

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> November 18, 2013		<b>DATE SUBMITTED:</b> November 6, 2013	
<b>DEPARTMENT OF ORIGIN:</b> Water Services		<b>SUBMITTED BY:</b> M. Jurica	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consider approval of an Interlocal Agreement for Sewer Use and Pretreatment with the City of College Station establishing understandings and obligations for sewer use in Certificate of Convenience and Necessity (CCN) No. 20136 held by the City of Bryan and CCN No. 20126 held by the City of College Station.			
<b>SUMMARY STATEMENT:</b> The City of Bryan is obligated by permit with TCEQ to implement an Industrial Pretreatment Program (IPP) for managing usage of its sanitary sewer system. The City's IPP was established in 1985 by Council Resolution No. 1375 and has undergone many changes since its implementation. The function of the IPP is to: (1) ensure employee safety for personnel working in the sanitary sewer and treatment plants; and, (2) prevent bypass of pollutants and/or disruption of wastewater treatment resulting from commercial, industrial, and categorical sewer users.			
<p>The service area for the City of Bryan's Thompsons Creek Wastewater Treatment Plant will serve the sewer needs of Bryan's west side and a shared area between the Cities of Bryan and College Station known as the "BioCorridor." An Interlocal Cooperation and Joint Development Agreement establishing understandings and obligations between both Cities regarding the BioCorridor was approved on December 15, 2011. On April 10, 2013, TCEQ approved Docket No. 2012-2253 allowing transfer of approximately 1,582.32 acres from Bryan's sewer CCN to College Station's sewer CCN; likewise, approximately 431.62 acres were transferred from College Station's sewer CCN and were added to Bryan's sewer CCN. This transfer creates a system where sewer services are provided across city lines by one municipality to customers located in the neighboring municipality.</p> <p>The City of Bryan's ownership and operation of sewer services located inside of the City of College Station is recognized by EPA and TCEQ as a "Multijurisdictional Pretreatment Program" because sewer contribution to the sanitary sewer is not limited solely to system users located inside Bryan. The proposed Interlocal Agreement satisfies Bryan's IPP obligation to EPA and TCEQ by establishing discharge standards and prohibitions no less stringent than City of Bryan Code of Ordinances Chapter 122 for City of Bryan sewer customers located in the City of College Station. The ILA establishes guidelines for general sewer usage, IPP regulations and standards, and avenues of enforcement for usage violations. The ILA establishes Bryan to operate as the "agent" of College Station for management and execution of Bryan's IPP.</p> <p>Staff from both Cities worked to draft the proposed ILA. TCEQ was consulted throughout this process to assist with development of the ILA. The ILA has been officially reviewed by TCEQ. Approval of an ILA or another legally-binding document is necessary to outline roles and responsibilities regarding management and use of Bryan sewer customers located in the City of College Station. The proposed ILA satisfies this requirement.</p>			
<b>STAFF ANALYSIS AND RECOMMENDATION:</b> Water Services respectfully requests City Council approval of the proposed Interlocal Agreement for Sewer Use and Pretreatment with the City of College Station. Approval of the Interlocal Agreement satisfies TCEQ's program requirement for Multijurisdictional Pretreatment Programs. Approval of the ILA is necessary to establish guidelines for general sewer use requirements between both cities'			

sanitary sewer systems.

Sewer discharges by Bryan sewer customers located in the City of College Station, which meet the requirements for participation in Bryan's IPP, may not legally be provided sewer service by the City of Bryan without adoption of the proposed ILA or another legally binding document. Providing sewer service to a qualifying IPP participant without an established agreement is a violation of Bryan's discharge permit with TCEQ. Approval of the ILA is critical to overcoming this hurdle by satisfying mandatory program requirements of Bryan's IPP.

**OPTIONS (In Suggested Order of Staff Preference):**

- 1) Approve proposed ILA.
- 2) Approve the ILA with modifications, which may require consideration at a future City Council meeting.
- 3) Do not approve ILA and provide staff direction.

**ATTACHMENTS:**

1. Interlocal Agreement for Sewer Use and Pretreatment (Word); Exhibit "A" Map of Bryan's Sewer CNN Extending into College Station (pdf)

**FUNDING SOURCE:** N/A

**APPROVALS:** Jayson E. Barfknecht 11/06/13; Hugh R. Walker, 11/07/2013

**APPROVED FOR SUBMITTAL:**

**APPROVED FOR SUBMITTAL: Janis K. Hampton, 11/11/13**

Revised 04/2013

**STATE OF TEXAS**

§

**INTERLOCAL AGREEMENT FOR  
SEWER USE AND PRETREATMENT**

**COUNTY OF BRAZOS**

§

§

This Interlocal Agreement (the “Agreement”) is made by and between the City of Bryan, Texas (“Bryan”), and the City of College Station, Texas (“College Station”), acting by and through their respective authorized representatives. The Cities of Bryan and College Station are collectively referred to herein as the “Cities,” or the “Parties,” and each is individually referred to as a “City,” or a “Party”.

**RECITALS:**

**WHEREAS**, Bryan operates a TCEQ-approved pretreatment program; and

**WHEREAS**, Bryan’s Sewer CCN extends into the incorporated limits of College Station as shown on the map in Exhibit “A”; and

**WHEREAS**, Operation and maintenance of the infrastructure providing collection, conveyance, and treatment of wastewater received from System Users within Bryan’s System located in College Station’s boundaries and Bryan’s Sewer CCN is the responsibility of Bryan; and

**WHEREAS**, Bryan must enforce a pretreatment program to control discharges from System Users of its wastewater treatment system pursuant to requirements set out in 40 CFR Part 403 and 30 TAC Chapter 315; and

**WHEREAS**, Legally binding procedures must be established to ensure that all extra jurisdictional System Users are subject to Bryan’s pretreatment standards and sewer use requirements, and that all requirements of Bryan’s TCEQ-approved pretreatment program are satisfied; and

**WHEREAS**, College Station has adopted a sewer use and pretreatment ordinance that requires the system users located within its city limits and Bryan’s Sewer CCN and discharging to Bryan’s System to comply with necessary sewer use and pretreatment controls; and

**WHEREAS**, College Station authorizes Bryan, as the owner and operator of said sewer system to implement and enforce civilly, College Station’s sewer use and pretreatment ordinance, as an agent of the City of College Station; and

**NOW THEREFORE**, in conjunction with the foregoing and the mutual covenants and promises set forth herein, the parties agree as follows:

## **Article I Definitions**

In this Agreement:

“CCN” means a certificate of convenience and public necessity issued by the TCEQ for water or sanitary sewer service in accordance with Chapter 13 of the Texas Water Code, as amended.

“CFR” means the Code of Federal Regulations.

“System User” means a sewer user meeting the criteria set forth in 40 CFR Part 403 and 30 TAC Chapter 315, located within College Station’s city limits, Bryan’s Sewer CCN, and discharging into Bryan’s System, or any commercial or domestic sewer use located within College Station’s city limits, Bryan’s Sewer CCN, and discharging into Bryan’s System.

“System” means sewage or wastewater treatment works as defined by the Federal Clean Water Act and owned by Bryan. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage sludge or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

“TAC” means Texas Administrative Code.

“TCEQ” means Texas Commission on Environmental Quality.

## **Article II Adoption and Revisions of Sewer Use and Pretreatment Ordinance**

### **2.01 Initial Ordinance**

- a. In furtherance of this Agreement, College Station in conjunction with this Agreement has adopted a sewer use and pretreatment ordinance which incorporates the provisions of Chapter 122 of the City of Bryan Code of Ordinances, Article IV Wastewater System, to regulate all System Users located within College Station’s city limits and Bryan’s Sewer CCN and discharging into Bryan’s System. The College Station ordinance provides for civil penalties and further authorizes Bryan, as an agent College Station, to civilly enforce said administrative penalties, in the name of the City of College Station.

### **2.02 Revisions to Ordinance**

- a. Whenever Bryan revises its sewer use and pretreatment ordinance, prior to forwarding the proposed ordinance amendment to TCEQ for approval, Bryan will forward a copy of the proposed ordinance amendments to College Station for its review and comment, which shall be provided to Bryan within 30 days of College Station’s receipt of the proposed ordinance amendments. Upon Bryan’s receipt

and review of College's Station's comments or after the expiration of the 30 day period, whichever may occur sooner, Bryan may submit the proposed ordinance amendments to the TCEQ, along with a copy of this Agreement, and such other documentation required by TCEQ, for review and approval by the TCEQ.

- b. College Station agrees to place on its City Council agenda the proposed College Station ordinance amendment for consideration by the College Station City Council within 60 days of receipt of notification from the TCEQ of its approval of the ordinance amendment.

### **Article III Designation of Enforcement Agent**

- a. College Station designates Bryan as an agent of College Station for the purposes of implementation and civil enforcement of College Station's sewer use and pretreatment ordinance against System Users located in College Station's city limits, Bryan's Sewer CCN, and discharging to Bryan's System. The parties agree that Bryan may bring a civil enforcement action in the name of the City of College Station, as an agent of the City of College Station, against System Users of Bryan's System located in the City of College Station city limits and within Bryan's sewer CCN territory to recover civil penalties for violations of College Station's sewer use and pretreatment ordinance and may take any civil action under College Station's sewer use and pretreatment ordinance that could have been taken by College Station. All such actions taken by Bryan shall be at its own cost.
- b. As agent for College Station, Bryan will, at its own expense, perform technical and administrative duties necessary to implement and civilly enforce College Station's sewer use and pretreatment ordinance for System Users of Bryan's System located in College Station's city limits and Bryan's Sewer CCN. Bryan will: (1) complete industrial waste surveys; (2) issue permits to all industrial users required to obtain a permit; (3) conduct inspections and sampling; (4) take all appropriate enforcement action as outlined in Bryan's enforcement response plan and provided for in College Station's sewer use and pretreatment ordinance; (5) review plumbing and development plans of system users; and (6) perform any other technical or administrative duties the Parties deem appropriate.
- c. As agent of College Station, Bryan, at its own expense, may take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, compromises System integrity, or which threatens to cause interference, pass through, or sludge contamination.
- d. As agent, Bryan has the responsibility and authority under federal, state, and local laws to establish:

- i. Types and quantities of discharges that are prohibited for entry into the System;
  - ii. Discharge prohibitions for certain substances, as may be amended from time to time;
  - iii. Pretreatment, permitting, monitoring, and other requirements for System Users; and
  - iv. Measures to protect the System, including, without limitation, any portion of the sanitary sewer, and any receiving stream receiving a discharge of wastewater effluent from harmful discharges.
  - v. Surcharge System Users in accordance with published rates approved by the Bryan City Council.
  - vi. Bring a civil action for the enforcement of College Station's sewer use and pretreatment ordinance, as it may be amended from time to time, in the name of the City of College Station against Bryan System Users, located within the city limits of College Station, failing to comply with requirements of College Station's sewer use and pretreatment ordinance.
- e. College Station will provide assistance as necessary to ensure Bryan has access to the facilities of System Users located in College Station's city limits and Bryan's Sewer CCN for the purposes of inspection, sampling, and any other duties deemed necessary by Bryan. College Station will promptly provide Bryan with all information provided to College Station from System Users related to the System User's industrial discharges.
- f. If the authority of Bryan to act as agent for College Station under this Agreement is questioned by a System User, court of law, or otherwise, College Station will take whatever action is reasonably necessary to ensure that implementation and enforcement of its sewer use and pretreatment ordinance against its System Users discharging to the System, including, but not limited to, implementing and enforcing its sewer use and pretreatment ordinance on its own behalf or amending this Agreement to clarify Bryan's authority.
- g. The College Station, City Manager is hereby authorized, without further action by the College Station Council, to execute any documents or instruments as may be required by a court of law or administrative hearing officer, verifying the scope of agency granted to the City of Bryan by this Interlocal Agreement.
- h. Bryan shall retain any award of attorney's fees or cost awarded in a civil action authorized under this Section. In addition, in the event of the recovery of an award of monetary damages, Bryan shall retain such amount of the award that is attributable to actual loss or damage sustained by Bryan or its System.

- i. Notwithstanding any provision to the contrary, nothing in this agreement shall preclude the City of Bryan from asserting alternative causes of action, in its sole capacity, including but not limited to negligence, nuisance or trespass, against any party who discharges pollutants into its sanitary sewer system located within the corporate limits of College Station.

#### **Article IV**

##### **Permit for Industrial Sewer Connection and Wastewater Discharge**

**4.01.** Before a System User meeting the pretreatment requirements of the Federal Pretreatment Rule discharges into Bryan's System, the System User must obtain a permit from Bryan, detailing the limits, conditions, and charges related to any discharge from the System User. This permit will also contain language permitting Bryan access to the System User's facility for the purpose of inspection and sampling.

**4.02** College Station agrees to the inclusion of the following language in the Bryan System User permit: *The System User agrees to comply with the requirements of the City of Bryan's sewer use and pretreatment ordinance, as they may be amended from time to time, and the City of College Station's sewer use and pretreatment ordinance, as may be amended from time to time. In the event the requirements may differ, the System User agrees to comply with the more stringent requirement. In the event that the System User is unable to determine which requirement is more stringent, the System User shall request explanation in writing from the City of Bryan and failure to request such explanation shall be inferred irrefutably that System User has knowledge of the requirements that applied to System User. The obligation to comply with the aforementioned requirements is contractual in nature and the City of Bryan may enforce the terms of this Agreement, including but not limited to the obligation to comply with the aforementioned requirement, of either the City of Bryan or the City of College Station, whichever is more stringent, in any manner available in law or equity, including but not limited to injunctive relief, and System User agrees that System User shall be liable to the City of Bryan or College Station for all costs associated with the successful enforcement of this Agreement, including but not limited to reimbursement of City of Bryan's or City of College Station's attorney fees and expenses, and reimbursement of any costs charged by the City of College Station to the City of Bryan for any City of College Station's enforcement action against System User for enforcement of the City of College Station's sewer use and pretreatment ordinance.*

#### **Article V.**

##### **Miscellaneous**

**5.01 Authority to Enter Contract.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.

**5.02 Entire Agreement.** This Agreement represents the entire agreement among the Cities with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

**5.03 Amendment.** This Agreement may be amended by the mutual written agreement of the Cities.

**5.04 Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party.

**5.05 Force Majeure.** Neither Party shall be liable to the other Party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond their respective control, including, but not limited to: war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control. The affected Party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the Party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

**5.06 Term; Termination.**

- a. This Agreement shall become effective on the last date of execution hereof (the "Effective Date") following the approval of this Agreement by the governing bodies of both Parties and shall be in effect for an initial period of ten (10) years, except as may be otherwise provided herein.
- b. The Parties will review and revise this Agreement to ensure compliance with the Federal Clean Water Act (42 U.S.C. §1251 et seq.) and rules and regulations (see 40 CFR Part 403 and 30 TAC Chapter 315) issued thereunder, as necessary, but at least once every 10 years on a date to be determined by both Parties. Thereafter this Agreement shall renew for an additional ten (10) year period, unless sooner terminated as provided herein.
- c. Notwithstanding any of the foregoing, this Agreement may be terminated at anytime by the mutual written agreement of the Cities.
- d. This Agreement may be terminated by either Party if the other Party fails to perform an obligation of such Party under this Agreement and such failure is not cured within sixty (60) days after written notice thereof. Before any termination of this Agreement occurs the Parties will submit the dispute to the TCEQ's Alternative Dispute Resolution Program or an independent mediator mutually agreed upon by the parties to resolve any disputes. In the event, the parties cannot agree upon a mediator, each party shall select a mediator and the two mediators shall agree upon a third party mediator to mediate the dispute. All benefits and

obligations under this Agreement will cease following sixty (60) days from receipt of such notice. Notwithstanding the foregoing, the Non-Breaching Party may grant additional time to cure or waive a failure to perform an obligation.

**5.07 Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand-delivery or electronic or facsimile transmission confirmed by mailing written confirmation substantially the same time as such electronic or facsimile transmission, and addressed to the respective City at the following address:

City of Bryan, Texas  
Attn: City Manager  
300 South Texas Avenue  
Bryan, Texas 77803

City of College Station, Texas  
Attn: City Manager  
PO Box 9960  
College Station, Texas 77842

**5.08 Governing Law.** The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Cities shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Brazos County, Texas. The Cities agree to submit to the personal and subject matter jurisdiction of said court.

**5.09 Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and in lieu of each provision that is invalid, illegal or unenforceable, there shall be added a new provision to this Agreement as similar in terms to such invalid, illegal, or unenforceable provision as may be possible and yet be valid, legal and enforceable, by means of good faith negotiation by the Parties to this Agreement or by reform by a court of competent jurisdiction.

**5.10 Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Cities, pertaining to a period of time following the termination of this Agreement shall survive termination.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF BRYAN, TEXAS**

By: \_\_\_\_\_  
Jason P. Bienski, Mayor

**APPROVED AS TO FORM**

**ATTEST:**

By: \_\_\_\_\_  
Janis K. Hampton, City Attorney

By: \_\_\_\_\_  
Mary Lynne Stratta, City Secretary

**City of Bryan Acknowledgment**

STATE OF TEXAS           §  
  §  
COUNTY OF BRAZOS       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013,  
by Jason Bienski, in his capacity as Mayor of the City of Bryan, a Texas home-rule municipality,  
on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

**EXECUTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by  
**College Station.**

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_  
Mayor, City of College Station

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Sherry Mashburn**  
City Secretary

\_\_\_\_\_  
**Carla Robinson**  
City Attorney

**ACKNOWLEDGEMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF BRAZOS   §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **NANCY BERRY**, Mayor of College Station, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed it for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_  
\_\_\_\_\_, A.D. 2013

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**MAP OF BRYAN'S SEWER CCN THAT EXTENDS INTO COLLEGE STATION**

