

**ATTACHMENT A -STANDARD FORM AGREEMENT REGARDING PAYMENT AND
USE OF DROUGHT SURCHARGE EXEMPTION FEE**

STATE OF TEXAS §

COUNTY OF NUECES §

Whereas, the City of Corpus Christi adopted Ordinance No.____ which amended Section 55-50 of the City Code of Ordinances (the “Code”) by adding new subsection (e), “Drought Surcharge Exemption Fee”, a copy of which is attached as Exhibit A, and referred to herein as “the Ordinance”;

Whereas, the Ordinance established the initial Drought Surcharge Exemption Fee of \$0.25 per 1,000 gallons for industrial customers effective October 1, 2018, herein the ““Drought Surcharge Exemption Fee” or “the Fee”;

Whereas, the Ordinance further provides that industrial customers who pay the non-mandatory Fee are exempt from the applicable water allocation surcharges of City Code Section 55-154;

Whereas, the Ordinance further provides that large volume industrial customers may opt-out of the Drought Surcharge Exemption Fee by providing written notice to the City Manager;

Whereas, large volume industrial customers who opt out of the Fee will be subject to the allocation surcharge of City Code of Ordinances Section 55-154 as amended;

Whereas, the Ordinance further provides that the Fees shall be dedicated for development of a drought-resistant water supply;

Whereas, the Ordinance further provides that the City Manager may execute contracts and other documents necessary to establish the dedicated fund; and

Whereas, the Ordinance further provides that the Drought Surcharge Exemption Fee may be adjusted no more frequently than every 5 years by City Council;

NOW, THEREFORE, THIS AGREEMENT is made and entered into by and between, _____ (“Company”), whose address is _____, and the City of Corpus Christi, Texas (“City”), a home rule city and municipal corporation and body politic under the laws of the State of Texas, of 1201 Leopard Street, Corpus Christi, Texas 78401, County of Nueces, State of Texas, for good and valuable consideration in hand

received by the parties respectively and upon the covenants and conditions hereafter stated:

1. The parties find and agree that the foregoing statements included in the preamble of this Contract are true and correct and adopt such findings for all intents and purposes related to this Contract.
2. Company is a large-volume industrial customer of the City. For purposes of this agreement, the term "large-volume industrial customer" or "industrial customer" means: a City utility account customer that uses water in quantity of at least 100,000 gallons a day in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric, but does not include agricultural use.
3. During the term of this Agreement and subject to the opt-out provisions detailed below, the City agrees to bill Company the Drought Surcharge Exemption Fee of \$0.25 per 1,000 gallons per month as adjusted for consumer price index described in Ordinance No. _____ in addition to the regular City rates for Company's water use. The City acknowledges that by Company's timely payment of said Drought Surcharge Exemption Fee, the Company is exempt from the City's water allocation surcharge of City Code Section 55-154 for the month of billing. However, this Agreement does not prevent the City from allocating water supply in the event of an emergency water shortage condition as defined by TCEQ regulations or by City Ordinance 031355.
4. During the term of this Agreement and subject to the opt-out provisions detailed below, the Company agrees to timely pay the Drought Surcharge Exemption Fee established by City Ordinance. Company agrees that the Drought Surcharge Exemption Fee is a non-mandatory and nonrefundable fee. Company agrees that said fee is reasonable and fair. Company agrees that Company shall not subject the City to any legal challenge of said Drought Surcharge Exemption Fee or of Ordinance No. _____.
5. During the term of this Agreement and subject to the opt-out provisions detailed below, the City agrees that the Drought Surcharge Exemptions Fees shall continue be billed and paid each month unless the balance exceeds \$150,000,000 to be adjusted annually for inflation by the following Consumer Price Index: CPI-All Urban Consumers (Current Series) for Water and sewer and trash collection services in U.S. City average, all urban consumers, or until the Ordinance is repealed, whichever occurs first.
6. The City agrees that the Drought Surcharge Exemption Fees paid by Company shall be deposited by City into a dedicated account (or "the Fund") to be used by City solely to develop capital projects for a drought-resistant water supply or supplies. The

City agrees that the Drought Surcharge Exemption Fees will not be used for non-capital projects such as studies that compare alternate water sources. For purposes of this Agreement, the term “capital project” is a capital project as determined by general accepted accounting principles. The Drought Surcharge Exemption Fees paid to the City may be used by the City to pay debt for an allowable capital project.

7. Company acknowledges that Company may opt out of the non-mandatory Drought Surcharge Exemption Fee (or “Fee”) by providing written opt-out notice to the City Manager. Company acknowledges that once Company opts out of said Fee, then Company again becomes subject to the City’s water allocation surcharge of City Code Section 55-154.

8. If the Company fails to timely pay the Fee when due, then the City shall provide Company notice and 30 days’ opportunity to cure the payment default. Upon expiration of the 30 day notice period without Company curing the default, the Company will be deemed to have opted out of the Fee and immediately again becomes subject to the water allocation surcharges of the City Code.

9. Company further acknowledges that once Company has opted out of said Fee, then Company may request to opt back into the Fee subject to compliance with City ordinance and the following minimum conditions:

There is no right nor entitlement to opt back into the Fee. The City Manager or designee retains sole discretion to determine whether granting request to opt back into the Fee is in the best interest of the city.

The customer must submit a written request to the City Manager to request to opt back into the Drought Surcharge Exemption Fee subject to City Manager review.

Upon receipt of invoice, (which may be sent in the event the City Manager or designee grants the request to opt back into the Fee) the customer must timely pay the Drought Surcharge Exemption fees calculated on customer’s actual water usage from date of City’s receipt of written request back to customer’s date of opt out, up to a maximum of 10 years.

The customer remains subject to compliance with the aforementioned allocation surcharge provisions of the City Code as may be amended and all other applicable ordinances, rules and regulations of the City for the mandatory reinstatement period of 24 months. The mandatory reinstatement period begins upon date of notice from the City to the customer of the approval of the request to opt in and continues for 24 consecutive calendar months. During the 24-month reinstatement period, the customer must timely pay a non-refundable reinstatement fee of \$0.25 per 1,000 gallons of water consumed during the reinstatement period, upon receipt

of invoice. By payment of said reinstatement fee, the Company has determined that the fee is fair, just and reasonable.

Despite compliance with these conditions, the customer will not be allowed to opt back into the Fee when the combined storage level of the Choke Canyon Reservoir and Lake Corpus Christi declines below 40%.

10. The Fee shall not be increased for initial five years from effective date of the Ordinance. Thereafter, the Fee shall not be increased by more than the percentage increase in the U.S. Consumer Price Index-All Urban Consumers (Current Series) for Water and sewer and trash collection services U.S. City average, all urban consumers since the effective date of the Ordinance.

11. The parties acknowledge that all customers within the same rate class must receive the same rates. Therefore, if the City enters into an agreement with another similarly classified industrial customer regarding the payment and use of the Drought Surcharge Exemption Fee and the agreement contains terms more favorable than those in this Agreement, then Company and its assigns shall have the right to amend this Agreement to contain the more favorable terms and provisions.

12. The parties agree that if any court or administrative body with final jurisdiction declares the Fee or Ordinance invalid, then the parties agree that this Agreement shall be terminated and any unencumbered balance remaining in the Fund shall be returned to the then-participating industrial customers and then-participating wholesale water suppliers on a last-in, first-out basis based on amounts of Fee paid by each such customer.

13. This Agreement is subject to the laws of the State of Texas. Any dispute regarding the City's performance under this Agreement shall be brought in the courts of Nueces County Texas after notice and reasonable opportunity to cure.

14. Notices regarding this Agreement shall be sent to the parties at the addresses reflected herein, as may be modified by written notice. Notices to the City shall be addressed to attention of the City Manager with copy to the City Attorney. Notices are deemed received three business days' following mail via regular U.S. mail, certified U.S. mail, or via overnight mail courier service.

15. This Agreement takes effect upon date of last signature.

16. Once the balance of the Fund exceeds \$150,000,000 the City will cease billing and collection of the Drought Surcharge Exemption Fee. The Company continues to be exempt from the allocation surcharges of City Code 55-154 as long as the balance of the Fund exceeds \$150,000,000 until this Agreement is terminated.

17. This Agreement continues in effect unless terminated by mutual agreement of the parties, or until Company issues notices to opt out of the Fee, or until terminated as otherwise provided herein.

18. This Agreement may also be terminated upon City Council adoption of an ordinance to terminate this Agreement effective upon five years' notice to Company, or by adoption of an ordinance to terminate collection of the Drought Surcharge Exemption Fee upon five years' notice to the then participating large volume industrial customers. Upon effective date of termination of this Agreement as described in the preceding sentence, any unencumbered balance remaining in the Fund shall be returned to the then-participating wholesale water suppliers and then-participating large-volume industrial customers on a last-in, first-out basis and the Company is subject to the allocation surcharges of City Code 55-154 as amended.

AGREED TO BY:

COMPANY:

By: _____

Name:

Title:

STATE OF TEXAS §

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COUNTY OF NUECES §

This instrument was acknowledged before me on this the _____ day of _____, 2018, by _____ as the _____ for _____ Company on behalf of said Company.

Notary Public, State of Texas

CITY OF CORPUS CHRISTI:

By: _____

Name:

Title:

STATE OF TEXAS §

COUNTY OF NUECES §

This instrument was acknowledged before me on this ____ day of _____, 2018, by _____, _____, _____, _____, of the City of Corpus Christi, a Texas home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

APPROVED AS TO FORM: ____ day of _____, 2018.

Assistant City Attorney
for the City Attorney