
405 Municipal Drive, Kennedale, Texas 76060

AGENDA
KENNEDALE CITY COUNCIL
REGULAR MEETING - December 8, 2011
CITY COUNCIL CHAMBERS

WORK SESSION - 5:30 PM
REGULAR SESSION - 7:00 PM

I. CALL TO ORDER

II. WORK SESSION

***NOTE: Pursuant to Section 551.071, Texas Government Code, the City Council reserves the right to adjourn into Executive Session at any time during the work session or the regular session to discuss posted executive session items or to seek legal advice from the City Attorney on any item posted on the agenda.**

- A. UTA Project Presentation: Bird Sanctuary
- B. UTA Project Presentation: Board and Commission Handbook
- C. UTA Project Presentation: Economic Development Incentives
- D. UNT Project Presentation: Kennedale Parkway Cleanup Options

III. REGULAR SESSION

IV. ROLL CALL

V. INVOCATION

VI. UNITED STATES PLEDGE

VII. TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State under God; One and Indivisible."

VIII. VISITOR/CITIZENS FORUM

At this time, any person with business before the Council not scheduled on the agenda may speak to the Council. No formal action can be taken on these items at this meeting.

IX. REPORTS/ANNOUNCEMENTS

In addition to any specific matters listed below, the city council may receive a report about items of community interest, including but not limited to recognition of individual officials, citizens or departments, information regarding holiday schedules, upcoming or attended events, etc.

X. CONSENT ITEMS

All matters listed under consent agenda have been previously discussed, require little or no deliberation, or are considered to be routine by the council. If discussion is desired, then an item will be removed from the consent agenda and considered separately.

A. Consider approval of meeting minutes from regular meeting held on November 17, 2011.

B. Consider approval of a professional services agreement with Modern Geosciences in the amount of \$99,250 to conduct air monitoring at gas well padsites in the City of Kennedale over a one-year period.

XI. REGULAR ITEMS

A. Discuss and consider **deferring until February 9th, 2012** action on Case PZ 11-10, a request for a change in zoning from "C-0" Retail Commercial to "C-1" Restricted Commercial for approximately 1.014 acres located at 4850 US Hwy 287, Kennedale, Tarrant County, Texas, more particularly described as Lot 2 Block 1R Southwest Crossing Addition. The rezoning is requested by JP Morgan Chase.

B. Discuss and consider an AN ORDINANCE OF THE CITY OF KENNEDALE, AMENDING CHAPTER 23, ARTICLE III OF THE KENNEDALE CITY CODE (1992), REQUIRING PERMITS TO DISCHARGE INDUSTRIAL WASTE INTO THE KENNEDALE SANITARY SEWER SYSTEM; AUTHORIZING THE DIRECTOR OF THE PUBLIC WORKS TO PROMULGATE REGULATIONS PERTAINING TO SUCH PERMITTING, PROVIDING FOR DEFINITIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; REPEALING ORDINANCE NO. 308 (2005); PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

XII. EXECUTIVE SESSION

A. The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda and legal issues regarding regulation of sexually oriented businesses, litigation, settlement offers, and/or claims regarding the following matters:

1. H & A Land Corporation, et al. v. City of Kennedale - Cause No. 402-CV-0458-Y (Dreamer's and Showtime)

B. The City Council will meet in closed session pursuant to Section 551.072 of the Texas Government Code to deliberate the purchase, exchange, lease, or value of real property for the following:

1. 945 Little School Road

XIII. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

XIV. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Kennedale will provide for reasonable accommodations for persons attending City Council meetings. This building is wheelchair accessible, and parking spaces for disabled citizens are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meetings. Please contact Amethyst Cirno, City Secretary, at 817.985.2104 or (TDD) 1.800.735.2989

CERTIFICATION

I certify that a copy of the December 8, 2011, agenda was posted on the City Hall bulletin board next to the main entrance of the City Hall building, 405 Municipal Drive, of the City of Kennedale, Texas, in a place convenient and readily accessible to the general public at all times and said Agenda was posted on the following date and time: by 5:00 p.m., at least 72 hours preceding the schedule time of said meeting, in accordance with Chapter 551 of the Texas Government Code.

A handwritten signature in black ink, reading "Amethyst G. Cirno", written over a horizontal line.

Amethyst G. Cirno, City Secretary

Date: December 8, 2011

Agenda Item No: WORK SESSION - A.

I. Subject:

UTA Project Presentation: Bird Sanctuary

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

The original project proposal was as follows:

The City of Kennedale has been selected to participate in the urban Conservation Treaty for Migratory Birds, a program sponsored by the U.S. Fish and Wildlife Service. Kennedale's participation will include creating educational handouts, a youth art program, bird count events, and a local pesticide reduction agreement. In order to deliver this program, Kennedale is seeking input on how to best implement a communications strategy that will ensure the success of this project. The UBT Capstone team will research and make recommendations on a communications plan that will address:

- Building partnerships with local property owners for the bird hazard reduction program
- Disseminating educational information about native and migratory birds
- How to improve outreach and community interest in the citizen science program
- Prepare a draft agreement between city and property owners for the bird hazard reduction program (pesticides)

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

Date: December 8, 2011

Agenda Item No: WORK SESSION - B.

I. Subject:

UTA Project Presentation: Board and Commission Handbook

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

The following is from the students' project charter:

"The city of Kennedale has 10 boards and commissions appointed by City Council to advise them on various items related to the community. These boards all operate and function differently based on the adopting ordinance and therefore lacks consistency in procedures, structure and expectations. Since the inception of these boards the city of Kennedale has not had a handbook of this type to provide the necessary guidance to new board members, chairs and vice chairs, and staff liaisons.

The Kennedale Boards & Commissions Handbook project will create a research-based document that provides clear administrative procedure guidance, board member expectations, purpose and function of the board and the importance of understanding what it means to be an advisory board to the City Council and the board's position as a representative of the community to be used by all Boards and Commissions."

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: December 8, 2011

Agenda Item No: WORK SESSION - C.

I. Subject:

UTA Project Presentation: Economic Development Incentives

II. Originated by:

Bob Hart, City Manager

III. Summary:

This group will be presenting information related to potential economic development incentives that may work for Kennedale.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

Date: December 8, 2011

Agenda Item No: WORK SESSION - D.

I. Subject:

UNT Project Presentation: Kennedale Parkway Cleanup Options

II. Originated by:

Bob Hart, City Manager

III. Summary:

This group will be presenting information on potential methods related to the cleanup of Kennedale Parkway.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: December 8, 2011

Agenda Item No: CONSENT ITEMS - A.

I. Subject:

Consider approval of meeting minutes from regular meeting held on November 17, 2011.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Please see attached minutes.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1. minutes	11.17.2011_MINUTES_City Council Regular Meeting.doc
------------	---

405 Municipal Drive, Kennedale, Texas 76060

AGENDA
KENNEDALE CITY COUNCIL
REGULAR MEETING - November 17, 2011
CITY COUNCIL CHAMBERS

WORK SESSION - 5:30 PM
REGULAR SESSION - 7:00 PM

I. CALL TO ORDER

Mayor Lankhorst called the meeting to order at 5:40pm

II. WORK SESSION

***NOTE: Pursuant to Section 551.071, Texas Government Code, the City Council reserves the right to adjourn into Executive Session at any time during the work session or the regular session to discuss posted executive session items or to seek legal advice from the City Attorney on any item posted on the agenda.**

A. Discuss Impact Fee study update and regional detention application.

Sakura Moten-Dedrick explained that impact fees are assessed every five years and the city will be working on compiling information for this update over the next few months. This process is a combined effort between planning, public works, and finance. This study also deals with road impact fees.

Councilmember Clark posed questions regarding construction on Sublett Road, noting that mail delivery and road conditions had become a problem. Councilmember Clark asked that the city look into providing post office boxes for residents along this street if the problem persists.

Bob Hart presented information regarding regional detention ponds, noting that impact fees could be set up in a way that could assist with the development of these types of drainage ponds. The city currently has no mechanism to pay for these projects and may look at this question during the impact fee study.

B. Discuss potential changes to oil & gas code, including drilling waiver requirements and padsite locations

Rachel Roberts approached the council, asking for further clarification on several issues in the oil and gas code, including distances and waivers. Bob Hart noted that city staff recommended the 80% requirement.

John Clark – Favored a 100% waiver requirement and mentioned that a moratorium throughout the city should be considered until current issues are resolved.

Brian Johnson – Recommended remaining at the 80% requirement as to not allow a single person to derail the entire process.

Frank Fernandez – Felt that 80% was a problem and favored either a moratorium or 100% waiver requirement.

Mayor Lankhorst – Favored a 100% waiver requirement

Kelly Turner – Favored an 80% requirement with the possibility for a moratorium.

Liz Carrington – Concurred with other who favored an 80% requirement and a possible moratorium.

C. Discuss water and wastewater service contract with the City of Arlington.

Bob Hart clarified that he specifically wished to discuss the water contract. The city current has connections with Arlington water system in several areas. The city is currently not interested in making changes to the current wastewater contract but may be visiting ideas in the future.

D. Regular item B regarding the regulation of amusement machines was pulled from the regular session for further discussion.

Bob Hart presented information to the Council regarding amendments to this ordinance, noting that the city was amending the original ordinance to allow for better regulation and knowledge of eight-liner locations in the city.

The Mayor closed the work session and the Council entered executive session at 6:45pm.

EXECUTIVE SESSION was held prior to the regular meeting

A. The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda and legal issues regarding regulation of sexually oriented businesses, litigation, settlement offers, and/or claims regarding the following matters:

1. H & A Land Corporation, et al. v. City of Kennedale - Cause No. 402-CV-0458-Y (Dreamer's and Showtime)
2. Chesapeake Energy
3. Kennedale vs. H.M. Real Estate Management, Inc.

III. REGULAR SESSION

Mayor Lankhorst called the meeting to order at 7:08pm.

IV. ROLL CALL

RollCall.

Present: Frank Fernandez, John Clark, Brian Johnson , Kelly Turner, Liz Carrington, Bryan Lankhorst (Not Voting).

V. INVOCATION

The invocation was performed by Andy Miller from the Salvation Army.

VI. UNITED STATES PLEDGE

The pledge was also performed by Andy Miller from the Salvation Army.

VII. TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State under God; One and Indivisible."

VIII. VISITOR/CITIZENS FORUM

At this time, any person with business before the Council not scheduled on the agenda may speak to the Council. No formal action can be taken on these items at this meeting.

1. Captain Andy Miller of the Salvation Army announced that the annual Mayoral ring-off will take place on Saturday December 17th in front of Wal-Mart.
2. Nassem Patel, business owner at 317 E Kennedale Parkway, approached the council with questions related to enforcement of the amusement machine ordinance.
3. Duane Tippet of 204 E Mistletoe approached the council. City of Dallas vs. Heather Stewart. Mr. Tippet urged the city attorney to support Heather Stewart. Mr. Tippet approached the council regarding the recent legal decisions regarding condemnation and destruction of personal property regarding the City of Dallas vs. Heather Stewart.
4. Monte Ubanks of 1221 Peggy Lane approached the council regarding renting ballfield space from the city for girls softball team practice. Bob Hart mentioned that the Kennedale Youth Association, who currently oversees the ballfields, turned him away. The city will follow up with Mr. Ubanks as soon as possible.

IX. REPORTS/ANNOUNCEMENTS

In addition to any specific matters listed below, the city council may receive a report about items of community interest, including but not limited to recognition of individual officials, citizens or departments, information regarding holiday schedules, upcoming or attended events, etc.

Councilmember Turner noted that the 9-11 Memorial dedication ceremony, noting that many community members attended the ceremony and noting that the Memorial was a great addition to the city.

Councilmember Johnson announced that he, Frank Fernandez, and Bob Hart recently attended the National League of Cities Conference.

Councilmember Fernandez noted that several videos of the Memorial dedication ceremony are available on youtube.com and at the city's website homepage.

Mayor Lankhorst announced that the annual Christmas Tree Lighting Festival will be held on Tuesday November 27th from 5 to 8pm, and that the Kennedale Historical Society had recently held its first meeting.

X. CONSENT ITEMS

All matters listed under consent agenda have been previously discussed, require little or no deliberation, or are considered to be routine by the council. If discussion is desired, then an item will be removed from the consent agenda and considered separately.

A. Discuss and consider approval of regular meeting minutes from October 13, 2011

B. Discuss and consider A RESOLUTION ADOPTING AN AMENDED CITY OF KENNEDALE FINANCIAL MANAGEMENT POLICY.

C. Discuss and consider A RESOLUTION ADOPTING A CITY OF KENNEDALE INTERNAL CONTROLS & CASH HANDLING POLICY.

D. Discuss and consider A RESOLUTION ADOPTING AN AMENDED CITY OF KENNEDALE INVESTMENT POLICY.

E. Discuss and consider A RESOLUTION ADOPTING AN AMENDED CITY OF KENNEDALE PROCUREMENT CARD PROGRAM POLICY.

F. Discuss and consider A RESOLUTION ADOPTING AN AMENDED CITY OF KENNEDALE PURCHASING POLICY.

G. Discuss and consider A RESOLUTION ADOPTING A CITY OF KENNEDALE UNCLAIMED PROPERTY POLICY.

H. Discuss and consider A RESOLUTION ADOPTING ETHICAL AND TRAINING STANDARDS FOR JUVENILE CASE MANAGERS EMPLOYED BY THE CITY OF KENNEDALE, PROVIDING FOR IMPLEMENTATION OF SAID STANDARDS, AND PROVIDING FOR PERIODIC REVIEW TO ENSURE IMPLEMENTATION OF THE REQUISITE STANDARDS.

I. Consider authorizing the City Manager to sign the annual Fort Worth Interlocal Agreement for Rabies Control

J. Authorize City Manager to sign agreement with the Cub Scouts for the use of Sonora Park for the Scout day camp site.

K. Final payment and acceptance of project for the Bowman Springs Road Realignment project.

L. Discuss and consider an AN ORDINANCE OF THE CITY OF KENNEDALE, AMENDING CHAPTER 23, ARTICLE III OF THE KENNEDALE CITY CODE (1992), REQUIRING PERMITS TO DISCHARGE INDUSTRIAL WASTE INTO THE KENNEDALE SANITARY SEWER SYSTEM; AUTHORIZING THE DIRECTOR OF THE PUBLIC WORKS TO PROMULGATE REGULATIONS PERTAINING TO SUCH PERMITTING, PROVIDING FOR DEFINITIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; REPEALING ORDINANCE NO. 308 (2005); PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

Item L has been tabled until the next regular meeting, as the ordinance is still under construction.

Motion: To approve the consent agenda as presented, noting that item L had been deferred to the next meeting. , **Action:** Approve, **Moved by** Brian Johnson , **Seconded by** Frank Fernandez.
Motion passed unanimously.

XI. REGULAR ITEMS

A. Case PZ 11-10 to receive comments and consider action on a request for a change in zoning from "C-0" Retail Commercial to "C-1" Restricted Commercial for approximately 1.014 acres located at 4850 US Hwy 287, Kennedale, Tarrant County, Texas, more particularly described as Lot 2 Block 1R Southwest Crossing Addition. The rezoning is requested by JP Morgan Chase.

Rachel Roberts approached the Council, noting that real estate workers had been unable to find business suited for C-0 zoning and that JP Morgan Chase has shown interest in the site and would require a zoning change. Councilmember Carrington commented that there were several other banks in that area.

Ryan Tinch, acting as the listing agent for the property, presented information to Council regarding his representation of this property, noting that both the economy and property access had proven to be a

challenge to development.

Danny Buckner, project manager for Chase Bank approached the council stating that Chase Bank would very much like to be a part of Kennedale

Mark Morocco, site selection broker for Chase Bank, approached the council and described the aspects of the lot that would be beneficial to Chase Bank, including daily drivers from Wal-Mart clientele and proximity to clients.

The public hearing was opened. No one signed up to speak and the hearing was closed.

Bob Hart mentioned that staff's recommendation to change the zoning as it would serve the city well to fill the lot with a good bank service than to leave it vacant. Staff noted that the uses that the city would like to see do not appear to be compatible with the lot. Councilmembers Clark, Johnson, and Fernandez expressed disappointment that promises made by Wal-Mart have not been fulfilled.

Motion: To table this item to the next regular meeting. , **Action:** Table, **Moved by** Kelly Turner, **Seconded by** Liz Carrington.

Vote: Motion passed (**Summary:** Yes = 4, No = 1, Abstain = 0).

Yes: Frank Fernandez, Brian Johnson , Kelly Turner, Liz Carrington.

No: John Clark.

B. Discuss and consider AN ORDINANCE OF THE CITY OF KENNEDALE, TEXAS AMENDING CHAPTER 11 "LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS", ARTICLE V "AMUSEMENT HALLS", BY ADOPTING REGULATIONS FOR AMUSEMENT MACHINE ESTABLISHMENTS.

Bob Hart approached the council noting that without a licensing and registration process it is very difficult for the city to be aware of the location of eight-liner amusement machines that pose potential problem. These amendments also further restriction operating hours around school zones.

City Attorney Wayne Olson noted that these types of regulations are dictated by the Texas State Penal Code. Eightliners are legal as long as there is not a payout from a win.

Councilmember Carrington questioned the notion that establishments selling state lottery tickets were not allowed to have any other gaming devices on site. Councilmember Johnson requested that a copy of the Texas lottery rules that state that this is the case be sent to establishments that fell into this category.

Motion: To approve Ordinance 492, **Action:** Approve, **Moved by** Brian Johnson , **Seconded by** Kelly Turner.

Motion passed unanimously.

C. Discuss and consider a Resolution casting votes for the election of Tarrant Appraisal Board Members for the 2012 - 2014 term.

Bob Hart noted that as members of the Tarrant Appraisal District Kennedale has 7 votes out of 5,000.

Motion: To cast all votes for Potthoff., **Action:** Approve, **Moved by** John Clark, **Seconded by** Brian Johnson .

Motion passed unanimously.

D. Discuss and consider action to approve KKB recommendation to move Wayne Wooten from Place 1 on the Keep Kennedale Beautiful Commission to Alternate Place 8.

Motion: To move Wayne Wooten to Place 8., **Action:** Approve, **Moved by** Brian Johnson , **Seconded by** Kelly Turner.

Motion passed unanimously.

E. Discuss and consider appointing Stephen Brim and Fred Winters to the Keep Kennedale Beautiful Commission.

Motion: Stephen Brim to Place 1 and Fred Winters to Place 9., **Action:** Approve, **Moved by** Kelly Turner, **Seconded by** Liz Carrington.

Motion passed unanimously.

XIII. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

XIV. ADJOURNMENT

Motion: To adjourn., **Action:** Adjourn, **Moved by** Brian Johnson , **Seconded by** Kelly Turner.

Vote: Motion passed (**Summary:** Yes = 4, No = 1, Abstain = 0).

Yes: Frank Fernandez, Brian Johnson , Kelly Turner, Liz Carrington.

No: John Clark.

Date: December 8, 2011

Agenda Item No: CONSENT ITEMS - B.

I. Subject:

Consider approval of a professional services agreement with Modern Geosciences in the amount of \$99,250 to conduct air monitoring at gas well padsites in the City of Kennedale over a one-year period.

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

The City approved an annual fee to be charged to gas well operators, which would allow the City to conduct air monitoring at gas wells padsites on an annual basis. We spoke with six different consultants, and of the six, staff believes Modern is the best suited for this task. I reviewed Modern's proposal, and it should meet the City's objectives for air monitoring.

Modern Geosciences has a good reputation in the region and conducts air monitoring programs in several North Texas cities, including Grand Prairie, Flower Mound, Southlake, and Denton.

Staff recommends approving the professional services agreement.

IV. Fiscal Impact Summary:

The cost of the monitoring program will be paid through an annual fee charged to operators.

V. Legal Impact:

The City is not authorized to regulate air quality from gas drilling. The purpose of the air monitoring program, therefore, will be to collect data and monitor air quality, rather than to enforce a particular air quality standard.

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	Proposal from Modern Geosciences	P11DFW024R4.pdf
----	----------------------------------	-----------------



MODERN GEOSCIENCES
Trusted Environmental Advisors

November 17, 2011
Proposal P11DFW024R4

*This proposal contains confidential and
proprietary information prepared for the
exclusive use by the City of Kennedale.*

City of Kennedale – Planning
405 Municipal Drive
Kennedale, Texas 76060

Attention: Ms. Rachel Roberts
Phone: 817.985.2135
Email: rroberts@cityofkennedale.com

Subject: Field Inspection and Air Quality Monitoring (12 Month Period)
Multiple Sites
Kennedale, Texas

Dear Ms. Roberts:

As requested, Modern Geosciences, LLC (Modern) is pleased to submit this proposal to the City of Kennedale (City) for Air Quality Monitoring assistance.

The following sections provide our understanding of the proposed project, scope of work, fee and schedule. Modern's consulting services will be conducted in accordance with the scope of services detailed below and our existing Professional Services Agreement (PSA).

BACKGROUND AND PROJECT UNDERSTANDING

Modern's staff have worked with over a dozen North Texas municipalities concerning air and water quality issues stemming from oil and gas activities. This has included not only the design and implementation of monthly air sampling in Flower Mound, baseline air quality and hydrogeologic studies for Southlake, and training of City staff to complete field inspections in Colleyville and Grand Prairie, but also operational guidance support for Grand Prairie in the form of the Leak Detection and Compliance Plan (LDCP) guidance written by Modern to improve the operator compliance and reporting to the City. We are proud partners with local municipalities and enjoy helping Cities develop cost-effective methods to inspect, screen, and monitor impacts to groundwater, surface water, or air from urban oil and gas operations.

Modern understands the City currently has eight operational gas well sites (Sites) within its jurisdiction that operate under City permits and Air Quality Monitoring is required by the City on a periodic basis by all operators. Based on our discussion, a systematic approach is desired to provide the City with independent information concerning ongoing air quality at the Sites.

To date, short duration air sampling (30 to 60 minute) has been performed on selected pad sites in the City before, during and after the drilling process by the operators. No direct field inspection of the operating equipment has been performed. Modern has been asked to provide a suggested monitoring approach to address the long term production phase of the Sites that will provide the City with cumulative data on both the operating equipment and air quality at the Site boundaries.

Based on discussions with City staff and Council on June 14, 2011, it is suggested that Kennedale utilize a wide spectrum monitoring program that offers longer periods of data collection. Modern has designed Air Quality Monitors (AQMs) for this type of extended monitoring (multiple hours to days) and will supplement direct field inspection of the operating equipment using real-time sensor for air quality data collection. Together, these can allow earlier detection of operational issues at production pad sites. This will serve as a cost-effective method of monitoring and allow adjustment in the monitoring sessions based on known or perceived issues at a pad site. Unlike conventional air sampling that offers limited sets of contaminants (i.e., TO-15 VOCs) and limited sampling periods from discrete locations (i.e., single canister location), the AQM provides a reading across a given distance (i.e., hundreds of feet along the fenceline within the breathing zone). The AQM takes advantage of continuous data logging (typically every three to five minutes) that will be stored throughout the monitoring session to allow averaging by the hour. While not proposed for this initial monitoring event, the AQM can also be configured for near real-time data transmission to a hosted website to allow easy dissemination of the monitoring results if this becomes needed.

If issues are identified through the monitoring, additional sampling and/or field screening with real-time equipment can then be targeted to address the concern. Use of a scalable approach will give the City the needed flexibility to address the unique issues often found from one pad site to the next. The frequency of monitoring can be adjusted based on the type of operations at an individual pad site or to address known or perceived issues arising from inspections or citizen complaints. This may include longer monitoring periods (weeks to months), multiple air monitoring stations per site (equipment vs. fenceline monitoring), or dedicated air monitoring station(s) that provide continuous results to the City concerning air quality at a pad site.

AQM SPECIFICATIONS

The AQM uses Ultra-Violet Differential Optical Absorption Broadband (UVDOAS) spectroscopy to measure spectral regions of light energy between roughly 180 and 320 nanometers within the UV spectrum. This provides us with defensible data for individual compounds of interest throughout the monitoring session across a given distance (up to 1,000 feet). Modern has designed the AQM for this project to include monitoring of the following concerns most closely associated with oil and gas emissions:

- **Volatile Organic Compounds (VOCs)** – Individual detections throughout the monitoring session for VOCs such as benzene, toluene, ethylbenzene, xylenes, styrene, naphthalene, styrene, phenol and 1,3 butadiene.
- **Meteorological Data** – The AQM has been equipped with several meteorological meters to provide site-specific data concerning weather conditions that correlates to the air quality results. These include wind direction, speed, and temperature. *[May not be available for the demonstration model]*
- **Nitrogen Compounds** – The AQM has been designed to allow detection of Ammonia, Nitrogen Dioxide and Nitrogen Oxide.
- **Carbonyl Compounds** – The AQM has been design to allow detection of formaldehyde, acetaldehyde and acrolein*.
- **Sulfur Compounds** – The AQM has been designed to allow detection of carbon disulfide, hydrogen sulfide*, and sulfur dioxide.
- **Ozone** – The AQM has been designed to allow detection of this compound continuously.

**These compounds are only visible in sufficient concentrations without cross compound interference.*

All equipment and sensors will be calibrated by Modern prior to initiation of the monitoring session(s) to ensure the data sets will be as representative of site conditions as possible. The final COC detection limits will be based on the actual length of the open path. It is anticipated that most compounds will be monitored near or below the applicable regulatory criteria. Here is an example of anticipated detection limits at 325 feet (~200m monostatic beam) and selected regulatory criteria.

Example Detection Limits		
COC	MDL	Regulatory Criteria
Ammonia	2.95	250/25*
Acetaldehyde	15	50/25
1,3 Butadiene	1	230/9.1
Benzene	1.34	180/1.4
Carbon Disulfide	66.5	10
Ethyl Benzene	1.5	170/450
Formaldehyde	16	41/8.9
Naphthalene	1	90/10*
Nitrogen Oxide (NO)	1.46	250/25*
Nitrogen Dioxide (NO2)	20.2	53/100**
Ozone	10	75/120**
o-xylene	18.9	380/140
m-xylene	1.8	80/140
p-xylene	1.2	80/140
Sulfur Dioxide	1.6	30/75**
Styrene	3	25/110

Concentrations presented as ppbv

AMCVs – short term or odor threshold/long term

*ESLs – short term or odor threshold/long term

** National Ambient Air Quality Standard annual/one hour

Actual detection limits will vary based on field conditions and may be slightly lower or higher based on the distance being monitored.

MONITORING FREQUENCY

At the City's direction we have included the costs for one year of monitoring for all eight operational pad sites. Additional monitoring to establish background conditions at non pad-site facilities for each quarter have been included as well. Pad-site monitoring includes quarterly (4x per year) sampling at "high-impact" sites (close to residential development) and annual (1x per year) at "low-impact" sites. There are currently two (2) pad sites noted as "high-impact" operated by Chesapeake. These include:

- Little School Drive/ Kennedale Sublett
- Swiney Hiatt/ Joplin

Costs have also been included to provide the City with technical support and production of a summary report for each monitoring event and attendance/presentation at an annual City-directed meeting.

SCOPE OF SERVICES

TASK 1: Field Inspection and Air Quality Monitoring

Following authorization, Modern will coordinate with designated four site operator contact(s) to communicate the proposed monitoring schedule, equipment security needs, and pad site safety requirements for access. Modern will prepare a site-specific Health and Safety Plan for all direct personnel that will be present at the Site. This will include coordination with the pad site operators/pumpers to ensure operational requirements are met.

Modern will then coordinate access with the City and operator to perform field inspections of the on-site equipment using real-time monitors for methane and VOCs as well as monitoring using our mobile AQMs. For this proposal one hour screenings will be performed at each site in the anticipated upwind, downwind, and cross facility locations. Final selection will be dependent upon actual field conditions.

Field Inspection:

Prior to commencement of the monitoring period, Modern will complete a thorough Field Inspection of the pad site to evaluate operational conditions of well heads, well connections, flanges, valves, pumps, well head fluids (i.e., corrosion inhibitors), production piping, system pressure gauges (i.e., braden head, central casing, production tubing), separator systems, secondary containment integrity, above-ground storage tanks (i.e., thief hatch, ventilation), fluid disposal transfer points, compressor systems, chemical storage areas, and obvious signs of staining, spills, or releases. The inspection will also include field screening with intrinsically safe handheld equipment to determine background ambient readings at the edge of the pad site as well as specific monitoring points in close proximity to operational equipment. Field Screening equipment will include a Flame Ionization Detector (FID) or Thermal Vapor Analyzer (TVA) in conjunction with a four gas safety meter. All field staff are HAZWOPER trained and operate under a detailed health and safety plan for each visit.

Air Quality Monitoring:

Prior to placement of the AQM, Modern will complete the above Field Inspection and estimate the current up and downwind locations at the Site. Modern will then place the AQM equipment in general up and downwind positions for the selected schedule near the pad site boundary as well as a third location that crosses the pad site. Data collection will include continuous (i.e., three minute to five minute) and hourly average monitoring information for the final report. All equipment and sensors will be calibrated prior to initiation of the monitoring session(s) to ensure the data sets will be as representative of site conditions as possible.

TASK 2: Reporting and Technical Support

Monitoring reports will be prepared summarizing the most recent and all previous sampling results for all field inspections and monitored pad sites. The reports will contain findings, conclusions, and recommendations concerning obvious issues observed during the monitoring or visual issues identified during the equipment placement process. All reports will be transmitted electronically in portable document format. Hard copies can be made for an additional fee if required. Additionally, it is anticipated that a limited amount of technical support will be provided to City staff concerning the monitoring results, programmatic monitoring approaches, and presentation of the collected data at City-directed events.

ESTIMATED BUDGET

Modern will perform the above described scope of services on a unit fee per sampling event with a total not to exceed **\$99,250**. Fees for technical support will be charged on a time and materials basis according to the current Modern fee schedule at the time the work is performed.

Additional costs might be incurred if the assumptions presented earlier are not correct. In the event that additional costs and services are required, Modern will notify the City immediately and prepare an estimate of the additional cost. Modern will not exceed the authorized amount until written approval from City has been received. The estimated project budget is summarized in the table below.

PROJECT BUDGET COSTS

Task 1: Field Inspection Air Quality Monitoring	
Consulting Labor (Inspection Activities)	\$ 1,200
Air Quality Monitoring (Deployment, Calibration and Monitoring across, up and downwind – 1 hour each alignment)	\$ 3,000
Task Expenses	\$ 800
Subtotal	\$ 5,000
Task 2: Reporting and Technical Support	
Consulting Labor	\$ 1,200
Task Expenses	\$ 200
Subtotal	\$ 1,400
TOTAL PER PAD SITE	\$ 6,250

ANNUAL PROJECT BUDGET

HIGH IMPACT – QUARTERLY MONITORING	
Chesapeake – Little School/Kennedale Sublett (4 Events at \$6,250/ea)	\$ 25,000
Chesapeake – Swiney Hiatt/Joplin (4 Events at \$6,250/ea)	\$ 25,000
Subtotal	\$ 50,000
LOW IMPACT – ANNUAL MONITORING	
Carrizo, Chesapeake, EOG, and XTO padsites (6 Events at \$6,250/ea)	\$ 37,500
BACKGROUND – QUARTERLY MONITORING	
Non Pad Site Locations (1 Event at \$6,250/ea)	\$ 6,250
TECHNICAL SUPPORT AND ANNUAL SUMMARY PRESENTATION	
Consulting Labor	\$ 5,000
Task Expenses	\$ 500
TOTAL FOR ANNUAL MONITORING	\$ 99,250

ANTICIPATED SCHEDULE

Modern will endeavor to complete the tasks outlined above within the following schedule:

- *Coordination with Operator on Access Needs and Security - 30 days from authorization and site access information;*
- *AQM will be ready for deployment – 45 days from Notice to Proceed*
- *Pad Site Monitoring Session - 15 days from City direction and site access; and*
- *Reporting - 15 days from completion of data collection*

It should be noted that the above schedule is subject to interaction with operators, client representatives, subcontractors or other third parties that can delay the project.

ASSUMPTIONS AND LIMITATIONS

- *Our client will coordinate all access and site personnel/equipment required to allow the above scope of work to be executed. All site plans and facility information will be needed prior to Field Inspection activities;*
- *Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of our profession practicing in the same locality, under similar conditions and at the time the services are performed;*

- *Our conclusions, opinions and recommendations will be based on the information available for review. This will only include a limited number of observations and data points. It is likely that conditions will vary between or beyond the specific points evaluated. Modern makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided. The final report will be submitted electronically. Hard copies can be provided for an additional fee;*
- *The AQM instrumentation is not intended to be in close proximity to areas where an explosive atmosphere is anticipated. Our proposal assumes operator access does not inhibit the placement of the AQM nor places extremely burdensome access restrictions. It is anticipated that the City will coordinate any access issues in accordance with the operating permit;*
- *The use of AQM equipment is only proposed for access controlled facilities where assurances can be made that it will be protected from tampering, theft or accidental impairment. Modern will work with both the City and operator to select the most functional and protected location; however, if the Site does not have limitations concerning access additional measures and costs may be needed to secure the use of AQM equipment for the project duration;*
- *During the course of our services hazardous conditions or materials may be discovered. Modern will assume no responsibility or liability for any expense, claim, material loss to the property, damage, or injury that results from or in any way connected with pre-existing hazardous conditions or materials being encountered or present on the project site, or from the discovery of such hazardous conditions or materials;*
- *Our Client will be responsible for all required notification, if any, of the existence, release, or threatened release of hazardous substances at the project site prior, during, or after Modern's services;*
- *Laws, regulations and professional standards applicable to Modern's services are continually evolving. Techniques are, by necessity, often new and relatively untried. Different professionals may reasonably adopt different approaches to similar problems. As such, our services are intended to provide our client with a source of professional advice, opinions and recommendations based on a limited number of field observations and tests, collected and performed in accordance with the generally accepted practice that exists at the time, and may depend on, and be qualified by, information gathered previously by others and provided to Modern by our Client;*
- *All information gathered during the services by Modern will be considered confidential and released only upon written authorization of the Client or as required by law. State law may require a person to inform the state if a situation is encountered that can be considered an imminent endangerment to the public's health or welfare and/or to the environment; and*

- *This proposal is valid for a period of 60 days from the date of issuance.*

AUTHORIZATION

If this proposal meets your needs please submit and executed copy of the full proposal, executed Notice to proceed and PSA to our office. If there is a need for any change in the scope of services described in this proposal or the proposed PSA, please contact us immediately. Any requested changes may require revision of the proposed fee and schedule.

All terms and conditions indicated in this proposal will be considered by both parties to be in effect from the effective date of the executed contract through completion of the project.

CLOSING

We thank you for the opportunity to provide this proposal for environmental services and look forward to working with you on this project. Dr. Kenneth Tramm will be the primary contact for the work to be performed under the above scope of work. If you have any questions or comments, he can be contacted at 682.223.1322 or at ktramm@moderngeosciences.com regarding this proposal.

Sincerely,

MODERN GEOSCIENCES

Texas Registered Geoscience Firm No. 50411



Kyle A. Knight
Project Manager



Kenneth S. Tramm, PhD, PG, CHMM
Senior Program Manager

If this proposal meets your needs please provide authorize services as indicated below.

NOTICE TO PROCEED

The above scope is understood and authorized.

Name: _____

Signature: _____

Title: _____

Date: _____

MODERN GEOSCIENCES, LLC

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (Agreement) is made between Modern Geosciences, LLC (MODERN) with an address of 1904 Industrial Boulevard, Suite 105, Colleyville, Texas 76034 and

CLIENT: _____

Address: _____

The Agreement includes the following documents by reference:

Part I: Modern's Proposal with Scope of Services

Part II: Terms and Conditions set forth below.

Part III: Any subsequent Work Orders related to the Agreement

PART II TERMS AND CONDITIONS

I. WORK ORDERS AND SCOPE OF SERVICES: This Agreement anticipates the execution of various written Work Orders (see Part III, Sample Work Order) and sets forth the terms and conditions pursuant to which MODERN will provide CLIENT the services (Services) specified in MODERN's Proposal and in each Work Order. Each Work Order shall define the scope of Services to be performed, the location of CLIENT's project, the time period for performance, the agreed-upon fees, and additional provisions, if any, applicable to such Services.

II. STANDARD OF CARE: MODERN will perform its Services in a manner consistent with that level of care and skill ordinarily exercised by other members of MODERN's profession practicing in the same locality, under similar conditions and at the date the services are provided. Due to limitations in current technology, no level of assessment can conclusively determine whether a property or its structures are completely free of hazardous substances (including asbestos or mold) or petroleum products. MODERN makes no other representation, guarantee, or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided under this Agreement.

III. MODERN'S RESPONSIBILITIES: MODERN will perform the Services as an independent contractor and shall not act as an agent or employee of CLIENT. MODERN shall be solely responsible for the conduct of its own employees and for any of its employees' compensation, benefits, contributions, and payroll taxes. MODERN will, as directed by CLIENT or its agent (i) provide qualified staff to perform the Services specified in the Work Order; (ii) maintain records of Project site activities and costs for a period of no less than two (2) years from completion of MODERN's services; (iii) work, to the extent reasonably possible, in coordination with CLIENT's employees, contractors, consultants and other site staff so as not to impede the progress of the Project; and (iv) require its personnel to maintain a safe, clean and orderly work environment.

IV. TERM AND TERMINATION: The term of this Agreement shall commence on the date of execution of this Agreement and shall continue in effect until terminated or revised by either party as provided herein. Either party may terminate this Agreement or any Work Order at any time, with or without cause, by providing not less than ten (10) days advance written notice to the other party. Notwithstanding the termination of this Agreement, this Agreement will survive as to any and all Work Orders signed by both Parties prior to the Agreement's effective termination date, and until all of the rights and obligations of both Parties hereunder have been fulfilled. CLIENT shall compensate MODERN for all Services performed hereunder through the date of any termination and for all reasonable costs and expenses incurred by MODERN in effecting the termination, including, without limitation, non-cancelable commitments, fixed cost components, and other demobilization costs.

V. COMPENSATION: MODERN may be compensated for its Services either on a time-and-materials or fixed-price basis or any other method as mutually agreed

upon and as specified in each Work Order. CLIENT agrees to provide an invoice format specific to CLIENT's needs is provided to MODERN in advance of signing this Agreement. Additional charges may apply to any contracting or invoicing specifications outside of MODERN's standard procedures. CLIENT understands that time-and-materials pricing should be construed as an estimate only and that true costs may be higher or lower, depending on actual circumstances. If a Work Order is to be performed on a time-and-materials basis, MODERN shall be reimbursed for all hours worked and other costs incurred at the rates and terms set forth in its then current fee schedule.

MODERN shall submit its invoices for Services rendered to CLIENT monthly. The terms of payment are net thirty (30) days from date of invoice, with a two percent (2%) per month service charge on balances past due as calculated from the initial date of invoice. MODERN may suspend performance of Services under this Agreement until MODERN has been paid in full for all balances past due, including applicable service charges. MODERN shall be entitled to recover all its attorney's fees and costs resulting from its efforts to secure payment from Client.

VI. INSURANCE: MODERN currently carries Worker's Compensation, Commercial General Liability, and Automobile Liability Insurance for bodily injury and property damage. In addition, MODERN carries Professional Liability and Pollution Prevention insurance coverage.

VII. CHANGES: CLIENT or MODERN may request changes to the scope of Services by altering, adding to, or deleting from the Services to be performed by MODERN. Both Parties agree to negotiate in good faith to determine changes in scope, any needed equitable adjustment to the price and time for performance of the affected Work Order, and to execute an amended Work Order. Should the total cost of MODERN's performance under a Work Order be greater than the estimated amount, MODERN will notify CLIENT. Failure by both parties to renegotiate in good faith the terms and conditions of any Work Order may result in suspension of work without penalties, and termination of this Agreement by MODERN.

VIII. FORCE MAJEURE: If the performance of Services by MODERN is affected by causes beyond its reasonable control, Force Majeure shall result. Force Majeure includes acts of God; acts of a legislative, administrative, or judicial entity; acts of CLIENT's separate contractors and consultants; war; fires; floods; labor disturbances; and unusually severe or unanticipated weather.

IX. INSTRUMENTS OF SERVICE: All reports, drawings, plans, or other documents (or copies) furnished to MODERN by the CLIENT, shall, at CLIENT's written request, be returned upon completion of the Services; provided, however, that MODERN may retain copies of all such documents for record keeping purposes. All reports, drawings, plans, documents, software, source code, object code, field notes and work product (or copies thereof) in any form prepared or furnished by MODERN pursuant to this Agreement are instruments of service. Exclusive ownership, copyright and title to all such instruments of service shall remain with MODERN. The opinions and other information prepared or furnished by MODERN under this Agreement, including, without limitation, its instruments of service, are not intended to inform, guide, or otherwise influence any entities or persons other than CLIENT with respect to any particular business transactions and should not be relied upon by any entities or persons other than CLIENT for any purpose. Any requests by third parties for reliance upon the Instruments of Service will be subject to advance approval at MODERN's discretion and subject to the limitations, terms and conditions governing reliance on the instruments of service. Additional fees will be required to provide additional reliance. MODERN will not be responsible for damages resulting from any unauthorized use by CLIENT or others of the instruments of service furnished by MODERN under this Agreement.

X. CLIENT'S RESPONSIBILITIES: CLIENT agrees to (i) convey and discuss with MODERN all available material, data, and information pertaining to the Services, including, without limitation, the composition, quantity, toxicity, or potentially hazardous properties of any material known or believed to be present at any site, any hazards that may be present, the nature and location of underground or otherwise not readily apparent utilities, summaries and assessments of the site's past and present compliance status, and the status of any filed or pending judicial or administrative action concerning the site or Project; (ii) ensure the cooperation of CLIENT's employees and separate contractors and consultants; and (iii) be solely responsible for determining whether the Project is subject to prevailing wage regulations and to notify MODERN of such determination in advance of its proposal.

XI. ALLOCATION OF RISK. Neither party shall be responsible to the other for any special, incidental, indirect, penal or consequential damages (including lost profits) incurred by either MODERN or CLIENT or for which either party may be liable to

any third party. The indemnity obligations and the limitation of liability established below shall survive the expiration or termination of this Agreement.

A) Indemnification of CLIENT. Subject to the provisions and Limitation of Liability of this Agreement, MODERN agrees to indemnify and hold harmless CLIENT, its shareholders, officers directors, employees, and agents from and against any claims, suits, damages, expenses, including reasonable attorneys’ fees, or other losses (collectively “Losses”) to the extent caused by MODERN’s negligent performance of Services under this Agreement.

B) Indemnification of MODERN. Client will indemnify and hold harmless MODERN, its shareholders, officers, directors, employees, and agents from and against Losses to the extent caused by the negligence of Client, its employees, agents, and contractors. CLIENT’S obligation to indemnify shall include any Losses, resulting from (1) a subsequent determination that the Project is subject to prevailing wage regulations, and (2) Losses arising from the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, the exposure of any person to, or any degradation of the environment due to Hazardous Materials.

C) Limitation of Liability: The total liability of MODERN arising out of or related to this Agreement, whether based in contract or tort, shall be limited to the greater of the compensation actually paid to MODERN for the Services under all Work Orders or \$25,000. This limitation of liability shall include any Losses payable to Client under 11(A), Indemnification of CLIENT. All claims by CLIENT against MODERN shall be deemed waived unless written notice of the claim has been provided to MODERN within one (1) year after substantial completion of the Services performed under a particular Work Order. CLIENT agrees that any claim or suit for damages made or filed against MODERN by CLIENT will be made or filed solely against MODERN or its successors or assigns and that no shareholder or employee of MODERN shall be personally liable to CLIENT for damages under any circumstances. This Limitation of Liability applies to any and all claims, no matter how pleaded, including claims for errors and omissions, breach of contract, negligence, or breach of fiduciary duty and applies to all phases of Services performed under this Agreement. MODERN’s total liability to CLIENT and anyone claiming by, through, or under CLIENT for damages shall not exceed the percentage share that MODERN’s negligence bears to the total negligence of all negligent entities and individuals

XII. SITE ACCESS: CLIENT shall, as may be required by MODERN for the successful and timely completion of Services: (i) provide unimpeded and timely access to the site, including third party sites, as required; (ii) provide an adequate area for MODERN’s site office facilities, equipment storage, and parking; (iii) furnish all construction utilities and utility releases necessary for the performance of the Services; and (iv) obtain Project-specific permits and licenses necessary for the performance of the Services.

XIII. WARRANTY OF TITLE, WASTE OWNERSHIP: MODERN does not take title to any hazardous materials found at the project site. Any risk of loss with respect to all materials shall remain with the project site owner, who shall be considered the generator of such materials, execute all manifests as the generator of such materials, and be liable for the arrangement, transportation, treatment, and/or disposal of all material. All samples shall remain the property of the CLIENT or other responsible party.

XIV. ASSIGNMENT AND SUBCONTRACTING: This Agreement does not create any right or benefit to anyone other than CLIENT and MODERN and shall not be assigned by either party without the prior written approval of the other party. MODERN, however, may elect to subcontract portions of the Services to a qualified subcontractor.

XV. DISPUTE RESOLUTION: If a claim or dispute arises out of or relates to the interpretation, application, enforcement, or performance of Services under this Agreement, both Parties agree to attempt to resolve the claim or dispute (1) at a meeting between the principals within fifteen (15) days of receipt by either party of a notice and description of the dispute, and failing resolution (2) mediation in accordance with the AAA Construction Industry Mediation Rules then in effect within forty-five (45) days from service of written notice. If the claim or dispute cannot be resolved through mediation and unless otherwise mutually agreed, either party may file suit in an appropriate court in the state of the MODERN office entering into this Agreement.

This Agreement shall be governed and construed in accordance with the laws of the State of the MODERN office entering into this Agreement.

XVI. WAIVER OF TERMS AND CONDITIONS: The failure of either Party in any one or more instances to enforce one or more of the terms or conditions of this Agreement, or to exercise any right or privilege in this Agreement, or the waiver by MODERN or CLIENT of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such waiver had occurred.

XVII. SEVERABILITY: Every term or condition of this Agreement is severable from the others. Notwithstanding any possible future finding by a duly constituted authority that a particular term or provision is invalid, void, or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms, and provisions shall not be affected thereby.

XVIII. ENTIRE AGREEMENT: The terms and conditions set forth herein, including any associated Proposals or Work Orders, constitute the entire understanding and agreement of both Parties with respect to the Services. Any amendment or revision to this Agreement shall be in writing and signed by an authorized representative from each party. Any oral modification or revision of this Agreement or any Work Order shall not operate to modify this Agreement or any Work Order.

The above Professional Services Agreement is fully understood and agreed to by duly-authorized representatives as of:

The _____ day of _____, 20____.

MODERN GEOSCIENCES, LLC

By: _____

Printed Name: Kenneth S. Tramm, PhD, PG, CHMM

Title: Principal/General Manager

Date: _____

CLIENT:

By: _____

Printed Name: _____

Title: _____

Date: _____

Date: December 8, 2011

Agenda Item No: REGULAR ITEMS - A.

I. Subject:

Discuss and consider **deferring until February 9th, 2012** action on Case PZ 11-10, a request for a change in zoning from "C-0" Retail Commercial to "C-1" Restricted Commercial for approximately 1.014 acres located at 4850 US Hwy 287, Kennedale, Tarrant County, Texas, more particularly described as Lot 2 Block 1R Southwest Crossing Addition. The rezoning is requested by JP Morgan Chase.

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

Due to holiday schedules and other external time constraints, staff recommends that this item be postponed until the February City Council meeting so that sufficient information can be gathered for further discussion.

IV. Fiscal Impact Summary:

If the property is rezoned, the rezoning applicant will develop the site, and this will generate an increase in property tax revenues.

V. Legal Impact:

VI. Recommendation:

Postpone

VII. Alternative Actions:

VIII. Attachments:

Date: December 8, 2011

Agenda Item No: REGULAR ITEMS - B.

I. Subject:

Discuss and consider an AN ORDINANCE OF THE CITY OF KENNEDALE, AMENDING CHAPTER 23, ARTICLE III OF THE KENNEDALE CITY CODE (1992), REQUIRING PERMITS TO DISCHARGE INDUSTRIAL WASTE INTO THE KENNEDALE SANITARY SEWER SYSTEM; AUTHORIZING THE DIRECTOR OF THE PUBLIC WORKS TO PROMULGATE REGULATIONS PERTAINING TO SUCH PERMITTING, PROVIDING FOR DEFINITIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; REPEALING ORDINANCE NO. 308 (2005); PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

II. Originated by:

Larry Ledbetter, Director of Public Works

III. Summary:

In 2009 the City of Fort Worth was chosen by the EPA and the TCEQ for a "Pilot Program" involving the Streamlining of the Industrial Waste Ordinance. The process would incorporate aspects of the EPA model ordinance and would be utilized on a national basis when completed. As a Customer City of Fort Worth, the City of Kennedale was included in the streamlining process along with all other customer cities. As a customer city of both Ft. Worth, Arlington and TRA, the City of Kennedale requested that the streamlining process be carried even further, to include a single ordinance that would cover the various mutli-jurisdictional agencies involved. Kennedale staff worked with these agencies to create the new ordinance.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	Industrial Waste Ordinance (show changes)	IWO streamline showing changes.doc
----	---	------------------------------------

KENNEDALE

CHAPTER 23 ARTICLE III

DIVISION 3. DISCHARGE REGULATIONS*

***Editor's note:** Ord. No. 308, § 1, adopted Aug. 11, 2005, repealed the former Div. 3, §§ 23-121--23-145, and enacted a new Div. 3 as set out herein. The former Div. 3 pertained to similar subject matter and derived from Ord. No. 84-8, § I(14-32.1, 14-32.2, 14-33--14-37), adopted March 8, 1984; Ord. No. 14, §§ 1--7, adopted Oct. 10, 1991.

State law references: Discharge regulations authorized, V.T.C.A., Water Code § 26.176.

Sec. 23-121. Definitions.

When used in this division, these terms shall be defined as follows:

Abnormal sewage. Any industrial waste discharged into the authority's sanitary sewer which, when analyzed, shows by weight a total suspended solids (TSS) concentration greater than 250 mg/L or a biochemical oxygen demand (BOD) concentration greater than 250 mg/L. In addition, the authority may judge independently a waste's suitability for discharge to the POTW that requires additional treatment, based upon BOD, TSS or other characteristics, as abnormal. Any waste in this classification must be made acceptable for discharge into the POTW as defined in this division.

Act. The Clean Water Act (33 U.S.C. 1251 et seq.), as amended.

Aliquot: a measured portion.

Approval authority. ~~The Regional Administrator of the EPA, or the~~ Director of the Texas Commission on Environmental Quality ("TCEQ").

Authority. The City of Kennedale, Texas.

Authorized representative of the industrial user. Authorized representatives (authorized signatories) for wastewater discharge permit applications and for reports submitted under section 23-125, of this division are:

(1) A responsible corporate officer, if the discharger submitting the application or report is a corporation. This includes the president, vice-president, secretary or treasurer 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.

(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 or any control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(3) For a partnership or sole proprietorship, a general partner of the proprietor, respectively.

(4) The principal executive officer or director having responsibility for the overall operation of the facility if the discharger is a federal, state or local governmental entity, or their agents.

(5) A duly authorized representative of the individual designated in subsections (1) through (4) above if:

- a. The authorization is made in writing by the individual described above in subsections (1) through (4); and
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the discharge originates (such as a plant manager), or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company;
- c. The written authorization is submitted to the city. If an authorization is no longer accurate because a different individual or position has responsibility, a new authorization must be submitted to the city prior to or together with any reports signed by an authorized representative.

Best management practices (BMP). Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 23-123(e) [40 CFR 403.5(a)(1) and (b)] and to prevent or reduce the pollution of the MS4 and waters of the United States. 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

Biochemical oxygen demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Centigrade, expressed as parts per million by weight or in terms of milligrams per liter.

Bypass. The intentional diversion of waste streams or wastewater from any portion of a discharger's wastewater treatment equipment or pretreatment facility.

Categorical industrial user. An Industrial User subject to a categorical Pretreatment Standard or categorical standard.

Categorical pretreatment standards. Limitations on pollutant discharges to POTW's promulgated by EPA in accordance with section 307 of the Clean Water Act, that apply to specified process wastewaters of particular industrial categories [40 CFR 403.6 and Parts 405--471].

CFR. Code of Federal Regulations.

City. The City of Kennedale, Texas.

COD (Chemical Oxygen Demand). The measure of the oxygen-consuming capacity of inorganic matter present in the water or wastewater expressed in mg/L as determined by the amount of oxidant consumed from a chemical reflux. Such term does not, however, differentiate between stable and unstable organic matter, and therefore does not necessarily correlate with BOD.

Combined wastestream formula (CWF). A procedure found in 40 CFR 403.6 (e) for calculating fixed alternative discharge limits at industrial facilities applicable when regulated process wastewater, subject to a categorical pretreatment standard, is mixed with non-regulated wastewaters prior to sampling. treatment.

Composite sample. A mixture of grab samples collected at the same sample point at different times and composed of not less than four (4) samples. The series of samples may be collected on a time or flow proportional basis.

(1) Time proportional composite sample. A sampling method which combines discrete samples of constant volume collected at constant time intervals (e.g., two hundred (200) milliliter samples collected every half hour for a twenty-four-hour period).

(2) Flow proportional composite sample. A sampling method which combines discrete samples collected over time, based on the flow of the waste stream being sampled. There are two (2) methods used to collect this type of sample. One method collects a constant sample volume at time intervals which vary based on the stream flow [e.g., two hundred (200) milliliters of sample collected for every five thousand (5,000) gallons discharged]. The other method collects samples of varying volume, based on stream flow, at constant time intervals.

(3) Flow proportional composite will be used only in locations that have the capability to measure flow during the sampling period.

Contaminated. Means containing a harmful quantity of any substance.

Control authority. The City of Fort Worth, Texas or the Trinity River Authority, as holders of the respective Texas Pollutant Discharge Elimination System (TPDES) permits and the City of Arlington as holder of the interlocal wastewater contract with the City of Kennedale.

Cooling water. The water discharged from any system of condensation such as air conditioning, cooling, refrigeration or water used as a coolant in cooling towers where the only pollutant is thermal.

Director. The director of public works of the city, or his/her authorized representative.

Discharge. In its verb form: to deposit, conduct, drain edit, throw, run, allow to seep or otherwise release or dispose; to allow, permit or suffer any of these acts or omissions. In its noun form: the product of any of these acts.

Discharger. Any user discharging an effluent into a POTW by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, intercepting ditches, and all constructed devices and appliances appurtenant thereto. The term includes owners and occupants of such premises.

Disposal: The discharge, deposit, injection, dumping, spilling, leaking or placing of industrial, liquid or hazardous waste into or on land, water or the POTW.

EPA. Environmental Protection Agency of the federal government.

Existing source. Any source of discharge, the construction or operation of which commenced prior to the publication by the 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.

Garbage. Animal and vegetable waste or residue from preparation, cooking or dispensing of food or from the handling, storage, and sale of food products and produce.

Generator: A person who causes, creates, generates, or otherwise produces waste.

gpd. Gallons per day.

Grab sample. A sample which is taken from a waste stream on a one-time basis with no regard to the flow of the waste stream and without consideration of time. The sample is collected over a period of time not exceeding fifteen (15) minutes.

Hazardous Waste: Any liquid, semi-liquid or solid waste (or combination of wastes), which because of its quantity, concentration, physical, chemical or infectious characteristics is:

- a. Identified as hazardous waste in 40CFR Part 261; or
- b. Identified or listed as a hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361.

Indirect discharge or discharge. The introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the act.

Industrial waste. Solid, liquid or gaseous waste resulting from any industrial, manufacturing, trade, or business process or from the development, recovery or processing of natural resources.

Industrial user or user. A source of indirect discharge.

Instantaneous maximum allowable discharge limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete grab or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

~~The daily composite sample is the concentration of discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling.~~

~~The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.~~

Interference. A discharge which, alone or in conjunction with a discharge or discharges from other sources:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(2) Therefore is a cause of a violation of any requirement of the POTW's TPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act; or

(3) Therefore is a cause of a violation of a wastewater contract for sewage disposal or of receiving water quality standards.

Maximum daily average. Means the maximum concentration of a substance allowed in a discharge as determined from a laboratory test of a daily composite sample. The daily composite sample is the concentration of discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling.

May. Is permissive.

mg/L. Milligram per liter.

Monitored User: Commercial and industrial users which are not classified as Significant Industrial Users and do not discharge a significant amount of regulated pollutants on a regular basis.

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

New source. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

(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 should be considered.

Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subsections (2) or (3) above but otherwise alters, replaces, or adds to existing process or production equipment. Construction of a new source under this definition has commenced if the owner or operator has;

a. Begun, or caused to begin as part of a continuous onsite construction program;

1. any placement, assembly, or installation of facilities or equipment; or

2. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which 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 raw materials, intermediate product, waste product, or finished product.

Non-significant Categorical Industrial User (For facilities discharging to the City of Fort Worth Village Creek Wastewater Treatment Facility) means an Industrial User that is subject to categorical Pretreatment Standards may, at the discretion of the Director, be permitted as a Non-Significant Categorical Industrial User (NSCIU) based on a finding that the industrial user never discharges categorical wastewater and the following conditions are met:

- (a) The Industrial User, prior to City's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
- (b) The Industrial User annually submits the certification statement required in Section 12.523-125.1(d)(9)-633(B) [see 40 CFR 403.12(q)], together with any additional information necessary to support the certification statement; and
- (c) The Industrial User never discharges any categorical process wastewater into the sanitary sewer.

Normal Wastewater: Wastewater in which the average concentration of Total Suspended Solids is not more than 250mg/L and BOD is not more than 250mg/L, and which is otherwise acceptable to be discharged into a sanitary sewer under the terms of this Chapter.

NPDES (National Pollutant Discharge Elimination System): National Pollutant Discharge Elimination System permit program of the Environmental Protection Agency, and/or the permit program of the state agency delegated to act on the Environmental Protection Agency's behalf with an approved pretreatment program (e.g. TPDES or Texas Pollutant Discharge Elimination System.).

North American Industry Classification System (NAICS). Is a system used by the Federal Government for collecting and organizing industry-related statistics. The NAICS codes are updated every five years to stay current with industry developments.

O and M (or O & M). Operation and maintenance.

Other wastes. Decayed wood, sawdust, shavings, bark, lime, refuse, ashes, garbage, offal, oil, tar, and all other substances except sewage and industrial wastes.

Owner or occupant. The person, firm, or public or private corporation, using the lot, parcel of land, building or premises connected to and discharging sewage, industrial wastewater or liquid, into the sanitary sewage system of the city, and who pays, or is legally responsible for the payment of, water rates or charges made against the said lot, parcel of land, building or premises, if connected to the water distribution system of the city, or who would pay or be legally responsible for such payment if so connected.

Over Load: The discharge of BOD/COD, solids or wastewater volume in excess of the POTW's capacity.

Pass through. The discharge of pollutants through the POTW into waters of the United States in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of the POTW's TPDES permit.

Permit. Wastewater discharge permit, issued to non-domestic discharges into the sanitary sewerage system of the POTW.

Person. Any individual, business entity, partnership, corporation, governmental agency, political subdivision, or any agent or employee thereof.

pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions, in grams per liter of solution; a measure of the acidity or alkalinity of a solution, expressed in standard units

Polluted Water: Water and/or liquid waste containing any of the following:

- a. Free or emulsified grease, and/or oil.
- b. Acids or alkalis.
- c. Phenols or other substances producing taste or odor in receiving water.
- d. Toxic or poisonous substances in suspension, colloidal state or solution.

- e. Noxious or otherwise obnoxious or odorous gases, liquids or solids.
- f. More than ten (10) mg/L of Total Suspended Solids or BOD, or both.
- g. Color; either True or Apparent, exceeding fifty (50) units.
- h. More than 500 mg/L of dissolved solids, more than 250mg/L of chlorides or more than 250mg/L sulfates.
- i. A pH value of less than 5.5 or greater than 11.0 for discharges to TRA; and lower than 5.0 or higher than 12.0 for discharges to Fort Worth.
- j. Any water or wastewater not approved for discharge into Water of the State by the TCEQ.

Pollutant. Dredged spoil, solid, waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

POTW (publicly owned treatment works). A treatment works as defined by section 212 of the Act, which is owned by the City of Kennedale or the control authority or TRA. This definition includes any devices and systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes of a liquid nature and any other conveyances which convey wastewater to a treatment plant.

Pretreatment. 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 the sanitary sewer.

Pretreatment requirements. Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

Pretreatment standard. The term "pretreatment standard," or "standard" means prohibited discharge limits established pursuant to 40 CFR Part 403.5, categorical pretreatment standards, and local limits, including BMPs.

Process wastewater. Means it is the water that comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, waste product, or wastewater.

Public Sewer: Pipe or conduit carrying sanitary or storm wastewater or unpolluted drainage in which owners of abutting properties shall have the use, subject to control by the City.

Public works utility superintendent (or superintendent). Public works utility superintendent of the city, or his authorized representative.

Sanitary sewer. A publicly owned pipe or conduit designed to collect and transport industrial waste and domestic sewage to the POTW.

Sanitary Sewer Service. A sewer conveying wastewater from the premises of a User to the POTW.

Septage. Wastes removed from a septic tank.

Severe property damage. Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can be reasonably expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

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

Shall. Is mandatory.

Significant change. An increase or decrease in the volume of wastewater discharged by more than twenty (20) percent from the data submitted in the permit application, or the deletion or addition of any pollutant regulated by the authority or by a categorical standard. Volumes are those measured by the water service meter, a verifiable estimate, or a permanently installed effluent flow meter approved by the authority.

Significant industrial user (SIU). (a) (For facilities discharging to the City of Fort Worth Village Creek Wastewater Treatment Facility).

(1) All industrial users subject to categorical pretreatment standards and any other industrial user that:

- a. Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to a POTW (excluding sanitary, noncontact cooling or boiler blowdown wastewater);
- b. Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of a POTW; or
- c. Is designated as such by the authority on the basis that the industrial user has a reasonable potential for adversely affecting a POTW's operation or for violating any pretreatment standard or requirement.

(2) An Industrial User that is subject to categorical Pretreatment Standards may, at the discretion of the Director, be permitted as a Non-Significant Categorical Industrial User (NSCIU) based on a finding that the industrial user never discharges categorical wastewater (excluding sanitary, non-contact cooling and boiler blow-down wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

- a. The Industrial User, prior to City's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
- b. The Industrial User annually submits the certification statement required in Section 12.5-633(B) [see 40 CFR 403.12(q)], together with any additional information necessary to support the certification statement; and
- c. The Industrial User never discharges any categorical process wastewater into the sanitary sewer.

(3) Upon a finding that a noncategorical industrial user meeting the criteria for a significant industrial user has no reasonable potential for adversely affecting a POTW's operation or for violating any pretreatment standard or requirement, the authority may at any time on its own initiative or in response to a petition received from a noncategorical industrial user, determine such user is not a significant industrial user.

(b) (For facilities discharging through the City of Arlington to Trinity River Authority Central Regional Wastewater System).

All industrial users subject to categorical pretreatment standards and any other industrial user that:

- (1) Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to a POTW (excluding sanitary, noncontact cooling or boiler blowdown wastewater);
- (2) Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of a POTW; or
- (3) Is designated as such by the authority on the basis that the industrial user has a reasonable potential for adversely affecting a POTW's operation or for violating any pretreatment standard or requirement.

Upon a finding that a noncategorical industrial user meeting the criteria for a significant industrial user has no reasonable potential for adversely affecting a POTW's operation or for violating any pretreatment standard or requirement, the authority may at any time on its own initiative or in response to a petition received from a noncategorical industrial user, determine such user is not a significant industrial user.

Slug Load or Slug Discharge. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards of this ordinance. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.

Standard Industrial Classification (SIC) Code. The codes which best describe the activities conducted at the facility or establishment. SIC codes are 4 digit numbers used by the Bureau of Census as part of a system to categorize and track the types of business activities conducted in the United States. The first two digits of the code represent the major industry group and the second two digits represent the specific subset of that group. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

Standard methods. "Standard Methods for the Examination of Water and Wastewater", a publication prepared and published jointly by the American Public Health Association, American Waterworks Association and the Water Pollution Control Federation, as it may be amended from time to time.

State: The State of Texas.

Storm Sewer: All roads with drainage systems, streets, catch basins, curbs, gutters, ditches, watercourses and storm drains, which are designed or used for collecting or conveying storm water.

Storm water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation including snowmelt.

Total suspended solids (TSS). Solids that either float on the surface of, or in suspension in, water, sewage or other liquid and which are removable by laboratory filtering.

Total toxic organics (TTO). The sum of masses or concentration of the toxic organic compounds listed in 40 CFR 122 Appendix D, Table II, excluding pesticides, found in industrial users' discharges at a concentration greater than 0.01 mg/L. Only those parameters reasonably suspected to be present, to be determined by the city, if any, shall be analyzed for with non-categorical industries. With categorical industries, the list of TTOs is specific for every applicable federal category. TTO's will be sampled for as stipulated in the particular category or those parameters reasonably suspected to be present, to be determined by the city, where not stipulated.

Texas Pollutant Discharge Elimination System (TPDES) Permit. Permit issued by the Texas Commission on Environmental Quality under authority delegated pursuant to 33 USC 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group or general area-wide basis.

Toxic Pollutant: Any substance that is identified as hazardous waste in 40 CFR Part 261 or established pursuant to 40 CFR Part 403.

TRA. Trinity River Authority.

Transporter: A person who owns or operates a vehicle used for the purpose of transporting waste, or a person who authorizes such operation.

Upset. An exceptional incident in which a discharger unintentionally and temporarily is in a state of noncompliance with the standards established in this division, due to factors beyond the reasonable control of the discharger and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation thereof. Any affirmative defenses to upset only apply to federal court actions as per Section 23-126 of this ordinance.

U.S.C. United States Code.

User. Means a person who is a source of an indirect discharge.

Waste: Rejected, unutilized or superfluous substances in liquid, gaseous or solid form resulting from domestic, agricultural, commercial or industrial activities.

Wastewater:. Liquid and water-carried industrial waste and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

Watercourse: A natural or man-made channel in which a flow of water occurs, either continuously or intermittently.

Waters of the State: All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which contained within, flow through or border upon the State or any portion thereof.
(Ord. No. 308, § 1, 8-11-05)

Sec. 23-122. Purpose and policy; Administration

(a) This division provides for prohibitions on discharges of certain substances into the public sewer system of the city from all sources, domestic, commercial, or industrial. A further purpose of this division is to set forth uniform requirements for industrial dischargers into the authority's wastewater collection and treatment systems, and to enable the authority to protect the general public's health and POTW personnel in conformance with all applicable state and federal laws relating thereto, including the Clean Water Act. Parts of this division are enacted pursuant to regulations established by the U.S. Environmental Protection Agency (EPA) as set forth in 40 CFR Part 403 and all applicable state and federal laws, including the Clean Water Act (33 United States Code 1251 et seq.) and as set forth in 40 CFR Part 403.

(b) All categorical pretreatment standards, lists of toxic pollutants, record-keeping requirements, industrial categories and other standards and categories which have been or which will be promulgated by the EPA shall be incorporated as a part of this division, as will EPA regulations regarding sewage pretreatment established pursuant to the act, and amendment of this division to incorporate such changes shall not be necessary. The authority shall maintain current standards and regulations which shall be available for inspection and copying.

(c) The objectives of this division are:

(1) To prevent the introduction of pollutants into the authority wastewater system which will interfere with the normal operation of the system, including interference with the use or disposal of sludge, or contaminate the resulting sludge;

(2) To prevent the introduction of pollutants into the POTW, and which will pass through the system into receiving waters or the atmosphere or which are otherwise incompatible with the system;

(3) To improve the opportunity to recycle or reclaim wastewater and sludge from the system;

(4) To provide for the equitable distribution of the cost of operation, maintenance, and improvement of the POTW;

(5) To prevent the entrance of pollutants into watercourses within the city and to maintain the quality of water consistent with public health and enjoyment;

(6) To ensure that the quality of wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;

(7) To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public; and

(8) To enable the city to comply with its contracts with the City of Fort Worth and the City of Arlington and to enable the Trinity River Authority and the City of Fort Worth to comply with their NPDES or TPDES permit conditions, sludge use and disposal requirements, and any other federal and state laws to which the POTW is subject.

(d) The regulation of discharges into the authority's wastewater system under this Division shall be accomplished through the issuance of permits, as specified in section 23-125, and by monitoring and inspection of facilities, according to this division.

(e) The director shall have the authority to promulgate such administrative regulations which are consistent with this article and as are from time to time necessary for the enforcement of this division.

(f) For the purpose of promoting consistency of enforcement throughout the city's jurisdiction and service areas, the director shall promulgate an enforcement response plan.

(g) The director and the director's authorized representatives are authorized to administer, implement, and enforce the provisions of this division. Additionally, the director and the director's authorized representatives are authorized to make inspections pursuant to this division and to take enforcement action against violators.

(Ord. No. 308, § 1, 8-11-05)

Sec. 23-123. Prohibited discharges.

(a) *Discharges to storm drains and watercourses.* It shall be unlawful for any person to discharge or cause to be discharged any wastewater into any storm drain or watercourse within the city, except for those persons with approved permits for such discharges.

(b) *General prohibited discharges.*

(1) No person shall discharge or cause to be discharged any storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, and unpolluted wastewater or drainage from downspouts, yard drains, yard fountains and ponds, or lawn sprays into any sanitary sewer.

(2) Water from unpolluted industrial water or cooling water from various equipment shall not be discharged into sanitary sewers if an alternate acceptable means of disposal is available. If an alternate acceptable means of disposal is not available, such water may be discharged into the sanitary sewer with the approval of the city.

(3) No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements.

(c) *Prohibited sewer connections.* It shall be unlawful for any person to deposit or discharge into the sanitary sewer any liquid or solid waste, including trucked or hauled wastes, unless such deposit or discharge has been approved by the authority.

(d) *Specific discharge prohibitions.* No person shall contribute or cause to be discharged directly or indirectly, into any public sanitary sewer any of the following described substances, materials, water or waste:

(1) *Temperature.* Any liquid or vapor having a temperature higher than one hundred fifty degrees (150°) Fahrenheit (65° Centigrade) or a temperature which inhibits or interferes with biological activity in the POTW treatment plant. In no case shall wastewater be introduced which would have a temperature exceeding 40 degrees C (104 degrees F) upon entering the POTW treatment plant.

(2) *Solidifying substance.* Any water or waste which contains wax, grease, oil, petroleum oil, nonbiodegradable cutting oil, products of mineral oil origin, plastic or other substance that will solidify or become discernibly viscous at temperatures between thirty-two degrees (32°) to one hundred fifty degrees (150°) Fahrenheit, thereby contributing to the clogging, plugging or otherwise restricting the flow of wastewater through the collection system;

(3) *Explosive.* Pollutants which create a fire or explosion hazard in the sewer system or POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than one hundred forty degrees (140°) Fahrenheit or sixty degrees (60°) Centigrade using the test methods specified in 40 CFR Part 261.21. This includes flammable or explosive liquids, solids or gases such as gasoline, kerosene, benzene, naphtha, etc., which by reason of their chemical properties or quantity may be sufficient, either alone or by interaction, to cause fire or explosion.

(4) *Obstruction.* Solid or viscous substances in quantities capable of causing obstruction in the flow in sewers or other interference, such as, but not limited to, ashes, cinders, asphalt, concrete, cement, 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, or bulk solids;

- (5) *Garbage*. Any garbage that has not been properly comminuted or shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half-inch in any dimension;
- (6) *Gases*. Any noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance and repair;
- (7) *Sludge*. Any substance which may cause the POTW's effluent or treatment residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process as determined pursuant to criteria in this division. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the act or any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Toxic Substances Control Act, or state standards applicable to the sludge management method being used;
- (8) *TPDES*. Any substance which will cause the POTW to violate its TPDES or other disposal system permits, or the receiving stream water quality standards;
- (9) *Objectionable color*. Any substance with objectionable color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions;
- (10) *Slugload*. Any dump or slugload;
- (11) *Hazard to human life*. Any wastewater which causes a hazard to human life or creates a public nuisance;
- (12) *Toxicity test*. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
- (13) *Swimming pool*. Swimming pool drainage from private residential pools may not be discharged to the sanitary sewer system. Swimming pool drainage from public and semi-public swimming pools may be discharged to the POTW with the prior consent of the authority. Swimming pool filter backwash may be discharged to the POTW;
- (14) *Detergents*. Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
- (15) *Medical waste*. Medical wastes, except as specifically authorized by the authority in a wastewater discharge permit;
- (16) *Pollutants*. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (17) *Interference*. Any pollutant, including oxygen-demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Interference with the POTW.
- (18) *Oils*. Petroleum oil, non-biodegradable cutting oil, or product of mineral oil origin in amounts that will cause interference or pass through.
- (19) *Trucked or hauled pollutants*. Trucked or hauled pollutants, except at discharge points designated by the authority in accordance with subsection 23-123(c) of this division.
- (20) *pH*. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges.
- (21) *Oil and grease*.

a. (For facilities discharging to the City of Fort Worth Village Creek Wastewater Treatment Facility):

1. Petroleum oil, non-biodegradable cutting oil, or non polar products of mineral oil origin in concentrations greater than 200 mg/L;
2. Visible free floatable polar oils, fats, or grease or a concentration greater than 250 mg/L in wastewater discharged from industrial or commercial facilities into the POTW; or

3. In no case shall discharges in amounts that cause interference or operational problems with the POTW be allowed.

b. (For facilities discharging through the City of Arlington and to Trinity River Authority Central Regional Wastewater System):

Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than one-half (1/2) inch in any dimension of fats, oil and grease measured as total oil and grease in excess of two hundred (200) mg/L.

(22) *BTEX*. BTEX concentration greater than 1.0 mg/L.

(23) *Gases*. Hydrogen sulfide, sulfur dioxide or nitrous oxide in excess of 10 parts per million.

(24) *Radioactive*. Radioactive wastes or isotopes with a half-life or concentration exceeding limits established by the authority in compliance with applicable state or federal regulations.

(25) *Toxics*. Toxic pollutants in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, or to pass through the treatment plant and impair aquatic life in receiving water, as expressed by the results of acute or chronic toxicity tests of the POTW effluent.

(26) *Categorical*. Pollutants in excess of the limitations established in an applicable categorical pretreatment standard set forth in Title 40 of the Code of Federal Regulations.

(27) *Explosive*. Wastewaters which emanate vapors causing the atmosphere in the sewer system to exceed twenty (20) percent of the lower explosive limit in the immediate area of the discharge.

(e) *Wastewater limitations*. No person shall contribute or cause to be discharged, directly or indirectly, into any sanitary sewer any wastewater containing or having:

(1) *Acids or alkalis*. Acids or alkalis capable of causing damage to sewage disposal structures or personnel or having a pH value:

a. lower than 5.0 or higher than 12.0 for discharges to Fort Worth; or

b. lower than 5.5 or higher than 11.0 for discharges to TRA.

(2) *Local limits*. Metals in the form of compounds or elements with total concentrations exceeding the following:

TABLE INSET:

Pollutant	Instantaneous Maximum Limit (mg/l) For Discharges to TRA	Instantaneous Maximum Allowable Discharge Limit (mg/L) For Discharges to Fort Worth
Arsenic	0.2	0.25
Cadmium	0.1	0.15
Chromium	2.9	5.0
Copper	2.3	4.0
Lead	0.9	2.9
Mercury	0.0004	0.01
Molybdenum	0.8	No Limit
Nickel	4.6	2.0
Selenium	0.1	No Limit

Silver	0.8	1.0
Zinc	8.0	5.0
TTO	2.13	No Limit

(3) *Cyanide*. Cyanide or cyanogens compounds (expressed as total Cn) in excess of:

- a. 1.0 mg/L for discharges to Fort Worth; and
- b. 0.5 mg/L for discharges to TRA.

(4) *Best Management Practices*. The director may develop Best Management Practices (BMPs), by ordinance or in individual wastewater discharge permits, to help implement Local Limits and other pretreatment standards and the requirements of Section 23.123.

(5) A person commits an offense if with criminal negligence the person processes or stores pollutants, substances, or wastewater prohibited by this section in such a manner that they could be discharged to the POTW.

(f) *Accidental discharge/slug control plan*

The Director shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control Slug Discharges at the time of SIU determination or at least by the first year. All the activities associated with slug control evaluation and results are to be kept in the Industrial User file. The director may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. Alternatively, the director may develop such a plan for any User. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the director of any accidental or slug discharge, as required by Section 23-124 of this article; and
- (4) Procedures as needed to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(g) *Interceptors required*. Where any wastewater may contain sand, grit, debris, undesirable wastes or oil and grease in excess of the allowable limit, appropriate interceptors to remove the aforementioned substances shall be provided and maintained by the person contributing to or causing the discharge, directly or indirectly, at his/her own expense and as required by the authority. Such discharges shall:

- (1) Direct all waste streams, which may contain oil, grease, sand, grit, and solids into an approved interceptor or other pretreatment device approved by the authority.
 - a. All fixtures, equipment, and drain lines located in a facility's food preparation and clean up areas shall be connected to an interceptor.
 - b. The following types of equipment or fixtures shall be connected to a grease interceptor: pre-rinse or pre-wash sinks or sinks in dishwashing areas; dishwashers; two- or three-compartment sinks; work stoves; garbage disposals; kitchen floor drains; floor sinks; mop sinks; food prep sinks; and hand sinks.
- (2) Provide equipment and facilities of a type, design and minimum capacity approved by the authority.
 - a. Interceptors designed to remove oil and grease shall be designed to hold one hundred (100) percent of the discharger's estimated waste stream for a minimum of twelve (12) minutes.
 1. The interceptor shall have a minimum of two (2) compartments and a minimum of two (2) baffles.

2. The interceptor shall be capable of separation and retention of grease and storage of settled solids.
3. The interceptor shall be designed, constructed, and installed for adequate load bearing capacity.
4. A manhole cover shall be installed over each compartment of sufficient size to accommodate cleaning and maintenance.
5. The interceptor shall be installed in a location outside of the building.
6. The interceptor size shall be based on the following calculation or as determined by the authority.

$$\text{Total fixture waste stream}_1 \times 40\% \times 12 \text{ minutes} = \text{interceptor capacity}_2$$

1

The total fixture estimated waste stream is determined by adding the diameters (in inches) of all drains discharging into the interceptor and multiplying this number by 7.5.

2 In gallons.

- (3) Dischargers who discharge extraordinary amounts of abnormal waste may be required to have a higher than minimum capacity interceptor.
- (4) Locate the interceptor in a manner that provides ready and easy accessibility for monitoring, cleaning, and inspection.
- (5) Maintain the interceptor in an effective operating condition by completely cleaning the interceptor and removing all accumulated wastes semi-annually or at a greater frequency as needed to meet regulated discharge limits.
- (6) No chemicals, enzymes, bacteria, or other chemical grease-reducing agents shall be added to an interceptor.
- (7) Provide monitoring facilities as detailed in the City of Arlington Water Utilities Standard Specifications for Water and Sewer Construction, or as specified by the authority.
(Ord. No. 308, § 1, 8-11-05; Ord. No. 349, § 1, 9-14-06; Ord. No. 351, § 1, 10-12-06)

Sec. 23-124. Special rules relating to industrial dischargers.

(a) *Compliance with standards.*

(1) *Applicable laws.* All dischargers shall be subject to those federal, state, and local requirements and limitations which are the most stringent. All limitations listed in this division shall apply at the point where the wastewater is discharged to the POTW.

(2) *Dilution.* No discharger shall increase the use of potable or process water in any way for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in this division.

(3) *Mass limitations.* Where deemed appropriate the authority may apply mass limitation expressed in pounds per day of pollutant discharged.

(4) *Categorical pretreatment standards.*

a. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the authority may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

b. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, director shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).

c. A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

d. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.25.

(b) *Accidental discharge.*

(1) Each discharger shall provide protection from accidental discharge of prohibited or regulated materials or substances established by this division. Where necessary, facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the discharge's cost and

expense. When applicable, detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the authority for review, and shall be approved by the authority before construction of the facility. Review and approval of such plans and operating procedures by the authority shall not relieve the discharger from the responsibility to modify its facility as necessary to meet the requirements of this division.

(2) Dischargers shall notify the authority immediately upon the occurrence of a "slug" or accidental discharge of substances prohibited by this division. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, corrective actions taken, and be signed by the dischargers authorized representative. Within five (5) days following such discharge, the user shall, unless waived by the director, submit to the director a detailed written report which specifies: A description and cause of the discharge, including location of the discharge, type, concentration, and volume of water; duration of noncompliance including exact dates and times of noncompliance and, if the noncompliance is continuing, an immediate response to cause the noncompliant discharge to cease; and all steps taken or to be taken to reduce, eliminate, and prevent continuation or recurrence of such an upset, slug load, or accidental discharge, spill, or other conditions of noncompliance. Any discharge discharging slugs of prohibited materials shall be liable for any expense, loss or damage to the wastewater system and the POTW, in addition to the amount of any fines imposed on the authority under state or federal law.

(3) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in this subsection. Each employer shall instruct all applicable employees, who may cause or discover such a discharge, with respect to emergency notification procedure including the proper telephone number of the authority to be notified.

(c) *Wastewater discharges into private sewer systems.* All dischargers who discharge wastewater into a private sewer system shall comply with this division including section 23-125; provided, however, that flow measurement may be based on metered water consumption. Each discharger shall provide an agreement, signed by the owner of the sewer system, which authorizes the authority's personnel to enter onto the owner's property for purposes of inspection and monitoring of discharger's premises, and for enforcement pursuant to the term of this division.

(d) *Prohibition of bypass.*

(1) Bypass of a discharger's treatment equipment or treatment facility is prohibited and the authority may take enforcement action against the discharger unless:

a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, and;

b. There were no feasible alternatives to the bypass, such as use of auxiliary treatment facilities, retention of untreated wastewater, or maintenance during normal periods of downtime. This condition is not satisfied if, in the exercise of reasonable engineering judgment, adequate back-up equipment should have been installed to prevent a bypass which occurred during normal periods of equipment downtime or maintenance, and;

c. The discharger submitted advanced, written notice of the need for a bypass.

(2) The discharger shall submit oral notice to the authority of an unanticipated bypass that exceeds categorical standards or other discharge limits within twenty-four (24) hours of the time the discharger becomes aware of the bypass. Written notice shall be provided within five (5) days of the time the discharger becomes aware of the bypass. The written notice shall include a description of the bypass and its causes, duration of the bypass, steps taken to prevent the reoccurrence of the bypass, and must be signed by the authorized representative of the discharger. (3) The authority may approve an anticipated bypass, after considering its adverse effects, if it determines that the bypass will meet all of the conditions of subsection (d)(1) above.

(e) *Notification of hazardous waste discharges.* All dischargers shall notify the authority, the control authority, the EPA's Regional Waste Management Division Director, and the approval authority in writing of any discharge into a wastewater system or POTW of any substance, which, if otherwise

disposed of, would be a hazardous waste under 40 CFR Part 261. Any notification under this subsection must be submitted in conformance with 40 CFR Part 403.12 (p).

(f) Pretreatment facilities.

(a) Users shall provide wastewater treatment as necessary to comply with this article and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in Division 2 of this article within the time limitations specified by EPA or TCEQ, the state, or the director, whichever is more stringent.

(b) The user shall provide, operate, and maintain any facilities necessary for compliance at the user's expense.

(c) The director may require a user to submit detailed plans describing such facilities and operating procedures to the director for review. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the city under the provisions of this article.

(Ord. No. 308, § 1, 8-11-05)

Sec. 23-125.1 Administration by permit. (For facilities discharging to the City of Fort Worth Village Creek Wastewater Treatment Facility)

(a) Wastewater discharge permit required.

(1) All nondomestic users which discharge into the POTW shall be grouped according to the following definitions:

a. Group I--Significant industrial users.

b. Group II--Commercial facilities and **Non-Significant Industrial Users (NSIU)**. Those commercial facilities and industrial users which are not included in Group I. Examples include, but are not limited to, automotive service shops, car washes, small food processors, and photographic developing shops.

c. Group III--Classed high strength users. Restaurants or other businesses which can be classed according to any average strength or abnormal strength of their wastewater.

d. Group IV--Wastewater haulers. Septage and chemical toilet waste haulers desiring to discharge into the POTW. Waste must be generated within the city's service area.

e. Group V--Ground water remediation dischargers. Dischargers who are retrieving contaminated underground water, pretreating such water, and then discharging into the POTW.

~~The following classification of user is only applicable for these types of facilities discharging to the City of Fort Worth Village Creek Wastewater Treatment Facility.~~

f. Group VI-- Non-Significant Categorical Industrial User Industrial User (NSCIU). Facility that never discharges categorical wastewater even though categorical process(es) are located on-site.

(2) No Group I, Group IV or Group V or **Group VI** user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the director.

(3) The Director may require any Group II or Group III user to obtain a wastewater discharge permit. Within thirty (30) days after being notified by the director that a wastewater discharge permit is required, the user shall submit a completed application in compliance with this article. After sixty (60) days from the date a Group II or Group III user is notified by the director that a permit is required, the user shall cease discharge to the POTW without a wastewater discharge permit.

(4) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this article and subjects the wastewater discharge permittee to the sanctions set out in this chapter. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law.

(b) Permits. All industrial users determined by the city to be a significant industrial user shall submit a wastewater discharge permit application to the authority on a form provided by the authority. **For**

significant industrial users, an application shall be filed with the director at least ninety (90) days prior to the date upon which any discharge will begin or recommence. Non-significant categorical industrial users (NSCIU) and non-significant industrial users (NSIU) shall be required to submit applications at dates specified by the Director. Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

(1) The application shall contain:

- a. All information required by section 23-125(c).
- b. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemical used or stored at the facility which are, or could accidentally or intentionally be, discharged into the POTW;
- c. Number and type of employee, hours of operation, and proposed or actual hours of operation;
- d. Each product produced by type, amount, process or processes, and rate of production;
- e. Type and amount of raw materials processed (average and maximum per day);
- f. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- g. Time and duration of discharge; and
- h. Any other information as may be deemed necessary by the authority to evaluate the wastewater discharge permit application.

All dischargers shall submit an industrial waste questionnaire. The questionnaire will be reviewed by the public works utility superintendent or authorized representative. If deemed necessary, dischargers may also be required to obtain a permit as outlined herein.

(2) No categorical industrial user shall be allowed to discharge until issued a valid permit.

(3) The authority will evaluate the completed applications and data furnished by the discharger and may require additional information. If, after evaluation, the application is deemed satisfactory, then a wastewater discharge permit shall be issued after the evaluation is complete. The wastewater discharge permit shall be subject to the terms and conditions specified herein and to the regulations of the authority.

(4) If the application is denied, the applicant shall be notified in writing of the reasons for such denial. If denial is based on the authority's determination that the applicant cannot meet the wastewater discharge limitations of this division, the authority may specify that the applicant be required to provide pretreatment of the waste before it is deemed acceptable for sewer discharge.

(5) Where additional pretreatment and/or operation and maintenance activities will be required to comply with this division, pursuant to subsection (a)(5) above, the discharger shall provide a declaration of the shortest schedule by which the discharger will provide such additional pretreatment and/or implement added operational and maintenance activities.

a. The schedule shall contain milestone dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the discharger to comply with the requirements of this division including, but not limited to dates, relating to hiring an engineer, completing preliminary plans, completing final plans, executing contract(s) for major components, commencing construction, completing construction, and all other acts necessary to achieve compliance with this division.

b. The time increments established between milestone dates shall be the shortest practicable for the completion of the required work. Under no circumstances shall the authority permit a time increment for a single step in the compliance schedule to exceed nine (9) months. The completion date in this schedule shall not be later than the compliance date established for applicable categorical pretreatment standards.

c. Not later than fourteen (14) days following each milestone date in the schedule and the final date for compliance, the discharger shall submit a progress report to the authority, including a statement as to whether or not it complied with the increment of progress represented by that milestone 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 discharger to return the construction to the approved schedule. In no event shall more than nine (9) months elapse between such progress reports to the authority.

(6) Prior to the approval of a permit, unless exempted by the authority, all dischargers shall provide monitoring facilities to allow inspection, sampling and/or flow measurement of wastewaters before entering the sanitary sewer of the authority. Each monitoring facility shall be located on the discharger's premises; provided, however, where such location would be impractical or cause undue hardship to the discharger, the authority may approve the placement of monitoring facilities in the public street or sidewalk area. All monitoring equipment and facilities shall be maintained in a safe and proper operating condition at the expense of the discharger. Failure to provide proper monitoring facilities shall be grounds for denial of a permit.

(c) Permit conditions

Permits are issued to a specific discharger for specific operation and are not assignable to another discharger or transferable to any other location without the prior written approval of the authority.

(1) Wastewater discharge permit transfer may be transferred to a new owner or operator only if the permittee gives advance notice to the authority and the authority approves the wastewater discharge permit transfer. The notice to the authority must include a written certification by the new owner or operator which:

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

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

(2) Wastewater discharge permit requirements:

- a. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
- b. A statement that the wastewater discharge permit is nontransferable without prior notification to the city in accordance with subsection 23-125(b)(1) of this division, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
- c. Effluent limits **and Best Management Practices** based on applicable general pretreatment standards as set forth in CFR part 403, categorical pretreatment standards, local limits, and state and local law;
- d. Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include and identification of pollutants **(or Best Management Practices)** to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law; and
- e. Permits shall contain a statement of the civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by federal, state, and local law.

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

- a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- b. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- c. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;

- d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW, the unit charge or schedule of user charges and fees for the management of the wastewater discharge to the POTW;
- e. The unit charge or schedule of user charges and fees for management of the wastewater discharge to the POTW;
- f. Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- g. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit;
- h. Other conditions as deemed appropriate by the authority to ensure compliance with this division, and state and federal laws, rules, and regulations; and
- i. Limits on the maximum wastewater constituents and characteristics and location of approved discharge points.
- j. Requirements to control Slug Discharge, if determined by the city to be necessary.

(d) *Reporting requirements for dischargers.*

(1) *Baseline report.*

Within one hundred eighty (180) days following the effective date for new or revised categorical pretreatment standards, or at least ninety (90) days prior to commencement of the introduction of wastewater into the POTW by a new discharger, any discharger subject to a categorical pretreatment standard shall submit to the authority a report (in a form provided by the authority), indicating the nature and concentration of all prohibited or regulated substances contained in its discharge, and the average and maximum daily flow in gallons. The report shall state whether the applicable categorical pretreatment standards are being met on a consistent basis and, if not, what additional O & M or pretreatment is necessary to bring the discharger into compliance with the applicable categorical pretreatment standards. The report shall also contain:

- a. *Identifying information.* The name and address of the facility, including the name of the operator and owner.
- b. *Environmental permits.* A list of any environmental control permits held by or for the facility.
- c. *Description of operations.* A brief description of nature, average rate of production, standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
- d. *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
- e. *Measurement of pollutants.*
 - i. The categorical pretreatment standards applicable to each regulated process.
 - ii. The result of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the authority, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 23-125 herein. 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 City or the applicable standards to determine compliance with the standard.
 - iii. Sampling must be performed in accordance with procedures set out in subsection 23-125(c)(4).
 - iv. The user shall take a minimum of one representative sample to compile the data necessary to comply with the requirements of this paragraph. However, the City may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to

determine the need for industrial pretreatment measures. Historical data than can represent the current discharge only can be accepted as a baseline report.

v. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

f. *Certification.* A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not whether additional operation and maintenance (O & M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

g. *Compliance schedule.* If additional pretreatment, best management practices and/or O & M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O & M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this division must meet the requirements set out in section 23-125.

h. *Signature and certification.* All baseline monitoring reports shall be signed by an authorized representative and certified by a qualified professional as stated in 40 CFR Part 403.12(b)(6).

(2) *Ninety-day compliance report.* Within ninety (90) days following the date for final compliance by the discharger with applicable categorical pretreatment standards or ninety (90) days following commencement of the introduction of wastewater into the POTW by a new discharger, any discharger subject to categorical pretreatment standards shall submit to the authority a report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge, and the average and maximum daily flow in gallons. The report shall state whether the applicable categorical pretreatment standards or requirements are being met on a consistent basis and, if not, what additional O & M or pretreatment is necessary to bring the discharger into compliance with the applicable categorical pretreatment standards or requirements, including best management practices. This report shall be signed by an authorized representative of the discharger.

(3) *Periodic compliance reports*

a. Any discharger subject to a categorical pretreatment standard made a part of this division shall submit to the authority a report indicating the nature and concentration of prohibited or regulated substances in the effluent which are limited by the categorical pretreatment standards hereof, including best management practices. Reports are required after the compliance date of such a pretreatment standard, or in the case of a new discharger, after commencement of the discharge, and are to be submitted at least once every six (6) months (on dates specified by the authority).

b. In addition, where applicable, this report shall include a record of all measured or estimated average and maximum daily flows. Flows shall be reported on the basis of actual measurement, provided however, where cost or feasibility considerations justify, the authority may accept reports of average and maximum flows estimated by verifiable techniques. The authority, taking into consideration extenuating factors, may authorize the submission of said reports on months other than those specified above.

c. In cases where the Pretreatment Standard requires compliance with Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by City or the Pretreatment Standard necessary to determine the compliance status of the User, and contributing information as is determined necessary to account for water usage, materials recovery, or disposal practices.

d. ~~If the Director has determined that a~~ All non-significant categorical industrial users (NSCIU) or a non-significant industrial user (NSIU) needs a permit, user shall submit a report annually in the month specified by the Director. The report shall be completed according to the City's current reporting requirements, including the submittal of any applicable certification statements and data obtained

through appropriate sampling and analysis performed during the period covered by the report which data are representative of conditions occurring during the reporting period.

e. If the Director has determined that a non-significant industrial user (NSIU) needs a permit, then the NSIU shall submit a report annually in the month specified by the Director. The report shall be completed according to the City's current reporting requirements, including the submittal of any applicable certification statements.

f. e. All periodic compliance reports shall be signed and certified in accordance with section 86-90(c)(9) of this article.

g. f. All wastewater samples shall be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring equipment in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

h. g. Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(4) *Analysis and sampling procedures.*

a. All analyses shall be performed in accordance with procedures contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by the Administrator of the EPA. Sampling shall be performed in accordance with the techniques approved by EPA. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where EPA determines that the Part 136 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 POTW or other parties, approved by EPA.

b. Sample collection.

1. Except as indicated in subsection (c)(4)(B)(ii) b.2. below, the user must collect wastewater samples using 24-hour flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the authority may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with instantaneous discharge limits.

2. Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

3. For sampling required in support of baseline monitoring and 90-day compliance reports required in [40 CFR 403.12(b) and (d)], a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City Superintendent may authorize a lower minimum.

4. For the reports required by (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.

(5) *Reporting additional monitoring.* If an industrial user subject to the reporting requirements of this section monitors any pollutant more frequently than required by the authority, using the procedures prescribed in subsections (c)(4) and b.2. herein, the results of this monitoring along with chain-of-custody forms shall be included in the report.

(6) *Significant industrial user reporting.* Significant industrial users shall submit to the authority at least once every six (6) months (on dates as specified by the authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the authority. 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 subsection (c)(4) herein. This sampling and analysis may be performed by the authority in lieu of the significant industrial user.

(7) *Notification of changed discharge.* Dischargers shall give prior written notification to the authority and City of Fort Worth and TRA of any potential and actual significant changes in the volume or character of pollutants in the discharge.

a. The notification to the authority shall be received at least thirty (30) days prior to change.

b. The authority may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application.

c. The authority may issue a wastewater discharge permit or modify an existing wastewater discharge permit in response to changed conditions or anticipated changed conditions.

d. For purposes of this requirement, significant changes include, but are not limited to, flow increases or decreases of twenty (20) percent or greater, the discharge of any previously unreported pollutants, and the deletion of any pollutant regulated by this division or a permit issued pursuant to this division.

e. Significant Industrial users that discharge wastewater to treatment plants operated by the City of Fort Worth shall provide prior written notification to the City and City of Fort Worth of changes to its wastewater discharges and any changes at its facility that affect the potential for a Slug Discharge.

(8) *Authority monitoring.* Sampling and analysis for the reports required by subsections (c)(1), (2), (3) and (6) above may be performed by the authority in lieu of the discharger. If all information required for the report, including flow data, is collected by the authority, the discharger will not be required to submit the report.

(9) *Signatory requirements.*

a. All applications and compliance reports submitted to the authority must contain the following certification statement and be signed by the authorized representative:

"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 and for not reporting known violations, including possibility of fine and imprisonment."

b. Annual Certification for Non-Significant Categorical Industrial Users—A facility determined to be a Non-Significant Categorical Industrial User by the director pursuant to Section 12.5 103 & 631 (a) (623-121 & 23-125.1(a)); must annually submit the following certification statement signed in accordance with the signatory requirements in 40 CFR 403.120(l)]. This certification must accompany an alternative report required by the Director:

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

(a) The facility described as [facility name] met the definition of a Non-Significant Categorical Industrial User as described in Section 23-125.1 (a) (1).

(b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and

(c) The facility never discharged categorical process wastewater on any given day during this reporting period.

This compliance certification is based on the following information: _____"

(10) *Wastewater analysis.* When requested by the authority, a user must submit information on the nature and characteristics of its wastewater within the time frame requested by the authority. The

authority is authorized to prepare a form for this purpose and may periodically require users to update this information.

(e) *Inspection and flow measurement.*

(1) *Inspection.*

a. At least once a year, the director shall inspect and sample each significant industrial user (SIU), NSCIU and NSIU to determine compliance with the requirements of this article. However, the director may inspect and sample each SIU as frequently as needed during the pretreatment year. The director shall evaluate whether each SIU needs a plan to control slug discharges at the time of SIU determination, or at least by the first year. The authority, control authority, TCEQ or EPA may inspect the facilities of any discharger to determine compliance with the requirements of this division. The discharger shall allow the authority, control authority, TCEQ or EPA or their representatives to enter upon the premises of the discharger at all reasonable hours for the purposes of inspection, sampling, or examination of records. All reports and records related to the provisions of this division shall be made available for copying and inspection by the authority, control authority, TCEQ or EPA, including documentation associated with Best Management Practices. The authority, control authority, TCEQ or EPA shall have the right to set upon the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering or measuring operations. User shall provide ample room in or near the monitoring facility to allow accurate sampling and preparation of samples and analysis and whether constructed on public or private property, the monitoring facilities should be provided in accordance with the City's requirements and all applicable local construction standards and specifications, and such facilities shall be constructed and maintained in such manner so as to enable the City to perform independent monitoring activities. The inspectors, agents or representatives of the authority, control authority, TCEQ or EPA charged with the enforcement of this division shall be deemed to be performing a governmental function for the benefit and health and welfare of the general public and neither the authority, control authority, TCEQ, EPA, nor any individual inspector, agent or representative these agencies shall be held liable for any loss or damage, whether real or asserted, caused or alleged to have been caused as a result of the performance of such governmental function. The failure or refusal of such owner or discharger to comply with this provision shall be grounds for the disconnection of water or sewer service to the facility.

b. Facilities regulated under this chapter are subject to the authority of the following agencies concerning access to information and right of entry onto property for purposes of implementing and enforcing federal and state pretreatment programs and other applicable law: (i) the EPA under section 308 of the Federal Clean Water Act (33 U.S.C. § 3318), as amended; and (ii) the Texas Commission on Environmental Quality (TCEQ), Water Code §§ 26.014 and 26.015, as amended, and V.T.C.A., Health and Safety Code §§ 361.032 and 361.037, as amended, provisions of the Texas Water Code and Texas Health Safety Code. If entry is denied or if a person in control cannot be located, the director shall have every recourse provided by law to secure entry. Such recourse shall include the right to obtain a search warrant under the guidelines of the Texas Code of Criminal Procedure; and for the purposes of same, any person with enforcement authority under this chapter is hereby declared to be a "health officer."

c. The industrial waste discharged or deposited into the sanitary sewers shall be subject to periodic inspection and sampling as often as may be deemed necessary by the authority, control authority, TCEQ or EPA. Samples shall be collected in such manner as to be representative of the character and concentration the waste under operational conditions. The laboratory methods used in the examination of said waste shall be those set forth in 40 CFR Part 136. The determination of the character and concentration of industrial waste shall be made at such times and on such schedules as may be established by the authority, control authority, TCEQ or EPA. Should a discharger desire a determination of the quality of such industrial waste be made at some time other than that scheduled by

the authority, control authority, TCEQ or EPA, such special determination may be made by the authority, control authority, TCEQ or EPA at the expense of the owner or discharger.

d. The authority, control authority, TCEQ or EPA shall conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. The authority or control authority shall inspect and sample the effluent from each significant industrial user at least once a year. The result of such activities shall be available to the approval authority upon request.

(2) *NOV/repeat sampling and reporting.* If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. Within ten (10) days submit to the director a report which addresses: The time, date, location, processes, and operations associated with the violation, and the personnel assigned responsibility and/or present during the violation; the cause or probable cause of the noncompliance; and the actions taken and implemented to meet permit conditions. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within thirty (30) days after becoming aware of the violation, except the industrial user is not required to resample if:

a. The control authority performs sampling at the industrial user at a frequency of at least once per month; or

b. The control authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(3) *Measurement of flow.* The volume of flow used in computing sewage charges shall be based upon metered water consumption or discharge as shown in the records of meter readings maintained by the city's water department.

Where it can be shown to the satisfaction of the director that a substantial portion of the metered water does not enter the sanitary sewer, the director may require or permit the installation of additional approved meters at the owner's expense, to measure the quantity of water actually entering the sewer system. If approved by the director, the measured quantity of water actually entering the sewer system will be used to determine the sewer service charge.

Any discharger who procures all or part of its water supply from sources other than the city's water department, all or part of which is subsequently discharged into the sanitary sewer, shall install and maintain at its expense an effluent meter or flow measuring device approved by the director for the purpose of determining the proper volume of flow to be used in computing sewer service charges. Such meters or measuring devices shall be read monthly.

If the director determines that it is not practicable to measure the quantity or quality of waste by the aforesaid meters or monitoring devices, the quantity or quality of the waste shall be determined in any manner or method the director may find practicable in order to arrive at the percentage of water entering the sanitary sewage system of the authority and/or the quality of the sewage to be used to determine the sewer service charge.

(f) *Permit modifications.*

(1) The authority reserves the right to amend any permit issued hereunder in order to assure compliance by the authority with applicable laws and regulations. The authority may amend any permit for good cause including, but not limited to the following:

a. To incorporate any new or revised federal, state, or local pretreatment standards or requirements.

b. Material or substantial alterations or additions to the discharger's operation processes, or discharge volume or character which were not considered in drafting the effective permit.

c. 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.

d. Information indicating that the permitted discharge poses a threat to the authority's or POTW's collection and treatment systems, authority or POTW personnel or the receiving waters.

e. Violation of any terms or conditions of the permit.

- f. Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting.
- g. To correct typographical or other errors in the permit.
- h. To reflect transfer of the facility ownership and/or operation to a new owner/operator.
- i. Upon request of the permittee, provided such request does not create a violation of any applicable requirements, standards, laws, or rules and regulations.
- j. To incorporate, revise, or revoke new or existing best management practices.

(2) All categorical pretreatment standards promulgated and adopted by the EPA after the effective date of this division shall automatically become a part of this division. Where a discharger, subject to a categorical pretreatment standard, has not previously submitted an application for a permit as required by subsection 23-125(a)(2) above, the discharger shall apply for a permit from the authority within one hundred eighty (180) days after the promulgation of the applicable categorical pretreatment standard by the EPA. In addition, the discharger with an existing permit shall submit to the authority within one hundred eighty (180) days after promulgation of an applicable categorical pretreatment standard, the information required by subsection 23-125(c)(1) above. The discharger shall be informed of any proposed changes in its permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(g) Confidential information.

(1) All information and data submitted by a discharger to the authority or POTW may be submitted to any state or federal agency governing the POTW. Such information shall be considered subject to public disclosure, provided, however, that the discharger may request that information not be subject to public disclosure, in accordance with 40 CFR Part 2 as follows:

a. A discharger may assert a business confidentiality claim covering part or all of the information in a manner described below, and that information covered by such a claim will be disclosed only by means of the procedures set forth below.

b. If no claim of business confidentiality is asserted, all information will be subject to public disclosure without further notice to the discharger.

(2) Asserting business confidentiality claim. A discharger which is submitting information to the authority may assert a business confidentiality claim covering the information by placing on or attaching to the information, at the time it is submitted to the authority, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise nonconfidential documents should be clearly identified by the discharger, and may be submitted separately to facilitate identification and handling by the authority. If the discharger desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.

(3) Nothing in this division shall prevent the disclosure of information and data regarding the nature and content of a discharger's effluent, and the frequency of discharge, or a standard or limitation to be met by the discharger, and this information shall be available to the public with no restrictions. Effluent data which cannot be held as confidential is as defined in 40 CFR 2.302.

(4) The provisions of this subsection shall be subject to any public disclosure requirements which may exist under the Texas Public Information Act, V.T.C.A., Government Code Ch. 552, as amended.

(h) Duty to reapply. A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit re-issuance by submitting a complete permit application, in accordance with subsection 23-125(a)(2) of this division prior to the expiration of the user's existing wastewater discharge permit. An expired permit will continue to be effective and enforceable until the permit is reissued. The user will not be subject to penalties if:

(1) The user has submitted a complete permit application at least sixty (60) days prior to the expiration date of the user's existing permit; and

(2) The failure to reissue prior to expiration of the previous permit is not due to any act or failure to act on the part of the user.

Sec. 23-125.2 Administration by permit. (For facilities discharging through City of Arlington and to the Trinity River Authority Central Regional Wastewater System).

(a) Permits.

(1) All industrial users determined by the city to be a significant industrial user shall submit a wastewater discharge permit application to the authority on a form provided by the authority. The application shall contain:

- a. All information required by section 23-125.2(c).
- b. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemical used or stored at the facility which are, or could accidentally or intentionally be, discharged into the POTW;
- c. Number and type of employee, hours of operation, and proposed or actual hours of operation;
- d. Each product produced by type, amount, process or processes, and rate of production;
- e. Type and amount of raw materials processed (average and maximum per day);
- f. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- g. Time and duration of discharge; and
- h. Any other information as may be deemed necessary by the authority to evaluate the wastewater discharge permit application.

All dischargers shall submit an industrial waste questionnaire. The questionnaire will be reviewed by the public works utility superintendent or authorized representative. If deemed necessary, dischargers may also be required to obtain a permit as outlined herein.

(2) No categorical industrial user shall be allowed to discharge until issued a valid permit.

(3) The authority will evaluate the completed applications and data furnished by the discharger and may require additional information. If, after evaluation, the application is deemed satisfactory, then a wastewater discharge permit shall be issued after the evaluation is complete. The wastewater discharge permit shall be subject to the terms and conditions specified herein and to the regulations of the authority.

(4) If the application is denied, the applicant shall be notified in writing of the reasons for such denial. If denial is based on the authority's determination that the applicant cannot meet the wastewater discharge limitations of this division, the authority may specify that the applicant be required to provide pretreatment of the waste before it is deemed acceptable for sewer discharge.

(5) Where additional pretreatment and/or operation and maintenance activities will be required to comply with this division, pursuant to subsection (a)(5) above, the discharger shall provide a declaration of the shortest schedule by which the discharger will provide such additional pretreatment and/or implement added operational and maintenance activities.

a. The schedule shall contain milestone dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the discharger to comply with the requirements of this division including, but not limited to dates, relating to hiring an engineer, completing preliminary plans, completing final plans, executing contract(s) for major components, commencing construction, completing construction, and all other acts necessary to achieve compliance with this division.

b. The time increments established between milestone dates shall be the shortest practicable for the completion of the required work. Under no circumstances shall the authority permit a time increment for a single step in the compliance schedule to exceed nine (9) months. The completion date in this schedule shall not be later than the compliance date established for applicable categorical pretreatment standards.

c. Not later than fourteen (14) days following each milestone date in the schedule and the final date for compliance, the discharger shall submit a progress report to the authority, including a statement as to whether or not it complied with the increment of progress represented by that milestone 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 discharger to return the construction to the approved schedule. In no event shall more than nine (9) months elapse between such progress reports to the authority.

(6) Prior to the approval of a permit, unless exempted by the authority, all dischargers shall provide monitoring facilities to allow inspection, sampling and/or flow measurement of wastewaters before entering the sanitary sewer of the authority. Each monitoring facility shall be located on the discharger's premises; provided, however, where such location would be impractical or cause undue hardship to the discharger, the authority may approve the placement of monitoring facilities in the public street or sidewalk area. All monitoring equipment and facilities shall be maintained in a safe and proper operating condition at the expense of the discharger. Failure to provide proper monitoring facilities shall be grounds for denial of a permit.

(b) *Permit conditions.* Permits are issued to a specific discharger for specific operation and are not assignable to another discharger or transferable to any other location without the prior written approval of the authority.

(1) Wastewater discharge permit transfer may be transferred to a new owner or operator only if the permittee gives advance notice to the authority and the authority approves the wastewater discharge permit transfer. The notice to the authority must include a written certification by the new owner or operator which:

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

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

(2) Wastewater discharge permit requirements:

- a. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
- b. A statement that the wastewater discharge permit is nontransferable without prior notification to the city in accordance with subsection 23-125(b)(1) of this division, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
- c. Effluent limits based on applicable general pretreatment standards as set forth in CFR part 403, categorical pretreatment standards, local limits, and state and local law;
- d. Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include and identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law; and
- e. Permits shall contain a statement of the civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by federal, state, and local law.

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

- a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- b. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- c. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;
- d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW, the unit charge or schedule of user charges and fees for the management of the wastewater discharge to the POTW;

- e. The unit charge of schedule of user charges and fees for management of the wastewater discharge to the POTW;
- f. Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- g. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit;
- h. Other conditions as deemed appropriate by the authority to ensure compliance with this division, and state and federal laws, rules, and regulations; and
- i. Limits on the maximum wastewater constituents and characteristics and location of approved discharge points.

(c) Reporting requirements for dischargers.

(1) *Baseline report.* Within one hundred eighty (180) days following the effective date for new or revised categorical pretreatment standards, or at least ninety (90) days prior to commencement of the introduction of wastewater into the POTW by a new discharger, any discharger subject to a categorical pretreatment standard shall submit to the authority a report (in a form provided by the authority), indicating the nature and concentration of all prohibited or regulated substances contained in its discharge, and the average and maximum daily flow in gallons. The report shall state whether the applicable categorical pretreatment standards are being met on a consistent basis and, if not, what additional O & M or pretreatment is necessary to bring the discharger into compliance with the applicable categorical pretreatment standards. The report shall also contain:

a. *Identifying information.* The name and address of the facility, including the name of the operator and owner.

b. *Environmental permits.* A list of any environmental control permits held by or for the facility.

c. *Description of operations.* A brief description of nature, average rate of production, standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

d. *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).

e. *Measurement of pollutants.*

1. The categorical pretreatment standards applicable to each regulated process.

2. The result of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the authority, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 23-125 herein.

3. Sampling must be performed in accordance with procedures set out in subsection 23-125(c)(4).

f. *Certification.* A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not whether additional operation and maintenance (O & M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

g. *Compliance schedule.* If additional pretreatment and/or O & M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide 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. A compliance schedule pursuant to this division must meet the requirements set out in section 23-125.

h. *Signature and certification.* All baseline monitoring reports shall be signed by an authorized representative and certified by a qualified professional as stated in 40 CFR Part 403.12(b)(6).

(2) *Ninety-day compliance report.* Within ninety (90) days following the date for final compliance by the discharger with applicable categorical pretreatment standards or ninety (90) days following commencement of the introduction of wastewater into the POTW by a new discharger, any discharger subject to categorical pretreatment standards shall submit to the authority a report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge, and the average and maximum daily flow in gallons. The report shall state whether the applicable categorical pretreatment standards or requirements are being met on a consistent basis and, if not, what additional O & M or pretreatment is necessary to bring the discharger into compliance with the applicable categorical pretreatment standards or requirements. This report shall be signed by an authorized representative of the discharger.

(3) *Periodic compliance reports.*

a. Any discharger subject to a categorical pretreatment standard made a part of this division shall submit to the authority a report indicating the nature and concentration of prohibited or regulated substances in the effluent which are limited by the categorical pretreatment standards hereof. Reports are required after the compliance date of such a pretreatment standard, or in the case of a new discharger, after commencement of the discharge, and are to be submitted at least once every six (6) months (on dates specified by the authority).

b. In addition, where applicable, this report shall include a record of all measured or estimated average and maximum daily flows. Flows shall be reported on the basis of actual measurement, provided however, where cost or feasibility considerations justify, the authority may accept reports of average and maximum flows estimated by verifiable techniques. The authority, taking into consideration extenuating factors, may authorize the submission of said reports on months other than those specified above.

(4) *Analysis and sampling procedures.*

a. All analyses shall be performed in accordance with procedures contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by the Administrator of the EPA. Sampling shall be performed in accordance with the techniques approved by EPA. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where EPA determines that the Part 136 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 POTW or other parties, approved by EPA.

b. *Sample collection.*

1. Except as indicated in subsection (c)(4)(B)(ii), the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the authority may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.

2. Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

(5) *Reporting additional monitoring.* If an industrial user subject to the reporting requirements of this section monitors any pollutant more frequently than required by the authority, using the procedures prescribed in subsection (c)(4) herein, the results of this monitoring shall be included in the report.

(6) *Significant industrial user reporting.* Significant industrial users shall submit to the authority at least once every six (6) months (on dates as specified by the authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the authority. 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 subsection (c)(4) herein. This sampling and analysis may be performed by the authority in lieu of the significant industrial user.

(7) *Notification of changed discharge.* Dischargers shall give prior written notification to the authority of any significant change in the volume or character of pollutants in the discharge.

a. The notification to the authority shall be received at least thirty (30) days prior to change.

b. The authority may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application.

c. The authority may issue a wastewater discharge permit or modify an existing wastewater discharge permit in response to changed conditions or anticipated changed conditions.

d. For purposes of this requirement, significant changes include, but are not limited to, flow increases or decreases of twenty (20) percent or greater, the discharge of any previously unreported pollutants, and the deletion of any pollutant regulated by this division or a permit issued pursuant to this division.

e. Significant Industrial users that discharge wastewater to treatment plants operated by the Trinity River Authority (TRA) shall provide prior written notification to the City and the TRA of changes to its wastewater discharges and any changes at its facility that affect the potential for a Slug Discharge.

(8) *Authority monitoring.* Sampling and analysis for the reports required by subsections (c)(1), (2), (3) and (6) above may be performed by the authority in lieu of the discharger. If all information required for the report, including flow data, is collected by the authority, the discharger will not be required to submit the report.

(9) *Signatory requirements.* All applications and compliance reports submitted to the authority must contain the following certification statement and be signed by the authorized representative:

"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 and for not reporting known violations, including possibility of fine and imprisonment."

(10) *Wastewater analysis.* When requested by the authority, a user must submit information on the nature and characteristics of its wastewater within the time frame requested by the authority. The authority is authorized to prepare a form for this purpose and may periodically require users to update this information.

(d) *Inspection and flow measurement.*

(1) *Inspection.*

a. The authority, control authority, TCEQ or EPA may inspect the facilities of any discharger to determine compliance with the requirements of this division. The discharger shall allow the authority, control authority, TCEQ or EPA or their representatives to enter upon the premises of the discharger at all reasonable hours for the purposes of inspection, sampling, or examination of records. All reports and records related to the provisions of this division shall be made available for copying and inspection by the authority, control authority, TCEQ or EPA. The authority, control authority, TCEQ or EPA shall have the right to set upon the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering or measuring operations. The inspectors, agents or representatives of the authority, control authority, TCEQ or EPA charged with the enforcement of this division shall be deemed to be performing a governmental function for the benefit and health and welfare of the general public and neither the authority, control authority, TCEQ, EPA, nor any individual inspector, agent or representative these agencies shall be held liable for any loss or damage, whether real or asserted, caused or alleged to have been caused as a result of the performance of such governmental function. The failure or refusal of such owner or discharger to comply with this provision shall be grounds for the disconnection of water or sewer service to the facility.

b. Facilities regulated under this chapter are subject to the authority of the following agencies concerning access to information and right of entry onto property for purposes of implementing and

enforcing federal and state pretreatment programs and other applicable law: (i) the EPA under section 308 of the Federal Clean Water Act (33 U.S.C. § 3318), as amended; and (ii) the Texas Commission on Environmental Quality (TCEQ) under V.T.C.A., Water Code §§ 26.014 and 26.015, as amended, and V.T.C.A., Health and Safety Code §§ 361.032 and 361.037, as amended, provisions of the Texas Water Code and Texas Health Safety Code. (d)

c. The industrial waste discharged or deposited into the sanitary sewers shall be subject to periodic inspection and sampling as often as may be deemed necessary by the authority, control authority, TCEQ or EPA. Samples shall be collected in such manner as to be representative of the character and concentration the waste under operational conditions. The laboratory methods used in the examination of said waste shall be those set forth in 40 CFR Part 136. The determination of the character and concentration of industrial waste shall be made at such times and on such schedules as may be established by the authority, control authority, TCEQ or EPA. Should a discharger desire a determination of the quality of such industrial waste be made at some time other than that scheduled by the authority, control authority, TCEQ or EPA, such special determination may be made by the authority, control authority, TCEQ or EPA at the expense of the owner or discharger.

d. The authority, control authority, TCEQ or EPA shall conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. The authority or control authority shall inspect and sample the effluent from each significant industrial user at least once a year. The result of such activities shall be available to the approval authority upon request.

(2) *NOV/repeat sampling and reporting.* If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within thirty (30) days after becoming aware of the violation, except the industrial user is not required to resample if:

a. The control authority performs sampling at the industrial user at a frequency of at least once per month; or

b. The control authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(3) *Measurement of flow.* The volume of flow used in computing sewage charges shall be based upon metered water consumption or discharge as shown in the records of meter readings maintained by the city's water department.

Where it can be shown to the satisfaction of the director that a substantial portion of the metered water does not enter the sanitary sewer, the director may require or permit the installation of additional approved meters at the owner's expense, to measure the quantity of water actually entering the sewer system. If approved by the director, the measured quantity of water actually entering the sewer system will be used to determine the sewer service charge.

Any discharger who procures all or part of its water supply from sources other than the city's water department, all or part of which is subsequently discharged into the sanitary sewer, shall install and maintain at its expense an effluent meter or flow measuring device approved by the director for the purpose of determining the proper volume of flow to be used in computing sewer service charges. Such meters or measuring devices shall be read monthly.

If the director determines that it is not practicable to measure the quantity or quality of waste by the aforesaid meters or monitoring devices, the quantity or quality of the waste shall be determined in any manner or method the director may find practicable in order to arrive at the percentage of water entering the sanitary sewage system of the authority and/or the quality of the sewage to be used to determine the sewer service charge.

(e) *Permit modifications.*

(1) The authority reserves the right to amend any permit issued hereunder in order to assure compliance by the authority with applicable laws and regulations. The authority may amend any permit for good cause including, but not limited to the following:

- a. To incorporate any new or revised federal, state, or local pretreatment standards or requirements.
- b. Material or substantial alterations or additions to the discharger's operation processes, or discharge volume or character which were not considered in drafting the effective permit.
- c. 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.
- d. Information indicating that the permitted discharge poses a threat to the authority's or POTW's collection and treatment systems, authority or POTW personnel or the receiving waters.
- e. Violation of any terms or conditions of the permit.
- f. Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting.
- g. To correct typographical or other errors in the permit.
- h. To reflect transfer of the facility ownership and/or operation to a new owner/operator.
- i. Upon request of the permittee, provided such request does not create a violation of any applicable requirements, standards, laws, or rules and regulations.

(2) All categorical pretreatment standards promulgated and adopted by the EPA after the effective date of this division shall automatically become a part of this division. Where a discharger, subject to a categorical pretreatment standard, has not previously submitted an application for a permit as required by subsection 23-125(a)(2) above, the discharger shall apply for a permit from the authority within one hundred eighty (180) days after the promulgation of the applicable categorical pretreatment standard by the EPA. In addition, the discharger with an existing permit shall submit to the authority within one hundred eighty (180) days after promulgation of an applicable categorical pretreatment standard, the information required by subsection 23-125(c)(1) above. The discharger shall be informed of any proposed changes in its permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(f) Confidential information.

(1) All information and data submitted by a discharger to the authority or POTW may be submitted to any state or federal agency governing the POTW. Such information shall be considered subject to public disclosure, provided, however, that the discharger may request that information not be subject to public disclosure, in accordance with 40 CFR Part 2 as follows:

- a. A discharger may assert a business confidentiality claim covering part or all of the information in a manner described below, and that information covered by such a claim will be disclosed only by means of the procedures set forth below.
- b. If no claim of business confidentiality is asserted, all information will be subject to public disclosure without further notice to the discharger.

(2) Asserting business confidentiality claim. A discharger which is submitting information to the authority may assert a business confidentiality claim covering the information by placing on or attaching to the information, at the time it is submitted to the authority, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise nonconfidential documents should be clearly identified by the discharger, and may be submitted separately to facilitate identification and handling by the authority. If the discharger desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.

(3) Nothing in this division shall prevent the disclosure of information and data regarding the nature and content of a discharger's effluent, and the frequency of discharge, or a standard or limitation to be met by the discharger, and this information shall be available to the public with no restrictions. Effluent data which cannot be held as confidential is as defined in 40 CFR 2.302.

(4) The provisions of this subsection shall be subject to any public disclosure requirements which may exist under the Texas Public Information Act, V.T.C.A., Government Code Ch. 552, as amended.

(g) *Duty to reapply.* A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit re-issuance by submitting a complete permit application, in accordance with subsection 23-125(a)(2) of this division prior to the expiration of the user's existing wastewater discharge permit. An expired permit will continue to be effective and enforceable until the permit is reissued. The user will not be subject to penalties if:

(1) The user has submitted a complete permit application at least sixty (60) days prior to the expiration date of the user's existing permit; and

(2) The failure to reissue prior to expiration of the previous permit is not due to any act or failure to act on the part of the user.

Sec. 23-126. Enforcement.

(a) Notice of violation.

(1) When a director finds that any person has violated, or continues to violate, this chapter or any permit or order issued hereunder, the director may issue to such person a written notice of violation.

(2) No later than the tenth day after receipt of the notice, the violator shall submit to the issuing director an explanation of the violation and a plan for the satisfactory correction and prevention of a reoccurrence of the violation. Such plan shall include specific actions to be taken by the violator.

(3) If the violator denies that any violation occurred, or contends that no corrective action is necessary, he shall submit to the director no later than the tenth day after receipt of the notice, a written explanation of the basis of any such denial or contention.

(4) Submission of an explanation and/or plan in no way relieves a violator of liability for any violations occurring before or after receipt of the notice of violation.

(5) Issuance of a notice of violation shall not be a bar against, nor a prerequisite for, taking any other action against a violator.

(b) ~~Revocation of permit.~~ The authority may revoke the permit or terminate water or sewer service of any discharger which fails to: *Non-emergency termination of water supply and/or discharge.*

(1) A user who violates the following conditions is subject to the termination of its city-provided water supply and/or its discharge:

a. Violation of wastewater discharge permit conditions;

b. Failure to accurately report the wastewater constituents and characteristics of its discharge;

c. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

d. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or

e. Violation of the pretreatment standards of this division.

f. The user will be notified of the proposed termination of its water supply and/or discharge, and may petition for a reconsideration and hearing.

(1) ~~Factually report the wastewater constituents and characteristics of its discharge; or~~

(2) ~~Report significant changes in wastewater constituents or characteristics; or~~

(3) ~~Allow reasonable access to the discharger's premises by representatives of the authority for the purpose of inspection or monitoring; or~~

g. (4) Pay sewer charges; or

h. (5) Meet compliance schedules; or

- i. (6) Fulfill the conditions of its permit, or this division, or to obey any final judicial order with respect thereto.
- j. Failure to meet effluent limitations; including Best Management Practices, based on applicable Pretreatment Standards; or
- k. A User who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance or individual discharge permit.

(c) Notification of violation.

- (1) Whenever the authority finds that any discharger has engaged in conduct which justifies non-emergency termination revocation of a permit, pursuant to subsection 23-126.1 (a) hereof, the authority shall serve or cause to be served upon such discharger a written notice, either by personal delivery or by certified or registered mail, return receipt requested, stating the nature of the alleged violation.
- (2) Within 30 ten (10) days of the date of receipt of the notice, the discharger shall respond in person or in writing to the authority with a report containing the following:
 - a. the problem(s) per the NOV issued;
 - b. the possible cause of the problem(s);
 - c. the steps being taken to minimize or curtail the reoccurrence of the problem(s).
- (3) The user shall not recommence its discharge until the director so authorizes and:
 - a. The user presents proof satisfactory to the director that the non-complying discharge has ceased;
 - b. The user presents proof satisfactory to the director that the conditions creating the threat of imminent and substantial danger have been eliminated;
 - c. The user pays the city for all costs the city will incur in reinstating services.
- (4) Exercise of this option by the director shall not be a bar to, nor a prerequisite for, taking any other action against the user.

(c) *Administrative orders.* Where the violation of subsection 23-126(a), hereof is not corrected by means of enforcement action listed in subsection 23-126(b), the following enforcement escalations may be used. Terms may or may not be negotiated with industrial users.

(1) *Consent order.* An agreement between the authority and the industrial user normally containing three (3) elements: (1) compliance schedules; (2) stipulated fines or remedial actions; and (3) signatures of the authority and authorized representatives.

(2) *Show cause order.* An order which directs the user to appear before the city to explain its noncompliance and show cause why more severe enforcement actions against the user should not be levied. Typically used after informal contacts or NOV's have failed to resolve noncompliance; however, it can be used at anytime.

(3) *Compliance order.* An order which directs the industrial user to achieve or restore compliance by a date specified in the order. Terms need not be discussed with the industry in advance. Typically used when noncompliance cannot be resolved without construction, repair, or process changes, or to require development of management practices, spill prevention programs, and other pretreatment program requirements.

For facilities discharging through City of Arlington to Trinity River Authority Central Regional Wastewater System

(4) *Cease and desist order.* (Only for facilities discharging through City of Arlington to Trinity River Authority Central Regional Wastewater System). An order which directs the noncompliance user to cease illegal or unauthorized discharges immediately, or to terminate the discharge altogether. Generally used in situations where the discharge could cause interference or pass through, or otherwise create an emergency situation.

~~(4) *Cease and desist order.* An order which directs the noncompliance user to cease illegal or unauthorized discharges immediately, or to terminate the discharge altogether. Generally used in situations where the discharge could cause interference or pass through, or otherwise create an emergency situation.~~

(d) *Right of appeal of administrative ruling.* Any discharger or any interested party shall have the right to request in writing an interpretation or ruling by the authority on any matter covered by this division and shall be entitled to a prompt written reply. In the event that such inquiry is by a discharger and deals with matters of performance or compliance with this division or deals with a permit issued pursuant hereto for which enforcement activity relating to an alleged violation is the subject, receipt of a discharger's request shall stay all enforcement proceedings pending receipt of the aforesaid written reply; provided, however, the authority may take any action it deems necessary to protect its wastewater collection and treatment system or to comply with its TPDES permit or to comply with any contract the authority has for the treatment of wastewater.

(e) *Judicial proceedings.* The authority, with respect to the conduct of any discharger contrary to the provisions of this division may authorize its attorney to commence any legal action in a court of competent jurisdiction for equitable and/or legal relief.

(1) *Injunctive relief.* When the authority finds that a user has violated, or continues to violate, any provision of this division, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the authority may petition, pursuant to Chapter 54 a District Court or other court of proper jurisdiction of Tarrant County, Texas through its attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this division on activities of the user. The authority may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunction relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(2) *Civil penalties.* The authority may also seek to recover civil penalties of up to five thousand dollars (\$5,000.00) per day pursuant to V.T.C.A., Local Government Code § 54.018.

(3) *Criminal proceedings.* Notwithstanding any notice provisions contained in this division, any person who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this division commits an offense. The person shall be fined not more than two thousand dollars (\$2,000.00) for each offense.

(f) *Emergency suspension of service and discharge permits.*

(1) The authority, may, for good cause shown, suspend water or wastewater service to the discharger's facility when it appears to the authority that an actual or threatened discharge presents or may present an imminent or substantial danger to the health or welfare of persons, substantial danger to the environment, interfere with the operation of a POTW, violate any pretreatment limits imposed by this division or any Permit issued pursuant to this division. Any discharger notified of the suspension of the authority's water or wastewater service and/or the discharger's permit, shall within a reasonable period of time, as determined by the authority, cease all discharges. In the event of the failure of the discharger to comply voluntarily with the suspension order within the specified time, the authority may commence judicial proceedings to compel the discharger's compliance with such order or may immediately disconnect such discharger's service line from the city water and sanitary sewer system. In the case of emergency disconnection of service, the director shall make a reasonable attempt to notify the owner or discharger before disconnecting the service line. The party whose service has been disconnected shall have an opportunity for a hearing on the issue of the illegal discharge and the disconnection as soon as possible after such disconnection has taken place.

(2) The authority may reinstate the permit and/or the wastewater or water service upon proof by the discharger of the cessation of the non-complying discharge or elimination of conditions creating the

threat of imminent or substantial danger as set forth above. The water and/or wastewater service shall be reconnected at the discharger's expense.

(g) **Affirmative defenses.**

(1) **Act of God. Affirmative defense to discharge violations for action in municipal or state court.**

In an action brought in municipal or state court, if a person can establish that an event that would otherwise be a violation of this division or a permit issued under this division was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of this division or the permit. In an enforcement proceeding, the user seeking to establish the occurrence of an act of God, war, strike, riot, or other catastrophe shall have the burden of proof. In the event that an act of God, war, strike, riot, or other catastrophe has been established the user shall control production of all discharges to the extent possible until such time as the reduction, loss, or failure of its treatment facility is restored or an alternative method of treatment is provided.

(2) **Affirmative defense to upset.**

In an action brought in federal court, it is an affirmative defense to an enforcement action brought for noncompliance with categorical pretreatment standards that the noncompliance was caused by upset, if the user demonstrates, through properly signed, contemporaneous operating logs, or other relevant evidence that: An upset occurred and the user can identify the cause(s) of the upset; the facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

(2) Any discharger who experiences an upset in operations which places the discharger in a temporary state of non-compliance with this division shall inform the authority within twenty-four (24) hours of first awareness of the commencement of the upset. Where such information is given orally, the authority may at its discretion require the discharger to file a written report within five (5) working days. The report shall specify:

- a. Description of the upset, its cause and the upset's impact on a discharger's compliance status.
- b. Duration of non-compliance, including exact dates and times of non-compliance, and if the non-compliance continues, the time by which compliance is reasonably expected to occur.
- c. All steps taken or to be taken to reduce, eliminate and prevent recurrence of such an upset or other conditions of non-compliance.

(3) **Affirmative defense to specific prohibited discharge standards.**

It is an affirmative defense in federal court to an enforcement action brought against a user for noncompliance with the general prohibitions of Section 86-88(a) or a specific prohibition of section 86-88(d)(1), (5), (7), (14), or (17), that the user did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- a. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- b. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(4) An operating upset which was not the result of negligence on the part of the discharger, and which has been documented and verified in the manner stated above shall be an affirmative defense to any enforcement action brought by the authority against a discharger for any non-compliance with the division which arises out of violations alleged to have occurred during the period of the upset.

(h) **Recovery of costs incurred by the authority.** Any discharger who discharges or causes a discharge producing a deposit or obstruction, or causes damage to or impairs the authority's wastewater system, shall be liable to the authority for any expense, loss, or damage caused by such violation or discharge. The authority shall bill the discharger for the costs incurred by the authority for any cleaning, repair, or replacement work caused by the violation or discharge. Failure to pay such bill may result in the termination of water or wastewater service.

(i) *Falsifying information.* Any person who makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this division, or falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Division, shall, upon conviction, be punished as provided in subsection 23-126(e)(3) herein.

(j) *POTW pretreatment requirements.* All POTW's shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of one thousand dollars (\$1,000.00) a day for each violation by industrial users of pretreatment standards and requirements. POTWs whose approved pretreatment programs require modification to conform to the requirements of this subsection shall submit a request for approval of a program modification in accordance with § 403.18, unless the state would be required to enact or amend a statutory provision, in which case the POTW shall submit such a request.

~~(k) Non-emergency termination of water supply and/or discharge.~~

~~(1) A user who violates the following conditions is subject to the termination of its city-provided water supply and/or its discharge:~~

~~a. Violation of wastewater discharge permit conditions;~~

~~b. Failure to accurately report the wastewater constituents and characteristics of its discharge;~~

~~c. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;~~

~~d. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or~~

~~e. Violation of the pretreatment standards of this division.~~

~~f. The user will be notified of the proposed termination of its water supply and/or discharge, and may petition for a reconsideration and hearing.~~

~~(2) The user shall not recommence its discharge until the director so authorizes and:~~

~~a. The user presents proof satisfactory to the director that the non-complying discharge has ceased;~~

~~b. The user presents proof satisfactory to the director that the conditions creating the threat of imminent and substantial danger have been eliminated;~~

~~c. The user pays the city for all costs the city will incur in reinstating services.~~

~~(3) Exercise of this option by the director shall not be a bar to, nor a prerequisite for, taking any other action against the user.~~

(Ord. No. 308, § 1, 8-11-05)

Sec. 23-127. Miscellaneous provisions.

(a) *Net/gross calculations.* The authority may elect to adjust categorical pretreatment standards to reflect the presence of pollutants in the discharger's intake water, in accordance with 40 CFR Part 403.15.

(b) *Preservation of records.* All dischargers subject to this division shall retain and preserve and make available for inspection and copying, for no less than three (3) years, any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating to monitoring activities, sampling and chemical analyses made by or on behalf of a discharger in connection with its discharge and required by this article, and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements including documentation associated with Best Management Practices established under Sec. 23-123(e)(9). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. All records which pertain to matters which are the subject of administrative adjustment or any other enforcement or litigation activities brought by the

authority pursuant hereto shall be retained and preserved by the discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

(c) *Costs of administering program.* The authority may make such charges, known as monitoring and pretreatment charges, as are reasonable for services rendered in administering the programs outlined in this division. Such charges may include, but are not limited to:

- (1) Permitting industrial facilities;
- (2) Inspection;
- (3) Sample analysis;
- (4) Monitoring; and
- (5) Enforcement.

(d) *Right of revision.* The authority reserves the right to amend this division to provide for more or less stringent limitations or requirements on discharges to the sanitary sewer or POTW where deemed necessary to comply with the objectives set forth in section 23-122.

(e) *Publication of list of significant violations.*

(1) (For facilities discharging to the City of Fort Worth Village Creek Wastewater Treatment Facility).

A User shall be determined by the authority to be in a state of significant noncompliance if a User's violation meets one or more criteria listed in 40 CFR 403.8 (f) (2) (viii). The authority shall annually publish, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the City, a list of users that have significantly violated federal pretreatment requirements during the previous twelve (12) months. The director, or the director's designee, shall be responsible for calculating the users who have committed significant violations.

Significant Industrial Users are subject to the SNC criteria listed in paragraphs a through h below. Group II non-significant industrial users that have been issued a permit shall be subject to SNC criteria listed in paragraphs c through h below. Group VI non-significant categorical industrial users shall be subject to SNC criteria listed in paragraphs c through h below. All other industrial users are subject to the SNC criteria listed in paragraphs c, d and h of this Section. Significant violation noncompliance (SNC) shall mean any of the following:

- a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of wastewater measurements taken for the same pollutant parameter during a six-month period exceed a numeric pretreatment standard or requirement, including instantaneous limits for the same pollutant parameter by any amount;
- b. Technical review criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the daily numeric pretreatment standard or requirement including instantaneous limits multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- c. Any other discharge violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (Daily Maximum, long-term average, instantaneous limit or a narrative standard) that the authority believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;
- d. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the authority's exercise of its emergency authority to halt or prevent such a discharge;
- e. Failure to meet, within a stipulated deadline of the scheduled date (90 days), a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- f. Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

- g. Failure to accurately report noncompliance; or
- h. Any other violation(s), which may include a violation of Best Management Practices, that the authority determines will adversely affect the operation or implementation of the local pretreatment program.

(2) (For facilities discharging through City of Arlington and to the Trinity River Authority Central Regional Wastewater Treatment System).

A User shall be determined by the authority to be in a state of significant noncompliance if a User's violation meets one or more criteria listed in 40 CFR 403.8 (f) (2) (vii) [rev. 7/24/90]. The authority shall annually publish in the authority's official newspaper a list of users that have significantly violated federal pretreatment requirements during the previous twelve (12) months. The director, or the director's designee, shall be responsible for calculating the users who have committed significant violations. Significant violation shall mean any of the following:

- a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of wastewater measurements taken during a six-month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount;
- b. Technical review criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- c. Any other discharge violation that the authority believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;
- d. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the authority's exercise of its emergency authority to halt or prevent such a discharge;
- e. Failure to meet, within a stipulated deadline of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- f. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- g. Failure to accurately report noncompliance; or
- h. Any other violation(s) which the authority determines will adversely affect the operation or implementation of the local pretreatment program.

(Ord. No. 308, § 1, 8-11-05)
Secs. 23-128--23-175. Reserved.

Date: December 8, 2011

Agenda Item No: EXECUTIVE SESSION - A.

I. Subject:

The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda and legal issues regarding regulation of sexually oriented businesses, litigation, settlement offers, and/or claims regarding the following matters:

1. H & A Land Corporation, et al. v. City of Kennedale - Cause No. 402-CV-0458-Y (Dreamer's and Showtime)

II. Originated by:

Bob Hart, City Manager

III. Summary:

Bob Hart will present information on these topics during executive session.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

Any action that is necessary on this topic will be taken once council has reconvened into open session.

VIII. Attachments:

Date: December 8, 2011

Agenda Item No: EXECUTIVE SESSION - B.

I. Subject:

The City Council will meet in closed session pursuant to Section 551.072 of the Texas Government Code to deliberate the purchase, exchange, lease, or value of real property for the following:

1. 945 Little School Road

II. Originated by:

Bob Hart, City Manager

III. Summary:

Bob Hart will present information on this topic during executive session.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments: