park	Tim Royse
Zoning Board of Adjustments	Mayrani Velazquez
TIF/Power Center	Mayrani Velazquez
Planning and Zoning	Mayrani Velazquez

## ITEM 7.1.

Name	Contact Information	Term Count	Appointed Re-	Term Expiratio
Tax Increment Financing Reinvestment Zone No. 1 Board				
Don Thurman Chairman for 1 year Appointed November 20, 2007	1103 Griffith Ave. Terrell, Texas 75160 T: 972-524-6219 M: 469-474-8111	7	3/5/2019	Mar-21
Juan Salazar Replacing Douglas Howie term expired Jan-20 Orig. Appt. Date - Dec. 18, 2019	1720 Oak Post Drive Terrell, TX 75160 W: C: 214-832-9441 EM: juans@1stchoicepandb. com	1	1/20/2020	Jan-22
John Davidson, Chairman Appointed Chairman 3/5/19 Appointed November 20, 2007	408 Laurel Trail North Terrell, Texas 75160 T: 972-563-0186 EM: johndavidson@anbtx.com W: 214-863-5959	7	3/5/2019	Mar-21
Terry Barber Appointed by KC Comm. Court to fill unexp. term of Ken Schoen Appointed 1/23/2017	601 E. Nash Street Terrell, TX 75160 W: 972-563-5362 C: 214-734-0812 EM: tbarber@kaufmancounty. net	2	3/20/2019	Apr-21
Mike Hunt Appointed by KC Comm. Court to fill unexp. term of Jimmy Vrzalik Appointed 1/23/2017	Pct. 1 3001 S. Washington St. Kaufman, TX 75142 W: 972-932-0285 C: 214-797-6420 EM: mhunt@kaufmancounty. net	2	3/20/2019	Apr-21
2 years Board of Directors Ordinance 2355	Initial appointments required by resolution. See Resolution 595			

ITEM 7.1.

Needs Replacement	Requests Reappointment		
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Regular City Council  
**AGENDA ITEM REPORT**



**To:** City Council  
**Subject:** Discuss and consider Planning and Zoning Commissioner reappointments.  
**Meeting:** Regular City Council - Mar 16 2021  
**Department:** Municipal Development  
**Staff Contact:** J Potts,

**BACKGROUND INFORMATION:**

Planning and Zoning Commissioners requesting reappointment to the commission:  
Chairman- Danny Stephens reappointment to third term.  
Vice-Chairman Jenny Heisel reappointment to third term.  
Commissioner Trini B. Jones reappointment to third term.

**ATTACHMENTS:**

[Planning and Zoning Term Emails](#)



## Third Term on the Planning and Zoning Commission

2 messages

**J Potts** <jpotts@cityofterrell.org>  
To: Danny Stephens <dannystephens@sbcglobal.net>  
Cc: Charles Fenner <cfenner@cityofterrell.org>

Thu, Feb 25, 2021 at 6:53 PM

Mr. Stephens,

I want to "Thank You" for your service during the second term on the Planning and Zoning Commission, which expired in February 2021. I'm emailing you to see if you would like to serve a third term on the Planning and Zoning Commission. Please let me know if you wish to serve the third term on the Planning & Zoning Commission.

Sincerely,

J. Lee Potts  
City of Terrell  
Municipal Development Tech  
972-551-6600 Ext 2063

**Danny Stephens** <dstephens@ter-jan.com>  
To: J Potts <jpotts@cityofterrell.org>

Fri, Feb 26, 2021 at 8:27 AM

Jay,

I will be glad to serve a third term.

Thanks

[Quoted text hidden]



## Third Term on the Planning and Zoning Commission

2 messages

**J Potts** <jpotts@cityofterrell.org>  
To: Jenny <jenny.heisel@suddenlink.net>  
Cc: Charles Fenner <cfenner@cityofterrell.org>

Thu, Feb 25, 2021 at 6:52 PM

Mrs. Heisel,

I want to "Thank You" for your service during the second term on the Planning and Zoning Commission, which expired in February 2021. I'm emailing you to see if you would like to serve a third term on the Planning and Zoning Commission. Please let me know if you wish to serve the third term on the Planning & Zoning Commission.

Sincerely,

J. Lee Potts  
City of Terrell  
Municipal Development Tech  
972-551-6600 Ext 2063

**Jenny** <jenny.heisel@suddenlink.net>  
To: J Potts <jpotts@cityofterrell.org>

Sat, Feb 27, 2021 at 5:46 AM

Yes, I will serve another term. Thank you

Sent from my iPad

> On Feb 25, 2021, at 6:49 PM, J Potts <jpotts@cityofterrell.org> wrote:  
>  
>  
[Quoted text hidden]



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## Third Term on the Planning and Zoning Commission

3 messages

**J Potts** <jpotts@cityofterrell.org>  
To: Trini Jones <trinibjones@gmail.com>  
Cc: Charles Fenner <cfenner@cityofterrell.org>

Thu, Feb 25, 2021 at 6:54 PM

Mr. Jones,

I want to "Thank You" for your service during the second term on the Planning and Zoning Commission, which expired in February 2021. I'm emailing you to see if you would like to serve a third term on the Planning and Zoning Commission. Please let me know if you wish to serve the third term on the Planning & Zoning Commission.

Sincerely,

J. Lee Potts  
City of Terrell  
Municipal Development Tech  
972-551-6600 Ext 2063

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**J Potts** <jpotts@cityofterrell.org>  
To: Trini Jones <trinibjones@gmail.com>

Thu, Mar 4, 2021 at 11:27 AM

Mr. Jones,

Wanted to check in with you to see if you have considered serving a third term on the Planning and Zoning Commission? I am currently preparing the agenda item for the City Council to consider and approve additional term appointments to the Planning and Zoning Commission at the City Council meeting scheduled for 3/16/2021.

Sincerely,

J. Lee Potts  
City of Terrell  
Municipal Development Tech  
972-551-6600 Ext 2063

[Quoted text hidden]

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**Trini Jones** <trinibjones@gmail.com>  
To: J Potts <jpotts@cityofterrell.org>

Thu, Mar 4, 2021 at 11:26 AM

Yes, I will.

[Quoted text hidden]

## Council Board Responsibilities

<b>Board</b>	<b>Council Member</b>
Airport	Rick Carmona
Animal Advisory Board	Grady Simpson
Building Standards	Tim Royse
Civil Service	Grady Simpson
Economic Development	Rick Carmona
Library	Charles Whitaker
Park	Tim Royse
Zoning Board of Adjustments	Mayrani Velazquez
TIF/Power Center	Mayrani Velazquez
Planning and Zoning	Mayrani Velazquez

Regular City Council  
**AGENDA ITEM REPORT**



**To:** City Council  
**Subject:** Discuss and consider Zoning Board of Adjustments reappointments  
**Meeting:** Regular City Council - Mar 16 2021  
**Department:** Municipal Development  
**Staff Contact:** J Potts,

**BACKGROUND INFORMATION:**

Zoning Board of Adjustments members requesting reappointments to the board:  
Dr. Kameka Miller reappointment to second term.  
Chairman Jimmy Cooper reappointment to third term.  
Vice-Chairman Karen Jones reappointment to third term.

**ATTACHMENTS:**

[Zoning Board of Adjustments Term Emails](#)



## Second Term on the Zoning Board of Adjustments

2 messages

**J Potts** <jpotts@cityofterrell.org>  
To: Kameka Miller <kamekamiller87@gmail.com>  
Cc: Charles Fenner <cfenner@cityofterrell.org>

Mon, Mar 1, 2021 at 8:10 AM

Mrs. Miller,

I want to "Thank You" for your service during the first term on the Zoning Board of Adjustments, which expired in February 2021. I'm emailing you to see if you would like to serve a second term on the Zoning Board of Adjustments. Please let me know if you wish to serve the third term on the board.

Sincerely,  
J. Lee Potts  
City of Terrell  
Municipal Development Tech  
972-551-6600 Ext 2063

**Kameka Miller** <kamekamiller87@gmail.com>  
To: J Potts <jpotts@cityofterrell.org>  
Cc: Charles Fenner <cfenner@cityofterrell.org>

Mon, Mar 1, 2021 at 3:04 PM

Hi Mr. Potts,

Thank you so much for your email. I would love to serve another term on the Zoning Board of Adjustments for the City of Terrell.

Sent from my iPhone

> On Mar 1, 2021, at 8:07 AM, J Potts <jpotts@cityofterrell.org> wrote:  
>  
>  
[Quoted text hidden]



---

## Third Term on the Zoning Board of Adjustments

2 messages

**J Potts** <jpotts@cityofterrell.org>  
To: jim@jarepllc.com  
Cc: Charles Fenner <cfenner@cityofterrell.org>

Mon, Mar 1, 2021 at 8:06 AM

Mr. Cooper,

I want to "Thank You" for your service during the second term on the Zoning Board of Adjustments, which expired in February 2021. I'm emailing you to see if you would like to serve a third term on the Zoning Board of Adjustments. Please let me know if you wish to serve the third term on the board.

Sincerely,

J. Lee Potts  
City of Terrell  
Municipal Development Tech  
972-551-6600 Ext 2063

---

**Jim Cooper** <jim@jarepllc.com>  
To: J Potts <jpotts@cityofterrell.org>

Mon, Mar 1, 2021 at 8:32 AM

3<sup>rd</sup> term is fine by me. Thanks for your hard work

[Quoted text hidden]



---

## Third Term on the Zoning Board of Adjustments

2 messages

**J Potts** <jpotts@cityofterrell.org>  
To: K Jones <tisdwife@yahoo.com>  
Cc: Charles Fenner <cfenner@cityofterrell.org>

Mon, Mar 1, 2021 at 8:08 AM

Mrs. Jones,

I want to "Thank You" for your service during the second term on the Zoning Board of Adjustments, which expired in February 2021. I'm emailing you to see if you would like to serve a third term on the Zoning Board of Adjustments. Please let me know if you wish to serve the third term on the board.

Sincerely,

J. Lee Potts  
City of Terrell  
Municipal Development Tech  
972-551-6600 Ext 2063

---

**Karen Jones** <tisdwife@yahoo.com>  
To: J Potts <jpotts@cityofterrell.org>

Mon, Mar 1, 2021 at 9:44 AM

Yes, I'd love to serve another term. I enjoy the work and the great people I work with! Thanks J!

Sent from my iPad

On Mar 1, 2021, at 8:05 AM, J Potts <jpotts@cityofterrell.org> wrote:

[Quoted text hidden]

## Council Board Responsibilities

<b>Board</b>	<b>Council Member</b>
Airport	Rick Carmona
Animal Advisory Board	Grady Simpson
Building Standards	Tim Royse
Civil Service	Grady Simpson
Economic Development	Rick Carmona
Library	Charles Whitaker
Park	Tim Royse
Zoning Board of Adjustments	Mayrani Velazquez
TIF/Power Center	Mayrani Velazquez
Planning and Zoning	Mayrani Velazquez

**RESOLUTION NO. 1011**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS, ESTABLISHING AND ASSIGNING RESPONSIBILITIES TO A CITY FACILITIES NAMING COMMITTEE AND PLACING A TEMPORARY HOLD ON NEW HONORARY NAMES TO ALLOW THE CITY FACILITIES NAMING COMMITTEE DUE TIME FOR DELIBERATIONS AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, City Councils in the State of Texas possess the responsibility of assigning names to streets, municipal buildings, parks, trails, lakes and other facilities under the municipality's jurisdiction; and

**WHEREAS**, the Terrell City Council recognizes the importance of a reliable, efficient and open process for creating new names that reinforce respect for the history of Terrell, foster appreciation for the various contributions of the people and neighborhoods of Terrell, establish a positive identity consistent with the brand of Terrell, promote civic pride in Terrell and communicate clearly to visitors and emergency response personnel; and

**WHEREAS**, the Terrell City Council adopted Resolution No. 636 on June 16, 2009 governing the naming or renaming of City facilities, streets, and park land; and

**WHEREAS**, the Terrell City Council adopted Ordinance No. 2717, the current Comprehensive Plan, on January 2, 2018, which included recommendations from both the Park Plan and the Downtown Plan as adopted in May, 2018; and

**WHEREAS**, the Terrell City Council wishes to be responsive to changes in planning documents, growth trends and community input which have occurred since Resolution No. 636 was adopted.

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

**Section I.**

A City Facilities Naming Committee is hereby established as a temporary advisory board to provide consideration and input to the Terrell City Council based on the recitals herein. The Committee shall have five (5) total members with one (1) representative to be recommended by each of the five (5) members of the City Council and membership on the Committee to be subject to a vote of the full City Council. The City Secretary is directed to create an application for members of the community wishing to serve on the Committee and to make it available to the City Council and on the City website.

**Section II.**

The City Facilities Naming Committee shall meet at a time to be established by the City Manager after all five (5) members have been assigned by the City Council. The Committee

shall operate under Roberts Rules of Order, shall select its own Chairperson at its first meeting, shall meet as necessary as scheduled by the City Manager to make due consideration of a full range on City naming issues and shall have full charge to consider nonbinding recommendations to Council related to naming policies, naming processes and names of individual facilities under the City's jurisdiction.

### **Section III.**

The City Facilities Naming Committee shall make its recommendations only by a majority vote of the full five (5) members of the Committee, shall provide a spokesperson to report to the City Council and, in the case of specific facilities, may provide either a single recommendation or a short list of options.

### **Section IV.**

All elements Resolution No. 636 related to new and honorary names are hereby suspended until such time as the Naming Committee recommends updated procedures in the form of an updated Naming Resolution and such new Resolution is approved by City Council. Any street toppers already under consideration by the Planning and Zoning Commission shall be considered exempt from this suspension.

### **Section V.**

To ensure communication between the Committee and City Council, prior to considering any individual facility name or renaming, the Committee shall provide a list of facilities which it recommends be considered to the City Council, the Committee shall then only consider facilities for which the City Council has directed the Committee to exercise its deliberative authority.

### **Section VI.**

This Resolution shall become effective immediately upon its passage.

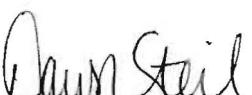
**PASSED AND APPROVED** by the City Council of the City of Terrell, Texas on this 2<sup>nd</sup> day of February, 2021.



---

E. RICK CARMONA, Mayor

ATTEST:



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DAWN STEIL, City Secretary

**ORDINANCE NO. 2859**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, AMENDING CHAPTER 12, UTILITIES, OF THE TERRELL CITY CODE OF ORDINANCES BY THE ADDITION OF SECTION 12-21, ON SITE SEWAGE FACILITIES, PROVIDING FOR SEVERABILITY, PROVIDING AN EFFECTIVE DATE, AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS CONSIDERED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, the Texas Commission on Environmental Quality (TCEQ) has established Rules for on-site sewage facilities to provide the citizens of this State with adequate public health protection and a minimum of environmental pollution; and

**WHEREAS**, the Legislature has enacted legislation, codified as Texas Health and Safety Code (THSC), Chapter 366, which authorizes a local government to regulate the use of on-site sewage facilities in its jurisdiction in order to abate or prevent pollution or injury to the public health arising out of the use of on-site sewage facilities; and

**WHEREAS**, due notice was given of a public meeting to determine whether the City Council of the City of Terrell, Texas should enact an ordinance controlling or prohibiting the installation or use of on-site sewage facilities in the City of Terrell, Texas; and

**WHEREAS**, the City Council of the City of Terrell, Texas finds that the use of on-site sewage facilities in areas of the City of Terrell, Texas not served by the City of Terrell's sanitary sewage system is causing or may cause pollution, and is injuring or may injure the public health; and

**WHEREAS**, the City Council of the City of Terrell, Texas has considered the matter and deems it appropriate to enact an Ordinance adopting Rules regulating on-site sewage facilities to abate or prevent pollution, or injury to public health in the City of Terrell, Texas.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS;**

**ARTICLE I.**

**THAT** Chapter 12, Utilities, of the Terrell City Code of Ordinances is hereby amended by the addition of Section 12-21, On-Site Sewage Facilities as follows, to-wit:

**Sec. 12-21. On-Site Sewage Facilities.**

- (a) *Conflicts.* – This Section repeals and replaces any other On-Site Sewage Facility (OSSF) Ordinance of the City of Terrell, Texas.
- (b) *On Site Sewage Facility Regulation and Enforcement.* – The City of Terrell, Texas clearly understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, and will fully enforce Chapter 366 of the THSC and Chapters 7 and 37 of the Texas Water Code (TWC), and associated rules referenced in Paragraph (e) below.
- (c) *Area of Jurisdiction.* – This section shall apply to all areas lying within the corporate limits of the City of Terrell, Texas.
- (d) *On-Site Sewage Facility Rules.* – Any permit issued for an on-site sewage facility within the jurisdictional area of the City of Terrell, Texas must comply with the Rules adopted in Paragraph (e) below.
- (e) *On-Site Sewage Facility Rules Adopted.* – The Rules, Title 30 Texas Administrative Code (TAC) Chapter 30, Subchapters A and G, and Chapter 285, promulgated by the TCEQ for on-site sewage facilities are hereby adopted, and all officials and employees of the City of Terrell, Texas, having duties under said Rules are authorized to perform such duties as are required of them under said Rules.
- (f) *Incorporation by Reference.* - The Rules, 30 TAC Chapter 30, Subchapters A and G, and Chapter 285 and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules.
- (g) *Amendments.* – The City of Terrell, Texas wishing to adopt more stringent Rules for this section understands that the more stringent local Rule shall take precedence over the corresponding TCEQ requirement. Listed below are the more stringent Rules adopted by the City of Terrell, Texas:

The City of Terrell requires a minimum of three-fourth (3/4) of an acre for a property to be served by an on-site sewage facility when served by a public water supply.
- (h) *Duties and Powers.* – The OSSF Designated Representative (DR) (30 TAC §285.2 (17)) of the City of Terrell, Texas, must be certified by the TCEQ before assuming the duties and responsibilities.
- (i) *Collection of Fees.* – All fees collected for permits and/or inspections shall be made payable to the City of Terrell, Texas. An additional fee of ten dollars (\$10.00) shall also be collected for each on-site sewage facility permit issued to be paid to the credit of the TCEQ Water Resources Management Account as required by THSC, Chapter 367.

- (j) *Appeals.* – Persons aggrieved by an action or decision of the designated representative may appeal such action or decision to the Municipal Court of the City of Terrell, Texas.
- (k) *Enforcement Plan.* – The City of Terrell, Texas, clearly understands that, at a Minimum, it must follow the requirements in 30 TAC § 285.71 Authorized Agent Enforcement of OSSF's. This section adopts and incorporates all applicable provisions related to on-site sewage facilities, which includes, but is not limited to, those found in Chapters 341 and 366 of the THSC, Chapters 7, 26, and 37 of the TWC and 30 TAC Chapter 30, Subchapters A and G, and Chapter 285.
- (l) *Relinquishment.* - In the event the City Council of Terrell, Texas, decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the City Council, as authorized agent, and the TCEQ shall follow the procedures outlined in 30 TAC § 285.10 (d) (5) and § 285.14 after the date that delegation has been relinquished.

## **ARTICLE II.**

All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

## **ARTICLE III.**

It is hereby declared to be the intention of the City Council of the City of Terrell, Texas, that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, paragraphs and sections.

## **ARTICLE IV.**

This Ordinance will take effect immediately after its passage and the publication of the caption, and its approval by the TCEQ as the law in such cases provides.

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

**PASSED AND ADOPTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

E. Rick Carmona, Mayor

Attest:

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Dawn Steil, City Secretary

Approved as to form:

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Mary Gayle Ramsey, City Attorney

## ORDINANCE NO. 2860

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, AMENDING CHAPTER 12, UTILITIES, OF THE TERRELL CITY CODE OF ORDINANCES BY THE ADDITION OF SECTION 12-21A, ON SITE SEWAGE FACILITIES INSPECTIONS AND PERMITTING, PROVIDING FOR SEVERABILITY, PROVIDING A PENALTY, PROVIDING AN EFFECTIVE DATE, AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS CONSIDERED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, the City Council of the City of Terrell, Texas has enacted an ordinance controlling or prohibiting the installation or use of on-site sewage facilities in the City of Terrell, Texas; and

**WHEREAS**, the City Council of the City of Terrell, Texas finds it necessary to enact provisions for the proper inspections and permitting of on-site sewage facilities in the City of Terrell.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS;**

### ARTICLE I.

**THAT** Chapter 12, Utilities, of the Terrell City Code of Ordinances is hereby amended by the addition of Section 12-21A, On-Site Sewage Facilities Inspections and Permitting as follows, to-wit:

#### **Sec. 12-21A. On-Site Sewage Facilities Inspections and Permitting.**

- (a) *Initial Inspection and Permitting* – Prior to any installation or permitting of an on-site sewage facility within the City of Terrell, a detailed design in conformance with the requirements of Section 12-21 must be submitted and approved by the OSSF Designated Representative and the City Engineer of the City of Terrell. Upon approval, an installation permit may be issued for the construction of the facility. Upon the completion of the initial construction and prior to final burial of the facility, an on-site inspection must be conducted by the OSSF Designated Representative for final approval. All fees for the initial inspections and permitting are the responsibility of the property owner and payable to the City of Terrell.
- (b) *Regular Inspections* – Within the months of April, August and December of each year, all aerobic on-site sewer facilities within the City of Terrell must, at the sole expense of the property owner, be inspected by a Registered Sanitarian or a Registered Professional Engineer that have expertise in on-site sewer facility design and operation to certify that the facility is in proper working condition.

The property owner shall be solely responsible for obtaining the services of a properly credentialed professional to make the above inspections.

The property owner shall be solely responsible for obtaining all necessary services from a Registered Sanitarian or a Registered Professional Engineer. There shall be no homeowner inspections or maintenance of an on-site sewage disposal system using aerobic treatment within the City of Terrell.

(c) *Submission of Reports to the OSSF Designated Representative and the City Engineer*

Following each of the inspections for an aerobic on-site sewer facility as specified above, a written report showing that the facility is in compliance with all applicable regulations of the T.C.E.Q and the Texas Health and Safety Code must be submitted to the OSSF Designated Representative and the City Engineer of the City of Terrell by the Registered Professional Sanitarian or Registered Professional Engineer conducting the inspection for review and final approval. All monthly administrative costs shall be at the sole expense of the property owner and payable to the City of Terrell.

(d) *Installation Fees* – Applicable fees for all initial inspections together with all follow-up reviews and approvals by the OSSF Designated Representative of the City of Terrell can be found in Appendix 1, Fee Schedule of the City of Terrell, Section 28, Paragraph (7), OSSF Installation Fees.

(e) *Penalty* – Any person violating any provision of this section shall be guilty of a misdemeanor and, upon conviction, be assessed a fine as follows:

(1)	First offense -	\$150.00
(2)	Second offense -	\$250.00
(3)	All additional offenses -	\$1,000.00
	(Each additional day the violation persists shall constitute a separate offense.)	
(4)	In addition to the above penalty for all additional offenses, the City may, at its discretion, order that electrical service to the property be discontinued until all violations of this section have been fully abated to insure public health and safety,	

## ARTICLE II.

All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

### **ARTICLE III.**

It is hereby declared to be the intention of the City Council of the City of Terrell, Texas, that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, paragraphs and sections.

### **ARTICLE IV.**

This Ordinance will take effect immediately after its passage and the publication of the caption as the law in such cases provides.

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

**PASSED AND ADOPTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

E. Rick Carmona, Mayor

Attest:

Approved as to form:

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Dawn Steil, City Secretary

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Mary Gayle Ramsey, City Attorney

## ORDINANCE NO. 2861

**AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING THE TERRELL CITY CODE OF ORDINANCES, APPENDIX 1, FEE SCHEDULE, SECTION 28, SEWER SERVICE RATES AND CHARGES BY ADDING PARAGRAPH (7), OSSF INSTALLATION FEES; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THAT THE MEETING IN WHICH THIS ORDINANCE WAS CONSIDERED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY:**

### ARTICLE I.

**THAT** Appendix 1, Fee Schedule, Section 28, Sewer Service Rates and Charges, be amended by adding paragraph (7) as follows:

*(7) OSSF Installation Fees.* The following fees shall apply to all initial inspections together with all follow-up reviews and approvals by the OSSF Designated Representative of the City of Terrell as follows to-wit:

a. Initial Single Family Residential Installation Permit -	\$360.00
b. Commercial Installation Permit -	\$610.00
c. Re-Inspection/Residential Installation -	\$200.00
d. Re-Inspection/Commercial	\$300.00
e. Monthly Septic Fee	\$1.00

### ARTICLE II.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

### ARTICLE III.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence paragraph or section.

## **ARTICLE IV.**

All other provisions of Section 28 not expressly modified by this Ordinance shall remain in full force and effect.

## **ARTICLE V.**

This Ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

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

PASSED AND ADOPTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

E. Rick Carmona, Mayor

ATTEST:

---

Dawn Steil, City Secretary

APPROVED AS TO FORM:

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Mary Gayle Ramsey, City Attorney

Regular City Council  
**AGENDA ITEM REPORT**



**To:** City Council  
**Subject:** RP 21-01  
Conduct a public hearing to discuss and consider a Final Plat of the Jaquez Addition, Lots 1 & 2, Block No. 580, Terrell Rev Addition. Being a replat of Lot 2R, Block No. 580, of the Terrell Rev Addition, City of Terrell, Kaufman County. The property is also known as 0 Mineral Wells Street, Terrell Texas. The property is currently zoned as Single Family 7.5 (SF-7.5) district.

**Meeting:** Regular City Council - Mar 16 2021  
**Department:** Municipal Development  
**Staff Contact:** J Potts,

**BACKGROUND INFORMATION:**

The applicant has submitted a Final Plat for the Jaquez Addition consisting of Lots 1 & 2, Block 580 out of the Terrell Rev Addition, City of Terrell, Kaufman County, Texas. The applicant is subdividing this lot into two separate lots. The property is located at 0 Mineral Wells. The Replat (Final Plat) meets the standards for zoning and subdivision ordinance.

**Staff Recommendation:**

Approval of the Final Plat for Lots 1 & 2, Block 580, out of the Terrell Rev Addition.

Planning and Zoning Commission approved the Final Plat by a vote of 5-2. Commissioner Stephanie Thomas abstained from voting on the item.

**ATTACHMENTS:**

[0 Mineral Wells Application Lot 2R replat](#)  
[Final Plat Jaquez Addition RP 21-01](#)  
[0 Mineral Wells Location](#)  
[0 Mineral Wells Zoning](#)  
[0 Mineral Wells FLU](#)



# City of Terrell

## Application for Plat Approval

PLANNING AND ZONING BOARD

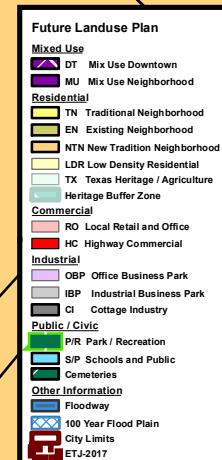
Municipal Development  
Department  
201 E. Nash/ P.O. Box 310  
Terrell, TX 75160  
972-551-6606 phone  
972-551-6677 fax

<b>Application Type:</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> Final	<input checked="" type="checkbox"/> Replat	<input type="checkbox"/> Amending
<b>Plat Name:</b>				
<b>Existing Property Information:</b>				
Legal Description:				
Lot: <u>2R</u>		Block: <u>580</u>		
Subdivision: <u>Replat of block 580</u>		No. of Lots <u>2</u>		
Survey abstract & acreage: <u>1 acre of 2R</u>				
Address: <u>8 Mineralwells St</u>				
Present use & zoning district: SF - 7.5 (Please note chart below)				
(AG)	AGRICULTURE	(NS)	NEIGHBORHOOD SERVICES	
(SF-16, SF-10, SF-7.5, SF-6)	SINGLE-FAMILY RESIDENTIAL	(R)	RETAIL	
(TH-12)	TOWNHOUSE RESIDENTIAL	(CBD)	CENTRAL BUSINESS DISTRICT	
(MF-22)	MULTI-FAMILY RESIDENTIAL	(C)	COMMERCIAL	
(MH)	MANUFACTURED HOME	(LI)	LIGHT INDUSTRIAL	
(O)	OFFICE	(PD)	PLANNED DEVELOPMENT	
<b>Property Owner Information:</b>				
Owner: <u>Hector Jaquez</u>		Phone No. <u>214-293-7841</u> Fax No. _____		
Address: <u>3709 S Country Club Rd Garland TX 75043</u>				
If the property owner is represented by an authorized agent, please complete the following:				
Agent/Developer: _____		Phone No. _____		Fax No. _____
Cell No. _____		E-Mail _____		
Address: _____				
Owner Signature: <u>[Signature]</u>		Agent Signature: _____		
<b>Surveyor:</b>				
Firm Name: <u>State wide Surveying</u>		Phone No. <u>972-962-6481</u> Fax No. <u>972-962-6480</u>		
Contact: <u>Greg Sjerven</u>		E-Mail <u>statewidesurvey@aol.com</u>		
Address: <u>208 North Washington Kaufman TX 75142</u>				
<b>Land Planner/Engineer:</b>				
Firm Name: <u>Eric Davis Engineering</u>		Phone No. <u>972-564-0592</u> Fax No. _____		
Contact: <u>Eric Davis</u>		E-Mail _____		
Address: <u>120 E Main St Forney TX 75126</u>				
<b>Office Use Only:</b>				
Application Date: <u>1/27/2020</u> Fee Paid: _____ (Check# <u>      </u> ) (Cash <u>      </u> ) (C.C. <u>      </u> ) Received By: _____				









Mineral Wells

Regular City Council  
**AGENDA ITEM REPORT**



**To:** City Council  
**Subject:** ZC 21-02  
Conduct a public hearing to discuss and consider a change in zoning from Retail (R) to Single-Family Residential 7.5 (SF-7.5). The property is described as Lot C, Block 4, out of the Terrell Terrace Addition, City of Terrell, Kaufman County, Texas and is also known as 301 9th Street.

**Meeting:** Regular City Council - Mar 16 2021  
**Department:** Municipal Development  
**Staff Contact:** J Potts,

**BACKGROUND INFORMATION:**

The property is currently zoned Retail (R). The applicant would like to rezone it to Single-Family 7.5 (SF-7.5). The property is Terrell Terrace, Block 4, Lot C, City of Terrell, Kaufman County, Texas. Also, known as 309 9th Street.

**Current:**

The current zoning of the property is Retail (R), as delineated by the attached map. The applicant has requested Single-Family 7.5 (SF-7.5), which would allow the structure on property to be used as a dwelling.

**Technical Issues:**

Area zoning:

North – Single-Family 7.5

South – Single-Family 7.5

East – Single-Family 7.5

West – Retail

12 letters were sent out to adjacent property owners within 200 feet of the property involved in this request.

**Staff Recommendation:**

Staff does not recommend approval of the requested zone change. The Retail zoning of the property allows for a number of different office uses or other small retail business uses. Rezoning the property to Single-Family 7.5 (SF-7.5) will create several nonconformities to include the building, setbacks, house type, existing land size, etc.

Planning and Zoning Commission denied approval of the zone change by a 8-0 vote.

**ATTACHMENTS:**

[Zoning Application for 301 9th St. ZC 21-02](#)

[301 9th St. Zoning](#)

[301 9th St. FLU](#)

[301 9th St. Buffer](#)

ITEM 8.10.

Existing Neighborhoods



# City of Terrell

## ZONING or SUP Application

PLANNING AND ZONING COMMISSION

City of Terrell  
201 E. Nash  
P.O. Box 310  
Terrell, TX 75160

### Property Owner Information:

Owner: Bryan Alex Boshart Phone No.: 832-922-5094 Fax No.: \_\_\_\_\_

Cell No.: 832-922-5094 E-Mail: alex.boshart@gmail.com

Address: 1601 S. Adams St. Fort Worth, TX 76104

Owner Signature:

If the property owner is represented by an authorized agent, please complete the following:

Agent: \_\_\_\_\_ Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Cell No.: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Address: \_\_\_\_\_

Agent Signature: \_\_\_\_\_

### Existing Property Information:

Lot: C Block: 4

Subdivision: Terrell Terrace Addition No. of Lots: 1

Survey abstract & acreage: 5,024 or 0.12 of an acre of land; Living Area: 882 sq. ft.

Address: 301 9th St. Terrell, TX 75160-2419

Current zoning district (Please note chart below): (R) Retail

(AG)	AGRICULTURE	(NS)	NEIGHBORHOOD SERVICES
(SF-16, SF-10)	SINGLE-FAMILY RESIDENTIAL	(R)	RETAIL
SF-7.5, SF-6)		(CBD)	CENTRAL BUSINESS DISTRICT
(TH-12)	TOWNHOUSE RESIDENTIAL	(C)	COMMERCIAL
(MF-22)	MULTI-FAMILY RESIDENTIAL	(LI)	LIGHT INDUSTRIAL
(MH)	MANUFACTURED HOME	(PD)	PLANNED DEVELOPMENT
(O)	OFFICE		

### Application Request:

Zone Change  Specific Use

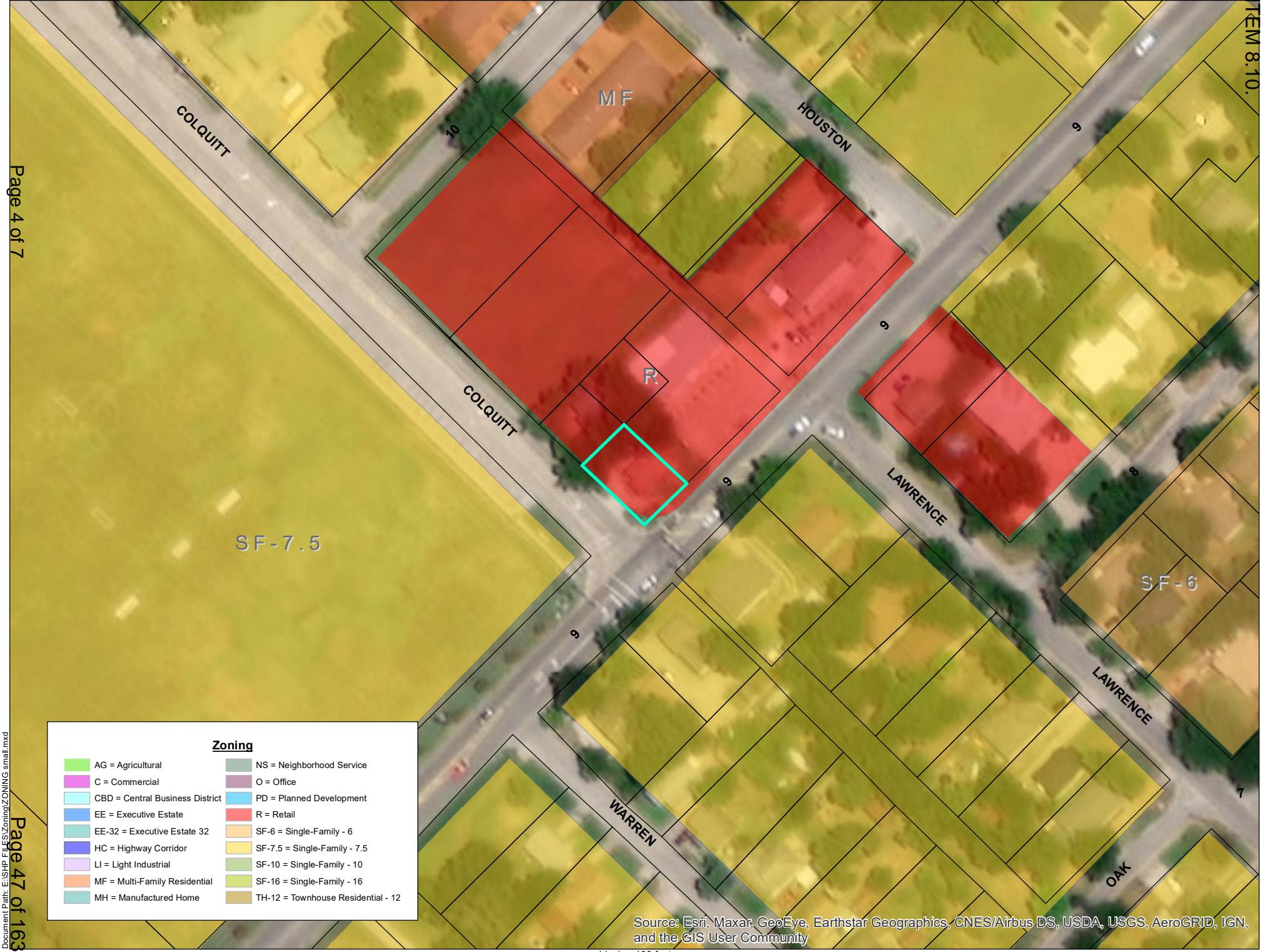
Use or Zoning Requested: Single - Family Residential

Reason for Request: Please see attached document.

The Municipal Development Department will only accept complete applications. This includes a completed application form, proof of ownership, non-refundable filing fee made payable to the City of Terrell, legal description or surveyed plat drawn by a Licensed Surveyor, and a Comprehensive Site Plan (if applicable). Planning & Zoning Commission meetings are held on the 4th Thursday of each month at 5:30 p.m. Applications are due thirty (30) days prior to the meeting date.

### Office Use Only:

<input type="checkbox"/> Complete Application	Received By: _____
<input type="checkbox"/> \$200.00 Fee	Filing Date: _____
<input type="checkbox"/> Proof of Ownership	Planning & Zoning Date: _____
<input type="checkbox"/> Surveyed Plat	1st City Council Date: _____
<input type="checkbox"/> Comprehensive Site Plan (for PD or SUP)	2nd City Council Date: _____





# City of Terrell

Future Land Use Plan

LEM 8.10.



## 2017 Thoroughfare Routes

Existing	Proposed	
		Regional Outer Loop
Freeway		
Frontage Road		
Type AA Principal Arterial (6 Lanes, 140' ROW)		
Type A Major Arterial (4 Lanes, 120' ROW)		
Type B Minor Arterial (4 Lanes, 100' ROW)		
Type C Principal Collector (2 Lanes, 100' ROW)		
Type D Major Collector (2 Lanes, 80' ROW)		
Type E Minor Collector (3 Lanes, 60' ROW)		
Type F Residential (2 Lanes, 60' ROW)		
Lakeside 2-Lane Road		
Lakeside Trail		
Proposed Greenbelt Trails		
Minor Rail Access Corridor		
Major Rail Access Corridor		

Colquitt Rd

EN

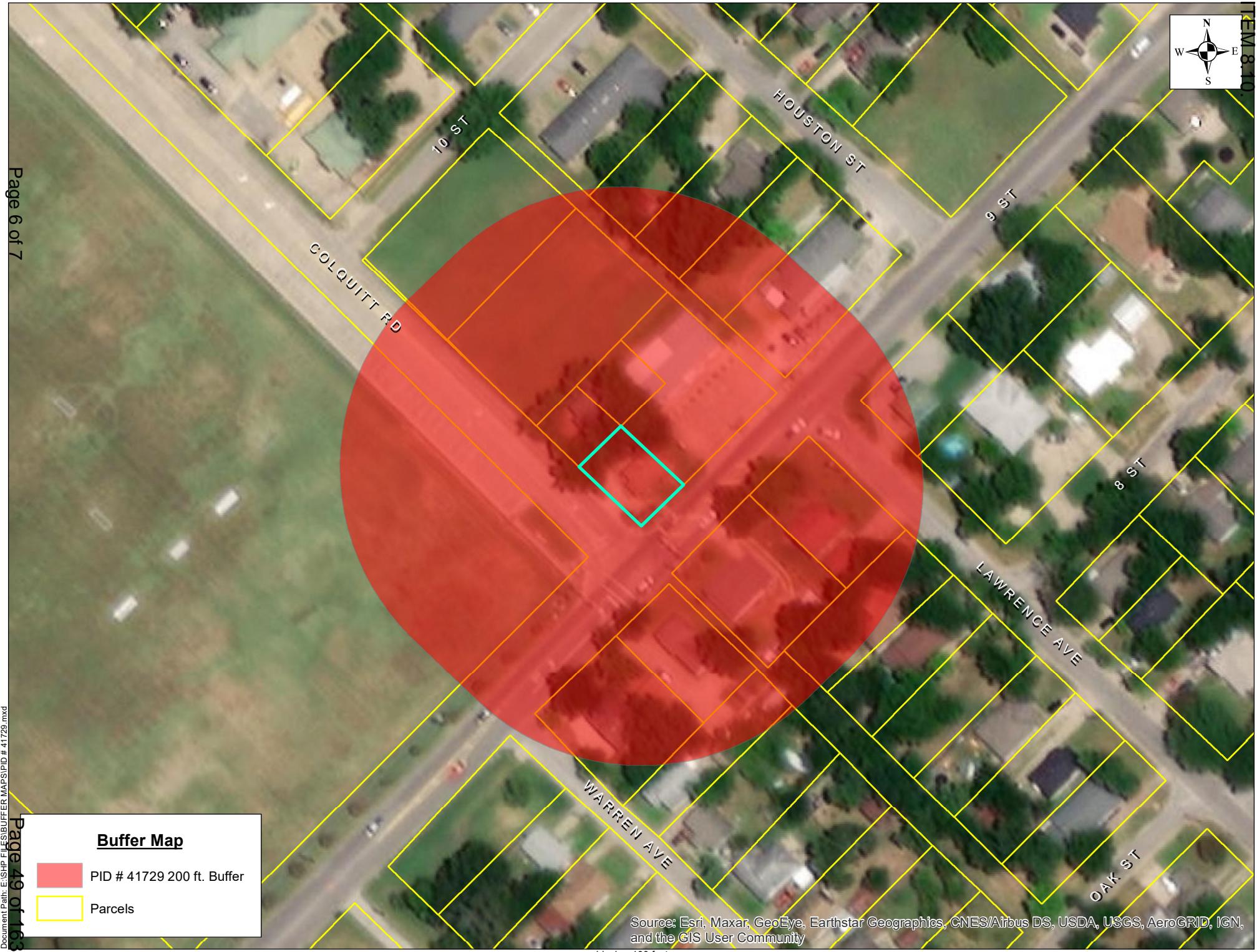
9TH

P/R

TN

## Future Landuse Plan

Future Landuse Plan	
Mixed Use	
DT Mix Use Downtown	
MU Mix Use Neighborhood	
Residential	
TN Traditional Neighborhood	
EN Existing Neighborhood	
NTN New Tradition Neighborhood	
LDR Low Density Residential	
TX Texas Heritage / Agriculture	
Heritage Buffer Zone	
Commercial	
RO Local Retail and Office	
HC Highway Commercial	
Industrial	
OBP Office Business Park	
IBP Industrial Business Park	
CI Cottage Industry	
Public / Civic	
PR Park / Recreation	
SIP Schools and Public	
Cemeteries	
Other Information	
Floodway	
100 Year Flood Plain	
City Limits	
ETJ-2017	





## TERRELL 2017 COMPREHENSIVE PLAN

## Land Use Categories

Existing Neighborhoods	
<b>Purpose and intent</b>	 <ul style="list-style-type: none"> <li>• To maintain the character and quality of existing neighborhoods</li> <li>• To minimize any neighborhood decline due to lack of upkeep and maintenance of infrastructure</li> </ul>
<b>Land use types and density</b>	 <ul style="list-style-type: none"> <li>• Mainly single-family residential with a range of lot sizes and densities</li> <li>• Also appropriate are elementary schools, parks, and small-scale neighborhood serving commercial uses in close proximity</li> </ul>
<b>Design priorities</b>	 <ul style="list-style-type: none"> <li>• Improve pedestrian connectivity through sidewalks and trails, especially within ¼- ½ mile of schools and parks.</li> <li>• Maintain existing street network, parks and open space</li> <li>• Vehicular and pedestrian connections to new adjoining neighborhoods and to schools and parks where feasible</li> </ul>
<b>Zoning Recommendations</b>	 <ul style="list-style-type: none"> <li>• Compatible zoning districts include SF-10, SF-16, and PD (when flexibility is needed on some of the development standards in lieu of protecting any historic or environmental features)</li> <li>• Evaluate current zoning to eliminate any incompatible zoning with respect to density and neighborhood context.</li> <li>• Step up code enforcement to ensure that homes and lots maintain property values and do not contribute to neighborhood decline and blight</li> </ul>



# Equipment Replacement Fund

# Dump Truck Tasks

- **Transporting** - loose material (such as sand, gravel, rock, mulch, demolition waste or any other earthen materials) to and from job site.
- **Hauling**
  - Spoils from drainage ditch clearing
  - Brush and storm debri
  - Cold mix (asphalt) to job sites for street maintenance repairs
  - Rock for road base
  - Millings to and from job sites for road repair
  - Sand for inclimate weather
  - Brush from tree trimming
  - Weeds from the pond
  - Mulch to different parks for playgrounds
  - Asphalt and road material for street repairs in and around parks
  - Dirt to parks to fill damaged and vandalized areas (ruts, low spots and erosion)
- **Clean-up** - Illegal dump sites, weather disaster area's, large animal road hazard, and stabilize hazardous liquid spills
- **Mobility** - quick response, no loading or unloading to site
- **Support** - utilized for access/block roadways. Rescue or fire suppression during disaster events.
- **Testing** - drivers are required to acquire their CDL to operate equipment

ITEM 9.1.



<p>22043 Year 1997 (24 Years Old) Mileage 92,059 Freightliner Truck Dump FL70 VIN # 1FVXJLBB6VHB10256</p> 	<p><b>52022 OUT OF SERVICE</b> Year 1997 (24 year Old) Mileage 46,514 Chevrolet Truck Dump 7500 VIN # 1GBM7H1J3VJ11291</p>  <p><b>OUT OF SERVICE, PARTS OBSOLETE</b></p>	<p>64050 Year 2002 (19 Year Old) Mileage 43,227 Freightliner Truck Dump FL70 VIN # 1FVABTCS12HJ80854</p> 
---	--	--

Vehicle ID	Repair Cost FY 2020-2021
22035	\$ 3,586
52020	\$ 2,047
64050	\$18,832
22042	\$13,357
22043	\$ 7,430
<b>Total</b>	<b>\$45,252</b>

## 2022 MACK GR64F Tandem



# Buyback vs Lease vs Purchase

## Buyback

- Reduce Cash flow impact on current and future budgets
- Replace aging fleet
- Eliminate long term maintenance cost
- No mileage restrictions
- Low Payments
- Under Warranty
- Latest technology and safety
- No hassle of selling or trading

## Purchase:

- No mileage restrictions
- Equity depending on market and condition at time of sale
- End results no monthly payment after payoff
- Warranty expires we will incur maintenance cost
- Greater impact on current and future budgets

## Lease:

- Reduce Cash flow impact on current budget
- Balloon payment at end of lease
- Low monthly payments
- Warranty
- Latest technology and safety
- Excess wear and tear concerns
- Limited mileage

# Financial Analysis

## (Per unit Cost)

	<b>Vehicle</b>	<b>Annual Cost</b>	<b>Warranty</b>	<b>Terms</b>
<b>Buyback</b>	Mack	\$15,952	Full	Every 12 Mos
<b>Lease</b>	Freightliner	\$22,741	Full	Every 60 Mos
<b>Purchase</b>	Mack	\$29,832	Full (First 5 years)	60 Mos (Own after 5 Years)

## Recommended Option

**\*East Texas MACK Dump Trucks (TIPS/Buyboard Approved)**

### ***Buy Back Program***

Year/Make/Model: 2022 MACK GR64F Tandem

Sale Price Per Unit:

\$137,952.84

12-13 months after original purchase date Trade-in Allowance \$122,000 for each unit that meets trade-in terms and surrendered conditions.

#### Trade Terms:

1. Truck to be maintained and serviced as recommended by Mack Trucks.
2. Customer is responsible for all damages beyond wear & tear exceeding \$500.00.
3. All options & local extras remain on the truck & returned with trade-in.
4. No mileage limitations, no turned drums, and no damaged glass.
5. Unit must meet all Texas Dept. of Transportation inspection requirements.
6. Attached “Trade Terms and Surrender Condition” letter also apply.

Finance Institution: BanCorpSouth

## PROCESS:

- 1) Sign agreement with East Texas Mack to purchase the truck or trucks
- 2) City payment Due in 12 to 13 months after Agreement is in place
- 3) Trade back agreement is between the City of Terrell and East Texas Mack
- 4) **Cost for 1 truck \$134,575.72 (amount due in 12-13 months) East Texas Mack Pays \$122,000.00**
- 5) City of Terrell would be billed for **\$15,952.84**
- 6) **Cost for 3 trucks \$403,727.16 (amount due in 12-13 months) East Texas Mack Pays \$366,000.00**
- 7) City of Terrell would be billed for **\$47,858.52** in FY22 Budget

If the city accepts the proposal, It would then move to BanCorpSouth approval phase.. At that time we would be required to provide year end audited financial statements.

The next part of the process is we would receive the lease purchase documents to the city for signatures.

# Council Action

Authorize the City Manager to enter into a contract to acquire three Dump Trucks.

\*Cooperative Purchase

## **RESOLUTION NO. 1021**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS, AUTHORIZING THE PURCHASE OF UP TO THREE DUMP TRUCKS THROUGH ANY DULY AUTHORIZED GOVERNMENTAL COOPERATIVE AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO NEGOTIATE AND EXECUTE ALL NECESSARY DOCUMENTS FOR THE PURCHASE OF UP TO THREE DUMP TRUCKS; DECLARING AN EFFECTIVE DATE**

**WHEREAS**, it is necessary that the City of Terrell replace certain out of service equipment that requires obsolete parts or extensive repairs; and

**WHEREAS**, the City has a need for dump trucks for transporting materials, hauling materials and debris, cleanup, mobility for quick response, support to rescue or fire suppression; and

**WHEREAS**, the City has determined that the acquisition of three dump trucks through a duly authorized governmental cooperative will be in the best interest of the City of Terrell.

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

#### **Section I.**

The City of Terrell is authorized to acquire up to three dump trucks through any duly authorized governmental cooperative at a per unit cost of \$16,000.00 per year under the terms and conditions set forth in the contract documents.

#### **Section II.**

That the City Council authorizes the City Manager or his designee to annually negotiate and execute all necessary documents for the implementation of Section I on behalf of the City of Terrell.

#### **Section III.**

This Resolution shall be effective immediately after its passage.

**PASSED AND APPROVED** by the City Council of the City of Terrell, Texas, on this \_\_\_\_ day of March, 2021.

---

**E. RICK CARMONA, Mayor**

**ATTEST:**

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**DAWN STEIL, City Secretary**

RESOLUTION NO. 1019

A RESOLUTION AUTHORIZING CONTINUED PARTICIPATION WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR; AND AUTHORIZING THE PAYMENT OF SIX CENTS PER CAPITA TO THE STEERING COMMITTEE TO FUND REGULATORY AND LEGAL PROCEEDINGS AND ACTIVITIES RELATED TO ONCOR ELECTRIC DELIVERY COMPANY, LLC.

**WHEREAS**, the City of Terrell is a regulatory authority under the Public Utility Regulatory Act (PURA) and has exclusive original jurisdiction over the rates and services of Oncor Electric Delivery Company, LLC (Oncor) within the municipal boundaries of the city; and

**WHEREAS**, the Steering Committee of Cities Served By Oncor (Steering Committee) has historically intervened in Oncor rate proceedings and electric utility related rulemakings to protect the interests of municipalities and electric customers residing within municipal boundaries; and

**WHEREAS**, the Steering Committee is participating in Public Utility Commission dockets and projects, as well as court proceedings, and legislative activity, affecting transmission and distribution utility rates; and

**WHEREAS**, the City is a member of the Steering Committee; and

**WHEREAS**, the Steering Committee functions under the direction of an Executive Committee which sets an annual budget and directs interventions before state and federal agencies, courts and legislatures, subject to the right of any member to request and cause its party status to be withdrawn from such activities; and

**WHEREAS**, the Steering Committee at its December 2020 meeting set a budget for 2021 that compels an assessment of six cents (\$0.06) per capita; and

**WHEREAS**, in order for the Steering Committee to continue its participation in these activities which affects the provision of electric utility service and the rates to be charged, it must assess its members for such costs.

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

Section I.

That the City is authorized to continue its membership with the Steering Committee of Cities Served by Oncor to protect the interests of the City of Terrell and protect the interests of the customers of Oncor Electric Delivery Company, LLC residing and conducting business within the City limits.

Section II.

The City is further authorized to pay its assessment to the Steering Committee of six cents (\$0.06) per capita based on the population figures for the City shown in the latest TML Directory of City Officials.

Section III.

A copy of this Resolution and the assessment payment check made payable to “*Steering Committee of Cities Served by Oncor*” shall be sent to Brandi Stigler, Steering Committee of Cities Served by Oncor, c/o City Attorney’s Office, Mail Stop 63-0300, 101 S. Mesquite St., Suite 300, Arlington, Texas 76010.

PASSED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays at a regular meeting of the City Council of the City of \_\_\_\_\_, Texas.

\_\_\_\_\_  
Signature  
E. Rick Carmona, Mayor

ATTEST:

\_\_\_\_\_  
Signature  
Dawn Steil, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Signature  
Mary Gayle Ramsey, City Attorney

## MEMORANDUM

TO: Steering Committee of Cities Served by Oncor  
FROM: Paige Mims, Chair  
DATE: February, 2021  
RE: **Action Needed – 2021 Membership Assessment Invoice**

Enclosed please find the 2021 Steering Committee of Cities Served by Oncor (“Steering Committee”) membership assessment invoice and draft resolution. These items are discussed below. We ask that your city please take action on the membership assessment as soon as possible.

Although the Steering Committee does not require that your city take action by resolution to approve the assessment, some members have requested a resolution authorizing payment of the 2021 membership assessment. Payment of the membership assessment fee shall be deemed to be in agreement with the terms of the Steering Committee participation agreement.

Please forward the membership assessment fee and, if applicable, the signed resolution to Brandi Stigler, Steering Committee of Cities Served by Oncor, c/o City Attorney’s Office, Mail Stop 63-0300, 101 S. Mesquite St., Suite 300, Arlington, Texas 76010. Checks should be made payable to: *Steering Committee of Cities Served by Oncor*. If you have any questions, please feel free to contact me at (972/941-7125) or Thomas Brocato (tbrocato@lglawfirm.com, 512/914-5061).

### Membership Assessment Invoice and Resolution

The Steering Committee is the most active consumer group advocating the interests of cities and residential and small commercial customers within the cities to keep electric transmission and distribution (*i.e.*, wires) rates reasonable. Steering Committee activities protect the authority of municipalities over the regulated wires service and rates charged by Oncor Electric Delivery Company, LLC (“Oncor”).

The work undertaken by the Steering Committee has saved cities and ratepayers millions of dollars in unreasonable charges. In order to continue to be an effective voice before the Public Utility Commission of Texas (“Commission” or “PUC”), ERCOT, the Legislature, and in the courts, the Steering Committee must have your support. The membership assessment is deposited in an account which funds Steering Committee activities.

Currently, the Steering Committee is involved in numerous rulemakings and projects at the PUC. The Steering Committee expects to participate in Oncor’s Rate Case and Energy Efficiency Cost Recovery Factor (“EECRF”) proceedings later this year.

On December 10, 2020, the Steering Committee approved the 2021 assessment for Steering Committee membership. Based upon the population-based assessment protocol previously adopted by the Steering Committee, the assessment for 2021 is a per capita fee of \$0.06 based upon the population figures for each city shown in the latest TML Directory of City Officials. This is a decrease of \$0.01 compared to 2020. The enclosed invoice represents your city’s assessment amount.

To assist you in the assessment process, we have attached several documents to this memorandum for your use:

- OCSC 2020 Year in Review
- Model resolution approving the 2021 assessment (optional, provided for those cities that have requested a resolution to authorize payment)
- Model staff report supporting the resolution
- List of Steering Committee members
- 2021 Assessment invoice
- 2020 Assessment invoice and statement (only if not yet paid)
- Blank member contact form to update distribution lists

## STEERING COMMITTEE CITIES SERVED BY ONCOR (162)

Addison	Frisco	Plano
Allen	Frost	Pottsboro
Alvarado	Gainesville	Prosper
Andrews	Garland	Ranger
Anna	Glenn Heights	Red Oak
Archer City	Grand Prairie	Rhome
Argyle	Granger	Richardson
Arlington	Grapevine	Richland
Azle	Haltom City	Richland Hills
Bedford	Harker Heights	River Oaks
Bellmead	Haslet	Roanoke
Belton	Henrietta	Robinson
Benbrook	Hewitt	Rockwall
Beverly Hills	Highland Park	Rosser
Big Spring	Honey Grove	Rowlett
Breckenridge	Howe	Sachse
Bridgeport	Hudson Oaks	Saginaw
Brownwood	Hurst	Sansom Park
Buffalo	Hutto	Seagoville
Burkburnett	Iowa Park	Sherman
Burleson	Irving	Snyder
Caddo Mills	Jolly	Southlake
Cameron	Josephine	Springtown
Canton	Justin	Stephenville
Carrollton	Kaufman	Sulphur Springs
Cedar Hill	Keene	Sunnyvale
Celina	Keller	Sweetwater
Centerville	Kennedale	Temple
Cleburne	Kerens	Terrell
Coahoma	Killeen	The Colony
Colleyville	Krum	Trophy Club
Collinsville	Lake Worth	Tyler
Colorado City	Lakeside	University Park
Comanche	Lamesa	Venus
Commerce	Lancaster	Waco
Coppell	Lewisville	Watauga
Copperas Cove	Lindale	Waxahachie
Corinth	Little Elm	Westover Hills
Cross Roads	Little River Academy	Westworth Village
Crowley	Malakoff	White Settlement
Dallas	Mansfield	Wichita Falls
Dalworthington Gardens	McKinney	Willow Park
DeLeon	Mesquite	Woodway
De Soto	Midland	Wylie
Denison	Midlothian	
Duncanville	Murchison	
Early	Murphy	
Eastland	New Chapel Hill	
Edgecliff Village	North Richland Hills	
Ennis	Northlake	
Euless	Oak Leaf	
Everman	Oak Point	
Fairview	Odessa	
Farmers Branch	O'Donnell	
Fate	Ovilla	
Flower Mound	Palestine	
Forest Hill	Pantego	
Forney	Paris	
Fort Worth	Parker	

**ITEM 9.2.**

City of Arlington, c/o Oncor Cities  
Steering Committee  
Attn: Brandi Stigler  
101 S. Mesquite St., Ste. 300  
MS # 63-0300  
Arlington, TX 76010

**Invoice**

Date	Invoice #
2/24/2021	21-134

Bill To
City of Terrell

Item	Population	Per Capita	Amount
2021 Membership Assessment	19,599	0.06	1,175.94

Please make check payable to: Oncor Cities Steering Committee and mail to Oncor Cities  
Steering Committee, Attn: Brandi Stigler, Arlington City Attorney's Office, 101 S. Mesquite  
St., Ste. 300, MS #63-0300, Arlington, Texas 76010

**Total** \$1,175.94

# 2020 OCSC NEWSLETTER

Steering Committee of  
Cities Served by  
**Oncor**

## 2020 YEAR IN REVIEW ISSUE

This past year was a busy one for OCSC. This annual review highlights the significant events of 2020 that impacted OCSC and what's on the horizon next year.



## OCSC Has a Productive 2020

This past year was another active year for the Steering Committee of Cities Served by Oncor (OCSC). On behalf of its member cities and their residents, OCSC participated in numerous proceedings before the Public Utility Commission of Texas (PUC) and the Texas Legislature. This Year in Review highlights the significant events in 2020 that impacted OCSC and previews what is on the horizon for the coming year. Looking ahead, 2021 will likely be another busy year for OCSC at the PUC, the Electric Reliability Council of Texas, the Texas Legislature, and the courts.



## Oncor DCRF Settles; Approved by PUC

In early April 2020, electric utilities filed applications with the Public Utility Commission (PUC or Commission) to amend their Distribution Cost Recovery Factors (DCRFs). Utilities file DCRF proceedings to update the DCRF Rider in their tariff to include additional distribution invested capital placed in service since their last full base rate case.

Oncor Electric Delivery Company, LLC (Oncor or Company) filed an Application to Amend its DCRF on April 3, 2020, seeking to increase Oncor's total distribution rates by \$75,889,531 annually (an approximately

\$0.88 increase to the average residential customer's bill). This is Oncor's third DCRF filing. OCSC intervened in the proceeding, hired consultants to review the filing, conducted discovery, and negotiated with the Company. Ultimately, the parties settled, resolving all issues in the docket. Under the settlement, Oncor reduced its request by \$6 million to a total DCRF annual revenue requirement increase of \$69.9 million.

On July 31, 2020 the Commission approved the settlement. The agreed rates for Oncor's DCRF became effective September 1, 2020.

## PUC Approves Oncor EECRF

Oncor made its annual Energy Efficiency Cost Recovery Factor (EECRF) filing on May 29, 2020, to adjust its rates during the following year to reflect changes in program costs and performance bonuses. EECRF filings also true-up any prior energy efficiency costs over- or under-collected, pursuant to the Public Utility Regulatory Act (PURA) and PUC rules. Because EECRF proceedings are limited in scope and review, they proceed on an expedited schedule.

OCSC intervened, hired a consultant to review the filing, conducted discovery, and discussed the filing with the Company. Ultimately, OCSC confirmed that the Company's request was reasonable. Therefore, OCSC agreed to the Company's requested EECRF increase as filed.

Pursuant to the agreement, Oncor will collect \$64,782,106 in 2021, consisting of the following components: (1) \$51,620,521 in energy efficiency program costs projected to be incurred in 2021; (2) \$14,249,500 for its 2019 performance bonus; (3) allocation of \$1,833,844 for the over-recovery of costs in 2019; (4) \$735,989 in estimated expenses relating to the Commission's EM&V costs; and (5) \$9,940 in rate case expenses from 2019.

At the September 10, 2020 open meeting, the PUC approved the settlement agreement. The settlement's rates will go into effect on March 1, 2021.

## PUC Takes Emergency Action to Combat the Impact of COVID-19

On March 16, 2020, the PUC held an emergency open meeting to adopt measures to address the threats presented by the coronavirus disease (COVID-19). The commissioners designated the COVID-19 threat as a public emergency, giving the PUC the authority to suspend the rules for different filing requirements and deadlines. The agency announced that its staff would be telecommuting, suspended its filing requirements for hard copies, and took its open meetings virtual, allowing the public to participate telephonically. As of the end of 2020, most of staff is still telecommuting, the PUC is contemplating permanent changes to filing requirements, and its open meetings are still being conducted virtually via online streaming.

On, March 26, 2020, the PUC exercised its emergency authority to issue three orders, detailed below:

### Exceptions to PUC Rules and Requirement for REPs to Offer DPPs

The first Order provided exceptions to existing PUC rules for electric, water, and sewer utilities, prohibiting the assessment of late fees and disconnection of customers when they cannot pay their utility bills, and required electric utilities to provide eligible customers with deferred payment plans (DPPs).

### Accounting Order, Establishing a Regulatory Asset

The Commission also approved an accounting order, authorizing an accounting mechanism and subsequent process through which regulated utilities may seek future recovery of expenses resulting from the effects of COVID-19. These expenses, considered "regulatory assets" can include non-payment of customer bills, as well as other costs, such as the cost to have facilities cleaned and disinfected. In future proceedings, the Commission will consider whether each utility's request for recovery of these regulatory assets is reasonable and necessary. The Commission will

also consider other issues at a future proceeding, such as the appropriate period of recovery for approved amounts.

### The COVID-19 Electricity Relief Program

The third Order established the COVID-19 Electricity Relief Program (ERP), which is a mechanism that was designed to protect Texas citizens impacted by COVID 19 and provide certainty to the electric utilities and retail electric providers for recovery of unpaid utility bills.

The ERP helped customers that have been impacted by COVID-19 pay their past-due electric bills, and prevented utilities from disconnecting such customers. The ERP applied only to residential customers and only to those areas of the state with retail electric deregulation.

The ERP was originally scheduled to end July 17, but at its July 2 open meeting, the PUC directed Commission Staff to draft an order to continue the ERP until August 31.

The ERP is funded by a special charge of 0.033 cents per kilowatt hour added to electricity bills. That works out to about 40 cents for residential customers who use 1,200 kilowatt hours of electricity per month. According to the PUC, the program was "intended to help unemployed customers . . . by providing protection from disconnections for non-payment and offering bill payment assistance."

Nearly 595,000 were shielded from utility disconnections because of the program. Since March, it provided more than \$30 million in assistance for bills.

On October 1, 2020, the ERP ended, exposing protected residents to the potential for disconnections and late fees from utilities.

At the August 27, 2020 open meeting, the Commission issued an order requiring Retail Electric Providers and Transmission and Distribution Utilities to file a final ERP report to the Commission on or before January 29, 2021. Page 79 of 163

# WETT STM Settlement Approved by PUC

On February 24, 2020, Wind Energy Transmission Texas, LLC (WETT), AxInfra US LP (AxInfra), Hotspur HoldCo 1 LLC (Hotspur 1), Hotspur HoldCo 2 LLC (Hotspur 2), and 730 Hotspur, LLC (730 Hotspur) (together Applicants) filed an application with the Public Utility Commission for approval of a sales transaction (STM) that would result in the transfer of ownership and control of WETT to AxInfra, an investment fund managed by Axium Infrastructure US, Inc. (Axium US) (Docket No. 50584).

OCSC intervened in the proceeding, because the proceeding impacts service in OCSC's member cities. Rates for all transmission providers are socialized (meaning that ratepayers will pay a portion of all transmission rates approved for all transmission providers). Additionally, the bankruptcy of Energy Future Holdings Corp., and three previous Oncor STMs, teach the importance of corporate structure, debt levels, and ring fencing in protecting consumers.

Under the application, AxInfra will ultimately control WETT. 730 Hotspur will acquire a non-controlling minority interest in Hotspur SPC, an Axium subsidiary that will have an upstream, indirect ownership interest in WETT.

The participating parties (the Applicant, TIEC, OCSC, and Commission Staff) filed a unanimous Stipulation, avoiding the June hearing on the merits.

In prior cases involving change of ownership—most notably the Oncor STMs involving Hunt and NextEra—there were serious debates over whether an application had to demonstrate meaningful savings or other benefits to customers to establish a public interest finding. WETT alleged modest savings in administrative costs by proposing a reduction in the size of its Board of Directors from five to three members—a mistake in governance that would nullify insignificant savings. The Stipulation corrects that mistake by requiring a five-member Board with two independent directors.

Other major concessions made by the Applicants to win the support of the parties include:

1. Dividend Restriction — WETT will not pay dividends, except for contractual tax payments, at any time that WETT's debt rating is below (BBB) or the equivalent with any one of the credit agencies rating WETT unless approved by the two disinterested board members of WETT Holdings;
2. Goodwill, Transaction & Transition Costs — WETT will not seek to include any transaction acquisition premium or Goodwill, transaction or transition costs in rates;
3. Capital Expenditures — Company will maintain capital expenditures consistent with the existing five-year plan; and
4. Stand Alone Credit — Owners agree to obtain stand-alone credit rating from at least one of Moody's, Fitch, or Standard & Poor's by the earlier of: (a) WETT's next base rate case, or (b) December 31, 2022.

On July 24, 2020 the Commission approved the Stipulation and issued its Final Order, finding that the transaction is in the public interest.

## PUC Compares Electricity Utility Distribution Spending and Reliability

Each year, the Public Utility Commission releases a report tracking the reliability-related spending of investor-owned electric utilities (IOUs) providing distribution service across the state of Texas. This year's report covers the ten-year period from 2010-2019, providing data on (1) distribution system spending; (2) all investor-owned electric distribution utilities serving customers in Texas; (3) variations in spending and reliability data in graphical format; and (4) outage comparisons between utilities. Outage comparisons use the System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI) calculations to show the duration and frequency of interruptions.

Oncor's data is affected by its acquisition of Sharyland's distribution system in December 2016. Oncor is tracking SAIDI and SAIFI separately for the former Sharyland territory for ten years, whereas, starting in 2017, the vegetation management data is combined.

The size and operating environments of the IOUs in Texas are very diverse, which can make comparisons between IOUs misleading without careful consideration of these differences. Because of the range in IOU size, climate, topography, and other factors, an apples to apples comparison of IOU spending is not necessarily appropriate.

## ITEM 9.2.

However, by comparing the cost per customer for each of the categories of IOU spending, we have some standards to gauge Oncor's spending.

In 2019, Oncor spent more than ever before on capital additions (around \$900 million) and Operations and Maintenance (O&M) (around \$250 million). Oncor's capital additions and O&M spending has climbed about 10-20% each year over the past 10 years.

Oncor's vegetation management (VM) spending rose slightly in 2019 compared to the previous two years, and is slightly above average for the past seven years. However, a large percentage of its VM spending is attributable to storms.

Oncor's SAIDI and SAIFI data reflects a rise in duration and frequency of interruptions in service that are attributable to major events. Further, over the last ten years, Oncor's percentage of SAIDI and SAIFI attributable to major events is much higher than other utilities.

Compared to other Texas Utilities, Oncor's SAIDI and SAIFI in roughly average.

The Commission's report can be found at:

[http://interchange.puc.texas.gov/Documents/46735\\_26\\_1089530.PDF](http://interchange.puc.texas.gov/Documents/46735_26_1089530.PDF)



## 2021 Legislative Session on the Horizon

The gavel drops, opening the 87th Texas Legislative Session on January 12, 2021. This session is sure to look different than years past. There will likely be occupancy limits and other limitations on how committee meetings will take place. Additionally, this session will be one of the toughest legislative sessions in recent years since members will have to address billions of dollars in shortfalls to the state budget, redraw the state's political maps, and navigate issues like health care and public education that have been a focus during the pandemic.

Since Lawmakers began prefiling bills on Monday, November 9, 2020, over 750 bills have already been filed in the House and over 200 bills have been filed in the Senate – including a dozen or so relating to energy and ratepayer issues. We have our eye on many of these bills, and will keep you apprised as they move through the legislative process.

Below, we listed several bills on our watch list, and explain briefly their purpose. However, keep in mind that inclusion on this list implies neither our support nor opposition. **We highlight these bills for informational purposes only.**

- **House Bill 427**, by state Rep. Ken King, would impose an additional \$200 fee for the registration of electric vehicles as well as a \$100 fee for the registration of hybrid vehicles.
- **House Bill 433**, also by state Rep. King, would impose a 1-cent per-kilowatt-hour tax on each kilowatt of electricity generated in Texas from any source other than natural gas.
- **House Resolution 9**, by state Rep. Richard Raymond, would direct the Texas Legislature to urge the U.S. Congress to order a cost-benefit analysis regarding the risks of climate change nationwide. The analysis should include a discussion of appropriate measures to address those risks.
- **House Bill 685**, by state Rep. Gary VanDeaver, would create a critical care program for veterinarians that depend upon electricity to maintain critical medical equipment for animals under their care. The Public Utility Commission would create disconnection protections for such veterinarian customers.
- **Senate Bill 170**, by state Sen. Cesar Blanco, calls for a study of the feasibility of expanding the state's renewable energy goals such that half the state's installed generating capacity by 2030 will come from renewable sources, and 100 percent of it would come from renewable sources by 2050.
- **Senate Bill 182**, by state Sen. Charles Schwertner, requires the Public Utility Commission to conduct a five-year look-back analysis of rates charged by municipal electric utilities. If the municipal rates are 10 percent higher than the five-year average of competitive rates paid in a similarly situated area with electric competition, then the municipal utility must transition to deregulation within one year.

We will provide updates as the as the 87th Legislature kicks off at the beginning of 2021.

# Public Utility Commission Prepares for 2021 Legislative Session

The Public Utility Commission (PUC) has acknowledged that this is not the year for utility issues to take center stage at the Legislative Session, so it seems their expectations are low for any significant changes in 2021. In the PUC's Biennial Report to the 87th Legislature (filed on December 10, 2020 in Docket No. 50475), the PUC provides a report on significant actions taken over the past two years, describes emerging issues, and summarizes its recommendations to the Legislature for potential water, electric, and telecommunications legislation. Based on this report and comments made by the Commissioners at the open meeting on December 17, 2020, the PUC recommends legislation on the following:

- Sale of Electricity at Charging Stations: As the cost of electric vehicles has dropped, more consumers have purchased them, with sales rates doubling year-over-year. With increased adoption of electric vehicles over fuel-based vehicles, there is a growing need for public-use charging stations

to be located off of highways and in places such as large retail shopping centers or garages near office buildings. The sale of electricity through these charging stations could potentially bring the companies owning them under the definition of an "electric utility." The PUC proposes that the Legislature clarify that the use of an electric vehicle charging station is not an electric utility or a retail electric provider.

- Filing Fees: The Commission is requesting the statutory authority to charge fees to certain parties that make paper filings with the PUC at a level not to exceed the costs incurred by the agency.

We will provide updates on how the 87th Legislature acts on the PUC's recommendations in 2021.



## 2021 OCSC Meetings

March 4  
May 6  
August 12  
December 9

## 2021 OCSC Officers

Paige Mims—Chair  
Don Knight—Vice Chair  
Adrienne Lotherry—Secretary



For more questions or concerns regarding any OCSC matter or communication, please contact the following representative, who will be happy to provide assistance:

**Thomas L. Brocato**  
Attorney

Direct : (512) 322-5857  
Email: [tbrocato@lglawfirm.com](mailto:tbrocato@lglawfirm.com)

Regular City Council  
**AGENDA ITEM REPORT**



**To:** Jamarcus Ayers  
**Subject:** Discuss and Consider Bank Depository Services Proposal.  
**Meeting:** Regular City Council - Mar 16 2021  
**Department:** Finance  
**Staff Contact:** Jamarcus Ayers, Director

**BACKGROUND INFORMATION:**

Staff solicited proposals for Bank Depository Services. The proposals were due in January 22nd, 2021. American National Bank of Texas and Texas Bank and Trust submitted proposals for the Depository Services. The initial contract period will begin March 2021 and end September 30, 2024. At the option of the City, the contract may be renewed for one additional 12-month period. American National Bank was notified about our desire to continue our long relationship with them as our bank depository. Contract has been delivered to the City of Terrell for the council's approval and execution.

**ATTACHMENTS:**

[bank depository](#)

## BANK DEPOSITORY AGREEMENT

This Bank Depository Agreement (the "Agreement") is made and entered into this 16 day of March 2021 by and between City of Terrell (the "City") and The American National Bank of Texas (the "Bank") a national bank.

### **Section I Designation as Depository**

The City, through action of its Governing Body, hereby designates the Bank as its depository for banking services for a 3-year period commencing March 16, 2021 through September 30, 2024. At the option of the City, the contract may be renewed for one additional 12-month period.

### **Section II Designation of Custodian**

The City and Bank hereby designate FHLB-Dallas (the "Custodian") to hold on trust, according to the terms and conditions of the City Request for Proposal, RFP dated November 10, 2020 (the "RFP") and pursuant to a separate Safekeeping Agreement, all securities pledged as depository collateral in accordance with the City's Investment Policy.

### **Section III Collateral**

City time and demand deposits, inclusive of interest, in excess of the Federal Deposit Insurance Corporation insurance shall be secured at all times by collateral, acceptable to the City and in accordance with the Public Funds Collateral Act (Texas Government Code 2257), pledged by the Bank and held in trust by the Custodian in an amount equal to at least 102% of the total of those funds. The Bank will provide a monthly report of the collateral directly to the City.

Such pledged securities shall be subject only to the joint written instructions of both (a) authorized representatives of the City and (b) specifically authorized representatives of the Bank. The Bank shall have the right, with the prior written consent of the City, to substitute or replace, any or all of the pledged securities with collateral acceptable to the City.

### **Section IV Financial Position**

The Bank will provide financial statements audited by its independent auditors including a letter as to its "fair representation" upon request from the City.

### **Section V Authorized City Representative**

For the term of this contract, the City and Bank designate the individuals as listed in the Treasury Management Resolution as authorized to represent and act for the City in any and all matters including collateral assignment and substitution, execution of agreements and transfer of funds. Any change in these representatives will be made in writing.

### **Section VI Scope of Services**

The Bank's response to the City's RFP, January 22, 2021 (the "Response") is incorporated into this Agreement for all purposes, including service charges, time deposit, demand deposit, and loan rates. If any provisions of the Response and this Agreement are in conflict, this Agreement will control.

The Bank shall faithfully perform all of its duties and obligations required by the laws of the State of Texas for public funds depositories and shall upon presentation pay all checks drawn on it against collected funds on demand deposits, and shall, at the expiration of the Agreement, turn over to its successor all funds, City-owned securities, property and things of value held as depository.

The City shall have the power to determine and designate the character and amount of the funds to be deposited in the Bank. The City may arrange for time deposits and Bank may accept such deposits subject to the terms of the Bank's Response.

This Agreement, along with all Exhibits and other incorporated documents shall constitute the entire Agreement between the parties.

#### **Section VII Contract Consideration**

Bank will be compensated for any and all services rendered to City under this Agreement. Bank agrees to provide all banking services free of charge, with a monthly average of \$5 million in collected non-interest-bearing account balances. Please note that the account analysis service contract option above, does not cover the cost of the following expanded Treasury Management Services offered: Lockbox, Card Services, Smart Safe, Safekeeping, or Merchant Processing services.

On interest bearing accounts, such as interest checking, savings or money market accounts, ANBTX offers a rate equal to the current Public Funds Money Market rate plus .15% on any Interest-bearing investment balances for a total current rate of .20%. The ANBTX Public Fund Money Market rate is subject to change, reflecting current market rates.

#### **Section VIII Default**

The Bank shall be in default if it fails to pay all or part of a demand deposit, a matured time deposit, or a matured certificate of deposit, including accrued but unpaid interest, at a specified maturity date. The Bank shall also be in default if ruled "bankrupt", "insolvent" or "failed" by a federal or state banking regulator, or if a receiver is appointed for the Bank.

In the event of a default, failure or insolvency of the Bank, the City shall be deemed to have vested full title to all securities pledged under this Agreement. The City is empowered to take possession of and transfer and or sell any and all securities. If the security is liquidated, any proceeds over the defaulted amount, plus expenses related to liquidation, shall be returned to the Bank. This power is in addition to other remedies which the City may have under this Agreement and without prejudice to its rights to maintain any suit in any court for redress of injuries sustained by the City under this Agreement.

#### **Section IX Non-Assignability**

This Agreement is not assignable in whole or in part but is binding on the parties, their successors and assigns.

#### **Section X Termination**

This Agreement may be terminated by either the City or the Bank by giving ninety (90) days prior written notice to the parties.

#### **Section XI Law Governing**

All applicable provisions and requirements of the laws of the State of Texas governing depositories for the City shall be a part of this Agreement.

#### **Section XII Bank Authorization**

The Bank represents and warrants that this Agreement is made pursuant to and is duly authorized by the Board of Directors of the Bank and recorded in the official records of the Bank.

CITY

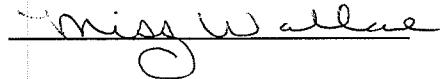
\_\_\_\_\_  
Mike Sims, City Manager  
City of Terrell

ATTEST:

BANK

  
Tori Lucas, Banking Center President  
American National Bank of Texas

ATTEST:

  
Miss W. Allue

Regular City Council  
**AGENDA ITEM REPORT**



**To:**

**Subject:** Discuss Ordinance 2862 Updating the Industrial Pretreatment Regulations

**Meeting:** Regular City Council - Mar 16 2021

**Department:** Engineering

**Staff Contact:** Mike Mikeska, Assistant City Engineer

**BACKGROUND INFORMATION:**

The City submitted Streamlining Modifications to the Texas Commission on Environmental Quality (TCEQ) in 2011. TCEQ responded to the City in 2019 indicating they approved the document. We were subsequently working with North Texas Municipal Water District (NTMWD) in 2020 as well in order to have the format of our program match theirs.

The included ordinance modifies the Pretreatment Program to have a format consistent with NTMWD and based on approval by TCEQ. An email from TCEQ acknowledging approval of the documents submitted is attached.

**ATTACHMENTS:**

[TCEQ approval email](#)

[Ordinance No. 2862](#)



**Completion of Nonsubstantial Modification to Incorporate the Pretreatment Streamlining Rule Required Provisions into the City of Terrell's Pretreatment Program - TPDES Permit No. WQ0010747001**

1 message

**Erika Crespo** <Erika.Crespo@tceq.texas.gov>

Mon, Nov 30, 2020 at 2:49 PM

To: "mmikeska@cityofterrell.org" <mmikeska@cityofterrell.org>

Cc: "gacuna@cityofterrell.org" <gacuna@cityofterrell.org>, "molina.rudy@epa.gov" <molina.rudy@epa.gov>, Genera Navarra

<Genera.Navarra@tceq.texas.gov>, Carol Moulton <carol.moulton@tceq.texas.gov>, Bismark Otorino <bismark.otorino@tceq.texas.gov>

Mr. Mikeska,

This email is being sent in lieu of a letter in order to acknowledge that the TCEQ has completed its review of the proposed nonsubstantial modification to incorporate the required provisions of the Pretreatment Streamlining Rule [rev. Federal Register/ Vol. 70, No. 198/ Friday, October 14, 2005/ Rules and Regulations, pages 60134-60798] into the City of Terrell's approved pretreatment program.

The proposed nonsubstantial modification package was originally submitted to the TCEQ on September 21, 2011; and revisions to it were submitted on October 7, 2020; on November 13, 2020; and on November 20, 2020. The TCEQ has determined that this nonsubstantial program modification submission is both technically complete and approved. The City of Terrell's approved pretreatment program shall now proceed forward with adequate public participation and obtain city council approval of this program modification submission.

After the city council has approved and adopted the revised city ordinance (and other portions of the pretreatment program as necessary), the City of Terrell's approved pretreatment program shall submit four complete copies of its modified approved pretreatment program to us so that we can update all of our records accordingly. Three of these copies need to be bound, and one copy can be left unbound.

Additionally, you will need to retain a complete copy of your modified approved pretreatment program for your records.

Please submit the four complete copies of your modified approved pretreatment program, without any unapproved changes included, to us by January 20, 2021. If additional time is needed in order for this submission to be made, please let me know. We will incorporate the approval of your Pretreatment Streamlining Rule nonsubstantial modification in the TPDES permit language by reference during the next TPDES permit action for WQ0010747001.

If you should have any questions or concerns, please feel free to contact me via email or at (512) 239-1827. Thank you, and I hope that you have a wonderful rest of the week.

Kind Regards,

Erika Crespo

Pretreatment Team Leader

Water Quality Division | TCEQ

Email: [erika.crespo@tceq.texas.gov](mailto:erika.crespo@tceq.texas.gov)

Phone: 512-239-1827 (O) | 512-626-4906 (C)

## ITEM 10.1.



**How is our customer service?** Fill out our online customer satisfaction survey at <http://www.tceq.texas.gov/customersurvey>.



## **CITY OF TERRELL**

### **INDUSTRIAL PRETREATMENT PROGRAM**

### **STREAMLINING RULE MODIFICATIONS**

March 2021

CITY OF TERRELL  
INDUSTRIAL WASTE ORDINANCE

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**ORDINANCE NO. 2862**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL TEXAS,  
REPEALING AND REPLACING CHAPTER 12, UTILITIES, ARTICLE II, INDUSTRIAL  
WASTE OF THE CITY OF TERRELL CODE OF ORDINANCES, PROVIDING  
REGULATIONS FOR THE DISPOSAL OF SEWAGE AND THE USE OF PUBLIC  
SEWERS; REGULATING THE DISCHARGE OF INDUSTRIAL WASTES INTO THE  
SANITARY SEWER OF THE CITY; REGULATING SEWER AND MISCELLANEOUS  
DISCHARGES; PROVIDING FOR A PERMIT SYSTEM WITH DENIAL, SUSPENSION,  
REVOCATION AND AN APPEALS PROCESS; PROVIDING A PENALTY CLAUSE, A  
REPEALING CLAUSE; A SEVERABILITY CLAUSE; AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Terrell provides facilities for the collection and treatment of wastewater, including the treatment of wastewater in appropriate treatment facilities, including contracting for the administration of the industrial pretreatment program, to promote the health, safety and convenience of its citizens and for the safeguarding of water resources common to all; and

**WHEREAS**, the City must operate its facilities in compliance with the Federal Water Pollution Control Act, U.S. Environmental Protection Agency (EPA) regulations, Texas Commission on Environmental Quality (TCEQ) regulations, and other federal, state and local laws; and

**WHEREAS**, protection of the quality of the effluent and proper operation of wastewater collection and treatment facilities may require either the exclusion, pretreatment, or controlled discharge at the point of origin of certain types and/or quantities of industrial wastes; and

**WHEREAS**, it is the obligation of the producers of industrial wastewater to defray the costs of the wastewater treatment services required of and provided by the City in an equitable manner and, insofar as it is practicable in proportion to benefits derived.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL TEXAS THAT:**

**CHAPTER 12, UTILITIES, ARTICLE II, INDUSTRIAL WASTE** is hereby repealed and replaced as follows:

**12-76: DEFINITIONS**

Unless the context specifically indicates otherwise, the meaning of the terms and phrases used in this Ordinance shall be as follows:

**ACT** - The Federal Water Pollution Control Act, Public Law No. 92-500, also known as the Clean Water Act (CWA), as amended, 33 United States Code (U.S.C.) 1251 *et seq.*

ADMINISTRATOR – The Administrator of the U.S. Environmental Protection Agency (EPA).

APPROVAL AUTHORITY - The Director in a National Pollutant Discharge Elimination System (NPDES) delegated state with an approved State pretreatment program, i.e., the Texas Commission on Environmental Quality (TCEQ) or its successor agencies.

AUTHORIZED REPRESENTATIVE OF THE USER –

- A) If the user is a corporation:
  - 1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
  - 2) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- B) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.
- C) 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.
- D) The individuals described in paragraphs A) through C), above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

BEST MANAGEMENT PRACTICES or BMPs - schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.

**BIOCHEMICAL OXYGEN DEMAND (BOD)** - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five (5) days at twenty (20) degrees Celsius (20°C), expressed as a concentration in mg/L. The laboratory determination shall be made in accordance with the procedures set forth in 40 C.F.R. Part 136.

**BUILDING DRAIN** – That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys to the building sewer, which begins three (3) feet outside the inner face of the building wall.

**BUILDING SEWER** - The extension from the building plumbing line(s) to the sewer main at the property line or other lawful place of disposal (also called house lateral or house connection).

**BYPASS** - Means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.

**CATEGORICAL PRETREATMENT STANDARD OR CATEGORICAL STANDARD** - Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which apply to a specific category of Industrial Users and which appear in 40 C.F.R. Chapter I, Subchapter N, Parts 405-471.

**CATEGORICAL INDUSTRIAL USER** – An Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.

**CHEMICAL OXYGEN DEMAND (COD)** - The measure of oxygen consuming capacity of inorganic and organic matter present in water or wastewater. It is expressed as a concentration in mg/L as the amount of oxygen consumed from a chemical oxidant in a specific test. It does not differentiate between stable and unstable organic matter and thus does not necessarily correlate with BOD.

**CITY** – The City of Terrell, Texas, the City Council of Terrell, the City Manager of Terrell, and/or any other person authorized by the City Council to represent the City.

**COMPOSITE SAMPLE** – A sample consisting of at least two aliquots collected on either a time or flow proportional basis over a period of time. The collective sample aliquots will reflect the average water quality covering the sample period.

**CONTROL AUTHORITY** – For purposes of this Ordinance, the City of Terrell pursuant to a pretreatment program that has been approved by the Approval Authority. A delegated agent of the City may administer certain aspects of the approved pretreatment program, according to the agreement.

**CONTROL MANHOLE** - A manhole, cleanout, or other appropriate sampling port giving access to a building sewer line prior to the building sewer line discharges into the public sewer.

**DAILY DISCHARGE** - The discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents a calendar day for purposes of sampling.

**DAILY MAXIMUM LIMIT** - The maximum allowable discharge limit of a pollutant during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. 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.

**DISPOSAL** - The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or semi-solid waste (*i.e.*, grease trap waste, grit trap wastes, and/or septage) into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including, but not limited to, groundwater.

**DOMESTIC SEWAGE** - The waterborne wastes normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories and institutions, free of storm water and industrial wastes.

**ENVIRONMENTAL OFFICER** - The City Manager of the City or his/her duly authorized representative, which may be any entity with which the City has contracted for operation of the POTW or a treatment plant and/or with which the City has entered into a multijurisdictional, or interjurisdictional, agreement providing for wastewater service and/or a pretreatment program, or a particular officer or employee thereof. For purposes of this Ordinance, NTMWD shall be considered a delegated agent of the City with authority to act on behalf of the City regarding all pretreatment matters as outlined in the agreement.

**EPA (Environmental Protection Agency)** - The U.S. Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the Administrator or other duly authorized officials of EPA.

**EXISTING SOURCE** - Any source or discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act (33 U.S.C. § 1317).

**FACILITY OR ACTIVITY** - Means an NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

**FLOW PROPORTIONAL COMPOSITE SAMPLE** - Shall mean a sample collected either as a constant sample volume at time intervals proportional to stream flow, or collected by increasing the volume of each aliquot as the flow increases while maintaining a constant time interval between the aliquots.

**GARBAGE** - Animal and vegetable wastes and residue from preparation, cooking, and dispensing of food; and from handling, processing, storage, and sale of food products and produce.

**GRAB SAMPLE** - An individual sample which is taken from a wastestream without regard to the flow in the wastestream and collected over a period of time not exceeding fifteen (15) minutes.

**GREASE TRAP OR INTERCEPTOR** - A water-tight receptacle designed and constructed to intercept and prevent the passage of greasy, fatty liquid, semi-liquid, and/or solid wastes into the sanitary sewer system to which the receptacle is directly or indirectly connected.

**GRIT/SAND TRAP** - A water-tight receptacle designed and constructed to intercept and prevent the passage of sand, grit and other heavy solids into the sanitary sewer system to which the receptacle is directly or indirectly connected.

**HAZARDOUS WASTE** - Any liquid, solid, contained gas, or sludge wastes that contain properties that are dangerous or potentially harmful to human health or the environment. Types and characteristics of hazardous waste are identified in 40 C.F.R. Part 261.

**HOLDING TANK WASTE** – Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

**INDIRECT DISCHARGE or DISCHARGE** - The introduction of pollutants into the POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act (33 U.S.C. § 1317).

**INDUSTRIAL USER** - Any source of indirect discharge, including all Significant Industrial Users, Categorical Industrial Users, or any other source of non-domestic discharge that may be regulated under this Ordinance, unless otherwise specified.

**INDUSTRIAL USER WASTEWATER DISCHARGE PERMIT (or PERMIT)** - A Permit required of an Industrial User to discharge wastewater into any sewer system under the jurisdiction of the POTW.

**INDUSTRIAL USER WASTEWATER SURCHARGE** - The additional charge made on those persons or industries who discharge industrial wastes into the sewer system which are amenable to treatment by the POTW treatment processes, but which exceed either the BOD or TSS concentrations of “Normal Domestic Sewage,” or may discharge flow in such an amount that hydraulically consumes treatment or conveyance capacity of the POTW.

**INDUSTRIAL WASTE** - The water-borne solids, liquids, or gaseous wastes resulting from industrial processes, or any mixture of these with water or domestic sewage as distinct from “Normal Domestic Sewage.”

**INSTANTANEOUS MAXIMUM ALLOWABLE DISCHARGE LIMIT** – The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of a single grab sample.

**INTERFERENCE** - A discharge which, either alone or in conjunction with a discharge or discharges from other sources, both:

- A) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

B) is the cause of a violation of any requirement of the applicable TPDES permit issued for operation of the POTW (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal by the POTW in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or Local regulations): Section 405 of the Act (33 U.S.C. § 1345); the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State requirements 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.

**LIQUID WASTE** - Water-borne solids, liquids, and gaseous substances accumulated in a grease trap, grit trap, chemical/portable toilet and/or septic tanks.

**LOCAL LIMIT** – 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 C.F.R. 403.5(a)(1) and (b).

**MEDICAL WASTE** – Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

**MILLIGRAMS PER LITER (mg/L)** - A weight to volume ratio; the milligrams per liter value multiplied by the factor 8.34 is equivalent to pounds per million gallons of water.

**MONTHLY AVERAGE** - The highest allowable average of “daily discharge(s)” over a calendar month, calculated as the sum of all “daily discharge(s)” measured during a calendar month divided by the number of “daily discharge(s)” measured during that month. Compliance with the monthly average effluent limitations guidelines and standards is required regardless of the number of samples analyzed and averaged during a calendar month.

**MUNICIPAL DEVELOPMEN DEPARTMENT** – The department responsible for issuing commercial/industrial building permits and certificates of occupancy to new water and/or sewer customers who are subject to the Industrial Pretreatment Program and reporting such permits and certificates of occupancy to the Industrial Pretreatment Coordinator.

**NATIONAL PRETREATMENT STANDARD, PRETREATMENT STANDARD, OR STANDARD** – Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Clean Water Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 C.F.R. § 403.5.

**NEW SOURCE** –

A) 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 (33 U.S.C. § 1317), which will be

applicable to such source if such Standards are thereafter promulgated in accordance with that Section, provided that:

- 1) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
- 2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- 3) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent factors, such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, will be considered.

B) 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 A) 2) or A) 3), above, but otherwise alters, replaces, or adds to the existing process or production equipment.

C) Construction of a New Source as defined has commenced if the owner or operator has:

- 1) Begun, or caused to begin, as part of a continuous on-site construction program:
  - a) Any placement, assembly, or installation of facilities or equipment; or
  - b) 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;
- 2) Entered into a binding contractual obligation for the purchase of facilities or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

**NONCONTACT COOLING WATER** - Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

**NORMAL DOMESTIC SEWAGE** - The “normal” sewage for the City, for which the average concentration of TSS is not more than 250 mg/L and BOD is no more than 250 mg/L. Industrial Wastes and storm water are excluded from this term.

**NORTH TEXAS MUNICIPAL WATER DISTRICT (NTMWD)** – The North Texas Municipal Water District, the Executive Director of North Texas Municipal Water District, or his/her duly authorized representative.

**OWNER** - Any person who owns a facility or any portion of a facility.

**PASS THROUGH** - A discharge which exits the POTW into waters of the United States in quantities or concentration which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the applicable TPDES permit issued for the operation of the POTW (including an increase in the magnitude or duration of a violation).

**POTW (Publicly Owned Treatment Works)** - A treatment works as defined by Section 212 of the Clean Water Act (33 U.S.C. § 1292), which is owned by a State or municipality (*i.e.*, the City or other governmental entity such as NTMWD). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes lift stations, sewers, pipes and other conveyances only if they convey wastewater to a Wastewater Treatment Plant. The term also means the governmental entity as defined in Section 502(4) of the Clean Water Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works (*i.e.*, the City or other governmental entity such as NTMWD). For the purpose of this Ordinance, the term shall also include sewers that convey wastewaters to the POTW from persons outside the City who are, by contract or agreement with the City of Terrell, users of Terrell's POTW.

**PPM (Parts Per Million)** - A weight to weight ratio; the parts per million value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.

**PERSON** - Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state or local governmental entities.

**pH** – A measure of the acidity or alkalinity of a solution, expressed in standard units. The logarithm (base 10) of the reciprocal of the hydrogen ion concentration.

**POLLUTANT** - A substance that alters the physical, thermal, chemical, radiological or biological quality or properties of water or that contaminates water to the extent that the water is rendered harmful to public health, safety or welfare, including: 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, and cellar dirt; industrial, municipal, and agricultural waste; and the characteristics of wastewater (such as pH, temperature, suspended solids, turbidity, color, BOD, COD, toxicity, and odor).

**PRETREATMENT (or TREATMENT) OF INDUSTRIAL WASTE** - The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or

biological processes, or process changes, or by other means, except by diluting the concentration of pollutants (as prohibited by 40 C.F.R. § 403.6(d)), unless allowed by an applicable pretreatment standard. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed with an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 C.F.R. § 403.6(e).

**PRETREATMENT PROGRAM** – A program regulated under 307 (b) of the Act and set forth in 40 C.F.R. Part 403 controlling the indirect discharge of pollutants into the POTW. The Pretreatment Program establishes regulations for those dischargers to prevent pass through and interference of the POTW, ensure worker health and safety, and improve opportunities to recycle and reclaim wastewater and/or sludge from the wastewater treatment plant.

**PRETREATMENT REQUIREMENTS** - Any substantive or procedural requirement related to the Pretreatment Program imposed on an Industrial User, other than a pretreatment standard. Requirements of the Pretreatment Program are set forth in 40 C.F.R. Part 403.

**PRETREATMENT STANDARDS OR STANDARDS** – Pretreatment Standards shall mean prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

**PRIORITY POLLUTANT** - A pollutant found in Table II or Table III of 40 C.F.R. Part 122, Appendix D.

**PROCESS WASTEWATER** – Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

**PROHIBITED DISCHARGE STANDARDS (or PROHIBITED DISCHARGES)** - Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 5 of this Ordinance.

**PROPERLY SHREDDED GARBAGE** – The wastes from the preparation, cooking, and dispensing of foods that have been shredded to such a degree that all particles shall be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (0.5) inch in any dimension.

**SANITARY SEWER** - A public sewer that conveys domestic sewage or industrial wastes or a combination of both, and into which storm, surface, groundwaters and other unpolluted waters are not intentionally passed.

**SEWAGE** - Human excrement and gray water (household showers, dishwashing operations, etc.).

**SEWAGE SERVICE CHARGE** – The charge made on all Users of the public sewer system whose wastes do not exceed in strength the concentration values established as representative of Normal Domestic Sewage.

**SHALL AND MAY** – The term “shall” describes mandatory actions, and the term “may” describe permissive (*i.e.*, discretionary) actions.

**SIC** (Standard Industrial Classification) - A classification pursuant to the *Standard Industrial Classification Manual* issued by the Executive Office of the President, Office of Management and Budget, 1972, or the latest edition.

#### **SIGNIFICANT INDUSTRIAL USER (SIU)**

A) Except as provided in part B) the term shall mean:

- 1) An Industrial User subject to Categorical Pretreatment Standards; or
- 2) Any other Industrial User that:
  - a) discharges an average of 25,000 gallons per day (gpd) or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blowdown wastewater);
  - b) contributes a process wastestream which makes up five (5) 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 Control Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standard or Requirements (in accordance with 40 C.F.R. § 403.8(f)(6)).

B) Upon finding that an Industrial User meeting the criteria in part A) 2) has no reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standard or Requirements, the Control Authority may at any time, on the City’s own initiative or in response to a petition received from an Industrial User, and in accordance with 40 C.F.R. § 403.8(f)(6), determine that such Industrial User is not a Significant Industrial User.

#### **SIGNIFICANT NONCOMPLIANCE (SNC)** – Significant noncompliance is defined as:

- 1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken for the same pollutant parameter during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined by this Ordinance;

- 2) Technical Review Criteria (TRC) violations, defined here as those which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in this Ordinance multiplied by the applicable TRC (TRC = 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 this Ordinance (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the POTW 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 human health, welfare or 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 ninety (90) days after the schedule date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- 6) Failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- 7) Failure to accurately report noncompliance; or
- 8) Any other violation or group of violations, which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of this Ordinance, as it may be hereafter amended.

**SLUG DISCHARGE or SLUG LOAD** - Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, and/or a discharge which violates any Prohibited Discharge Standard in Section 5 of this Ordinance, and/or could significantly disrupt the POTW and/or threaten human health and safety, and/or could potentially result in violations of the applicable TPDES permit issued for the operation of the POTW or sludge requirements.

**SPILL** - The accidental or intentional loss or unauthorized discharge of any waste or raw material.

**STORM SEWER (or STORM DRAIN)** - A sewer which carries storm and surface waters and drainage but excludes sewage and polluted industrial wastes.

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**STORM WATER** - Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

**SUSPENDED SOLIDS** - Solids that either float on the surface of, or are in suspension of water, sewage, or other liquids, and which are removable by laboratory filtration device. Quantitative determination of "total suspended solids" or "TSS" shall be made in accordance with procedures set forth in 40 C.F.R. Part 136.

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)** - The Texas Commission on Environmental Quality, or an agent thereof, or where appropriate, the Executive Director of TCEQ, or other duly authorized official of said agency, or its successor agencies.

**TIME PROPORTIONAL COMPOSITE SAMPLE** - A sample consisting of a series of aliquots collected after the passage of a definite period, regardless of the volume or variability of the rate of flow during that period.

**TOXIC POLLUTANT (or TOXIC SUBSTANCE)** - Any substance whether gaseous, liquid or solid which, when discharged to the POTW in sufficient concentrations, as determined by the Control Authority, may be hazardous to sewer maintenance and personnel, tend to interfere with any wastewater treatment process, constitute a hazard to human beings or animals, inhibit aquatic life, or to create a hazard to recreation in the receiving waters of the effluent from a wastewater treatment plant; or any pollutant or combination of pollutants listed as toxic in regulations promulgated by the EPA under the provision of the Clean Water Act Section 307(a) (33 U.S.C. § 1317) or other acts.

**TRAP** - A device designed to skim, settle, or otherwise remove oil, grease, sand, solids, petroleum products, flammable wastes or other harmful substances.

**WASTE** - Rejected, unutilized, or superfluous substances in liquid, gaseous or solid form resulting from domestic, agricultural, or industrial activities.

**WASTEWATER** - The liquid and water-carried industrial or domestic wastes from residential dwellings, commercial buildings, industrial and/or manufacturing facilities, and institutions, whether treated or untreated, which are contributed into or permitted to enter the POTW.

**WASTEWATER TREATMENT PLANT (or TREATMENT PLANT or WWTP)** – That portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal and industrial wastewater.

### 12-77: ABBREVIATIONS

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

BOD – Biochemical Oxygen Demand

BMP – Best Management Practice

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BMR – Baseline Monitoring Report  
C.F.R. – Code of Federal Regulations  
CIU – Categorical Industrial User  
COD – Chemical Oxygen Demand  
CWA – Clean Water Act  
EPA – U.S. Environmental Protection Agency  
gpd – Gallons per day  
mg/L – Milligrams per liter  
NELAP – National Environmental Laboratory Accreditation Program  
NPDES – National Pollutant Discharge Elimination System  
NTMWD – North Texas Municipal Water District  
POTW – Publicly Owned Treatment Works  
ppm – Parts per million  
RCRA – Resource Conservation and Recovery Act  
SIC – Standard Industrial Classification  
SIU – Significant Industrial User  
SNC – Significant Noncompliance  
SWDA – Solid Waste Disposal Act  
TAC – Texas Administrative Code  
TPDES – Texas Pollutant Discharge Elimination System  
TCEQ – Texas Commission on Environmental Quality  
TSS – Total Suspended Solids  
TWC – Texas Water Code  
U.S.C. – United States Code  
WWTP – Wastewater Treatment Plant

### 12-78: PURPOSE AND POLICY

This Ordinance sets forth uniform requirements for industrial users of the POTW for the City of Terrell and enables the City of Terrell to comply with all applicable State and Federal laws, including the Clean Water Act (33 U.S.C. § 1251 *et seq.*) and the General Pretreatment Regulations for Existing Sources of Pollution (40 C.F.R. Part 403). The objectives of this Ordinance are:

- A) To prevent the introduction of pollutants into the POTW that will interfere with its operation;

- B) To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into receiving waters, or otherwise be incompatible with the POTW;
- C) To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
- D) To protect both the POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- E) To promote the reuse and recycling of industrial wastewater and sludge from the POTW;
- F) To provide for fees for the equitable distribution of cost of operation, maintenance, and improvement of the POTW; and
- G) To enable the POTW to comply with the applicable TPDES permit issued for the operation of the POTW, sludge use and disposal requirements, and any other Federal or State laws to which the POTW is subject.

This Ordinance shall apply to all industrial users of the POTW that directly or indirectly discharge sewage that enters the POTW owned and/or operated by the City. This Ordinance may be enforced against any industrial user. This Ordinance authorizes the issuance of Industrial User Wastewater Discharge Permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires industrial user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established.

The City and/or NTMWD may agree in writing to modify the requirements for industrial users as set out herein, the application of which will be limited to the POTW owned and/or operated by the City.

#### 12-79: ADMINISTRATION

Except as otherwise provided herein, the Environmental Officer shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Environmental Officer may be delegated by the Environmental Officer to his/her duly authorized representative, which may be any entity with which the City has contracted for operation of the POTW or a treatment plant and/or with which the City has entered into a multijurisdictional, or interjurisdictional, agreement providing for wastewater service and/or a pretreatment program, or a particular officer or employee thereof.

#### 12-80: PROHIBITED DISCHARGES

No person may introduce or cause to be introduced into the POTW any pollutant(s) or wastewater which may cause pass through or interference. Also prohibited are any substances that have an adverse effect on the environment, may endanger life, health or property, or constitute a

public nuisance. These general prohibitions apply to all industrial 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. Furthermore, no industrial user may discharge or contribute the following substances into the POTW:

A) Substances specifically prohibited from being discharged into the POTW are as follows:

- 1) Any liquids, solids or gases, including but not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, perchlorates, bromates, carbides, hydrides, sulfides or any other substances which are a fire or other hazard to the system, which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fires, explosions, or be injurious in any other way to the facilities or operation of the POTW.
- 2) Any substance which creates a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (140°F) or sixty degrees Centigrade (60°C) using the test methods specified in 40 C.F.R. § 261.21.
- 3) Any wastewater having a pH less than five point zero (5.0) Standard Units (SU), greater than ten point five (10.5) SU, or any wastewater having any other corrosive property capable of causing damage, including structural damage, or hazard to the POTW, equipment, or any person.
- 4) Any wastewater containing 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/or safety problems.
- 5) Any liquid or vapor, including wastewater, having a temperature higher than 150 degrees Fahrenheit (150°F) or sixty-five degrees Centigrade (65°C); or exhibiting heat in amounts which will inhibit biological activity in a POTW causing an interference; or, in any case, exhibiting heat in such quantities that the temperature at the introduction into the POTW exceeds 40 degrees Centigrade (40°C) or 104 degrees Fahrenheit (104°F).
- 6) Any pollutant(s), including oxygen demanding pollutants (BOD, COD, etc.) and total dissolved solids, released in a Discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Pass Through or Interference at the POTW or which will cause the POTW to be in non-compliance with any Federal or State sludge use or disposal criteria, guidelines, or regulations.
- 7) Any free or emulsified fats, waxes, greases or oils containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit (32°-150°F) (0°-65°C); or any combination of free or

emulsified fats, waxes, greases or oils, if, in the opinion of the Control Authority, it appears probable that such wastes:

- a) can deposit grease or oil in the sanitary sewers in such a manner as to clog the sewers;
- b) can overload skimming and grease handling equipment;
- c) are not amenable to bacterial action and will therefore pass through to the receiving water without being affected by normal sewage treatment processes; or
- d) can have deleterious effects on the treatment process due to excessive quantities.

8) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

9) Solid, liquid, or viscous substances in amounts which may cause obstruction to the flow in sanitary sewers or other interference with the proper operation of the wastewater treatment facilities such as, but not limited to: ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, whole blood, paunch manure, hair and fleshings, entrails, lime slurry, lime residues, slops, chemical residues, paint residues, bulk solids or waste paper.

10) Any noxious or malodorous liquids, gases, solids, or other wastewater, which either singly or by interaction with other substances are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sanitary sewers for maintenance or repair.

11) Wastewater containing COD in concentrations which are not amenable to treatment, or any other substance which is determined by the Control Authority to not be amenable to treatment by the POTW.

12) Any trucked or hauled pollutants, including hauled wastewater, except at discharge points designated by the Environmental Officer and at such times as are established by the Control Authority.

13) Pollutant(s) which causes:

- a) high hydrogen sulfide content; or
- b) unusual taste or odor-producing substances.

- 14) Wastewater which imparts color that 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 POTW's effluent thereby violating the applicable TPDES permit issued for the operation of the POTW.
- 15) Storm water, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, unless specifically authorized by the Control Authority.
- 16) Solids, sludges, or other pollutants removed in the course of treatment or control of the wastewaters (including, but not limited to, materials which have been removed by catch basins, grease traps, grease interceptors, sand traps, or pretreatment systems), or acquired from another person or location.
- 17) Medical wastes, except as specifically authorized by the Environmental Officer in an Industrial User Wastewater Discharge Permit.
- 18) Wastewater causing, alone or in conjunction with other sources, causing the POTW's effluent to fail a toxicity test.
- 19) Any garbage that has not been properly ground or shredded by suitable garbage grinders to such a degree that all particles shall be carried freely under the flow conditions normally prevailing in public sewers.
- 20) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations.
- 21) Any radioactive wastes or isotopes without prior written permission from the Control Authority.

B) In cases where, in the opinion of the Environmental Officer, the character of the sewage from any manufacturer or industrial plant building or other premises is such that it will damage the system, or cannot be treated satisfactorily in the system, the Environmental Officer shall have the right to require such industrial user to dispose of such waste otherwise and prevent it from entering the POTW.

C) Unusual flow and concentration of any of the above shall be pretreated to a concentration acceptable to the City, if such wastes can:

- 1) cause damage to the POTW;
- 2) impair processes;
- 3) incur treatment cost exceeding those of normal sewage;

- 4) render the water unfit for stream disposal or industrial use;
- 5) create a public nuisance.

## 12-81: LOCAL LIMITS

The Control Authority is authorized to establish local limits pursuant to 40 C.F.R. 403.5(c) to prevent interference and pass through and implement the specific prohibitions above. The local limits apply to all industrial users of the City's POTW.

A) It shall be unlawful for any industrial user to discharge into the POTW, any metals, chemicals or toxic substances in excess of the following limits:

1) Uniform Concentration Limits

The following heavy metals and toxic materials in the form of compounds or elements in solution or suspension in concentrations exceeding these limits:

Pollutant	Daily Maximum Local Limit (mg/L)
Aluminum (Total)	57.74
Arsenic (Total)	0.88
Cadmium (Total)	0.77
Chromium (Total)	5.00
Copper (Total)	0.33
Lead (Total)	3.67
Mercury (Total)	0.04
Nickel (Total)	6.79
Zinc (Total)	2.79
Cyanide (Total)	0.77
Total Suspended Solids (TSS)	8,084

## 2) Industrial contributory flow or mass allocation pollutant limitations

The following pollutants will be allocated to industrial users on a case by case basis not to exceed the maximum allowable industrial loading (MAIL) established in the approved pretreatment program:

Pollutant
Selenium (Total)
Silver (Total)
Ammonia (Total)
Biochemical Oxygen Demand (BOD)

Limits for these pollutants will be calculated using either the industrial contributory flow or mass allocation methods. The specific limitations will be established in the individual user discharge permits.

- 3) The Control Authority may set limits on a permit by permit basis for any other parameter that would pose a threat to water quality, health and safety, or the POTW or the discharge of which would otherwise result in violation of Section 5 of Ordinance, including but not limited to, priority pollutants found in the POTW influent at a concentration at or above 0.1 mg/L or Numerical Aquatic Life Criteria as defined by TCEQ. Individual permit limits for specific dischargers may be established for compounds not specifically listed above, dependent upon a case-by-case evaluation. Such limits shall be determined based on the following factors:
  - a. Volume and concentration of the discharge;
  - b. Proximity to treatment works;
  - c. Type and size of treatment works operation;
  - d. Proximity to other industrial waste discharges that may cause adverse conditions;
  - e. Characteristics of chemical compound (volatility, solubility, and toxicity, including toxicity in treatment works effluent);
  - f. Dilution in collection system and treatment works;
  - g. Technological achievability of removal, including achievability of treatment offsite;
  - h. Potential impacts to public, private, or side sewers; treatment works; biosolids; or receiving waters.
- 4) Any radioactive wastes or isotopes without prior written permission from the Environmental Officer.

B) The above limits apply at the point where the wastewater is discharged to the POTW. The Control Authority may impose mass limitations in addition to, or in place of, the concentration-based limitations above.

C) The Control Authority may use grab sample(s) to determine noncompliance with Pretreatment Standards.

D) Dilution is prohibited as a substitute for treatment. Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority may impose mass limitations on Industrial Users that are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

## 12-82: CITY'S RIGHT OF REVISION

The Control Authority reserves the right to establish, by Ordinance or in Industrial User Wastewater Discharge Permits, more stringent standards or requirements on discharges to the POTW by Industrial Users.

## 12-83: DISCHARGES REQUIRING TRAPS

This Section applies only to those Industrial Users that are required to obtain an Industrial User Wastewater Discharge Permit and are considered Significant Industrial Users by the Control Authority.

- A) Discharges requiring a trap include any Significant Industrial User determined by the Control Authority based on this Ordinance discharging the following to the POTW:
  - 1) Grease or water containing grease;
  - 2) Oil;
  - 3) Sand and other solids;
  - 4) Flammable wastes, or;
  - 5) Other harmful substances.
- B) Any person responsible for discharges requiring a trap shall at their own expense and as required by the Control Authority:
  - 1) Provide equipment and facilities of a type and capacity approved by the Control Authority along with certified engineering design and drawings.
  - 2) Locate the trap in a manner that provides ready and easy accessibility for cleaning and inspection.
  - 3) Maintain the trap in effective and operating condition.
  - 4) Maintain all records for at least three years related to the maintenance and operation of the trap including manifests or trip tickets.
  - 5) Provide and maintain a sampling port that allows for representative oil and grease sampling to be collected as approved by the Environmental Officer.
  - 6) Shall provide disposal receipts and/or trip ticket for maintenance of the trap on a regular basis.

- 7) Nothing in this section shall be construed to limit the authority of or relieve the owner of responsibility to abide by the grease ordinance.
- 8) Comply with the City of Terrell Ordinance.

12-84: COMPLIANCE WITH OTHER AUTHORITIES

- A) Compliance with Federal Authority. Industrial Users within the jurisdiction of this Ordinance shall comply with all Federal General Pretreatment Regulations and with those Categorical Pretreatment Standards applicable to each as specified in 40 C.F.R. Chapter I, Subchapter N, Parts 405-471.
- B) Compliance with State Authority. Industrial Users within the jurisdiction of this Ordinance shall comply with applicable sections of Chapter 26 of the Texas Water Code.

12-85: INSPECTION AND SAMPLING

The Control Authority must carry out inspection, surveillance, and monitoring of Industrial Users to determine compliance or noncompliance with Pretreatment Standards independent of information supplied by the Industrial Users as required in 40 C.F.R. 403.8(f)(v).

- A) The Environmental Officer, NTMWD, as well as other authorized representatives of the City, EPA, TCEQ, and the Texas Department of Health, or any successor agencies bearing proper credentials and identification, shall be permitted to enter the premises of any Industrial User at any reasonable time for the purpose of inspection, observation, measurement, sampling, examination and copying of records, sampling and testing of any wastewater discharged into the POTW, as well as of any wastewater prior to treatment or discharge, and inspection of any pretreatment facilities, and shall have the right to inspect for compliance at least once per year.
- B) The Control Authority shall carry out all independent inspections and monitoring procedures necessary to determine compliance with applicable Pretreatment Standards and Requirements, including the right to take independent samples.
- C) The Control Authority shall have the right to set up on the Industrial User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the Industrial User's operations. All end of pipe sample locations must allow for uninterrupted and unobstructed access 24 hours a day, 7 days per week for the Control Authority.
- D) The Control Authority may require the Industrial User to install monitoring equipment as necessary. The User's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the Industrial User at its own expense. All devices

used to measure wastewater flow and quality shall be calibrated to ensure their accuracy. All calibrations shall be conducted as recommended by the manufacturer but no less frequent than once per year. The calibration must be documented and records maintained for at least three years.

- E) Anyone acting under this authority shall observe the established rules and regulations concerning safety, internal security, and fire protection.
- F) 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 Industrial User at the written or verbal request of the Control Authority and shall not be replaced. The costs of clearing such access shall be assumed by the Industrial User.
- G) No person shall maliciously, willfully, or negligently break, steal, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the Control Authority property, i.e., (automatic samplers and other field equipment). Any person found in violation of this requirement shall be subject to the sanctions set out in the Ordinance and criminal penalties under Texas Penal Code, Title 7, Chapter 28.
- G) Any denial of access or unreasonable delay in allowing the Environmental Officer, NTMWD, as well as other authorized representatives of the City, EPA, TCEQ, and the Texas Department of Health, or any successor agencies bearing proper credentials and identification access to an Industrial User's premises shall be a violation of this Ordinance.
- H) Search Warrants. If the Environmental Officer, NTMWD, as well as other authorized representatives of the City, EPA, TCEQ, and the Texas Department of Health, or any successor agencies bearing proper credentials and identification have 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 Control Authority designed to verify compliance with this Ordinance or any Industrial User Wastewater Discharge Permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Environmental Officer and/or delegated agent may seek issuance of a search warrant from any court of competent jurisdiction.

#### 12-86: DETERMINING THE CHARACTER AND CONCENTRATION OF WASTEWATER

The wastewater discharged into the POTW by an Industrial User shall be subject to periodic inspection and sampling as often as may be deemed necessary by the Environmental Officer. Sampling shall be conducted by the Control Authority according to 40 C.F.R. Part 136 and amendments thereto or with any other test procedures approved by the EPA and performed by a laboratory accredited by NELAP.

- A) The examination and analysis of the characteristics of waters and wastes shall be:
  - 1) Independent and performed without notice to the Industrial User.
  - 2) Performed in accordance with procedures established by the EPA pursuant to section 304(h) of the Act (33 U.S.C. § 1314) and contained in 40 C.F.R. Part 136 and amendments thereto or with any other test procedures approved by the EPA. Sampling shall be performed in accordance with the techniques approved by the EPA. Where 40 C.F.R. Part 136 does not include sampling or analytical techniques for the pollutants 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 using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the Environmental Officer or other parties, approved by the EPA.
  - 3) All analyses performed as required by this Ordinance must be conducted by a NELAP certified laboratory, which is certified for all parameters reported, unless certification is not available for a specific parameter.
  - 4) Determined from suitable samples taken at the control manhole provided or other sample locations authorized by the Environmental Officer provided at the expense of the industry.
  - 5) Split samples may be provided at the Industrial User's request and expense provided:
    - a) The Industrial User may not use the split sample for routine self-monitoring.
    - b) The Industrial User must have all supplies (bottles, chain of custody, labels, etc.) readily accessible for the Control Authority sampling personnel upon request.
- B) The Environmental Officer may require any Industrial User to compensate the Control Authority, as appropriate, for the costs of sampling, analyses of the discharges, and any additional administrative fees provided in Section 14, below.
- C) The Control Authority may use a grab sample(s) to determine noncompliance with pretreatment standards.

#### 12-87: CONTROL MANHOLE

When necessary to monitor wastewater discharged into the POTW from any Industrial User, the Control Authority shall require an Industrial User to provide and install, at its own expense, a suitable control manhole in an easily accessible location on the premises from which the wastewater

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is discharged in order to adequately sample and measure such wastewater. All end of pipe control manholes shall be accessible by the Control Authority 24 hours a day 7 days a week. Installation of any meters, equipment, and miscellaneous accessories deemed necessary by the Control Authority shall be required to be installed at the Industrial Users own expense.

- A) A required control manhole shall be:
  - 1) near the outlet of each building lateral, sewer, drain, pipe, or channel, which connects with the wastewater system;
  - 2) designed and constructed to prevent infiltration by ground or surface water;
  - 3) located to provide ample room in or near the facility to allow accurate sampling and preparation of samples for analyses; and
  - 4) maintained by the Industrial User at all times in safe and proper operating condition.
- B) Before beginning construction of a control manhole, the Industrial User shall submit plans to the Environmental Officer for review and approval to insure compliance with this section and any applicable City plumbing codes. Plans must include documentation on any meters or other equipment required to be installed.
- C) For those Industrial Users subject to Categorical Pretreatment Requirements, a proper control manhole shall be installed at the Industrial Users expense. The control manhole shall be located on each regulated process immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. The Industrial User must submit any plans to the Control Authority for review and approval prior to installing the control manhole.
- D) Where the Control Authority require that a control manhole shall be installed for an Industrial User located in a property occupied by multiple tenants, the owner and/or tenant will be required to install a proper control manhole. The control manhole shall be installed so that only wastewater discharged by the Industrial User is sampled and is prior to any other tenant's wastewater entering the sewer line.

### 12-88: MISCELLANEOUS OFFENSES RELATING TO SEWER SYSTEM

No person other than a regular employee or officer of the Control Authority charged with such duties shall do or aid in doing any of the following acts:

- A) Opening, closing, lifting or removing the cover of any wastewater lift station, sanitary sewer manhole, or clean-out plug of the City sanitary sewers.

- B) Interfering with, destroying, impairing, injuring or defacing any property which is a part of or essential to the proper functioning of the POTW.
- C) Covering or concealing from view any sanitary sewer manhole.
- E) Tapping and/or otherwise connecting into an existing sanitary sewer which is a part of the POTW.

#### 12-89: SIGNIFICANT INDUSTRIAL USER FEES

All Significant Industrial Users regulated under this Ordinance are subject to fees as necessary to properly implement the City of Terrell's Pretreatment Program.

- A) Each Significant Industrial User for which the Control Authority has designated as such in order to comply with the applicable TPDES permit issued for the operation of the POTW shall, if the Control Authority so demands, compensate the Control Authority, as appropriate, for the costs required to monitor wastewater discharges required to adequately implement the Pretreatment Program.
- B) Each Industrial User for which the Control Authority takes samples and/or runs laboratory analyses to monitor wastewater discharges shall compensate the Control Authority, as appropriate, if the Control Authority so demands, for the cost of such sampling and laboratory analyses. The Control Authority shall determine the number of samples and frequency of sampling necessary to determine compliance independent or information supplied by Industrial Users.
- C) The Control Authority may adopt other reasonable fees for reimbursement of its costs for setting up and operating the Pretreatment Program which may include:
  - 1) Fees for Industrial User Wastewater Discharge Permit applications, including the cost of review and processing such applications;
  - 2) Fees to recoup costs of monitoring, inspection, and surveillance procedures, including the cost of collection and analyzing an Industrial User's discharge, and reviewing monitoring reports submitted by Industrial Users;
  - 3) Fees to recoup the costs of responding to discharges by Industrial Users in violation of this Ordinance and/or to recoup monetary fines and/or penalties imposed on the Control Authority for violations of the applicable TPDES permit issued for the operation of the POTW attributable to pass through or interference caused by an Industrial User;
  - 4) Fees for reviewing and responding to accidental discharge procedures and construction;

- 5) Fees for reviewing appeals; and
- 6) Other fees the Control Authority may deem necessary to carry out the requirements of this Ordinance. These fees relate solely to the matters covered by this Ordinance and are separate from all other fees, fines, and penalties chargeable by the Control Authority.

D) All fees required under this Ordinance shall be invoiced, upon the Control Authority's request, to the contributing Industrial User by the Control Authority and shall be payable as indicated on the invoice.

#### 12-90: INDUSTRIAL WASTEWATER STRENGTH AND FLOW SURCHARGE

A surcharge may be applied to a Significant Industrial User in addition to the monthly sewer service charge for the discharge of wastewater with concentrations of either BOD or TSS concentrations exceeding that of "Normal Domestic Sewage," or excess flow to cover the additional costs of treating such wastewater. Such a charge is collected by the City.

A) The surcharge shall be calculated as follows:

$$C = [B(Bu-250) + S(Su-250)] \times F \times V$$

Where:

C	=	surcharge to the User in dollars
B	=	unit cost factor for treating one unit of BOD (per 1,000 gallons)
Bu	=	the tested BOD of the discharge
S	=	unit cost factor for treating one unit of TSS (per 1,000 gallons)
Su	=	the tested TSS of the discharge
F	=	a factor of 8.34 to convert mg/L to pounds/ gallon
V	=	monthly billing volume (discharge) in thousand gallons
250	=	average domestic BOD and TSS (250 mg/L)

B) If the concentration of BOD or TSS in the discharge is less than the normal strength for that category above specified, there shall be no surcharge for that category, nor shall there be credit given to the total surcharge if the concentration of either BOD or TSS is less than the normal concentration.

C) All BOD and TSS values used in determining the surcharge shall be re-evaluated and adjusted to reflect any changes in wastewater characteristics as sampling results indicate necessary.

D) Industrial Users that discharge flow in such an amount that hydraulically consumes treatment or conveyance capacity of the POTW may be assessed a surcharge in an amount to cover such excess capacity.

12-91: PRETREATMENT REQUIRED

- A) Industrial Users shall provide necessary wastewater treatment as required to comply with all Pretreatment Standards and Requirements, including Categorical Pretreatment Standards, local limits, and the prohibitions set out in Sections 5 and 6 of this Ordinance, with the time limitations specified by EPA, TCEQ, NTMWD, or the City, whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the Control Authority shall be provided, operated, and maintained at the User's expense. The Control Authority may require the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements.
- B) Before beginning construction of pretreatment facilities, the Industrial User shall submit certified and detailed plans and operating procedures for the facility to the Environmental Officer for review and approval. The review and approval of such plans and procedures will in no way relieve the Industrial User from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the Environmental Officer and the Control Authority under the provisions of this Ordinance.
- C) All Industrial Users shall promptly notify the Control Authority 90 days in advance of any change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under 40 C.F.R. § 403.12(p). The Environmental Officer may require the Industrial User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of an Industrial User Wastewater Discharge Permit Application Form. The Environmental Officer may issue an individual wastewater discharge permit under this Ordinance or modify an existing wastewater discharge permit under this Ordinance in response to changed conditions or anticipated changed conditions.
- D) All records relating to compliance with Pretreatment Standards and Requirements shall be made available to the Environmental Officer, NTMWD, and to other authorized officials of the City, TCEQ, or EPA upon request.
- E) The determination of the character and concentration of industrial wastewater shall be made by the Environmental Officer at such times and on such schedules as the Control Authority may establish.

12-92: FEDERAL CATEGORICAL PRETREATMENT STANDARDS

The Categorical Pretreatment Standards found at 40 C.F.R. Chapter I, Subchapter N, Parts 405-471 are hereby incorporated. The Categorical Pretreatment Standards only apply to Categorical Industrial Users of the POTW.

- A) Upon the promulgation of a Categorical Pretreatment Standard for a particular industrial category or subcategory, the Categorical Pretreatment Standard, if more stringent than specific local limits imposed under this Ordinance for Industrial Users subject to that Categorical Standard, shall supersede the local limits imposed under this Ordinance.
- B) Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Environmental Officer may impose equivalent concentration or mass limits in accordance with 40 C.F.R. § 403.6(c).
- C) Where Industrial Users combine wastestreams prior to treatment, compliance with an applicable Categorical Pretreatment Standard will be determined either prior to combining the wastestreams or following treatment of the combined wastestream (by applying the Combined Wastestream formula found in 40 C.F.R. § 403.6(e)).
- D) A User may obtain a variance from a Categorical Pretreatment Standard if the Industrial User can prove, pursuant to the procedural and substantive provisions in 40 C.F.R. § 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the Categorical Pretreatment Standard.
- E) An Industrial User may obtain a net gross adjustment to a Categorical Pretreatment Standard in accordance with 40 C.F.R. § 403.15.
- F) The Control Authority may convert the mass limits of the Categorical Pretreatment Standards of 40 C.F.R. Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Categorical Industrial Users. The conversion is at the discretion of the Control Authority.
- G) Once included in its permit, the Categorical 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.
- H) 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.
- I) Any Categorical Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the Environmental Officer within two (2) business days after the Categorical Industrial User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any Categorical Industrial User not notifying the Environmental Officer 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.

12-93: INDUSTRIAL USER WASTEWATER DISCHARGE PERMIT REQUIREMENTS

- A) All Users shall notify the Environmental Officer of the nature and characteristics of their wastewater prior to commencing their discharge. The Environmental Officer is authorized to prepare a form for this purpose. All Users must complete the Industrial User Wastewater Discharge Permit Application, the Industrial Waste Survey, and/or other forms as required by the Control Authority. If a User fails to complete any form identified as required by the Control Authority, the User will be in violation of this Ordinance. The Control Authority may periodically require Industrial Users to update this information.
- B) It shall be unlawful for Significant Industrial Users to discharge wastewater, whether directly or indirectly, into the POTW without first obtaining an Industrial User Wastewater Discharge Permit from the Control Authority. Said permit shall be issued by the Control Authority provided that all prerequisites thereto are satisfied. Any violation of the terms and conditions of an Industrial User Wastewater Discharge Permit shall be deemed a violation of this Ordinance and subjects the wastewater discharge permittee to the sanctions set out in this Ordinance. Obtaining an Industrial User Wastewater Discharge Permit does not relieve a permittee of its obligation to obtain any other and/or additional permits required by Federal, State, or local law.
- C) The Control Authority may require that other Industrial Users, including liquid waste haulers, obtain Industrial User Wastewater Discharge Permits as necessary to carry out the purposes of this article. The Environmental Officer also may prohibit the disposal of hauled pollutants, including hauled wastewater. The discharge of hauled pollutants, including hauled wastewater, is subject to all other requirements of this Ordinance.
  - 1) Industrial waste haulers, including haulers of wastewater, may discharge loads only at locations designed by the Environmental Officer.
  - 2) No load may be discharged without prior consent of the Environmental Officer.
  - 3) The Environmental Officer may collect samples of each hauled load to ensure compliance with applicable standards.
  - 4) The Environmental Officer may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

- 5) Industrial waste haulers, including haulers of wastewater, must provide a waste-tracking form for every load. 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.

D) All existing Significant Industrial Users connected to or contributing to the POTW shall obtain a revised Industrial User Wastewater Discharge Permit within one hundred eighty (180) days after the effective date of this Ordinance. The application must be submitted to the Environmental Officer within ninety (90) days after the effective date of this Ordinance.

E) New Connections: Any Significant Industrial User proposing to begin or recommence discharging nondomestic wastes into the POTW must obtain an Industrial User Wastewater Discharge Permit prior to beginning or recommencing such discharge. An application form must be filed by the SIU at least ninety (90) days prior to commencement of discharge. Categorical SIUs must provide an application form and a supplemental Baseline Monitoring Report, the two of which are to contain the information required by 40 C.F.R. § 403.12, as set out in this Ordinance.

F) The Control Authority may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its TPDES permit.

F) Reapplication: Once permitted, the Industrial User has the duty to reapply if the permittee wishes to continue an activity regulated by the permit after the expiration date of the Industrial User Wastewater Discharge Permit. The Industrial User must submit an application for a new permit at least ninety (90) days before the expiration of the then current permit. If the permitted Industrial User changes or adds any process(es) that will subject them to an existing categorical standard, an application must be submitted at least ninety (90) days prior to commencing discharge from the categorical process. The application form may be obtained from the Environmental Officer.

#### 12-94: INDUSTRIAL USER WASTEWATER DISCHARGE PERMIT APPLICATION AND BASELINE MONITORING REPORT

A) All Significant Industrial Users required to obtain an Industrial User Wastewater Discharge Permit shall complete and file with the Environmental Officer, an application on a form provided by the Control Authority. The Control Authority may charge a permit application fee, which if charged, shall accompany the application.

B) The Environmental Officer shall issue an Industrial User Wastewater Discharge Permit if he/she determines that pretreatment facilities are adequate for efficient treatment and that

discharged wastes will comply with all applicable Pretreatment Standards and Requirements, including those imposed by this Ordinance. Incomplete or inaccurate permit applications will not be processed and will be returned to the Industrial User for revision. The Control Authority may require additional information from the Industrial User as necessary to evaluate the permit application and issue the Discharge Permit.

C) Within one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard, or one hundred eighty (180) days after the final administrative decision made upon a category determination under 40 C.F.R. § 403.6(a)(4), whichever is later, existing Industrial Users subject to such Categorical Pretreatment Standards and currently discharging to or scheduled to discharge to the POTW shall be required to submit to the Environmental Officer an Industrial User Wastewater Discharge Permit Application and a Baseline Monitoring Report, the two of which shall contain the information identified in paragraphs 1) through 6), below. At least ninety (90) days prior to commencement of discharge, New Sources, and sources that become subject to Categorical Standards subsequent to the promulgation of an applicable Categorical Standard, shall submit to the Control Authority a report which contains the information listed in paragraphs 1) through 5), below. New Sources shall also be required to include this report information on the method of pretreatment the source intends to use to meet applicable Categorical Standards. New Sources shall give estimates to the information requested in paragraphs 4) and 5), below.

- 1) Identifying Information: The Industrial User shall submit the name and address of the facility including the name of the operators and owners.
- 2) Permits: The Industrial User shall submit a list of any environmental control permits held by or for the facility.
- 3) Description of Operations: The Industrial User shall submit a description of the nature, average rate of production, and the Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description shall include:
  - a) A floor plan showing the location of process lines/equipment, treatment systems, chemical storage, waste storage, offices and the use(s) for each room or area; and
  - b) A sewer diagram of the facility showing the locations where industrial wastewater enters sewer lines and where the facility sewer lines connect to the city sewer main, as well as the locations of clean-outs, sampling ports, manholes, sinks, floor drains, etc., certified by a professional engineer; and
  - c) A flow diagram of the process lines/equipment and pretreatment systems that show the flow of product and water. This diagram shall include the purpose of each process line/equipment, chemicals used, sizing and flow. A detailed,

written process description shall also be included for each process line and pretreatment system.

- d) A standard operating procedure for the pretreatment system that shall include operating and maintenance schedules. This is only required if a pretreatment system is present or required.
- e) The Industrial User shall submit a list of all chemicals utilized in its processes and appropriate Safety Data Sheets (SDSs).

4) Flow Measurement: The Industrial User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

- a) Regulated process streams; and
- b) Other streams as necessary to allow use of the Combined Wastestream formula of 40 C.F.R. § 403.6(e).

The Control Authority may allow for verifiable calculations of these flows where justified by cost or feasibility considerations.

5) Measurement of pollutants:

- a) The Industrial User shall identify the Categorical Pretreatment Standards applicable to each regulated process.
- b) In addition, the Industrial User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Categorical Pretreatment Standards or by the Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Standards to determine compliance with the Standards.
- c) Except as indicated in Section d) and e) 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 Environmental Officer. Where time proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the discharge. Using protocols

(including appropriate preservation) specified in 40 C.F.R. Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24 hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits. For sampling facilities that discharge less than 24 hours per day, the sampling may be representative of the Industrial User's wastewater discharge per 40 C.F.R. § 403.12(g)(3). Sampling must be taken within a 24-hour period and should only be collected during that portion of the 24-hour period that the IU is discharging from the regulated process and/or pretreatment unit as long as regulated process wastewater is flowing through the pretreatment unit.

- d) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- e) For sampling required in support of baseline monitoring and 90 day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Environmental Officer may authorize a lower minimum. For the compliance reports, the Industrial User is required to collect the number of grab samples necessary to assess and assure by compliance with applicable Pretreatment Standards and Requirements. The Control Authority may require more than four grab samples be taken and separately analyzed to ensure that sampling is representative (where the Control Authority cannot verify that previous techniques were representative, such data will not support the use of this alternative practice). Sampling requirements, which previously only supplied to BMRs and 90-day reports, extend to Reports on continued compliance and Noncategorical SIU reports [40 C.F.R. § 403.12(g)(1) and (3)].
- f) The User shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this section. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the Environmental Officer or the applicable Standards to determine compliance with the Standard.

- g) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. During parts of the day when there is no discharge of process wastewater, standing water should not be disproportionately sampled and analyzed as it would not be representative of the discharge from the IU. The Control Authority shall only approve a sampling protocol that produces representative results and is based on operation conditions and physical configuration of the IU facility. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the User should measure the flows and concentrations necessary to allow use of the Combined Wastestream formula of 40 C.F.R. § 403.6(e) in order to evaluate compliance with the Categorical Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 C.F.R. § 403.6(e), this adjusted limit along with supporting data shall be submitted to the Environmental Officer.
- h) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136 and amendments thereto. All analysis must be conducted by a laboratory certified under the NELAP program. Where 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures required by the Environmental Officer or other parties, approved by EPA.
- i) The Control Authority may require the User to submit a pollutant scan of the wastewater discharge.
- j) The Control Authority may allow the submission of a Baseline Monitoring Report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.
- k) The Baseline Monitoring Report shall indicate the time, date and place of sampling and methods of analysis, and the Industrial User shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.

6) Certification: A statement, reviewed by an authorized representative of the Industrial User, and certified to 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 for the Industrial User to meet the Pretreatment Standards and Requirements.

- 7) Compliance Schedule: If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards and Requirements, the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard or Requirement. A compliance schedule pursuant to this Section must meet the requirements set out in this Ordinance.
- 8) Where the Industrial User's Categorical Pretreatment Standard has been modified by the Combined Wastestream Formula (40 C.F.R. § 403.6(e)) at the time the User submits the report required by this section, the information required by paragraphs 6) and 7) shall pertain to the modified limits.
- 9) If the Categorical Pretreatment Standard is modified by a removal allowance (40 C.F.R. § 403.7), the Combined Wastestream formula (40 C.F.R. § 403.6(e)), and/or a Fundamentally Different Factors variance (40 C.F.R. § 403.13), after the User submits the report required by this section, any necessary amendments to the information requested by paragraphs 6) and 7) of this section shall be submitted by the Industrial User to the Environmental Officer within sixty (60) days after the modified limit is approved.

#### 12-95: PERMIT CONDITIONS

Any Industrial User required to obtain an Industrial User Wastewater Discharge Permit under this Ordinance will be issued a permit by the Control Authority after all required documents submitted by the Industrial User are reviewed, verified and technically evaluated by the Control Authority.

- A) Industrial User Wastewater Discharge Permits shall be expressly subject to all provisions of this Ordinance and all other applicable regulations, User charges, and fees established by the Control Authority. Industrial User Wastewater Discharge Permits shall include such conditions as are deemed reasonably necessary by the Control Authority 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. Industrial User Wastewater Discharge Permits shall contain, but not be limited to, the following:
  - 1) Statement of duration (in no case more than five years);
  - 2) Statement of non-transferability without, at a minimum, thirty (30) day prior notification to the Environmental Officer and provision of a copy of the existing control mechanism to the new owner or operator;

- 3) Effluent limits, including Best Management Practices, based on applicable general pretreatment standards in 40 C.F.R. Part 403, Categorical Pretreatment Standards, Prohibited Discharge Standards, site specific discharge limitations, local limits, and State and local law. The Control Authority reserves the right to establish in permits more stringent standards or requirements on discharges consistent with this Ordinance;
- 4) Applicable self-monitoring, sampling, reporting, notification and record-keeping requirements (3+ years, includes BMPs), including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general Pretreatment Standards, Categorical Pretreatment Standards, Prohibited Discharge Standards, local limits, and State and local law;
- 5) Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.
- 6) Requirements to control Slug Discharges, if determined by the Control Authority to be necessary. The Control Authority shall evaluate within one year of being designated as a Significant Industrial User (SIU), whether each SIU needs a plan or other action to control slug discharges.
- 7) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.
- 8) Requirements for installation and maintenance of inspection and sampling facilities and equipment.
- 9) Requirement for notification to the Environmental Officer for introduction of a new wastestream or wastewater constituents or a substantial change in the operations or volume or characteristics of the wastewater discharged to the POTW.
- 10) A statement that compliance with the Industrial User Wastewater Discharge Permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the Industrial User Wastewater Discharge Permit.

B) Industrial User Wastewater Discharge Permits may contain other conditions as deemed appropriate by the Control Authority to ensure compliance with this Ordinance, and State and Federal laws, rules, and regulations. Such other conditions may include, but are not limited to:

- 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 devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW.
- 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) Requirement for installation and maintenance of flow measuring devices.
- 6) Requirement to submit a sampling plan detailing the Industrial User's procedures to ensure all sampling and analysis are conducted using 40 C.F.R. Part 136 methods and analysis is done by a laboratory accredited by NELAP. All sampling and analysis for Industrial Users self-monitoring will be conducted at the Industrial Users expense.
- 7) A statement that compliance with the Industrial User Wastewater Discharge Permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the Industrial User Wastewater Discharge Permit.
- 8) Other conditions as deemed appropriate by the Control Authority to ensure compliance with this Ordinance, and State and Federal laws, rules, and regulations.

#### 12-96: PERMIT ISSUANCE REQUIREMENTS

- A) Permit Duration: Industrial User Wastewater Discharge Permits shall be issued for a specified period, not to exceed five (5) years. A permit may be issued for a period less than five (5) years, at the sole discretion of the Environmental Officer.
- B) Permit Appeals: Any interested person, including the Industrial User, may petition to appeal the terms of a permit, or the denial of a permit, to the Environmental Appeals Committee (as established by this Ordinance), within thirty (30) days of the final permit decision.
  - 1) Failure to submit a timely petition for review of the terms of a permit or the denial of a permit shall be deemed to be a waiver of the administrative appeal.
  - 2) In its petition, the appealing party must indicate the permit provisions objected to, the reasons for these objections, and the alternative condition, if any, it seeks to be placed in the permit. Any reasons advanced against a permit denial shall be fully explained.

- 3) The effectiveness of the permit shall not be stayed pending a reconsideration by the Environmental Appeals Committee (“Committee”), unless the Environmental Officer expressly so states. If, after considering the petition and any arguments put forth by the Environmental Officer, the Committee determines that reconsideration is proper, it shall remand the permit, or permit application, back to the Environmental Officer for reconsideration. Those permit provisions being reconsidered by the Environmental Officer on remand shall be stayed pending reissuance, unless the Committee expressly states to the contrary.
- 4) An Environmental Appeals Committee decision not to reconsider a final permit, or the denial of a permit, shall be considered final administrative action for purposes of judicial review.
- 5) If the Environmental Appeals Committee fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied.
- 6) Aggrieved parties seeking judicial review of the final administrative Industrial Wastewater Discharge Permit decision must do so by filing a complaint with the State District Court.

C) Permit Action and Modification: The Control Authority has the power to deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by an Industrial User where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate the applicable TPDES permit issued for the operation of the POTW by either pass through or interference. Additionally, any Industrial User that consumes excess organic and/or hydraulic flow capacity will require permit modification. The Control Authority may modify the Industrial User Wastewater Discharge Permit for good cause including but not limited to, the following:

- 1) To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements.
- 2) To address material or substantial alterations or additions to the Industrial User’s operation processes, or discharge volume or character which were not considered in drafting the effective permit.
- 3) A change in any condition in either the Industrial User or the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- 4) Information indicating that the permitted discharge poses a threat to the POTW, POTW personnel, or the receiving waters.
- 5) A violation of any terms or conditions of the permit.

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- 6) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting.
- 7) Revision of or a grant of variance from Categorical Standards pursuant to 40 C.F.R. § 403.13.
- 8) To correct typographical or other errors in the permit.
- 9) To reflect transfer of the facility ownership and/or operation to a new owner or operator.
- 10) Upon request of the permittee, provided such request does not create a violation of any applicable Pretreatment Standards or Requirements, or other laws, rules, or regulations. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

D) Permit Transfer: Industrial User Wastewater Discharge Permits may be reassigned or transferred to a new owner and/or operator with prior approval of the Environmental Officer, provided:

- 1) The permittee must give at least thirty (30) days advance notice to the Environmental Officer.
- 2) The permittee must provide a copy of the existing permit to the new owner or operator.
- 3) The notice must include a written certification by the new owner or operator which:
  - a) States that the new owner or operator has no immediate intent to change the facility's operations and processes;
  - b) Identifies that the permittee has provided a copy of the existing permit to the new owner or operator;
  - c) Indicates the name and address of the new owner and the authorized signatory for the facility;
  - d) Identifies the specific date on which the transfer is to occur; and
  - e) Acknowledges full responsibility for complying with the existing permit.

- 4) Failure to provide advance notice of a transfer may render the Industrial User Wastewater Discharge Permit void as of the date of facility transfer.
- E) Permit Termination: Industrial User Wastewater Discharge Permits may be terminated for good cause, including but not limited to, the following reasons:
  - 1) Falsifying self-monitoring reports.
  - 2) Tampering with monitoring equipment.
  - 3) Refusing to allow proper inspecting authorities timely access to the facility premises and records.
  - 4) Failure to meet effluent limitations.
  - 5) Failure to pay fines.
  - 6) Failure to pay sewer charges.
  - 7) Failure to meet compliance schedules.
  - 8) Failure to notify the Control Authority of significant changes to the wastewater prior to the changed discharge.
  - 9) Failure to provide prior notification to the Control Authority of changed conditions pursuant to Section 28, Paragraph C) of this Ordinance.
  - 10) Misrepresentation or failure to fully disclose all relevant facts in the Industrial User Wastewater Discharge Permit Application.
  - 11) Failure to complete a wastewater survey or the Industrial User Wastewater Discharge Permit Application.
  - 12) Failure to provide advance notice of the transfer of business ownership of a permitted facility.
  - 13) Violation of any pretreatment standard or requirement, or any terms of the Industrial User Wastewater Discharge Permit or this Ordinance.

A User will be notified of any proposed permit termination and offered an opportunity to show cause under this Ordinance why the proposed termination should not occur.

Industrial User Wastewater Discharge Permits shall be voidable upon cessation of operations or transfer of business ownership. All Industrial User Wastewater Discharge Permits issued

to a particular Industrial User are void upon the issuance of a new permit to that new Industrial User.

- F) Permit Reissuance: The User shall apply for permit reissuance by submitting a complete Industrial User Wastewater Discharge Permit Application Form a minimum of ninety (90) days prior to the expiration of the User's existing permit.
- G) Continuation of Expired Permits: An expired permit will continue to be effective and enforceable until the permit is reissued if:
  - 1) The Industrial User has submitted a complete Industrial User Wastewater Discharge Permit Application Form at least ninety (90) days prior to the expiration date of the Industrial User's then current permit.
  - 2) The failure to reissue the permit, prior to expiration of the previous permit, is not due to any act or failure to act on the part of the Industrial User.

#### 12-97: SIGNATORY REQUIREMENTS FOR INDUSTRIAL USER REPORTS

All Industrial Users required to submit reports under this Ordinance must comply with the requirements of this section.

- A) The reports required to be submitted by Industrial Users under this Ordinance shall include the certification statement below:

"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) The reports shall include the foregoing certification statement and shall be signed by the Authorized Representative of the Industrial User.
- C) If the designation of an Authorized Representative of the Industrial User is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new written authorization executed by the Authorized Representative satisfying the requirements of the definition stated in Section 1 must be submitted to the Control Authority prior to or together with any reports to be signed by an Authorized Representative.

D) The reports and other documents required to be submitted or maintained under this Ordinance shall be subject to:

- 1) The provisions of 18 U.S.C. § 1001 relating to fraud and false statements;
- 2) The provisions of sections 309(c)(4) of the Clean Water Act, as amended, governing false statements, representations or certification; and
- 3) The provisions of section 309(c)(6) regarding responsible corporate officers.

E) All reports submitted under this Ordinance by Industrial Users shall be deemed submitted to the Control Authority on the postmark date, shipment date, or hand delivery date. As long as this submittal date is on or prior to the report deadline, the report will not be considered late. Any reports due on a Saturday, Sunday, or Holiday shall be due no later than the next working business day.

#### 12-98: 90 DAY COMPLIANCE REPORT FOR CATEGORICAL INDUSTRIAL USERS

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a New Source following the commencement of the introduction of wastewater into the POTW, any Industrial User subject to such Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in Section 19, Paragraphs C) 4), C) 5), and C) 6). For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in 40 C.F.R. § 403.6(c), this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial 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. 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 Environmental Officer or the Pretreatment Standard necessary to determine compliance status of the User. All compliance reports must be signed and certified in accordance with Section 22 of this Ordinance.

#### 12-99: PERIODIC REPORT ON CONTINUED COMPLIANCE FOR SIGNIFICANT INDUSTRIAL USERS

All Significant Industrial Users regulated under this Ordinance shall submit periodic reports to the Control Authority as required by the Industrial User Wastewater Discharge Permit. The contents and frequency of these reports will be specified in the Industrial User Wastewater Discharge Permit.

A) The requirements for periodic reports submitted by Categorical Industrial Users are as follows:

- 1) Any Significant Industrial User subject to a Categorical Pretreatment Standard, after the compliance date of such Categorical Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Categorical Standard or by the City, NTMWD, TCEQ, or EPA, a report indicating the nature and concentration of pollutants in the discharge which are limited by such Categorical Pretreatment Standards.
- 2) In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge, except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are submitted.
- 3) Where the Control Authority has imposed mass limitations on an Industrial User as provided for by 40 C.F.R. § 403.6(d), the report required by paragraph A), above, shall indicate the mass of pollutants regulated by the applicable Categorical Pretreatment Standards in the Discharge for the Industrial User.
- 4) For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in 40 C.F.R. § 403.6(c), the report required by paragraph A) 1), above, shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by paragraph A) 1), above, shall include the User's actual average production rate for the reporting period.

B) The requirements for periodic reports submitted by Significant Noncategorical Industrial Users are as follows:

- 1) Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority.
- 2) This sampling and analysis may be performed by the Control Authority in lieu of the Significant Noncategorical Industrial User. Where the Control Authority collects all the information required for the report, the Noncategorical Significant Industrial User will not be required to submit the report.

C) All periodic reports submitted by Significant Industrial Users (Categorical and Noncategorical) are as follows:

- 1) These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 C.F.R. Part 136 and amendments thereto. Where 40 C.F.R. 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 analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the City, NTMWD or other persons, approved by the EPA.
- 2) 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 Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User.
- 3) All wastewater samples must be representative of the Industrial 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 an Industrial User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.
- 4) If an Industrial User subject to the reporting requirement of this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Control Authority, using the procedures prescribed in this Section of this Ordinance, the results of this monitoring shall be included in this report.
- 5) All periodic compliance reports must be signed and certified in accordance with Section 22 of this Ordinance.

#### 12-100: GENERAL REPORTING AND RECORD-KEEPING REQUIREMENTS

All Industrial Users required to submit reports under this Ordinance must comply with the requirements of this section.

A) If sampling performed by an Industrial User indicates a violation, the Industrial User shall notify the City and NTMWD within twenty-four (24) hours of becoming aware of the violation. The Industrial User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City and NTMWD within thirty (30) days after becoming aware of the violation. If the Control Authority performed the sampling and analysis in lieu of the Industrial User, the Control Authority will perform the repeat sampling and analysis

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unless it notifies the Industrial User of the violation and requires the Industrial User to perform the repeat sampling and analysis. Resampling is not required if:

- 1) The Control Authority performs sampling at the Industrial User at a frequency of at least once per month; or
- 2) The Control Authority performs sampling at the Industrial User between the time when the initial sampling was conducted and the time when the Industrial User or the Control Authority receives the results of this sampling.

B) If an Industrial User subject to the reporting requirements of Section 24 monitors any pollutant more frequently than required by this Ordinance or by the Control Authority, using the procedures as prescribed in 40 C.F.R. § 136, the results of this monitoring shall be included in the report.

C) Any Industrial User subject to the reporting requirements established in this Ordinance or the Industrial User Wastewater Discharge Permit shall retain for a minimum of three (3) years any records of monitoring activities and results (whether or not such monitoring activities are required by this Ordinance or the Industrial User Wastewater Discharge Permit), and documentation associated with BMPs, operation and maintenance manuals, chemical data sheets, production data, calibration logs, financial records of materials purchased, sampling and analysis reports, etc. and shall make records and documentation available for inspection and copying by the EPA, TCEQ, or NTMWD and/or City. This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or the Control Authority, when requested by the State or the Federal government, or when the Industrial User is specifically notified of a longer retention period by the Control Authority.

D) For all samples, such records shall include but not be limited to:

- 1) The date and time the sampling and analyses were performed;
- 2) Who performed the analyses including the laboratory name and address and NELAP accreditation seal;
- 3) Signature of laboratory personnel certifying the analytical report;
- 4) Quality Assurance and Quality Control data for the laboratory analysis;
- 5) The analytical techniques/methods used;
- 6) The results of such analyses;
- 7) The outfall number(s) and exact location for which samples were taken;

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- 8) Name and physical location of facility where samples were collected;
- 9) The sampler's name and signature;
- 10) Type of sample(s) collected;
- 11) Number of parts or sample intervals of the sample(s);
- 12) How the sample(s) was collected (*i.e.*, automatic sampler, in person, etc.);
- 13) Sample preservation;
- 14) Sample container – size and material;
- 15) Field data – Who measured it, date, and time;
- 16) Sampling date and time – Beginning date, ending date, beginning time, and ending time;
- 17) Chain of custody information (including affiliation of each individual in chain of custody).
- 18) Certification statement as set out in Section 22 of this Ordinance.
- 19) Signature of the Authorized Representative of the Industrial User as required by this Ordinance as defined in Section 1.

### 12-101: BYPASS

- A) Bypass not violating applicable Pretreatment Standards or Requirements. An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs B) and C), below.
- B) Notice
  - 1) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten (10) days before the date of the bypass.
  - 2) An Industrial User shall submit oral notice of an unanticipated bypass to the Control Authority within twenty-four (24) hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five (5) days

of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours following the bypass.

C) Prohibition of Bypass

- 1) Bypass is prohibited, and the Control Authority may take enforcement action against an Industrial User for a bypass, unless:
  - a) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
  - 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 down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
  - c) The Industrial User submitted notices as required under Paragraph B) of this Section.
- 2) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions in Paragraph C) 1) of this Section.

12-102: SLUG CONTROL PLAN

A) Each Industrial User shall provide protection from Slug Discharges, as defined in Section 1 of this Ordinance. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the Industrial User's own cost and expense. In accordance with 40 C.F.R. 403.8(f)(2)(vi), the Control Authority shall evaluate whether each Industrial User needs a plan to control slug discharges. If a slug control plan is required based on the evaluation, the Control Authority will require the Industrial User to develop and implement an accidental discharge/slug control plan. If a slug discharge plan is required, the plan shall be submitted to the Control Authority for review and approval by the Control Authority, and the plan shall contain, at a minimum, the following elements:

- 1) Description of discharge practices, including non-routine batch discharges;

- 2) Description of stored chemicals;
- 3) Procedures for immediately notifying the Control Authority of accidental or slug discharges, including any discharge that would violate a prohibition under 40 C.F.R. § 403.5, with procedures for follow-up written notification within five (5) days;
- 5) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operation, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

B) The Control Authority is required to keep records of the activities associated with slug control evaluation and results are required to be available to the Approval Authority upon request.

#### 12-103: NOTICE OF POTENTIAL PROBLEMS, INCLUDING SLUG LOADING

A) All Categorical and Noncategorical Industrial Users shall immediately notify the Control Authority of all discharges, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or slug loadings as defined in 40 C.F.R. § 403.5(b), that could cause problems to the POTW by the Industrial User. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective action taken by the user.

B) Within five (5) days following such discharge, the Industrial User shall, unless waived by the Control Authority, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the Industrial User of any fines, penalties, or other liability which may be imposed pursuant to this Ordinance.

C) Industrial Users are required to notify the Control Authority immediately of any changes at its facility affecting the potential for a Slug Discharge.

#### 12-104: AFFIRMATIVE DEFENSE

A) If a person can establish that an event, which would otherwise be a violation of this Ordinance, an Industrial User Wastewater Discharge Permit issued pursuant to this Ordinance, or other Federal, State, or local law, was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation.

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B) Conditions necessary for a demonstration of affirmative defense. An Industrial User who wishes to establish an affirmative defense shall demonstrate, through properly signed, contemporaneous operation logs, or other relevant evidence that:

- 1) The event that resulted in a violation occurred and the Industrial User can identify the cause(s) of the violation as being solely an act of God, war, strike, riot, or other catastrophe;
- 2) The facility was at the time being operated in a prudent and efficient manner and in compliance with applicable operation and maintenance procedures;
- 3) The Industrial User has submitted the following information to the Control Authority within twenty-four (24) hours of becoming aware of the violation (if this information is provided orally a written submission must be provided within five (5) days);
  - a) A description of the event that resulted in a violation and the cause of noncompliance;
  - b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;
  - c) Steps being taken and/or plans to reduce, eliminate and prevent recurrence of the noncompliance.

Any verbal notice must include all of the information set out in a) through c) above.

C) Burden of proof. In any enforcement proceeding the Industrial User seeking to establish an affirmative defense shall have the burden of proof.

D) Reviewability of agency consideration. In the exercise of prosecutorial discretion, the Control Authority will review any claims of an affirmative defense. No determinations made in the course of City and/or delegated review shall constitute final action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of an affirmative defense only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.

E) User responsibility. The Industrial User shall control production or 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, lost, or fails.

### 12-105: NOTIFICATION OF DISCHARGE OF HAZARDOUS WASTES

- A) If the permittee knows in advance of the need to discharge of a hazardous waste, the permittee shall submit prior written notice, at least ten days before the date of the discharge of a hazardous waste, to the Control Authority. If the permittee does not know in advance of the discharge of a hazardous waste, the permittee shall immediately notify the Control Authority and submit a written notice to the Control Authority within five (5) days of the discharge. The notification shall identify the hazardous waste discharged and the amount of the hazardous waste discharged.
- B) In addition to the reporting requirements set out in A) above, Industrial Users shall notify the Control Authority, 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 C.F.R. Part 261. Such notification must include the name of the hazardous waste as set forth in 40 C.F.R. Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: an identification of the hazardous constituents contained in the wastes; an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month; and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. Industrial Users shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 C.F.R. § 403.12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 C.F.R. § 403.12(b), (d) and (e).
- C) Dischargers are exempt from the requirements of paragraph B) above during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. § 261.30(d) and § 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e), requires a one-time notification.

Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional information.
- D) 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 Industrial User must notify the Control Authority, the EPA Regional Waste Management Division Director and the State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

- E) In the case of any notification made under this Section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the extent determined to be economically practical.
- F) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Ordinance, an Industrial User Wastewater Discharge Permit issued thereunder, or any applicable State or Federal law.

#### 12-106: CONFIDENTIAL INFORMATION

- A) Information and data on an Industrial User obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the Industrial User specifically requests and is able to demonstrate to the satisfaction of the Control Authority that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the Industrial User under applicable state law. Any such request must be asserted at the time of submission of the information or data. Any information requested to be held confidential shall be stamped "confidential business information," "confidential," or "privileged" on each page containing such information by the User at the time the information is submitted.
- B) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this Ordinance, the applicable TPDES permit issued for the operation of the POTW, and/or the Pretreatment Programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceeding involving the person furnishing the report. Effluent data as defined in 40 C.F.R. § 2.302 will not be considered confidential and will be available to the public without restriction.
- C. Notwithstanding the foregoing, if the Control Authority is compelled or required to disclose confidential information relating to an Industrial User by a court or pursuant to a legal proceeding or as otherwise required by law specifically including, but not limited to, any disclosure of documents or tangible things requested by a third-party pursuant to the Texas Public Information Act (TPIA) and which documents or things the TPIA requires the Control Authority to disclose to the Texas Attorney General's Office in an effort to protect such confidential information from disclosure, the Control Authority shall give the Industrial User written notice of such compulsion or requirement and afford the Industrial User the opportunity to seek a protective order or other appropriate relief. Such an opportunity shall be reasonably limited such that the Control Authority will satisfy all applicable responses, deadlines, and other requirements imposed by the court or pursuant to the legal proceeding.

## 12-107: COMPLIANCE SCHEDULE PROGRESS REPORTS

The following conditions shall apply to Industrial Users required to develop a compliance schedule to come into compliance with Pretreatment Standards and Requirements.

- 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 Industrial User to meet the applicable Pretreatment Standards (e.g., hiring an engineer, completing plans, executing contract for major components, commencing construction, completing construction, etc.).
- B) No increment in the compliance schedule shall exceed nine (9) months.
- C) Not later than fourteen (14) days following each date in the compliance schedule and the final date for compliance, the Industrial User shall submit a progress report to the Control Authority including, at a minimum, whether or not it 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 Industrial User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the Control Authority.

## 12-108: ADMINISTRATIVE ENFORCEMENT ACTIONS

All Industrial Users regulated under this Ordinance are subject to any and all enforcement actions and remedies described herein.

### A) Notice of Violation

After discovery of an Industrial User violation, the Control Authority may inform the noncompliant Industrial User by telephone, e-mail communication, in writing, or in person concerning the violation committed by the Industrial User. If by telephone, the Control Authority will speak to the Authorized Representative of the Industrial User contact and explain the violation. The Control Authority must state that the Industrial User is in violation of this Ordinance. The Control Authority will gather the following information:

- 1) why the violation occurred;
- 2) whether the problem has been corrected;
- 3) whether the violation could occur again; and
- 4) when the problem has been or will be corrected.

The information received from the Authorized Representative of the Industrial User contact concerning the violation will be documented along with the time and date of the call in the Violation Summary file. Such telephone call may be utilized to provide verbal notification

of minor violations. If communication is by e-mail and the Industrial User does not provide the above information in a timely manner, the Control Authority will follow-up via telephone. Use of the telephone call or e-mail communication does not limit the Control Authority's ability to take any other action authorized by this Ordinance.

B) Written Notification of Violation

When the Control Authority finds that an Industrial User has violated, or continues to violate, any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, the Control Authority may serve upon that Industrial User a written Notice of Violation. Within the time frame specified in the Notice of Violation, 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 Industrial User to the Control Authority. Submission of an explanation and/or plan in no way relieves the Industrial 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 Control Authority to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

C) Administrative Orders

Enforcement documents which direct Industrial Users to undertake or to cease specified activities. Terms may or may not be negotiated. Administrative Orders may incorporate compliance schedules, administrative penalties, and termination of service. Use of any type of Administrative Order does not limit the Control Authority's ability to take any other action authorized by this Ordinance.

- 1) Consent Orders. The Control Authority may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any Industrial User responsible for noncompliance. Such documents may include specific action to be taken by the Industrial User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to paragraphs D) and E) of this Section and shall be judicially enforceable.
- 2) Show Cause Hearing. The Control Authority may order an Industrial User which has violated, or continues to violate, any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Control Authority and show cause why the proposed enforcement action should not be taken. Notice shall be served on the Industrial User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the Industrial User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) or e-mail communication at least ten (10) calendar days

prior to the hearing. Such notice may be served on any Authorized Representative of the Industrial User. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the Industrial User.

- 3) Compliance Orders. When the Control Authority finds that an Industrial User has violated, or continues to violate, any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or Order issued hereunder, or any other Pretreatment Standard or Requirement, the Control Authority may issue an Order to the Industrial User responsible for the discharge directing that the Industrial User come into compliance within a specified time limit. If the Industrial User does not come into compliance within the specified time limit, 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 not extend the deadline for compliance established for a Federal Pretreatment Standard or Requirement, nor does a compliance order relieve the Industrial 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 Industrial User.

D) Cease and Desist Orders

When the Control Authority finds that an Industrial User has violated, or continues to violate, any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or Order issued hereunder, or any other Pretreatment Standard or Requirement, or that the Industrial User's past violations are likely to recur, the Control Authority may issue an Order to the Industrial User directing it to cease and desist all such violations and directing the Industrial 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 Industrial User.

E) Emergency Suspensions

The Control Authority may immediately suspend an Industrial User's discharge, after any reasonable notice to the Industrial User that is practical under the circumstances, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare

of persons. The Control Authority may also immediately suspend an Industrial User's discharge that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

- 1) Any Industrial User notified of a suspension of its discharge shall immediately stop or eliminate its contribution to the POTW. In the event of an Industrial User's failure to immediately comply voluntarily with the suspension order, the Control Authority may take such steps as deemed necessary, including immediate severance of the sewer or water connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Control Authority may allow the Industrial User to recommence its discharge when the Industrial User has demonstrated to the satisfaction of the Control Authority that the period of endangerment has passed, unless the termination proceedings in Paragraph H) of this Section are initiated against the Industrial User.
- 2) An Industrial 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 Control Authority prior to the date of any show cause or termination hearing under Paragraph C) or F) of this Section.

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

F) Termination of Discharge

In addition to the provisions in Section 33, Paragraph E) of this Ordinance, any Industrial User who violates the following conditions is subject to discharge termination:

- 1) Violation of Industrial User Wastewater Discharge Permit conditions;
- 2) Failure to accurately report the wastewater constituents and characteristics of its discharge;
- 3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- 4) Refusal of reasonable access to the Industrial User's premises for the purpose of inspection, monitoring, or sampling; or
- 5) Violation of Pretreatment Standards.

Such Industrial User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Paragraph C) of this Section why the proposed

action should not be taken. Exercise of this option by the Control Authority shall not be a bar to, or a prerequisite for, taking any other action against the Industrial User.

G) Administrative Fines

- 1) When the Control Authority finds that an Industrial User has violated, or continues to violate, any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, the City may fine such Industrial User in an amount not to exceed \$2,000.00. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.
- 2) Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of ten percent (10%) of the unpaid balance, and interest shall accrue thereafter at a rate of ten percent (10%) per month. A lien against the Industrial User's property will be sought for unpaid charges, fines, and penalties.
- 3) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User.

H) Appeals from Administrative Enforcement Actions

Any Industrial User subject to any Order issued, any administrative fine imposed, or any enforcement action taken by the Control Authority pursuant to its authority in this Ordinance, may appeal the Order, action, or fine by filing a written notice of appeal with the Control Authority. (The Control Authority may provide forms for this purpose.) Such notice of appeal shall be filed within fifteen (15) days of notice of the Order, action, or fine.

12-109: ENVIRONMENTAL APPEALS COMMITTEE

- A) An Environmental Appeals Committee ("Committee") is hereby established, and authorized to hear and decide appeals from any decision, fine, or order issued or any other enforcement action taken by the Control Authority pursuant to this Ordinance. The Committee shall be composed of, but not limited to, the City Manager, the Mayor, and the City Attorney, or any of their designated representatives.
- B) The Committee may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering its powers herein.
- C) Upon the hearing of an appeal from an order issued, enforcement action taken, or fine imposed by the Control Authority, the Committee shall determine if there is a preponderance of evidence to support the Industrial User's appeal of the Control Authority's determination,

fine, action, and/or Order. The decision of the Committee shall be in writing and contain findings of fact. If the Committee determines that there **is** a preponderance of evidence presented by the Industrial User to support the Industrial User's appeal, the Committee shall remand the permit, or permit application, back to the Control Authority for reconsideration. If, however, the Committee determines that there **is not** a preponderance of evidence presented by the Industrial User to support the Industrial User's appeal of the Control Authority's determination, fine, action, and/or order, the Committee shall, in addition to its decision, issue an order:

- 1) requiring discontinuance of the violation or condition;
- 2) requiring compliance with any requirement to correct or prevent any condition or violation;
- 3) suspending or revoking any Industrial User Wastewater Discharge Permit issued under this Ordinance; and/or
- 4) imposing the proper fine.

In any decision issued by the Committee, the order shall specify the time in which the compliance with the order must be taken. A copy of the order shall be delivered to the appellant or person to whom the order is directed in person or sent to him/her by registered or certified mail (return receipt requested) or via e-mail communication.

D) Upon the hearing of an appeal from a permit issuance, modification, or denial by the Control Authority, the Committee shall determine if there is evidence to support the Control Authority's permitting decision. The decision of the Committee shall be in writing. If the Committee determines that there is a preponderance of evidence to support the permitting decision of the Control Authority, the Committee shall affirm its decision. If the Committee determines that there is not adequate evidence to support the permitting decision of the Control Authority, the Committee shall remand the permit, or permit application, back to the Control Authority for reconsideration. A copy of the decision of the Committee upon the permitting appeal shall be delivered to the appellant in person or sent to him/her by registered or certified mail or e-mail communication. An Environmental Appeals Committee decision not to reconsider a final permit, or denial of a permit, shall be considered a final administrative action for purposes of judicial review.

#### 12-110: NOTICE OF SIGNIFICANT NONCOMPLIANCE

A) The Control Authority shall publish annually a list of Industrial Users in significant noncompliance with applicable Pretreatment Standards or other Pretreatment Requirements during the previous twelve (12) months. The notification shall also summarize any enforcement actions taken against the IU during the same period. Said list shall be published

in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the City.

B) For purpose of this section; an Industrial User is in significant noncompliance if its violation(s) meets one or more of the following criteria:

- 1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 1;
- 2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 1 multiplied by the applicable TRC (TRC = 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 Section 1 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the Control Authority 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 human health, welfare or the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;
- 5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- 6) Failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- 7) Failure to accurately report noncompliance; or
- 8) Any other violation or group of violations, which may include a violation of Best Management Practices, which the Control Authority determines will adversely affect the operation or implementation of the City's Ordinance.

#### 12-111: JUDICIAL ENFORCEMENT REMEDIES

All Industrial Users regulated under this Ordinance are subject to any and all enforcement actions and remedies described herein.

A) Civil Remedies

- 1) Whenever it appears that an Industrial User has violated, or continues to violate, any provision of this Ordinance that relates to the discharge of a pollutant into the POTW, the Control Authority may petition the State district court or the county court at law, through their respective legal counsel, for either the injunctive relief specified in Section 36, paragraph A) 2) or the civil penalties specified in Section 36, paragraph A) 3) below, or both the specified injunctive relief and civil penalties.
- 2) The Control Authority may obtain against the violating Industrial User a temporary or permanent injunction, as appropriate, that:
  - a) prohibits any conduct that violates any provision of this Ordinance that relates to the discharge of a pollutant into the POTW; or
  - b) compels the specific performance of any action that is necessary for compliance with any provision of this Ordinance that relates to the discharge of a pollutant into the POTW.
- 2) The City may recover a civil penalty of up to but not more than \$2,000.00 per day for each violation of any provision of this Ordinance.

B) Criminal Penalties

- 1) Any person who has violated any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or any order issued hereunder, or any other pretreatment standard or requirement shall be strictly liable for such violation and shall, upon conviction, be subject to a fine of up to but not more than \$2,000.00 per violation, per day or portion of a day, and each and every day such violation shall continue shall be deemed to constitute a separate offense.
- 2) Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Ordinance, an Industrial User Wastewater Discharge Permit, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be subject to a fine of up to but not more than \$2,000.00 per violation, per day or portion of a day, and each and every day such violation shall continue shall be deemed to constitute a separate offense.
- 3) In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm

caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

C) Civil Suit Under the Texas Water Code

Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of the Texas Water Code, or any rule, permit, or order of the Texas Commission on Environmental Quality, has occurred or is occurring within the jurisdiction of the City of Terrell, exclusive of its extraterritorial jurisdiction, the City, in the same manner as the TCEQ, may have a suit instituted in a state district court through its City Attorney for the injunctive relief or civil penalties or both authorized in Subsection (a) of Section 26.123 of the Texas Water Code, against the person who committed or is committing or threatening to commit the violation. This power is exercised pursuant to Section 26.124 of the Texas Water Code. In any suit brought by the City under this Section 36, Paragraph C), the TCEQ is a necessary and indispensable party.

D) Remedies Nonexclusive

The remedies provided for in this Ordinance are not exclusive of any other remedies that the Control Authority may have under state or federal law or that the City may have in its ordinances. The Control Authority may take any, all, or any combination of these actions against a violator. The Control Authority is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

## 12-112: SUPPLEMENTAL ENFORCEMENT ACTION

- A) Performance Bonds. The Control Authority may decline to issue or reissue an Industrial User Wastewater Discharge Permit to any Industrial User who has failed to comply with any provision of this Ordinance, a previous Industrial User Wastewater Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement unless such Industrial 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.
- B) Water Supply Severance. Whenever an Industrial User has violated or continues to violate any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or Order issued hereunder, or any other Pretreatment Standard or Requirement, water service to the Industrial User may be severed. Service will only recommence, at the Industrial User's expense, after it has satisfactorily demonstrated its ability to comply.
- C) Wastewater Severance. Whenever an Industrial User has violated or continues to violate any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or Order issued hereunder, or any other Pretreatment Standard or Requirement, wastewater service to the Industrial User may be severed. Service will only recommence, at the Industrial User's expense, after it has satisfactorily demonstrated its ability to comply.

- D) Public Nuisances. A violation of any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, is hereby declared a public nuisance and shall be corrected or abated as directed by the Control Authority. In addition, any person(s) creating a public nuisance shall be subject to the provisions of the applicable City Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.
- E) Conduct. In addition to prohibiting certain conduct by employees, it is the intent of this Ordinance to hold a corporation or association legally responsible for prohibited conduct performed by an agent acting on behalf of a corporation or association and within the scope of his/her office or employment.
- F) Responsibility for Violation. Any Industrial User that, in violating any Pretreatment Standard or Requirement, including any provision of this Ordinance, causes pass through or interference, or otherwise causes the Control Authority to violate the terms of the applicable TPDES permit issued for the operation of the POTW, and as a consequence to incur any civil or criminal penalty, shall be liable to the Control Authority for the amount of any such civil or criminal penalty, as well as any costs of compliance with any order issued by EPA, TCEQ, or any State or Federal Court and, additionally, any costs and/or attorneys' fees incurred by the Control Authority in defense or compliance with such judicial or administrative action.
- G) Fees for Violation. Any Industrial User that violates any Pretreatment Standard or Requirement, including any provision of this Ordinance, shall be liable to the Control Authority for any expense, loss, cleanup cost, damages, attorneys' fees and/or waste disposal cost incurred by the Control Authority because of such violations. Additionally, an administrative fee of up to one-half (1/2) of assessed clean-up costs may be levied by the City against the responsible violator.

#### PROVISIONS

All provisions of any existing Ordinance of the City of Terrell in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of any existing Ordinance of the City, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

#### SEVERABILITY

It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

#### EFFECTIVE DATE

ITEM 10.1.

This Ordinance shall become effective immediately upon its adoption and publication as required by law, the City Charter, and approval is received from the TCEQ.

**PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2021, at a meeting of the Terrell City Council.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2021, at a meeting of the Terrell City Council.

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E. RICK CARMONA, Mayor

ATTEST:

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Dawn Steil, City Secretary

APPROVED AS TO FORM:

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Mary Gayle Ramsey, City Attorney

Regular City Council  
**AGENDA ITEM REPORT**



**To:**

**Subject:** Discuss Award for Consultant Services for 2021 CDBG Grant Application and Administration Services

**Meeting:** Regular City Council - Mar 16 2021

**Department:** Engineering

**Staff Contact:** Mike Mikeska, Assistant City Engineer

**BACKGROUND INFORMATION:**

Staff is recommending award of consultant services to Public Management, Inc. for application and administrative services related to the 2021 Community Development Block Grant (CDBG) sponsored by the Texas Department of Agriculture (TDA). The project application is due by May 3, 2021. There is no cost to the City for services related to submission of the grant application.

Email solicitations were sent to five (5) firms for direct solicitation, in accordance with the requirements of the TDA as well as posting a notice in the Terrell Tribune. The proposal received from Public Management, Inc. was only one submitted for consideration.

A recommendation letter and a copy of the proposed contract is included for review. Financial implications will only occur if the grant is awarded and there are costs incurred for project administration.

**ATTACHMENTS:**

[award recom signed](#)  
[proposed contract](#)



Rick Carmona  
Mayor

March 5, 2021

Grady Simpson  
Mayor Pro Tem  
District 2

Tim Royse  
Deputy Mayor Pro Tem  
District 5

Mayrani Velazquez  
Council Member  
District 3

Charles Whitaker  
Council Member  
District 4

Mike Sims  
City Manager

Attention: Mayor and Council

Reference: Recommended Award for Administration Services for the Texas Community Development Block Grant (TxCDBG) 2021-2022 CD Fund

City staff solicited proposals for Administrative Services for the subject Community Development Block Grant and received one proposal. Staff recommends award to Public Management, Inc. (PMI) based on their extensive experience and previous successful projects with the City of Terrell.

Staff directly solicited proposals to five (5) firms as required by the rules regarding grant solicitation. Additionally, the RFP was posted in the Terrell Tribune. Therefore, since all requirements for solicitation were met, we recommend awarding the contract to PMI.

The proposal outlines there will be no cost for assisting with the submission of the grant. The City will incur costs for administration only if the grant is awarded. The grant application is due by May 3, 2021 and the maximum award amount if \$350,000.00.

Mike Mikeska  
Assistant City Engineer

This contract ("Contract") is made and entered effective \_\_\_\_\_, 2021 by and between **PUBLIC MANAGEMENT, INC.**, a Texas corporation, of Houston, Harris County, Texas ("Consultant") and the **CITY OF TERRELL**, ("Client") for the purpose of retaining Consultant to render Application and Administration Services to the Client for Texas Community Development Block Grant Program (TxCDBG) – administered by the Texas Department of Agriculture.

Client and Consultant agree that Consultant will provide services to Client on the terms and conditions outlined in this Contract.

I.

Consultant will provide Client with administrative services as follows:

**PRE-FUNDING SERVICES:**

**Application Preparation:** The Team will prepare the application as directed by the Client to apply for available funding sources adherent to the state and federal agencies guidelines. The Team will coordinate all activities and other service providers with regard to the preparation of the application, including, but not limited to:

- Review of proposed project for program compliance and will work with Client staff to provide an overview;
- Advise on important deadlines and procedures;
- Schedule project meetings with client staff to evaluate proposed project and timeframes;
- Prepare project description in conjunction with staff and project engineer;
- Evaluate project objective and develop timelines/milestones;
- Prepare project maps in ArcGIS and PDF format;
- Prepare necessary preliminary Environmental Compliance documentation;
- Conduct public hearings (as applicable) for application submission and attend Client meeting to address application development;
- Package complete application with all pertinent supplemental documentation for client to review prior to submission;
- Identify and document beneficiaries;
- Advise client on funding availability, anticipated scoring, selection and award process.

**POST FUNDING SERVICES**

**GENERAL ADMINISTRATION SERVICES**

**Administrative Duties:** The Team will coordinate, as necessary, between Client and any other appropriate service providers (i.e. Engineer, Environmental, etc.), contractor, subcontract and/or administrative agency to effectuate the services requested.

- Oversee the project and achieve all of the project goals within the constraints given by the funding agency;
- Develop and implement project phases to plan, budget, oversee, and document all aspects of the specific project;
- Coordinate all activities related to the project's successful completion with all other professionals and organizations associated with this project.

**Recordkeeping:** The Team will assist the Client with maintaining all records generated by the program. This includes all records required by the funding agency and the Client (i.e. program management records).

- Complete filing system will be developed and maintained at Client's office;
- Both physical and electronic form of records will be developed and accessible;
- Records will be updated as necessary to ensure compliance with funding source and administrative agency;
- Records will be retained for the appropriate period of time as dictated by the funding agency, with electronic records available for perpetuity.

**Financial Management:** The Team will assist the Client in keeping the general journal, general ledger, cash receipts journal and all other necessary financial documents, as well as monitor the Client's financial system.

- Utilize and assist with the agency's system of record to complete milestones, submit documentation, reports, draws, change requests, etc.;
- Request fund expenditure in-line with project milestones;
- Develop a detailed Contract Ledger;
- Establish a filing system that accurately and completely reflects the financial expenditures of the program and project(s).
- Keep track of disbursement of funds and ensure that the vendors are paid within the required timeframe set out by the funding agency.

**Construction Management:** The Team will coordinate and supervise the project to ensure designated activities are realizing the intended outcomes as stated in contract documents. We will oversee specialized contractors and other personnel and allocate necessary resources.

- Assist the Client in submitting/setting up project applications in the Agency's system of record;
- Coordinate the development, completion, and execution of contract documents to ensure supporting documentation is in order;
- Conduct regular on-site visitations and assessments;
- Development and maintenance of construction management status log;
- Recommendation and development of scope realignments as prescribed by the project's complexities.

#### CONTRACT ADMINISTRATION SERVICES

**Administrative Duties:** The Team will work with the Client's staff to provide the necessary administrative and planning services to see the project to completion. The Team will meet with officials on a regular basis to review progress on the objectives of the project and then take actions to see that those objectives are met.

- Act as the Client's liaison to the funding agency in all matters concerning the project;
- Coordinate communication via email, conference call, facsimile, and direct meetings to ensure the project is on schedule and all parties are properly informed;
- Prepare and submit any necessary reports required by the funding agency during the course of the project (i.e. Monthly/Quarterly Progress Reports, Project Monitoring Reports, Project Completion Reports, etc.);

- Provide Client staff specific instructions on the necessary administrative procedures that will assure a successful project;
- Establish and maintain record keeping systems;
- Assist with resolving monitoring and audit findings.

Real Property Acquisition (as applicable): The Team will assist the Client in the preliminary acquisition assessment as well as the development and/or coordination of acquisition of real property (real property in the context of acquisition refers to permanent interest in real property as well as certain less-than-full-fee interests in real property).

- Adherence to the Uniform Act (URA) which guides the acquisition of real property that may be necessary to the needs of the project;
- *If it is determined that property needs to be acquired, Public Management, Inc. will perform the following services according to the URA for an additional fee.*
- Development and maintenance of appropriate file materials to ensure compliance with federal, state, and program requirements;
- Administrative coordination of parcels, values, correspondence;
- Coordinate property appraisals and determine just compensation;
- Ensure easement/right of way boundaries are in line with proposed project and survey;
- Completion and/or file closure of acquired property.

Environmental Services: The Team will prepare all documents and correspondence for environmental review and clearance as well as maintain close coordination with local officials, project engineer and other members of the project team to assure appropriate level of environmental review is performed. This project element will abide by the National Environmental Policy Act (NEPA) or any other Federal, State or local regulation as applicable.

- Review each project description to ascertain and/or verify the level of environmental review required: Exempt, Categorical Exclusion not Subject to 58.5, Categorical Exclusion Subject to 58.5, Environmental Assessment, and Environmental Impact Statements;
- Prepare and maintain a written environmental review record;
- Consult and coordinate with oversight/regulatory agencies to facilitate environmental clearance;
- Conduct site-visits as necessary to ensure environmental compliance;
- Prepare all responses to comments received during comment phase of the environmental review, including State/Federal Agency requiring further studies and/or comments from public or private entities during public comment period;
- Provide documentation of clearance for Parties Known to be Interested as required by 24 CFR 58.43;
- Advise and complete environmental re-evaluations per 24 CFR 58.47 when evidence of further clearance or assessment is required;
- Assist in compliance with flood plain and wetlands management review guidelines;
- *Not included in this service are archeological, engineering, or other special service costs mandated by environmental review record compliance agencies.*

Civil Rights Requirements: The Team will structure the program so that all procurement procedures, contracts, and polices will be in accordance with state and federal regulations associated thereto. Ensure that the contractors make affirmative efforts to employ Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises and Women Business Enterprises.

- Set up Civil Rights & Citizen Participation File;
- Designate a Civil Rights Officer (CRO);
- Adopt policies and grievance procedures regarding Citizen Participation;
- Adopt Policies and Pass Resolution/Proclamation/Ordinances regarding Civil Rights;
- Publish Citizen Participation and Civil Rights Notices;
- Place necessary documentation in Bid Packets for Contractors;
- Include required clauses in Construction Contracts between Grant Recipient and Contractor;
- Take action to Affirmatively Further Fair Housing;
- The Team will be diligent and consistent in implementing the project's civil rights responsibilities and will undertake further action and reporting requirements.

**Procurement/Bidding/Contracting:** Procurement is the process through which an entity obtains goods and services from vendors. The Team will assist the Client in following appropriate procurement procedures to obtain professional and construction services necessary to complete the project.

- Provide assistance to ensure compliance with Local Government Code Chapter 252 as applicable to goods and services;
- Provide assistance to ensure compliance with 2 CFR 200.320 (Methods of Procurement to be Followed).

**Labor Standards Monitoring:** The Team will ensure that all labor standards laws and regulations are observed during the course of the project. The Team will structure the program so that all procurement procedures and contracts will meet equal opportunity requirements. The Team will also ensure that the contractors make affirmative efforts to employ minority persons and minority subcontractors. Ensure compliance with laws regarding Labor Standards, which include:

- Davis-Bacon Act (40 USC Chapter 31, Subchapter IV);
- Contract Work Hours & Safety Standards Act (CWHSSA);
- Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 3145);
- Fair Labor Standards Act.

**Force Account (as applicable):** The Team will assist the Client in preparing force account documentation for the project, if necessary, and will consolidate this information for suitable presentation to funding agency. *Public Management, Inc. may consider an additional fee for these services depending upon the scope of Force Account activities.*

- Develop and maintain documentation of all associated costs;
- Using appropriate recordkeeping forms required by funding agency;
- Submit documentation upon completion of necessary milestones.

**Contract Close-out Assistance:** The Team will prepare any necessary reports required by the funding agency to close out the project. The Team will work with the Client in preparing the annual audits and necessary actions to ensure the project reaches the "Administratively Closed" status.

- Ensure projects outcomes are in line with contract documents and funding agency's goals and objectives;
- Ensure project beneficiaries are appropriately documented and reported;
- Develop, complete, and submit project completion report(s) and any other necessary administrative completion documents.

It is specifically agreed and understood that Consultant will not provide either personally or by contract any professional or technical services requiring a license by the State of Texas in any phase or aspect of the foregoing. Rather, Consultant will advise Client of the need of such services in furtherance of the planned objectives of Client's Program.

Client acknowledges that Consultant is providing Administrative Services only to Client and that Consultant is not responsible for any procurement activities for or on behalf of the Client. That is, Client, not Consultant, will advertise for and procure the services of any third party required to fulfill Program requirements. By way of example only, Client, not Consultant, must timely and properly post any advertisements necessary to fulfill Program requirements and Client, not Consultant, will enter into any required contracts with third parties necessary to fulfill Program requirements.

Client Initials \_\_\_\_\_

Consultant Initials \_\_\_\_\_

**II.**

Consultant hereby agrees that in the implementation of this Contract, Consultant will comply with the terms and conditions of **Attachment III**, which document is attached hereto and incorporated herein for all purposes, as if set out herein verbatim.

**III.**

Client is awarding this contract in accordance with the State of Texas Government Code 2254, Professional and Consulting Services.

**IV.**

It is agreed by the parties hereto that Consultant will, in the discharge of services herein, be considered as an Independent Contractor as that term is used and understood under the laws of the State of Texas and further for the purposes of governing Consultant's fees under the Procurement Standards of Title 2 CFR Part 200.

**V.**

For work associated to the Texas Community Development Block Grant Program (TxCDBG) and in consideration of the foregoing, Client agrees to pay Consultant a fee not to exceed **ZERO DOLLARS (\$0.00)** for **Application Preparation Services**.

For work associated to Texas Community Development Block Grant Program (TxCDBG) and in consideration of the foregoing, Client agrees to pay Consultant a fee not to exceed the maximum project costs on the table below. *The fee will be based on final grant award amount. Consultant reserves the right to renegotiate fees based on the type of project being pursued:*

<i>TxCDBG Grant Amount</i>	<i>Percentage Factor</i>	<i>Fee Not to Exceed</i>
\$0 - \$299,000	12.00%	\$35,880.00
\$300,000 - \$500,000	10.00%	\$50,000.00
\$501,000 - 750,000	9.50%	\$71,250.00
\$751,000 - \$1,000,000	8.50%	\$85,000.00
\$1,000,001 +	6.00%	<i>Based on Final Award Amount</i>

**VI.**

It is agreed that upon determination of total funding request amount Consultant and Client will execute the **Work Authorization (Attachment I)** that will detail final contract amount and cost for services. It is also agreed that payments to such Consultant shall be subject to adjustment where monitoring reviews or audits by the agency indicate that personal services were compensated at greater than reasonable rates.

Services that fall outside the regular scope and/or are not part of the proposed scope will be billed according to the hourly rate and fee schedule defined in **Corporate Hourly Rate and Fee Schedule (Attachment II)**. *Prior to Consultant performing any services which are not part of the proposed scope, Consultant shall submit to Client, per paragraph of this contract, a projected hourly schedule and projected total fee for approval.*

**VII.**

Payment of the fees associated with ("Part V. and VI.") - Payment Schedule of this Agreement – shall be contingent upon funding award. In the event that grant funds are not awarded to the Client this agreement shall be terminated by the Client.

**VIII.**

For purposes of this Contract, the Mayor or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for Consultant. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.

**IX.**

This Contract shall extend and be in full force until the Program has been fully closed out by the agency. Notwithstanding the foregoing, this Contract may be terminated by Consultant, with or without cause, on forty-five (45) days' written notice to Client.

**X.**

**Termination for Cause by Client:** If Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if Consultant violates any of the covenants, conditions, contracts, or stipulations of this Contract, Client shall have the right to terminate this Contract by giving written notice to Consultant of such termination and specifying the effective date thereof, which shall be at least five (5) days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Consultant pursuant to this Contract shall, at the option of Client, be turned over to Client and become the property of Client. In the event of termination for cause, Consultant shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

**Termination for Convenience by Client:** Client may at any time and for any reason terminate Consultant's services and work at Client's convenience upon providing written notice to the Consultant specifying the extent of termination and the effective date. Upon receipt of such notice, Consultant shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement. Upon such termination, Consultant shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Consultant as are permitted by the prime contract and approved by Client; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Consultant prior to the date of the termination of this Agreement. Consultant shall not be entitled to any claim or claim of lien against Client for any additional compensation or damages in the event of such termination and payment.

**Resolution of Program Non-Compliance and Disallowed Costs:** In the event of any dispute, claim, question, or disagreement arising from or relating to this Contract, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or Program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within thirty (30) days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within thirty (30) days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Contract and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within sixty (60) days of the initiation of that procedure, either party may proceed to file suit.

**XI.**

Client, the agency, the U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of Consultant which are directly pertinent to this Program, for the purpose of making audit, examination, excerpts, and transcriptions, and to close

out the Client's contract. Consultant agrees hereby to maintain all records made in connection with the Program for a period of three (3) years after Client makes final payment and all other pending matters are closed. All subcontracts of Consultant shall contain a provision that Client, the agency, and the Texas State Auditor's Office, or any successor agency or representative, shall have access to all books, documents, papers and records relating to subcontractor's contract with Consultant for the administration, construction, engineering or implementation of the Program between the agency and Client.

XII.

If, by reason of force majeure, either party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term "force majeure" as employed herein shall mean acts of God, acts of public enemy, orders of any governmental entity of the United States or of the State of Texas, or any civil or military authority, and any other cause not reasonably within the control of the party claiming such inability.

XIII.

This document embodies the entire Contract between Consultant and Client. Client may, from time to time, request changes in the services Consultant will perform under this Contract. Such changes, including any increase or decrease in the amount of Consultant's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Contract.

XIV.

If a portion of this Contract is illegal or is declared illegal, the validity of the remainder and balance of the Contract will not be affected thereby.

XV.

Any provision of this Contract which imposes upon Consultant or Client an obligation after termination or expiration of this Contract will survive termination or expiration of this Contract and be binding on Consultant or Client.

XVI.

No waiver of any provision of this Contract will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

XVII.

This Contract will be governed by and construed in accordance with the laws of the State of Texas.

XVIII.

Any dispute between Consultant and Client related to this contract which is not resolved through informal discussion will be submitted to a mutually agreeable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

XIX.

The party who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney fees and all costs of such proceeding.

XX.

Consultant and Client, each after consultation with an attorney of its own selection (which counsel was not directly or indirectly identified, suggested, or selected by the other party), both voluntarily waive a trial by jury of any issue arising in an action or proceeding between the parties or their successors, under or connected with this contract or its provisions. Consultant and Client acknowledge to each other that Consultant and Client are not in significantly disparate bargaining positions.



PATRICK K. WILTSHERE  
President/CEO

*Client*

\_\_\_\_\_  
Chief Elected Official

ATTEST:



Contract

**Attachment I**  
**Work Authorization**

For work associated to \_\_\_\_\_, and in consideration of the foregoing, Client agrees to pay Consultant a fee not to exceed:

\_\_\_\_\_ (\$ \_\_\_\_\_)

The fees are payable upon receipt of invoice from Consultant in accordance with the following schedule for Administrative Services.

<b>ADMINISTRATIVE SERVICES</b>	
Preliminary Administrative Requirements	\$ _____
Environmental Review	\$ _____
Start of Construction	\$ _____
Construction Completion	\$ _____
Closeout Documents	\$ _____
<b>TOTAL FEE</b>	\$ _____

It is also agreed that payments to such Consultant shall be subject to adjustment where monitoring reviews or audits by the client indicate that personal services were compensated at greater than reasonable rates.



Client

PATRICK K. WILTSHERE  
President/CEO

Chief Elected Official

ATTEST:

**Attachment II**  
**Corporate Hourly Rate & Fee Schedule**

**PUBLIC MANAGEMENT, INC.**  
**2021 Hourly Rate**

<b>Principal Consultant</b>	<b>\$200.00/HR</b>
<b>Project Manager</b>	<b>\$185.00/HR</b>
<b>Planner</b>	<b>\$185.00/HR</b>
<b>Assistant Project Manager</b>	<b>\$150.00/HR</b>
<b>GIS Technician</b>	<b>\$140.00/HR</b>
<b>Executive Assistant</b>	<b>\$110.00/HR</b>

*Hourly rates for personnel not listed will be billed at direct payroll cost*

**REIMBURSABLE EXPENSES**

- Travel (vehicle miles traveled) at allowable IRS rate per mile, or at actual out-of-pocket cost.
- Actual cost of subsistence and lodging.
- Actual cost of long-distance telephone calls, expenses, charges, delivery charges, and postage.
- Actual invoiced cost of materials required for the job and used in drafting and allied activities, including printing and reproduction.

This rate schedule will be applicable through December 31, 2021. In January, 2022, if increases are necessary due to increases in wages or other salary related costs, the rates shown will be adjusted accordingly.

**ATTACHMENT III**  
**TERMS AND CONDITIONS**

## I.

**Equal Employment Opportunity**

During the performance of this Contract, Consultant agrees as follows:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employees' essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity" and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for

purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## II.

**Civil Rights Act of 1964**

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

## III.

**Section 109 of the Housing and Community Development Act of 1974**

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

## IV.

**Section 504 Rehabilitation Act of 1973, as Amended**

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including

discrimination in employment, under any program or activity receiving federal financial assistance.

V.

**Age Discrimination Act of 1975**

The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

VI.

**"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities (Limited to contracts greater than \$100,000)**

a) The work to be performed under this contract is subject to the requirements of section 3 of the Federal Emergency Management Administration Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by FEMA assistance or FEMA-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of FEMA assistance for housing.

b) The parties to this contract agree to comply with FEMA's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c) The Contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an

e) applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

f) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

g) Noncompliance with FEMA's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future FEMA assisted contracts.

h) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

VII.

**Section 503 of the Rehabilitation Act (the "Act") - Handicapped Affirmative Action for Handicapped Workers**

a) Consultant will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Consultant agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship.

b) Consultant agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

c) In the event of Consultant's non-compliance with requirements of this clause, actions for non-compliance may be taken in accordance with rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

d) Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

e) Consultant will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

f) Consultant will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

## VIII.

## Interest of Members of Client

No member of the governing body of Client and no other officer, employee, or agent of Client who exercises any functions or responsibilities in connection with the planning and carrying out of the Program, shall have any personal financial interest, direct or indirect, in this Contract and Consultant shall take reasonably appropriate steps to assure compliance.

## IX.

## Interest of Other Local Public Officials

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the Program, shall have any personal financial interest, direct or indirect, in this Contract; and Consultant shall take appropriate steps to assure compliance.

## X.

## Interest of Consultant and Employees

Consultant covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Contract, no person having any such interest shall be employed.

## XI.

## Debarment and Suspension (Executive Orders 12549 and 12689)

The Consultant certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Consultant. The

Consultant understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

## XII.

## Copyrights and Rights in Data

FEMA has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. FEMA requirements, Article 45 of the General Conditions to the Contract for Construction (form FEMA-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfill the requirements of the construction contract.

## XIII.

## Clean Air and Water.

(Applicable to contracts in excess of \$100,000)

Due to 24 CFR 85.36(l)(12) and federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and sub grants of amounts in excess of \$100,000.

## XIV.

## Energy Efficiency

Pursuant to Federal regulations (24 C.F.R 85.36(l)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

## XV.

## Retention and Inspection of Records

Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, FEMA, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other sub grantees make final payments and all other pending matters are closed.

Regular City Council  
**AGENDA ITEM REPORT**



**To:**  
**Subject:** Discuss Resolution 1020 Authorizing Application for a Community Development Grant Project  
**Meeting:** Regular City Council - Mar 16 2021  
**Department:** Engineering  
**Staff Contact:** Mike Mikeska, Assistant City Engineer

**BACKGROUND INFORMATION:**

The Texas Department of Agriculture has funding for a Community Development Grant Project in the amount of \$350,000. The grant application is due by May 3, 2021.

The included resolution is required prior to submission of the grant application. If awarded, the City will need to fund the net difference between the grant amount and the actual project cost. The current plan is to cover it through a short term borrow. There is no cost related to this item to submit the application.

**ATTACHMENTS:**

[Resolution No. 1020](#)

RESOLUTION NO. 1020

**A RESOLUTION OF THE CITY COUNCIL OF TERRELL, TEXAS, AUTHORIZING THE SUBMISSION OF A TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM APPLICATION TO THE TEXAS DEPARTMENT OF AGRICULTURE FOR THE COMMUNITY DEVELOPMENT FUND; AND AUTHORIZING THE MAYOR AND THE CITY MANAGER TO ACT AS THE CITY'S EXECUTIVE OFFICERS AND AUTHORIZED REPRESENTATIVES IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.**

**WHEREAS**, the City Council of Terrell desires to develop a viable community, including decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-to- moderate income; and

**WHEREAS**, certain conditions exist which represent a threat to the public health and safety; and

**WHEREAS**, it is necessary and in the best interests of the City of Terrell to apply for funding under the Texas Community Development Block Grant Program;

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

1. That a Texas Community Development Block Grant Program application for the Community Development Fund is hereby authorized to be filed on behalf of the City with the Texas Department of Agriculture.
2. That the City's application be placed in competition for funding under the Community Development Fund.
3. That the application be for \$350,000 of grant funds for water improvements in the City.
4. That the City Council directs and designates the following to act in all matters in connection with this application and the City's participation in the Texas Community Development Block Grant Program:
  - The Mayor and City Manager shall serve as the City's Chief Executive Officers and Authorized Representatives to execute this application and any subsequent contractual documents;
  - The Mayor and City Manager are authorized to execute environmental review documents between the Texas Department of Agriculture and the City; and
  - If this application is funded, the Mayor, Mayor Pro-Tem, City Manager, and City Secretary are authorized to execute the Request for Payment Form documents and/or other forms required for requesting funds to reimburse project costs.
5. That all funds will be used in accordance with all applicable federal, state, local and programmatic requirements including but not limited to procurement, environmental review, labor standards, real property acquisition, and civil rights requirements.

ITEM 10.3.

6. That it further be stated that the City of Terrell is committing \$556,510 from its Utility Fund as contribution toward this project.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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E. Rick Carmona, Mayor

Attest:

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City Secretary  
City of Terrell, Texas

Approved as to Form:

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Mary Gayle Ramsey, City Attorney