

Ordinance amending the Corpus Christi Code of Ordinances to modify Sections 55-150 and 55-154 and add Section 55-159.1, which will provide an exemption from drought surcharges for large-volume industrial customers who pay a drought surcharge exemption fee, provide a mechanism to opt-out of said fee, dedicate the use of the exemption fee to development of a drought-resistant water supply, and authorize the City Manager to execute a standard form agreement with customers who request a City commitment regarding use of the fee; effective October 1, 2018; and providing for penalties.

Whereas, a committee of large volume industrial customers determined that the value of their industrial processes creates a need to provide a water supply that will be resistant to drought despite future increases in industrial demand;

Whereas, said committee desires to simultaneously incentivize the City to obtain said drought resistant water supply while avoiding the vagaries of a drought surcharge that will occasionally and unpredictably increase their cost of water by paying a flat-rate fee that will pay for part of the cost of future drought-resistant water supplies;

Whereas, said fee will be placed in a dedicated fund with mechanisms to protect it from diversion into unintended uses; and

Whereas, curtailment due to shortage shall result in distribution of water pro rata in a manner directed by Texas Water Code § 11.039.

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

Section 1. The Corpus Christi Code of Ordinances is amended to modify Subsection (a) of Section 55-150 to read as follows:

Sec. 55-150. - Scope, purpose, authorization, and definitions.

- (a) *Scope.* There is hereby established a City of Corpus Christi Water Conservation Plan and Drought Contingency Plan. The City of Corpus Christi Water Conservation Plan approved on May 28, 2013 and the Drought Contingency Plan ~~2017~~Revised 2018 edition, dated approved January 30, 2018, as amended by ordinance, a true copy of which is on file in the office of the city secretary, is adopted, and shall be followed in matters concerning water conservation, drought management, and water supply enhancement programs.

Section 2. The Corpus Christi Code of Ordinances is amended to modify Section 55-154 to read as follows:

Sec. 55-154. - Surcharges for reservoir system stages 2, 3 and 4, and service measures.

- (a) *General.*
- (1) The surcharges established herein are solely intended to regulate and deter the use of water during a period of serious drought in order to achieve necessary water conservation. The city council expressly finds that the drought poses a serious and immediate threat to the public and economic health and general welfare of this

community, and that the surcharges and other measures adopted herein are essential to protect said public health and welfare.

- (2) This section, and the surcharges and measures adopted herein are an exercise of the city's regulatory and police power, and the surcharges and connection fees are conservation rates intended to meet fixed costs as a result of lost revenue.
 - (3) With city council approval, the city manager or designee is authorized to determine trigger points and surcharges during Stages 2, 3 and 4 emergency water shortage conditions.
 - (4) In this section, institutional customer means city utility customer which operates as a not-for-profit entity.
 - (5) A customer may appeal an allocation or drought surcharge triggering point established under this section to the director of water operations or his designee on grounds of unnecessary hardship through the process outlined in section 55-155.
 - (6) Reservoir system surcharge funds will first be applied towards annual debt service payments and operating and maintenance expenses of the water department as reflected in the city operating budget to offset revenue loss due to drought conditions. Additional funds will be reported to city council for city council direction.
- (b) *Residential water customers, who are not billed through a master water meter.*
- (1) A monthly base amount of three thousand (3,000) gallons shall be established as a trigger point for each customer. Water consumption up to and including this amount will not include a drought surcharge.
 - (2) Above the three thousand (3,000) gallon monthly consumption trigger point, with city council approval, a drought surcharge shall be added up to and including one hundred (100) per cent of the customer's total monthly water bill over the allocation.
- (c) *Residential customers who are billed from a master water meter.*
- (1) Once Stage 1 condition has been declared, property managers of multi-tenant units shall notify the city director of water operations of number of residential units in their facility for determination of allocations. Until so notified, the city shall calculate the allocation based on two (2) residential units per master water meter. A monthly base amount of three thousand (3,000) gallons shall be established as a trigger point for each residential unit.
 - (2) When consumption for the month is less than or equal to three thousand (3,000) gallons times the number of residential units, there will be no surcharge.
 - (3) With city council approval, when consumption is above the three thousand (3,000) gallons times the number of units, a drought surcharge shall be added up to and including one hundred (100) per cent of the customer's total monthly water bill over the allocation.
- (d) *Commercial or institutional customer.*
- (1) A monthly water usage allocation shall be established by the city manager or designee for each commercial or institutional customer.
 - (2) Method of establishing allocation:
 - a. When the combined reservoir capacity is less than twenty (20) per cent of total capacity (Stage 3), the commercial or institutional customer's allocation shall be ninety (90) per cent of the customer's usage for the corresponding month's billing period during the previous twelve (12) months prior to the implementation of Stage 1 condition.
 - b. If the customer's billing history is shorter than twelve (12) months, the monthly average for the period for which there is a record shall be used for any monthly period for which no history exists.
 - c. Provided, however, a customer, ninety (90) per cent of whose monthly usage is less than six thousand (6,000) gallons, shall be allocated six thousand (6,000) gallons.

- d. The city manager shall give best effort to see that notice of each commercial or institutional customer's allocation is mailed to such customer.
 - e. If, however, the customer does not receive such notice, it shall be the customer's responsibility to contact the city' utilities billing office to determine the allocation, and the allocation shall be fully effective notwithstanding lack of receipt of written notice.
 - f. Upon request of the customer or at the initiative of the city manager, the allocation may be reduced or increased by the city manager:
 - 1. If one (1) nonresidential customer agrees to transfer part of its allocation to another nonresidential customer; or
 - 2. If other objective evidence demonstrates that the designated allocation is inaccurate under present conditions.
- (e) *Industrial customers, who use less than 100,000 gallons of water per day for processing.*
- (1) A monthly water usage allocation shall be established by the city manager or designee for each ~~an~~ industrial customer, which uses less than 100,000 gallons of water per day for processing (e.g., an industrial customer).
 - (2) Method of establishing allocation.
 - a. When the combined reservoir capacity of Choke Canyon Reservoir and Lake Corpus Christi is less than twenty (20) percent of total capacity (Stage 3), the industrial customer allocation shall be ninety (90) percent of the customer's usage for the corresponding month's billing period during the previous twelve (12) months prior to the implementation of Stage 1 condition.
 - b. If the customer's billing history is shorter than twelve (12) months, the monthly allocation shall be one-twelfth of ninety (90) percent of the customer's maximum annual contracted amount until twelve (12) months of billing history are established. ~~However~~~~However~~, if the industrial customer does not have a water contract and does not have at least twelve (12) months of billing history, then the new industrial customer will provide data regarding expected water use and city will determine allocation based on ninety (90) percent of expected use to determine initial allocation until twelve (12) months of billing history are established.
 - c. The city manager shall give his best effort to see that notice of each industrial customer's allocation is mailed to such customer.
 - d. If, however, the industrial customer does not receive such notice, it shall be the customer's responsibility to contact the city utilities billing office to determine the allocation, and the allocation shall be fully effective notwithstanding lack of receipt of written notice.
 - e. Upon request of the industrial customer or at the initiative of the city manager, the allocation may be reduced or increased by the city manager, if:
 - 1. The designated period does not accurately reflect the customer's normal water usage because customer had to shut down a major processing unit for overhaul during the period.
 - 2. The customer has added or is in the process of adding significant additional processing capacity.
 - 3. The customer has shut down or significantly reduced the production of a major processing unit.
 - 4. The customer has previously implemented significant permanent water conservation measures.
 - 5. The customer agrees to transfer part of its allocation to another industrial customer.
 - 6. Other objective evidence demonstrates that the designated allocation is inaccurate under present conditions.

(f) Commercial customers, institutional customers, and industrial customers who use less than 100,000 gallons of water per day for processing shall pay the following reservoir system surcharges:

- (1) Customers whose allocation is six thousand (6,000) gallons through twenty thousand (20,000) gallons per month:
 - a. Five dollars (\$5.00) per one thousand (1,000) gallons for the first one thousand (1,000) gallons over allocation.
 - b. Eight dollars (\$8.00) per one thousand (1,000) gallons for the second one thousand (1,000) gallons over allocation.
 - c. Sixteen dollars (\$16.00) per one thousand (1,000) gallons for the third one thousand (1,000) gallons over allocation.
 - d. Forty dollars (\$40.00) for each additional one thousand (1,000) gallons over allocation.
- (2) Customers whose allocation is twenty-one thousand (21,000) gallons per month or more:
 - a. One (1) times the block rate for each one thousand (1,000) gallons in excess of the allocation up through five (5) percent above allocation.
 - b. Three (3) times the block rate for each one thousand (1,000) gallons from five (5) per cent through ten (10) percent above allocation.
 - c. Five (5) times the block rate for each one thousand (1,000) gallons from ten (10) per cent through fifteen (15) percent above allocation.
 - d. Ten (10) times the block rate for each one thousand (1,000) gallons more than fifteen (15) percent above allocation.
 - e. The surcharges shall be cumulative.
 - f. As used herein, "block rate" means the charge to the customer per one thousand (1,000) gallons at the regular water rate schedule at the level of the customer's allocation.

(g) Industrial customers, who use 100,000 gallons or more of water per day for processing.

- (1) A monthly water usage allocation shall be established by the city manager or designee for each industrial customer, which uses water for processing (e.g., an industrial customer).
- (2) Method of establishing allocation.
 - a. When the combined reservoir capacity of Choke Canyon Reservoir and Lake Corpus Christi is less than thirty (30) percent of total capacity (Stage 2), the industrial customer allocation shall be eighty (80) percent of the customer's usage for the corresponding month's billing period during the previous twelve (12) months prior to the implementation of Stage 1 condition.
 - b. If the customer's billing history is shorter than twelve (12) months, the monthly allocation shall be one-twelfth of eighty (80) percent of the customer's maximum annual contracted amount until twelve (12) months of billing history are established. However, if the industrial customer does not have a water contract and does not have at least twelve (12) months of billing history, then the new industrial customer will provide data regarding expected water use and city will determine allocation based on eighty (80) percent of expected use to determine initial allocation until twelve (12) months of billing history are established.
 - c. The city manager shall give his best effort to see that notice of each industrial customer's allocation is mailed to such customer.
 - d. If, however, the industrial customer does not receive such notice, it shall be the customer's responsibility to contact the city utilities billing office to determine the allocation, and the allocation shall be fully effective notwithstanding lack of receipt of written notice.
 - e. Upon request of the industrial customer or at the initiative of the city manager, the allocation may be reduced or increased by the city manager, if:

1. The designated period does not accurately reflect the customer's normal water usage because customer had to shut down a major processing unit for overhaul during the period.
2. The customer has added or is in the process of adding significant additional processing capacity.
3. The customer has shut down or significantly reduced the production of a major processing unit.
4. The customer has previously implemented significant permanent water conservation measures.
5. The customer agrees to transfer part of its allocation to another industrial customer.
6. Other objective evidence demonstrates that the designated allocation is inaccurate under present conditions.

(h) Industrial customers using 100,000 gallons or more of water per day for processing shall pay the following drought surcharges:

- (1) Customers whose allocation is Eighty thousand (80,000) gallons per month or more:
 - a. Three (3) times the block rate for each one thousand (1,000) gallons in excess of the allocation up through five (5) percent above allocation.
 - b. Six (6) times the block rate for each one thousand (1,000) gallons from five (5) per cent through ten (10) percent above allocation.
 - c. Nine (9) times the block rate for each one thousand (1,000) gallons from ten (10) per cent through fifteen (15) percent above allocation.
 - d. Twelve (12) times the block rate for each one thousand (1,000) gallons more than fifteen (15) percent above allocation.
 - e. The surcharges shall be cumulative.
 - f. As used herein, "block rate" means the charge to the customer per one thousand (1,000) gallons at the regular water rate schedule at the level of the customer's allocation.

(ig) Nonresidential customer is billed from a master meter.

- (1) When a nonresidential customer is billed from a master meter which jointly measures water to multiple residential dwelling units (for example: apartments, mobile homes), the customer may pass along any surcharges assessed under this plan to the tenants or occupants, provided that:
 - a. The customer notifies each tenant in writing:
 1. That the surcharge will be passed along.
 2. How the surcharge will be apportioned.
 3. That the landlord must be notified immediately of any plumbing leaks.
 4. Methods to conserve water (which shall be obtained from the city).
 - b. The customer diligently maintains the plumbing system to prevent leaks.
 - c. The customer installs water saving devices and measures (ideas for which are available from the city) to the extent reasonable and practical under the circumstances.

(jh) For residential customers, the following measures come into effect after city council approves a drought rate surcharge; for nonresidential customers, these measures come into effect at Stage 3. Water service to the customer may be terminated under the following conditions:

- (1) Monthly residential water usage exceeds trigger point by four thousand (4,000) gallons or more two (2) or more times (which need not be consecutive months).
- (2) Monthly water usage on a master meter which jointly measures water usage to multiple residential dwelling units exceeds trigger point by four thousand (4,000) gallons times the number of dwelling units or more two (2) or more times (which need not be consecutive months).

- (3) Monthly nonresidential water usage for a customer whose allocation is six thousand (6,000) gallons through twenty thousand (20,000) gallons exceeds its allocation by seven thousand (7,000) gallons or more two (2) or more times (which need not be consecutive months).
 - (4) Monthly nonresidential water usage for a customer whose allocation is twenty-one thousand (21,000) gallons or more exceeds its allocation by fifteen (15) percent or more two (2) or more times (which need not be consecutive months).
 - (5) For residential customers and nonresidential customers, after the first disconnection, water service shall be restored upon request for a fee of fifty dollars (\$50.00).
 - (6) For such customers, after the second disconnection, water service shall be restored within twenty-four (24) hours of the request for a fee of five hundred dollars (\$500.00).
 - (7) If water service is disconnected a third time for such customer, water service shall not be restored until the city re-enters a level of water conservation less than Stage 2. For master meter customers, the service restoration fees shall be the same as above times the number of dwelling units.
 - (8) The city manager is directed to institute written guidelines for disconnection of water service under this provision, which will satisfy minimum due process requirements, if any.
- (k) It shall be a defense to imposition of a surcharge hereunder, or to termination of service, that water used over allocation resulted from loss of water through no fault of the customer (for example, a major water line break) for the following conditions:
- (1) The customer shall have the burden to prove such defense by objective evidence (for example, a written certification of the circumstances by a plumber).
 - (2) A sworn statement may be required of the customer.
 - (3) This defense shall not apply if the customer failed to take reasonable steps for upkeep of the plumbing system, failed to reasonably inspect the system and discover the leak, failed to take immediate steps to correct the leak after discovered, or was in any other way negligent in causing or permitting the loss of water.
- (l) When this section refers to allocation or water usage periods as "month," "monthly," "billing period," and the like, such references shall mean the period in the city's ordinary billing cycle which commences with the reading of a meter one month and commences with the next reading of that meter which is usually the next month.
- (1) The goal for the length of such period is thirty (30) days, but a variance of two (2) days, more or less, will necessarily exist as to particular meters.
 - (2) If the meter reader system is prevented from timely reading a meter by any obstacle which is attributable to the customer, the original allocation shall apply to the longer period without modification.

Section 3. Article XII of Chapter 55 of the Corpus Christi Code of Ordinances is amended to add new Section 55-159.1, to read as follows:

“Sec. 55-159.1 – Non-mandatory Drought Surcharge Exemption Fee.

(a) Establishment of non-mandatory “Drought Surcharge Exemption Fee” effective October 1, 2018.

Large-volume industrial customers¹ may voluntarily pay a non-mandatory and non-refundable “Drought Surcharge Exemption fee” or “Fee” of \$0.25 per 1,000 gallons of water per month to be exempt from the applicable allocation surcharges of City Code Section 55-154 during the month of billing. The City will begin to charge the Fee as of October 1, 2018 to all large-volume industrial customers. The Fee will be charged with the large-volume industrial customer’s regular monthly water bill which is due as stated on the bill. By payment of the Fee, the large-volume industrial customer has determined that the Fee is fair, just, and reasonable.

(b) Notice of Opt-out-

A large-volume industrial customer may opt out of the Drought Surcharge Exemption fee (or “Fee”) by providing written notice to the City Manager. A large-volume industrial customer is deemed to have opted out of the Fee as of the date payment of the Fee remains delinquent after notice and opportunity to cure. A large-volume industrial customer who has opted out of said Fee is subject to aforementioned allocation surcharges of City Code Section 55-154 in addition to compliance with all applicable City ordinances.

(c) Request to opt back into the Drought Surcharge Exemption fee or “Fee”.

There is no right nor entitlement to opt back into the Fee. The City Manager or designee retains sole discretion to determine whether granting large-volume industrial customer’s request to opt back into the Fee is in the best interest of the city. At a minimum, the large-volume industrial customer will be required to comply with the following mandatory conditions.

1. The large-volume industrial 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.

2. Upon receipt of invoice, the large-volume industrial customer must timely pay the Drought Surcharge Exemption fees calculated on said customer’s actual water usage from date of City’s receipt of written request back to said customer’s date of opt out, up to a maximum of 10 years.

3. The large-volume industrial 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 said customer and continues for 24 consecutive calendar months. During the reinstatement period, the large-volume industrial customer will timely pay a non-refundable reinstatement fee of \$0.25 per 1,000 gallons of water upon receipt of invoice. By payment of said reinstatement fee, the large-volume industrial customer has determined that the fee is fair, just, and reasonable.

¹ For purposes of this Section 55-159.1 the term “large-volume industrial customer” shall mean a utility customer who uses water in minimum quantity of 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.

4. Despite compliance with these conditions, the large-volume industrial 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%.

(d) Dedicated use of the Drought Surcharge Exemption fees.

1. The Fee shall be dedicated by the City for development of a drought-resistant water supply and shall not be used for operation and maintenance costs of any water supply, treatment facility or distribution system.

2. The Fee paid to the City will be reserved in a separate account ("Account") and used only for capital costs to develop and/or acquire an additional drought-resistant water supply including but not limited to, payment of debt for an allowable capital project.

3. The City Manager may execute documents necessary for the establishment of a dedicated fund.

(e) Review and adjustment of the Drought surcharge exemption fee.

The Fee shall be reviewed and adjusted by City Council action no more frequently than every 5 years. Any subsequent Fee increase is limited to increases based upon changes to 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.

(f) Participation by wholesale water suppliers.

A wholesale water supplier with a water supply contract with the City may choose to establish an identical voluntary Drought Surcharge Exemption Fee and standard agreement for its large-volume industrial customers with said Fee and agreement to be equivalent to the ordinance and standard agreement adopted by the City of Corpus Christi. Upon adoption of said identical voluntary Drought Surcharge Exemption Fee and standard agreement for its large-volume industrial customers, the wholesale water supplier shall assess and collect the Fees from its large-volume industrial customers and then remit said Fees to the City. In addition, the wholesale water supplier shall notify the City Manager or designee of the volume of water used by its large-volume industrial customers each month.

(g) The City Manager may execute letters of commitment and standard agreements regarding payment and use of Drought Surcharge Exemption Fee with terms consistent with this Section 55-159.1 (each, an "Agreement"). The Agreement may be terminated by the City upon five years' notice to terminate the Agreement. A copy of the standard agreement is attached as an Exhibit to the Ordinance which enacted this Section 55-159.1. The City Manager is authorized to adjust the terms of the standard agreement as long as said adjustments are consistent with the terms of this Section 55-159.1 and said adjustment is made available to all large-volume industrial customers participating in the Drought Surcharge Exemption Fee.

(h) The Drought Surcharge Exemption Fee established by this Section 55-159.1 continues to be billed and paid except during periods when the balance in the Account 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. While balance exceeds \$150,000,000 the City will cease billing and collection of the Fee and the large-volume industrial customer remains exempt from the allocation surcharges.

(i) The City may repeal this Section 55-159.1 upon at least five years' notice to the then participating large-volume industrial customers and participating wholesale water suppliers.

(j) Upon City's repeal of this Section 55-159.1 or City's termination of the Agreement, any unencumbered balance remaining in the Account will be returned to the then-participating large-volume industrial customers and then-participating wholesale water suppliers on a pro-rata basis.

(k) The large-volume industrial customer paying the Drought Surcharge Exemption Fee established by this Section 159.1 is exempt from City curtailment of water during Reservoir System Stages 1, 2, and 3, except when such curtailment is required by Texas Water Code Section 11.039 or required by other applicable state laws and state regulations."

Section 4. The Drought Contingency Plan adopted by Ordinance No. 029846, as amended by Ordinance 030545, 031160, and Ordinance 031355 is hereby amended to reflect these changes, and the amended Drought Plan be filed of record with the City Secretary's Office. City staff is directed to submit the amended Drought Contingency Plan to the Texas Commission on Environmental Quality and the Texas Water Development Board and as required by law.

Section 5. Staff is directed to submit a copy of the approved ordinance to the wholesale water customers.

Section 6. Publication and Effective Date. This ordinance shall be published in a newspaper of general circulation. The changes enacted by this ordinance take effect on October 1, 2018.

Section 7. Severability. It is hereby declared to be the intention of the City that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such declaration shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

Section 8. Penalties. Violations of this Ordinance shall be enforced pursuant to City Code of Ordinances Section 55-156.

Section 9. The change in law made by this Ordinance applies only to an offense committed on or after the effective date of this Ordinance. An offense committed before the effective date of this Ordinance is governed by the Ordinance in effect when the offense was committed, and the former ordinance is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Ordinance if any element of the offense occurred before that date.

That the foregoing ordinance was read for the first time and passed to its second reading on this the _____ day of _____, 2018, by the following vote:

Joe McComb _____ Ben Molina _____

Rudy Garza _____ Everett Roy _____

Paulette Guajardo _____ Lucy Rubio _____

Michael Hunter _____ Greg Smith _____

Debbie Lindsey-Opel _____

That the foregoing ordinance was read for the second time and passed finally on this the _____ day of _____, 2018, by the following vote:

Joe McComb _____ Ben Molina _____

Rudy Garza _____ Everett Roy _____

Paulette Guajardo _____ Lucy Rubio _____

Michael Hunter _____ Greg Smith _____

Debbie Lindsey-Opel _____

PASSED AND APPROVED on this the _____ day of _____, 2018.

ATTEST:

Rebecca Huerta
City Secretary

Joe McComb
Mayor

EXHIBIT A - STANDARD FORM AGREEMENT REGARDING PAYMENT AND USE OF NON-MANDATORY DROUGHT ALLOCATION SURCHARGE EXEMPTION FEE

STATE OF TEXAS §
COUNTY OF NUECES §

Whereas, the City of Corpus Christi adopted Ordinance No.____ which amended Article XII Water Resource Management of Chapter 55 of the City Code of Ordinances (the “Code”) by adding new Section 55-159.1, “Non-mandatory 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 large-volume 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 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 Agreement are true and correct and adopt such findings for all intents and purposes related to this Agreement.

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 (“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 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, or as may be required by Texas Water Code Section 11.039 or required by any other State laws and regulations.
4. During the term of this Agreement and subject to the opt-out provisions detailed below, the Company agrees to timely pay the Fee established by City Ordinance. Company agrees that the Fee is a non-mandatory and nonrefundable fee. Company agrees that said fee is fair, just and reasonable. Company agrees that Company shall not subject the City to any legal challenge of said Fee or of Ordinance No. _____, but this sentence will not affect any legal challenge by Company based on the City’s failure to comply with the terms of this Agreement.
5. During the term of this Agreement and subject to the opt-out provisions detailed below, the City agrees that the Fee shall continue be billed and paid each month except during periods when 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 Fee 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 Fee 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 Fee 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 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 pro-rata basis based on amounts of Fees 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. Company may assign this Agreement upon written consent of the City which consent shall not be unreasonably withheld.

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. The City will cease billing and collection of the Drought Surcharge Exemption Fee during periods when the balance of the Fund exceeds \$150,000,000. The Company continues to be exempt from the allocation surcharges of the 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 pro-rata 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 §
 §
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