
CITY COUNCIL AGENDA

Notice is hereby given that the Rockport City Council will hold a regular meeting on Tuesday, May 24, 2016, at 6:30 p.m. The meeting will be held at Rockport City Hall, 622 E. Market, Rockport, Texas. The matters to be discussed and acted upon are as follows:

Opening Agenda

1. Call meeting to order.
2. Pledge of Allegiance.
3. Citizens to be heard.

At this time, comments will be taken from the audience on any subject matter that is not on the agenda. To address the Council, please sign the speaker's card located on the table outside the Council Chamber and deliver to the City Secretary before the meeting begins. Please limit comments to three (3) minutes. In accordance with the Open Meetings Act, Council may not discuss or take action on any item that has not been posted on the agenda.

Consent Agenda

All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

4. Deliberate and act on approval of City Council Special Meeting Minutes of May 6 and May 9, 2016, and Regular Meeting Minutes of May 10, 2016.
5. Deliberate and act on 2nd quarter report from Friends of the Fulton Mansion State Historical Site for Fiscal Year 2015-2016 marketing expenditures.
6. Deliberate and act to appoint member to the YMCA Development Committee.
7. Deliberate and act on request from Relay For Life of Rockport-Fulton for approval to close Austin Street between Wharf Street and Main Street from 5:00 pm. until midnight on Saturday, June 11, 2016, for the Relay For Life event.
8. Deliberate and act to confirm Mayoral re-appointments and appointments to various City of Rockport boards, committees and commissions.
9. Deliberate and act to confirm Mayoral appointments of City Council liaisons to various City of Rockport boards, committees and commissions.

Regular Agenda

10. Deliberate and act on second and final reading of an Ordinance replacing City of Rockport Code of Ordinances Chapter 42 Article V. "Erosion and Sediment Control" with a Stormwater Ordinance.
11. Deliberate and act on approval to issue a Request for Proposals to connect the Cape Velero waterline to the waterline on Rattlesnake Point Road.

12. Reports from Council.

At this time, the City Council will report/update on all committee assignments, which may include the following: Aransas Pathways Steering Committee; Building and Standards Commission; Coastal Bend Bays and Estuaries Program; Coastal Bend Council of Government; Environmental Committee for Water Issues; Park & Leisure Services Advisory Board; Planning & Zoning Commission; Rockport Heritage District Board; Rockport-Fulton Chamber of Commerce; Aransas County Storm Water Management Advisory Committee; Swimming Pool Operations Advisory Committee; Tourism Development Council; Tree & Landscape Committee; YMCA Development Committee; Texas Maritime Museum, Fulton Mansion, Rockport Center for the Arts, Aransas County, Aransas County Independent School District, Aransas County Navigation District, Town of Fulton, and Texas Municipal League. No formal action can be taken on these items at this time.

Executive Session

City Council will hold an executive session pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:

13. Section 551.071(1)(A) and Section 551.071(2) Consultation with Attorney: Pending or contemplated litigation: (A) Bay Education Center, (B) Pena/Dack, and (C) Texaz Construction and AZ Southwest Properties.
14. Section 551.071(2) Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

Open Session

City Council will reconvene into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any actions necessary related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.

15. Adjournment.

Special Accommodations

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (361) 729-2213, ext. 225 or FAX (361) 790-5966 or email citysec@cityofrockport.com for further information. Braille is not available. The City of Rockport reserves the right to convene into executive session under Government Code §§ 551.071-551.074 and 551.086.

Certification

I certify that the above notice of meeting was posted on the bulletin board at City Hall, 622 E. Market Street, Rockport, Texas on Friday, May 20, 2016, by 5:00 p.m. and on the City's website at www.cityofrockport.com. I further certify that the following News Media were properly notified of this meeting as stated above: *The Rockport Pilot*, *Coastal Bend Herald*, and *Corpus Christi Caller Times*.


Teresa Valdez, City Secretary

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, May 24, 2016

AGENDA ITEM: 4

Deliberate and act on approval of City Council Special Meeting Minutes of May 6 and May 9, 2016, and Regular Meeting Minutes of May 10, 2016.

SUBMITTED BY: City Secretary Teresa Valdez

APPROVED FOR AGENDA: PKC

BACKGROUND: Please see the accompanying minutes of the Special Meetings of May 6 and May 9, 2016, and Regular Meeting of May 10, 2016.

FISCAL ANALYSIS: N/A

RECOMMENDATION: Staff recommends Council approve the Minutes, as presented.

CITY OF ROCKPORT

MINUTES

**CITY COUNCIL SPECIAL MEETING
10:30 a.m., Friday, May 06, 2016
Rockport City Hall, 622 East Market Street**

On the 6th day of May 2016, the City Council of the City of Rockport, Aransas County, Texas, convened in Special Session at 10:30 a.m., at the regular meeting place in City Hall, and notice of meeting giving time, place, date and subject was posted as described in V.T.C.A., Government Code § 551.041.

CITY COUNCIL MEMBERS PRESENT
Mayor Pro-Tem Pat Rios, Ward 3
Council Member Rusty Day, Ward 1
Council Member Barbara Gurtner, Ward 4

CITY COUNCIL MEMBER(S) ABSENT
Mayor Charles J. Wax
Council Member J. D. Villa, Ward 2

STAFF MEMBERS PRESENT
City Manager Kevin Carruth
Assistant City Secretary Ruby Beaven

ELECTED OFFICIALS

Opening Agenda

1. Call to Order.

With a quorum of the Council Members present, the Special Meeting of the Rockport City Council was called to order by Mayor Pro-Tem Rios at 10:34 a.m. on Friday, May 06, 2016, in the Council Chambers of the Rockport City Hall, 622 E. Market Street, Rockport, Texas.

Executive Session

City Council will hold an executive session pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:

- 2. Section 551.072 Deliberation regarding real property - deliberate the purchase, exchange, lease, or value of real property: 1100 block of East North Street, between Austin Street and Water Street.**

At 10:35 a.m., Mayor Pro-Tem Rios convened the Rockport City Council into an executive session pursuant to provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in Section 551.072 Deliberation regarding real property - deliberate the purchase, exchange, lease, or value of real property: 1100 block of East North Street, between Austin Street and Water Street.

CITY OF ROCKPORT
MINUTES

Open Session

- 3. **City Council will reconvene into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any actions necessary related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.**

At 11:39 a.m., Mayor Pro-Tem Rios reconvened the Rockport City Council into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any necessary actions related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.

Mayor Pro-Tem Rios stated that no action will be taken at this time due to additional questions and recommended City Manager follow up with Luis Purón, Executive Director of the Rockport Center for the Arts immediately after adjournment. Mayor Pro-Tem announced to everyone that Council will reconvene on Monday, May 09, 2016, for deliberation and action.

MOTION: Council Member Rusty day moved to have City Manager meet with Luis Purón for further discussion and to reconvene on Monday, May 09, 2016. Council Member Barbara Gurtner seconded the motion. Motion carried unanimously.

4. Adjournment

At 11:40 a.m., Council Member Rusty Day moved to adjourn. Motion was seconded by Barbara Gurtner and carried unanimously.

APPROVED:

Patrick R. Rios, Mayor Pro-Tem

ATTEST:

Ruby Beaven, Assistant City Secretary

CITY OF ROCKPORT

MINUTES

CITY COUNCIL SPECIAL MEETING 1:00 p.m., Monday, May 9, 2016 Rockport City Hall, 622 East Market Street

On the 9th day of May 2016, the City Council of the City of Rockport, Arkansas County, Texas, convened in Special Session at 1:00 p.m., at the regular meeting place in City Hall, and notice of meeting giving time, place, date and subject was posted as described in V.T.C.A., Government Code § 551.041.

CITY COUNCIL MEMBERS PRESENT

Mayor Charles J. Wax
Mayor Pro-Tem Pat Rios, Ward 3
Council Member Rusty Day, Ward 1
Council Member Barbara Gurtner, Ward 4

CITY COUNCIL MEMBER(S) ABSENT

Council Member J. D. Villa, Ward 2

STAFF MEMBERS PRESENT

City Manager Kevin Carruth
City Secretary Teresa Valdez

ELECTED OFFICIALS

Opening Agenda

1. **Call to Order.**

With a quorum of the Council Members present, the Special Meeting of the Rockport City Council was called to order by Mayor Wax at 1:23 p.m. on Monday, May 9, 2016, in the Council Chambers of the Rockport City Hall, 622 E. Market Street, Rockport, Texas.

Mayor Wax stated for the information of the audience, the City received input from the Rockport Art Association's legal counsel at 12:45 p.m. today. Mayor Wax said there were three issues that were being discussed: 1) exclusivity, 2) term, and 3) liquidated damages. Mayor Wax added that the conversation will lead to a speedy resolution of these issues.

Executive Session

City Council will hold an executive session pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:

2. **Section 551.072 Deliberation about Real Property: Deliberate the purchase, exchange, lease, or value of real property: 1100 block of East North Street, between Austin Street and Water Street.**

At 1:24 p.m., Mayor Wax convened the Rockport City Council into an executive session pursuant to provisions of Chapter 551 of the Texas Government Code, in accordance with the authority

contained in Section 551.072 Deliberation about Real Property-Deliberate the purchase, exchange, lease, or value of real property: 1100 block of East North Street, between Austin Street and Water Street.

Open Session

- 3. **City Council will reconvene into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any actions necessary related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.**

At 2:10 p.m., Mayor Wax reconvened the Rockport City Council into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any necessary actions related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.

MOTION: Mayor Wax moved that Council approve the draft lease he has marked as "final" (attached) and instruct the City Manager, with all deliberate speed, to prepare the lease for signatures by both parties. Mayor Pro-Tem Rios seconded the motion. Motion carried unanimously.

4. Adjournment

At 2:12 p.m., Council Member Day moved to adjourn. Motion was seconded by Mayor Pro-Tem Rios and carried unanimously.

APPROVED:

Charles J. Wax, Mayor

ATTEST:

Teresa Valdez, City Secretary

Final
[Signature]

LEASE AND IMPROVEMENT AGREEMENT

This LEASE and Improvement Agreement ("Lease Agreement") is entered into by and between the City of Rockport, Texas, a Home Rule Municipality located in Aransas County, ("City"), and the Rockport Art Association, Inc., a non-profit organization operating within the City, ("RAA").

I. Recitals

1. RAA is preparing to construct new facilities for its operations on three lots located within the City's downtown area and bisected by 1100 block of East North Street in the City block that is bordered on the west by Austin Street and on the east by Water Street ("the Property"), being more fully depicted on the attached Exhibit "A" map.
2. East North Street is a public street subject to the exclusive control of the City, as provided by Sections 311.001 and 311.007, Texas Transportation Code, which authority includes the right to control, regulate, improve, close, vacate, remove encroachments or obstructions from, or to otherwise regulate the street.
3. RAA has requested that the City close the Property to regular vehicular traffic in order to incorporate the public street and sidewalk area into a landscaped public area with outdoor art features and related improvements.
4. The City Council is of the opinion that RAA's relocation to the proposed facilities and utilization of the Property in the manner described will enhance the appearance of the downtown area and create a campus atmosphere that will attract tourists and additional development to the downtown area, will promote economic development, and will stimulate business and commercial activity in the City.
5. The City Council has considered the requirements of Chapter 316, Texas Transportation Code, and has made the findings required by Sections 316.303 and 317.007.

II. Definition

For the purposes of this Lease Agreement, the term "exclusive possession" "exclusive use" or "exclusive right" with regard to RAA's interest in and use of the Property shall mean the following:

- a. The City shall not allow or permit any public event, festival, parade, or similar event to occur on the Property unless approved or requested by RAA;
- b. Use of the Property by RAA shall not prevent members of the public having access to the Property on foot or non-motorized personal vehicles (e.g. bicycles) so long as:

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- 42 (i) ~~such access is in accordance with RAA's policies and regulations for the~~
- 43 ~~Property; and~~
- 44 (ii) ~~such access does not damage, threaten, or pose a genuine threat to any~~
- 45 ~~outdoor art feature, landscaping, or improvement placed on the property~~
- 46 ~~by RAA;~~
- 47 c. ~~The City shall not be prevented from entering the property with emergency or utility~~
- 48 ~~vehicles or personnel when such entry is necessary to protect the health, safety, or~~
- 49 ~~welfare of the public, particularly including fire or police protection, ambulance and~~
- 50 ~~EMT services, or repair, removal, replacement, or installation of utility facilities; and~~
- 51 d. ~~In the event that RAA notifies the City that any planned, threatened, or anticipated~~
- 52 ~~event on or entry to the Property poses a threat, injury, or damage to RAA, its~~
- 53 ~~personnel or property, the City will use every means at its disposal to prevent,~~
- 54 ~~contain, cancel, or terminate such event or entry.~~

55 **III. Grant of Lease and Agreement**

56 For and in consideration of the foregoing recitals, the mutual covenants contained herein,
 57 and other good and valuable consideration, the receipt of which is hereby acknowledged, the
 58 City and RAA hereby agrees as follows:

- 59 1. **Closing of Property to Motorized Vehicles.** City will close the Property by Ordinance
 60 to regular, motorized vehicular traffic and enforce the closure by placement of
 61 appropriate signage and barriers at the east and west ends of the Property that will
 62 prohibit the passage of motorized vehicular traffic except as specifically authorized
 63 herein but which may be moved to allow the passage of authorized emergency vehicles as
 64 defined in Sec. 541.201(1), Tex. Trans. C. The closure shall take place no later than the
 65 tenth (10th) day following receipt by RAA of its building permit for the improvements to
 66 be constructed upon the property located at 106 and 204 S. Austin St. and 203 Water St.,
 67 Rockport, Texas.
- 68 2. **Lease.** City hereby leases to and allows RAA the exclusive right to utilize and possess
 69 the public street and sidewalk area within the Property as shown in Exhibit "A" attached
 70 hereto and incorporated herein by reference for all purposes, in conjunction with its other
 71 facilities, to create a landscaped area with outdoor art features and other improvements,
 72 including the placement therein of other works of art.
- 73 3. **Warranties.** The City makes this grant solely to the extent of its right, title and interest
 74 in the Leased Property and warrants that RAA shall have the exclusive right to use of the
 75 Property subject to the terms, **definition**, and conditions recited herein.

76 **Term.** This Lease Agreement shall commence on the effective date and shall continue in
 77 full force and effect for an **initial** term of **twenty-five (25)** years, provided that the
 78 Property is used solely and exclusively for the purposes set out herein and this Lease
 79 Agreement is not sooner terminated as provided for in Paragraph **15** hereafter. Following

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89 expiration of the initial term, the term of this Lease Agreement shall automatically renew
90 for one term of twenty-five (25) years unless terminated in accordance with Paragraph 15
91 herein. The initial term and the extended term shall be referred to herein as the "Lease
92 Term".

93 4.
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96 5. Liquidated damages: The City acknowledges that this lease is an integral part of the
97 RAA's decision to build a new RAA center in this location and that it provides value to
98 the RAA's project as a whole; and that the RAA has detrimentally relied upon this right
99 to exclusive possession and use of the public street to bridge its two properties and create
100 a campus atmosphere, in purchasing the adjacent properties, for the purpose of building a
101 new art center. In the event it is found, by a judge or jury, that the City or RAA
102 intentionally breached or terminated this lease agreement without just cause, the party
103 responsible for said breach or wrongful termination shall be responsible for any actual
104 damages incurred by the other party as a result of said breach and wrongful termination.

105 6. Compensation. Consideration for this lease shall be the economic development and
106 enhanced appearance of the City's downtown area provided by RAA's exclusive use of
107 the Property for the purposes authorized. No annual fee is required. As further
108 consideration, RAA agrees that if a third party causes damage to or destruction of a work
109 of art or improvement placed on the Property by RAA, RAA covenants not to sue the
110 City or pursue other methods against the City to recover costs of repairing or replacing
111 the art or improvements, save and except in the event the damage is the result of the
112 City's negligence, in whole or in part.

113
114 7. Limits on Lease. This Agreement is subordinate to any easements, utility easements,
115 rights of way, use of the streets for utility and emergency vehicles and non-motorized
116 vehicular traffic, or other property interests recorded and associated with the Property.

117
118 8. Entry by City. In case of emergency, the City may enter the Property without giving
119 notice and without incurring any obligation to RAA, in order to remove landscaping,
120 improvements, or outdoor art features if the City Manager deems it is necessary: (a) in
121 order to exercise the City's rights or duties with respect to the Property; (b) to protect
122 persons or property; or (c) for the public health or safety with respect to the Property or
123 the outdoor art features or other improvements placed thereon by RAA. In no event may
124 the City enter the Property to remove landscaping improvements or outdoor art features
125 upon the request of a third party.

126
127 9. Conditions and Responsibilities: Outdoor Art Features, Landscaping, and Other
128 Improvements

129 A. Location of Outdoor Art Features. RAA shall place the outdoor art features,
130 landscaping, and other improvements on the Property in a manner that does not
131 impede pedestrian or non-motorized vehicular traffic or access to the streets,
132 sidewalks, or other public property.

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Deleted: Following expiration of the initial term or the first extended term, the term of this Lease Agreement shall automatically renew for one extended term of twenty-five (25) years unless notice to terminate is given by either party to the other party one hundred-twenty (120) days prior to the expiration of the initial term. The initial term and the extended terms shall be referred to herein as the "Lease Term" ¶

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- B. **Installation of Sculptures and Works of Art.** RAA shall install all outdoor art features in a manner that insures that the same can withstand winds up to 70 miles per hour without blowing over or blowing away. If installation requires any additional construction or excavation, RAA shall obtain approval from the City for the excavation or construction prior to installation. RAA shall return the Property to its pre-installation condition upon removal of the outdoor art features.
- C. **Landscaping and Other Improvements.** RAA may erect or construct improvements or landscaping on the Property that is consistent with the uses herein authorized. RAA may erect or construct improvements which may include a performance area, accommodations for public events, or similar facilities provided, however, that any such improvements must be approved by the City Manager prior to erection or construction, and that the same shall be capable of removal or transport by the end of the term of this Lease Agreement.
- D. **Utility and Emergency Vehicle Access.** RAA agrees that none of the outdoor art features, improvements, or landscaping will restrict public access to the Property by pedestrian or non-motorized vehicular means, and will not prevent or unreasonably hinder access by City authorized utility, police, fire, ambulance, or other emergency vehicles. In this regard, RAA agrees that its landscaping and placement of outdoor art features will always retain a minimum of fifteen (15) feet of open passage through the Block for City authorized utility and emergency vehicles.
- E. **Graphic/Artistic Content of Outdoor Art Features.** RAA may not install an outdoor art feature on the Property that, in the opinion of the City, is pornographic, violent or discriminatory. No later than five (5) calendar days following notice by the City that it has determined an outdoor art feature to be pornographic, violent or discriminatory, RAA may request a hearing by the City Council to contest the City's determination. In the event offensive graffiti is written on an outdoor art feature, or other improvement, RAA is required to eliminate the graffiti or to remove the outdoor art feature, or improvement promptly.
- F. **Removal or Modification of Outdoor Art Features, Landscaping and Improvements.** If RAA constructs or locates an outdoor art feature, landscaping, or other improvement on the Property, RAA may be required at its own cost to remove the same upon termination of this Lease Agreement, in whole or in part, or prior to termination upon a determination by the City that an outdoor art feature, needs to be removed or modified because (a) it is or is becoming is a hazard to persons or property; (b) it prevents the City from using the Property for a purpose provided for herein; (c) the City requires access to its utilities for repair or replacement; (d) RAA is in violation of this Lease Agreement; or (e) because it does not comply with federal, state or local ordinances, or this Lease Agreement. All outdoor art features, landscaping, and other improvements must meet the City's ordinances and be accessible pursuant to the Americans with Disabilities Act and Texas Accessibility Standards.
- G. **Maintenance.** RAA is solely responsible for the timely and proper maintenance of the outdoor art features, landscaping, and improvements. Outdoor art features

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232 may be removed or replaced with new outdoor art features at the discretion of the
233 RAA and in accordance with the provisions of this agreement.

234 H. Intellectual Property and Other Rights to Display. RAA shall be solely
235 responsible for securing and maintaining all rights to hold, display, and present
236 the outdoor art features from the artist or owner if different than RAA. RAA
237 indemnifies and holds harmless the City for any display or use of any outdoor art
238 features in any manner that is not approved by the artist or owner or which
239 violates the owner's or artist's copyright, trademark, or any other intellectual
240 property right in the outdoor art features.

241 I. Owners. RAA shall require the owners of the outdoor art features (if RAA is not
242 the Owner) to execute an agreement with RAA, which includes the following
243 language:

244
245 *Owner understands and agrees that any outdoor art feature that is placed in the*
246 *right-of-way are subject to the terms and conditions of a Lease Agreement*
247 *between Rockport Art Association, Inc. ("RAA") and the City of Rockport, which*
248 *is attached hereto as Exhibit A. Owner agrees and authorizes placement of the*
249 *outdoor art feature in accordance with such terms and conditions.*

250
251 *Owner hereby agrees to indemnify, save, and hold harmless the City of Rockport,*
252 *its officers, employees, agents, and representatives against any and all liability,*
253 *damage, loss claims, causes of action, expenses or demands (collectively "costs")*
254 *of any nature whatsoever, on account of personal injury (including without*
255 *limitation, Workers' Compensation and death claims), or property loss of any*
256 *kind whatsoever, including damage to the outdoor art feature of owner, which*
257 *arises, or is claimed to arise, out of or in any manner connected with the*
258 *placement, construction, installation, existence, operation, display, use,*
259 *maintenance, repair, restoration, or removal of the work of art from the Leased*
260 *Property within the City of Rockport.*

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262 10. Installation and Construction Responsibility. RAA shall bear all costs of installing,
263 maintaining, displaying, removing, repairing, and handling all outdoor art features,
264 landscaping, and other improvements placed on the Property, and shall be responsible for
265 overseeing the construction process and obtaining and supervising all contractors used to
266 install the same or to construct any related improvements. All contractors and
267 consultants performing work on the Property shall be covered by a General Liability
268 Policy secured by RAA specifying the City as an additional insured in an amount as
269 determined by RAA.

270
271 11. Compliance with Applicable Law. RAA shall comply with all applicable federal, state,
272 and local laws, including all City ordinances, codes, and regulations, in the design and
273 construction of the outdoor art features, landscaping, and other improvements. Failure to
274 obtain any necessary approval of the City prior to construction or failure to comply with
275 all applicable federal, state and local law including all City ordinances, codes, and
276 regulations, shall constitute a material breach of this Lease Agreement. In addition, RAA
277 shall obtain all permits and inspections required by the City.

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- 12. **Contractors.** RAA will notify the City in writing of the nature of any work to be performed by a contractor or consultant of RAA and the intended date of commencement and completion of such work. Such work will not, under any circumstances, relieve RAA of its responsibilities and obligations under this Lease Agreement. All work performed by RAA or its agent shall be done in a good and workmanlike manner satisfactory to the City. Any contractor or consultant hired by RAA shall have sufficient skills and experience to properly perform the work described in this Lease Agreement.

- 13. **Insurance.** By placing outdoor art features, landscaping, and other improvements on the Property, RAA acknowledges that the City may seek to insure the same through Texas Municipal League Intergovernmental Risk Pool coverage ("TML insurance") and RAA will provide City with any information needed to insure the City against liability for placement of the outdoor art features, improvements, and landscaping on City Property. RAA acknowledges and agrees that the TML insurance of City may or may not protect RAA and may or may not cover damage to the sculptures and works of art and that the TML insurance is for the protection of the City against liability created by placement of the outdoor art features, landscaping, or improvements on City Property. RAA agrees that, if any claims are made and collected on City's TML insurance policy which claim arises out of the placement of the outdoor art features, landscaping, or other improvements on City Property, RAA shall be responsible for payment of any deductible provided under the TML insurance. In the event that TML coverage does not fully cover the City against general liability, RAA shall be required to obtain a liability policy in an amount determined by the City and naming the City as an additional insured throughout the term of the Lease and any subsequent extension of the Lease Term.

- 14. **Indemnification.** RAA hereby agrees to indemnify, save, and hold harmless the City of Rockport, its officers, employees, agents, and representatives (collectively called "Indemnitees") against any and all liability, damage, loss, claims, causes of action, expenses or demands (collectively "Costs") of any nature whatsoever, save and except in the event of gross negligence by Indemnitees, on account of personal injury (including without limitation, Workers' Compensation and death claims), or property loss or damage of any kind whatsoever, which arises, or is claimed to arise, out of or is, or is claimed to be, in any manner connected with, placement, display, construction, installation, existence, operation, use, maintenance, repair, restoration, or removal of the outdoor art features, landscaping, or other improvements on the Property pursuant to this Lease Agreement. RAA must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based thereon using counsel satisfactory to the City's Attorney, and pay all other costs and expenses of any kind arising from any of the aforesaid claims, demands or causes of action. This indemnification provision does not apply to any costs for which the City has been compensated by insurance.

- 15. **Termination.** If RAA abandons or fails to maintain Property and the outdoor art features, landscaping, or other improvements and the City Manager receives no substantive response within ten (10) business days following written notification to RAA,

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328 then the City may remove the outdoor art features, landscaping, or other improvements
329 from the Property. RAA covenants to pay the City's actual expenses incurred in
330 connection therewith within thirty (30) days after being billed therefore. All of RAA's
331 outdoor art features, landscaping, or improvements not removed are deemed property of
332 the City when abandoned by RAA. Abandonment of the same shall be presumed if the
333 outdoor art feature is not removed from the Property (or storage if applicable) within
334 thirty (30) days of the date that the City requests removal or the date of termination of
335 this Lease Agreement.

336
337 Upon termination of this Lease Agreement by either party by agreement or for just cause,
338 RAA shall remove all landscaping, improvements, outdoor art features, at its sole
339 expense, and shall restore the Property to the same condition that existed prior to the
340 effective date of this Lease Agreement, provided, however, that the City may in its
341 discretion waive, in writing, a requirement to remove particular landscaping,
342 improvement, outdoor art features or to otherwise restore the Property.

343
344 If the City fails to keep the street closed, as provided for herein, or otherwise violates any
345 of the terms of this lease and the RAA receives no substantive response within ten (10)
346 business days following written notification to RAA, RAA may bring any and all causes
347 of action to which it may be entitled.
348

349 **16. Findings.** Pursuant to Ch. 316, Texas Transportation Code, the City Council finds that
350 the rights granted to RAA under this lease agreement, including the placement of outdoor
351 art features, landscaping, and improvements, will not create a hazardous condition or
352 obstruction of public travel on the municipal street; and that the design and location of the
353 outdoor art features, landscaping, and improvements includes all reasonable planning to minimize
354 potential injury or interference to the public in the use of the municipal street. Any encroachment
355 on the street or sidewalk and effect on vehicular or pedestrian traffic, as contained in this Lease
356 Agreement, is found by the Council to be allowed pursuant to Sec. 316.007(b), Transportation
357 Code.

358
359 **17. 17. Venue.** Venue for any lawsuit concerning this Agreement shall be in the State-
360 District courts of Aransas County, Texas.

361
362 **18. Waiver of Default.** Either party may waive any default of the other at any time, without
363 affecting or impairing any right arising from any subsequent or other default.

364
365 **19. Assignment.** RAA shall not assign, sublet or transfer its interest in this Lease Agreement
366 without the prior written consent of the City Council. RAA shall provide the City with a
367 copy of any such proposed assignment or transfer of any of RAA's rights in this
368 Agreement, which must include the name, address, and contact person of the assignee,
369 along with the proposed date of assignment or transfer.

370
371 **20. Notice.** Notice required or permitted to be given in connection with this Lease
372 Agreement must be in writing. Notice may be given by hand delivery or certified mail,
373 postage prepaid, to the recipient at the address for notice set forth below or at the last
374 address for notice that the sender has for the recipient at the time notice is given. If

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properly addressed and sent certified mail or hand-delivered as provided herein, such notice will be deemed received on the day hand delivered, as evidenced by a written acknowledgment of receipt by the recipient, or on the third day after deposit in the U.S. mail, if sent certified mail, postage prepaid. Notice given in any other manner will be deemed delivered if and when actually received by the party specified below.

City: City of Rockport
Attn.: City Manager
622 E. Market Street
Rockport, TX 78382

RAA: Rockport Art Association, Inc.
Attn: Executive Director
902 Navigation Circle
Rockport, TX 78382

In the event the address or contact for a party changes, it shall be the responsibility of that party to notify the other party of the new address or contact within five (5) business days of that change.

21. **Default.** If RAA fails to comply with the terms of this Lease Agreement, then the City Manager shall give RAA written notice as set out in Section 20, Notice. RAA will have ten (10) days from the date of such notice to take action to remedy the failure complained of, or such lesser period if such is required under the terms of this Agreement, and, if RAA does not satisfactorily remedy the same within that thirty (30) day period, the City may remedy the default or contract to remedy the default.

Such remedy may include the City's right to take possession of an outdoor art feature and store it in a secure location at RAA's expense until the owner of outdoor art feature takes possession. Any outdoor art feature removed by the City under the terms of this Lease Agreement shall not be authorized for placement on any other City Property.

22. **Interpretation.** Although drafted by the City, this Lease Agreement must, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

23. **Application of Law.** This Lease Agreement must be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Lease Agreement, then the remaining parts must be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

Executed effective, the ___ day of May, 2016.

City of Rockport:

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Attest:

Teresa Valdez, City Secretary

C. J. Wax, Mayor

Rockport Art Association, Inc.

Terry Baiamonte, President

Luis Puron, Executive Director

THE STATE OF TEXAS §
COUNTY OF ARANSAS §

This instrument was acknowledged before me on this ____ day of May, 2016, by C. J. Wax,
Mayor of the City of Rockport, on behalf of the City.

Notary Public, State of Texas
My Commission expires: _____

THE STATE OF TEXAS §
COUNTY OF ARANSAS §

This instrument was acknowledged before me on this ____ day of May, 2016, by Terry
Baiamonte, President, and Luis Puron, Executive Director of the Rockport Art Association, Inc., on
behalf of that organization.

Notary Public, State of Texas
My Commission expires: _____

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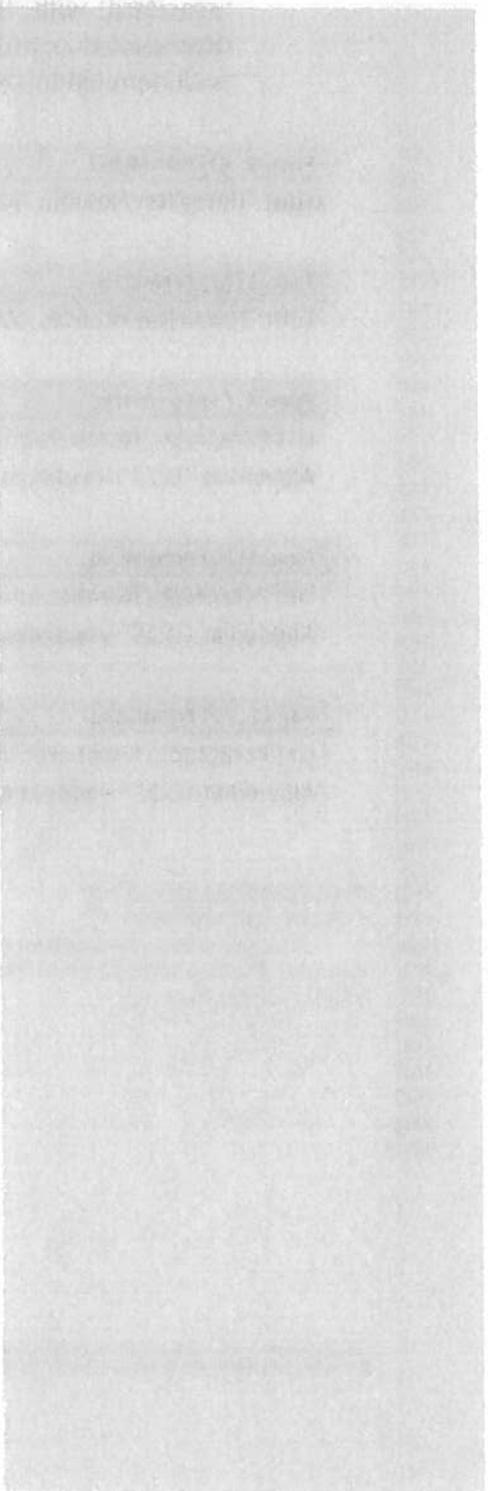
the City expect to pay the RA as damages the sum equal to...
the RA's actual out-of-pocket expenses...
the RA's actual out-of-pocket expenses...

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EXHIBIT A

the RA's actual out-of-pocket expenses...
the RA's actual out-of-pocket expenses...

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the City agrees to pay the RAA as damages the sum equal to equal to any costs associated with RAA's relocating of improvements constructed by RAA and the depreciated cost of any non-relocatable outdoor art featureimprovements resulting from such termination or breach.

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CITY OF ROCKPORT

MINUTES

CITY COUNCIL REGULAR MEETING

6:30 p.m., Tuesday, May 10, 2016

Rockport City Hall, 622 East Market Street

On the 10th day of May 2016, the City Council of the City of Rockport, Aransas County, Texas, convened in Regular Session at 6:30 p.m., at the regular meeting place in City Hall, and notice of meeting giving time, place, date and subject was posted as described in V.T.C.A., Government Code § 551.041.

CITY COUNCIL MEMBERS PRESENT

Mayor Charles J. Wax
 Mayor Pro-Tem Pat Rios, Ward 3
 Council Member Rusty Day, Ward 1
 Council Member J. D. Villa, Ward 2
 Council Member Barbara Gurtner, Ward 4

CITY COUNCIL MEMBER(S) ABSENT

STAFF MEMBERS PRESENT

City Manager Kevin Carruth
 City Attorney Terry Baiamonte
 City Secretary Teresa Valdez
 Finance Director Patty Howard
 Police Chief Tim Jayroe
 Public Works Director Mike Donoho
 Park & Leisure Services Director Tom Staley

ELECTED OFFICIALS PRESENT

Aransas County Court at Law Judge Richard Bianchi

Opening Agenda

1. Call to Order.

With a quorum of the Council Members present, the Regular Meeting of the Rockport City Council was called to order by Mayor Wax at 6:30 p.m. on Tuesday, May 10, 2016, in the Council Chambers of the Rockport City Hall, 622 E. Market Street, Rockport, Texas.

2. Pledge of Allegiance.

Mayor Pro-Tem Rios led the Pledge of Allegiance to the U.S. and Texas flags.

3. Citizens to be heard.

At this time comments will be taken from the audience on any subject matter that is not on the agenda. To address the Council, please sign the speaker's card located on the table outside the Council Chamber and deliver to the City Secretary before the meeting begins. Please limit comments to three (3) minutes. In accordance with the Open Meetings Act, Council may not discuss or take any action on any item that has not been posted on the agenda.

There were no citizen comments.

- 4. Presentation of Certificates of Election to newly-elected Mayor, official for Ward 2 and official for Ward 4.**
(Presentación de los certificados de elección para recién elegido alcalde, oficial de Barrio 2 y oficial de Barrio 4.)

Mayor Pro-Tem Rios presented the Certificates of Election to re-elected Mayor Charles J. "C.J." Wax.

Mayor Wax presented the Certificate of Election to newly-elected official for Ward 2 J.D. Villa and newly-elected official for Ward 4 Barbara Gurtner.

- 5. Administration of Oath of Office to newly-elected Mayor, official for Ward 2 and official for Ward 4.**
(Administración de juramento del cargo de alcalde electo, el recién elegido oficial de Barrio 2 y oficial de Barrio 4.)

Aransas County Court at Law Judge Richard Bianchi administered the Oath of Office to re-elected Mayor Charles J. "C.J." Wax.

Mayor Wax administered the Oath of Office to re-elected official J.D. Villa and to re-elected official Barbara Gurtner.

Consent Agenda

All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

- 7. Deliberate and act on approval of City Council Workshop Minutes and Regular Meeting Minutes of April 26, 2016, and Special Meeting Minutes of May 2, 2016.**
- 8. Deliberate and act on 2nd quarter report from Rockport Center for the Arts for Fiscal Year 2015-2016 marketing expenditures.**
- 9. Deliberate and act on approval of Performance Modifications No. 2 for the Water Improvements grant 713411 (West Terrace First Time Water Project).**

Mayor Wax called for requests to remove any item from the Consent Agenda for separate discussion. There being no requests, Mayor Wax called for a motion.

MOTION: Council Member Villa moved to adopt the Consent Agenda Items as presented. Council Member Gurtner seconded the motion. Motion carried unanimously.

6. Deliberate and act on election by Council of Mayor Pro-Tem.

A nomination of Council Member Rios for Mayor Pro-Tem was made by Council Member Villa.

MOTION: Council Member Villa moved to elect Council Member Rios as Mayor Pro-Tem for a term of May 2016 to May 2017 pursuant to the City of Rockport Home Rule Charter. Council Member Gurtner seconded the motion. The motion carried unanimously.

Regular Agenda

10. Tabled April 26, 2016 – Deliberate and act on Resolution amending Resolution 2016-06 authorizing certification of a cultural district to be named Rockport Cultural Arts District.

MOTION: Mayor Wax moved to remove this item from the table. Mayor Pro-Tem Rios seconded the motion. Motion carried unanimously.

Mayor Wax asked if Council Members had any questions in regard to the amendment to Resolution No. 2016-06.

There were no questions.

MOTION: Mayor Pro-Tem Rios moved to adopt the Resolution amending Resolution No. 2016-06 authorizing certification of a cultural district to be named Rockport Cultural Arts District. Council Member Villa seconded the motion. Motion carried unanimously.

11. Deliberate and act on second and final reading of an Ordinance amending City of Rockport Code of Ordinances Chapter 54 Health and Sanitation, Article II, Food Establishments.

City Manager Kevin Carruth stated there had been no changes in format or content to this Ordinance since the first reading. Discussion was held among Council and Mr. Carruth.

Council Member Day asked how the Ordinance would be enforced.

Public Works Director Mike Donoho stated the Ordinance contains enforcement provisions.

City Manager Kevin Carruth said that Section 42.131. contains the judicial enforcement remedies.

MOTION: Council Member Villa moved to approve the second and final reading of an Ordinance amending City of Rockport Code of Ordinances Chapter 54 Health and Sanitation, Article II, Food Establishments. Council Member Day seconded the motion. Motion carried unanimously.

12. Deliberate and act on second and final reading of an Ordinance authorizing the closing, vacating and abandonment of a 20-foot wide alleyway lying between Lots 1 and 9, Block 107, Manning Addition, and a 20-foot wide alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, Rockport, Aransas County, Texas; providing for the terms and conditions of such vacation and abandonment; authorizing the Mayor to execute a Quitclaim

Deed for the said alleyways to be closed, vacated and abandoned; and providing for an effective date.

Mayor Wax stated there had been no changes in format or content of this Ordinance since the first reading.

Council Member Villa stated he had asked Steve Pham, at the first reading of the Ordinance, if he was satisfied with all the numbers stated in the Ordinance, but he wanted to ask Mr. Pham that again.

Steve Pham answered that he was satisfied and agreed with the numbers stated in the Ordinance.

MOTION: Council Member Villa moved to approve the second and final reading of an Ordinance authorizing the closing, vacating and abandonment of a 20-foot wide alleyway lying between Lots 1 and 9, Block 107, Manning Addition, and a 20-foot wide alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, totaling approximately 0.06887 acre, Rockport, Aransas County, Texas; according to the plat of record in Volume 1, Page 7, Plat Records of Aransas County, Texas; providing for the terms and conditions of such vacation and abandonment; authorizing the Mayor to execute a Quitclaim Deed with conditions and reversionary clause for the two (2) 20-foot alleys to be closed, vacated and abandoned; and providing for an effective date. Mayor Pro-Tem Rios seconded the motion. Motion carried unanimously.

13. Deliberate and act on first reading of an Ordinance replacing City of Rockport Code of Ordinances Chapter 42 Article V. "Erosion and Sediment Control" with a Stormwater Ordinance.

Mayor Wax stated this Ordinance follows the Council discussion of the proposed ordinance at the April 26, 2016, City Council Workshop.

Public Works Director Mike Donoho read the following summary of the difference between the current Ordinance and the proposed Ordinance:

REGULATED IN CURRENT ORDINANCE

- Construction Activity

REGULATED IN PROPOSED ORDINANCE

- Discharge of contaminated stormwater by any of the following:
 - Hazardous substances
 - Petroleum products
 - Household hazardous waste
 - Industrial waste
 - Sediment from construction sites
 - Pesticides
 - Herbicides
 - Fertilizers

- Yard waste
- Wastewater from commercial power washing
- Wastewater from carpet cleaning
- Ready mix concrete, mortar, ceramic or asphalt base material
- Wash down water from animal kennels
- Swimming pool water containing high levels of chlorine
- Sanitary sewage
- Or any other contaminants
- Reporting and Cleanup of Hazardous Substances
- Construction Activity

Although construction activities are regulated under both ordinances, the new proposed ordinance is more strict and easier to enforce. For example, the proposed ordinance requires all contractors requesting a building permit to sign a certification statement acknowledging that they understand the terms of the ordinance before the permit will be issued. Also, we may require any plans for the construction site to illustrate the best management practices that will be implemented. The City may deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans or observed upon a site inspection are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with clearing, grading excavation, and other construction activities to the maximum extent practicable under the circumstances. The new ordinance also requires final stabilization at the construction site. Again, the City may deny the approval required for the certificate of occupancy until such stabilization has been inspected and approved.

Mayor Wax stated a tremendous amount of work had gone into the proposed Ordinance and he thanked staff for the work.

MOTION: Mayor Wax moved to approve the first reading of an Ordinance replacing City of Rockport Code of Ordinances Chapter 42 Article V. "Erosion and Sediment Control" with a Stormwater Ordinance. Council Member Gurtner seconded the motion. Motion carried unanimously.

14. Reports from Council.

At this time, the City Council will report/update on all committee assignments, which may include the following: Aransas Pathways Steering Committee, Building and Standards Commission; Coastal Bend Bays and Estuaries Program; Coastal Bend Council of Government; Environmental Committee for Water Issues; Parks & Leisure Services Advisory Board; Planning Zoning Commission; Rockport Heritage Board; Rockport-Fulton Chamber of Commerce; Aransas County Storm Water Management Advisory Committee; Swimming Pool Operations Advisory Committee; Tourism Development Council; Tree & Landscape Committee; YMCA Development Committee; Texas Maritime Museum; Fulton Mansion; Rockport Center for the Arts; Aransas County; Aransas County Independent School District; Aransas County Navigation District; Town of Fulton; and Texas Municipal League. No formal action can be taken on these items at this time.

Mayor Wax stated that by the City not having to conduct an Election, the City saved approximately \$8,000.00. Mayor Wax said no one filed to run against Council Members Villa or Gurtner, thereby showing their confidence in them.

Executive Session

City Council will hold an executive session pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:

- 15. Section 551.071(1)(A) Consultation with Attorney on pending or contemplated litigation: A) Bay Education Center, (B) Manning, (C) Pena/Dack, and (D) Texaz Construction and AZ Southwest Properties.**
- 16. Section 551.071(2) Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.**
- 17. Section 551.072 Deliberation about Real Property: Deliberate the purchase, exchange, lease, or value of real property: (A) Project Red Fish, and (B) 1100 block of East North Street, between Austin Street and Water Street.**
- 18. Section 551.087 Deliberation Regarding Economic Development Negotiations: Project Cardinal.**

At 6:51 p.m., Mayor Wax convened the Rockport City Council into an executive session pursuant to provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in Section 551.071910(A) Consultation with Attorney on pending or contemplated litigation: (A) Bay Education Center, (B) Manning, (C) Pena/Dack, and (D) Texaz Construction and AZ Southwest Properties; Section 551.071(2) Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas clearly conflicts with the chapter; Section 551.072 Deliberation about Real Property: Deliberate the purchase, exchange, lease, or value of real property: (A) Project Red Fish, and (B) 1100 block of East North Street, between Austin Street and Water Street; and Section 551.087 Deliberation Regarding Economic Development Negotiations: Project Cardinal.

Open Session

City Council will reconvene into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any actions necessary related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.

At 7:06 p.m., Mayor Wax reconvened the Rockport City Council into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any necessary actions related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.

19. Deliberate and act on an agreement with Rockport Art Association for the lease of the 1100 block of East North Street.

Mayor Wax stated there was no action to be taken on this item because the agreement had been finalized at the May 9, 2016, Special Council Meeting.

20. Adjournment

At 7:07 p.m., Mayor Pro-Tem Rios moved to adjourn. Motion was seconded by Council Member Villa and carried unanimously.

APPROVED:

Charles J. Wax, Mayor

ATTEST:

Teresa Valdez, City Secretary

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, May 24, 2016

AGENDA ITEM: 5

Deliberate and act on 2nd quarter report from the Friends of the Fulton Mansion State Historical Site for Fiscal Year 2015-2016 marketing expenditures.

SUBMITTED BY: City Secretary Teresa Valdez

APPROVED FOR AGENDA: PKC

BACKGROUND: The Friends of the Fulton Mansion State Historical Site has been allocated \$25,000.00 in FY 2015-2016 Hotel Occupancy Tax (HOT) funds. According to our agreement with the Friends of the Fulton Mansion State Historical Site, HOT funds are paid in advance and a report of the previous quarter's expenditures is required. See the accompanying 2nd quarter HOT expenditure report for additional information.

FISCAL ANALYSIS: Charged to account 6602009. YTD expenses are \$11,697.75 out of \$25,000.00 budgeted.

STAFF RECOMMENDATION: Staff recommends approval of the Friends of the Fulton Mansion State Historical Site FY 2015-2016 Hotel Occupancy Tax funds 2nd quarter expenditures and authorization to disburse 3rd Quarter funds in the amount of \$6,250.00, as presented.

Fulton Mansion

HOT FUNDING EXPENSE REPORT FY 2015-2016

Description of Expense	Approved Budget	1 st Quarter Expenses (Oct - Dec)	2 nd Quarter Expenses (Jan-March)	3 rd Quarter Expenses (April-June)	4 th Quarter Expenses (July-Sep)	TOTAL
Intern Salaries	\$10,000	\$2,134	\$1,380			\$3,514
Tour Guide Salaries	\$15,000	\$1,655	\$6,528.75			\$8,183.75
TOTAL REQUESTED	\$25,000	\$3,789	\$7,908.75			\$11,697.75

Description of Administrative Expenses	Current Fiscal Year Administrative Expenses Projection	Fiscal Year Administrative Actual Expenses	Percentage of Fiscal Year Projections
Intern and Tour Guide salaries	\$40,000	\$11,697.75	29%
TOTALS			

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, May 24, 2016

AGENDA ITEM: 6

Deliberate and act to appoint member to the YMCA Development Committee.

SUBMITTED BY: Mayor Charles J. Wax

APPROVED FOR AGENDA: PKC

BACKGROUND: The YMCA Ad Hoc Project Committee gave a final presentation to the Council on July 14, 2015, and addressed the Committee's charge from the Council to determine: scope of services, facility design, construction estimates, estimates of operating & maintenance costs, management agreement with YMCA of the Coastal Bend, and project funding plan. The next step in the process was to form a smaller committee of five to seven members to develop specific plans of action for the project. At the July 28, 2015 Council meeting, Council voted to establish a YMCA Development Committee consisting of approximately seven members. On October 27, 2015, Council appointed five members to the YMCA Development Committee. Since that time, a couple of members have resigned and new members were appointed. Recently another member, Yvonne Perez has resigned. The accompanying application for board or commission appointment has been received from Ms. Rosemary Vieux. The Board's current membership is detailed in the table below.

YMCA Development Committee

Place	Member
1	Rosemary Vieux (previously Yvonne Perez)
2	Eric Heller
3	VACANT (Jordan Fisher resigned)
4	Brian Olsen
5	Rebecca Johnson (previously Glen Gomez)
6	Warren Hassinger
7	Tracy Shelton

FISCAL ANALYSIS: N/A

STAFF RECOMMENDATION: Staff recommends appointment of Rosemary Vieux to the YMCA Development Committee, as presented.

CITY OF ROCKPORT
622 E. Market St.
Rockport, TX 78382
361-729-2213

RECEIVED

APR 22 2016

CITY SECRETARY

APPLICATION FOR
BOARD OR COMMISSION APPOINTMENT
August 2012

Check area of Interest:

- Keep Rockport Beautiful Advisory Board
- Planning and Zoning Commission
- Tree & Landscaping Committee
- Rockport Heritage District Board
- Park and Leisure Services Advisory Board
- Water Quality Committee
- Other YMCA
(please add)

Name: Rosemary Vieux Age (Optional): _____
 Home Address: 28 Saint Andrews Pl
 Home Phone: 361-563-0199 Work Phone: _____
 Business Address: _____
 Resident of City for 18 years Voter Registration No. _____
 Occupation: retired teacher
 Education: BS MS - secondary Educ. MS counseling psychology
 Special Knowledge or Experience Applicable to City Board or Commission Function: (attach)
additional information if needed
business owner in seasonal tourist area

- Banking/Finance
- Building/Construction
- Real Estate/Development
- Industrial Training
- Business Development
- Promotion/Marketing
- Manufacturing/Industrial Operations
- Law/Contract Administration

Other Information (civic activities, etc.) Friends of the Pool
Aransas County Retired Teachers Teachers & Junior Achievement

I have attended one or more meetings of the board or commission for which I have applied:

Yes No

Date: 4-22-16 Signature: Rosemary Vieux

RETURN COMPLETED FORM TO THE CITY SECRETARY'S OFFICE

ALL INFORMATION MUST BE FURNISHED IN ORDER TO BE CONSIDERED
Email to: citysec@cityofrockport.com

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, May 24, 2016

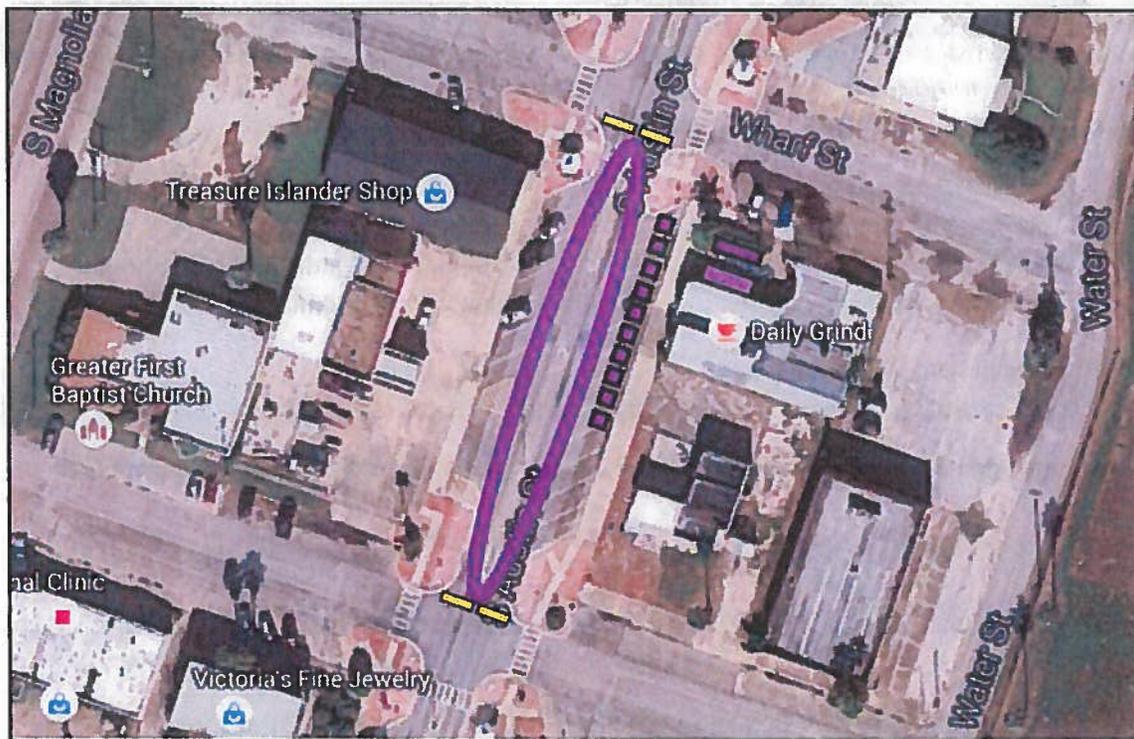
AGENDA ITEM: 7

Deliberate and act on request from Relay for Life of Rockport-Fulton for approval to close Austin Street between Wharf Street and Main Street from 5:00 p.m. until Midnight on Saturday, June 11, 2016, for the Relay For Life event.

SUBMITTED BY: City Manager Kevin Carruth

APPROVED FOR AGENDA: PKC

BACKGROUND: The Relay For Life of Rockport-Fulton has requested closure of a portion of Austin Street which will serve as the walking track for the Relay For Life event. Ms. Heather Marks, Senior Manager, Relay for Life, stated that they will be visiting the businesses in the affected area by May 23 to share the proposed plan and identify any conflicts from any businesses that might have had plans to be open past 4:00 p.m.



See the accompanying letter request.

FISCAL ANALYSIS: N/A

RECOMMENDATION: Staff recommends Council approve the request from the Relay For Life of Rockport-Fulton.



AMERICAN CANCER SOCIETY RELAY FOR LIFE

Celebrate.

Remember.

Fight Back.

4101 S. Alameda St, Corpus Christi, TX 78411 - 361.857.0136 office

Re: Relay For Life of Rockport-Fulton – Saturday, June 11, 2016

To Whom It May Concern:

The Relay For Life of Rockport-Fulton would like to respectfully request city approval and support to block off Austin Street between Wharf Street and Main Street between the hours of 5:00pm and 12:00am on Saturday, June 11th. This would encompass both sides of the divided street for just one city block, enabling traffic to divert around to Magnolia Street.

Our event committee will be visiting each business within this area by 5:00pm on Monday, May 23rd, to inform them of these proposed plans and confirm there would be no conflicts with their regular business.

See attached for a map depicting our proposed logistics and request.

Please contact me should you have any questions.

Thank you!

Heather Marks

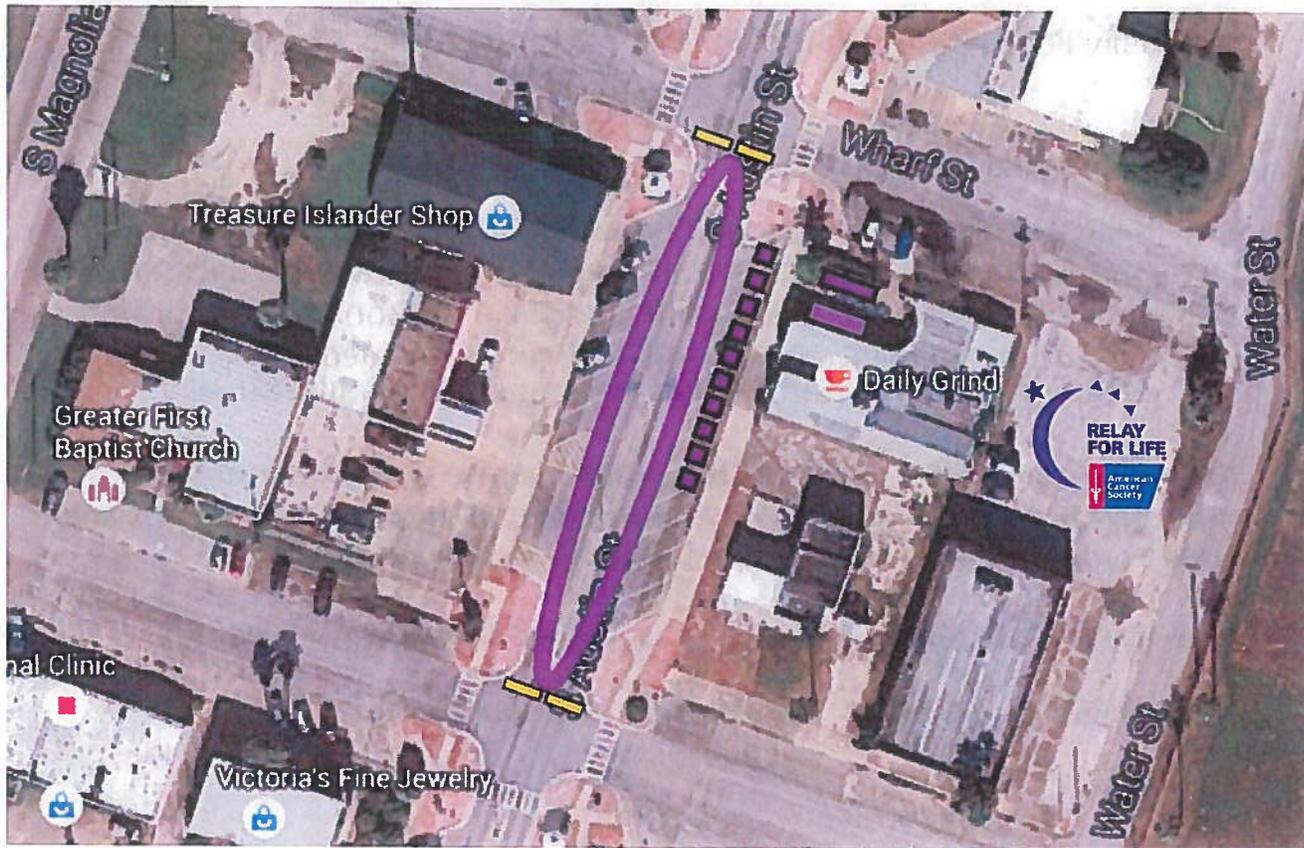
Heather Marks
American Cancer Society
High Plains Division
mobile: 956.802.3822
tax id: 13-1788491

Relay For Life of Rockport-Fulton

Saturday, June 11, 2016

5pm – 12am

Proposed Logistics Plan



CITY COUNCIL AGENDA
Regular Meeting: Tuesday, May 24, 2016

AGENDA ITEM: 8

Deliberate and act to confirm Mayoral re-appointments and appointments to various City of Rockport boards, committees and commissions.

SUBMITTED BY: Mayor Charles J. Wax

APPROVED FOR AGENDA: PKC

BACKGROUND: Each year after the May election, the City Council appoints members to the various boards, committees and commissions. Appointments for all boards and committees include the following: **NOTE:** **Red** type depicts re-appointments or vacancies. **Blue** type depicts appointments.

ENVIRONMENTAL COMMITTEE FOR WATER ISSUES

PLACE NO.	MEMBER'S NAME	EXPIRATION DATE	WARD	COMMENTS	REQUEST RE-APPOINTMENT
1	Ginger Easton-Smith	June 1, 2018	3		
2	VACANT	June 1, 2016		Tom Callan resigned	
3	Ron Helmke	June 1, 2018	4		
4	Shawn M. Johnston	June 1, 2017	2		
5	VACANT	June 1, 2018	3		
6	Virginia Hallinan	June 1, 2016	1		YES

Council Liaison: Pat Rios

PARK AND LEISURE SERVICES ADVISORY BOARD

PLACE NO.	MEMBER'S NAME	EXPIRATION DATE	WARD	COMMENTS	REQUEST RE-APPOINTMENT
1	Kate Catlow	June 1, 2018	1		
2	Ty Brisgill	June 1, 2018	1		
3	Leo Villa	June 1, 2017	2		
4	VACANT	June 1, 2018			
5	Cassandra Perkins	June 1, 2017	2		
6	Debra Corpora	June 1, 2016	4		YES
7	Jeanette Larson	June 1, 2016	4		YES

Council Liaison: J.D. Villa

PLANNING & ZONING COMMISSION

PLACE NO.	MEMBER'S NAME	EXPIRATION DATE	WARD	COMMENTS	REQUEST RE-APPOINTMENT
1	Edward Bellion	June 1, 2016	3		YES
2	Shawn M. Johnston	June 1, 2018	2		
3	Graham Wilson	June 1, 2018	3		
4	Brian Olsen	June 1, 2017	4		
5	Ruth Davis	June 1, 2016	1		YES
6	Diana Severino-Saxon	June 1, 2017	3	Secretary	
7	W. Kent Howard	June 1, 2018	3		

Council Liaison: Barbara Gurtner, as required

ROCKPORT HERITAGE DISTRICT BOARD

PLACE NO.	MEMBER'S NAME	EXPIRATION DATE	WARD	COMMENTS	REQUEST RE-APPOINTMENT
1	Chad Lee	June 2016	4	Development or Construction Industry representative	
2	Jim Godfrey	June 2018	1	Heritage District Business Owner representative	
3	Anita Diebel	June 2017	1	Heritage District representative	
4	Loretta J. Schindler	June 2016	4	Rockport Community representative	YES
5	Bill Fisher	June 2018	1	Historic Preservation Representative	Janie C. White resigned

Council Liaison: Rusty Day

TREE AND LANDSCAPE COMMITTEE

PLACE NO.	MEMBER'S NAME	EXPIRATION DATE	WARD	COMMENTS	REQUEST RE-APPOINTMENT
1	VACANT	June 1, 2018			
2	Ron Helmke	June 1, 2017	4		
3	Carroll G. Overturf	June 1, 2018	3		
4	Alex Johnson	June 1, 2016	1		YES
5	Ginger Easton Smith	June 1, 2017	3		
6	Diana Severino-Saxon	June 1, 2016	3	P & Z Representative	YES
7	VACANT	June 1, 2016			

Council Liaison: Barbara Gurtner

ZONING BOARD OF ADJUSTMENT

PLACE NO.	MEMBER'S NAME	EXPIRATION DATE	WARD	COMMENTS	REQUEST RE-APPOINTMENT
1	David Swartwout	June 1, 2017	4		
2	Michael Mahoney	June 1, 2017	3		
3	Carey Dietrich	June 1, 2016	4		YES
4	Leo Villa	June 1, 2016	2		YES
5	Tom Kramer	June 1, 2016	1		YES
6	Frank Reilly	June 1, 2016	3	Alternate	YES
7	C.G. (Turf) Overturf	June 1, 2017	3	Alternate	

Council Liaison: None

FISCAL ANALYSIS: N/A

STAFF RECOMMENDATION: Staff recommends that City Council confirm the Mayor's appointments to various boards, commissions, and committees, as shown in **red** type.

Received
5-20-16
City Secretary

CITY OF ROCKPORT
622 E. Market St.
Rockport, TX 78382
361-729-2213

**APPLICATION FOR
BOARD OR COMMISSION APPOINTMENT**

Check area of Interest:

- Keep Rockport Beautiful Advisory Board (**suspended**)
- Planning and Zoning Commission
- Tree & Landscaping Committee
- Rockport Heritage District Board
- Zoning Board of Adjustment
- Park and Leisure Services Advisory Board
- Environmental Committee for Water Issues
- Other _____
(please add)

Name: Chad Lee Age (Optional): 40
 Home Address: 104 Sedona Ct. Ward No: 4
 Home Phone: 361-205-7111 Work Phone: _____
 Business Address: PO Box 1422
 E-mail Address: cal_fish@yahoo.com
 Resident of City for 11 years Voter Registration No. _____
 Occupation: General Contractor
 Education: BA

Special Knowledge or Experience Applicable to City Board or Commission Function: *(attach additional information if needed)*

I have come before the Heritage District board twice for projects I have handled.

- Banking/Finance
- Building/Construction
- Real Estate/Development
- Industrial Training
- Business Development
- Promotion/Marketing
- Manufacturing/Industrial Operations
- Law/Contract Administration

Other Information (civic activities, etc.) I have been the president for the Sacred Heart School Advisory Council since 2010.

I have attended one or more meetings of the board or commission for which I have applied:

Yes **No**

Date: 5/20/2016 Signature: 

RETURN COMPLETED FORM TO THE CITY SECRETARY'S OFFICE

<p>ALL INFORMATION MUST BE FURNISHED IN ORDER TO BE CONSIDERED Email to: citysec@cityofrockport.com</p>
--

CITY OF ROCKPORT

622 E. Market St.
Rockport, TX 78382
361-729-2213

RECEIVED

MAY 20 2016

APPLICATION FOR
BOARD OR COMMISSION APPOINTMENT
August 2012

CITY SECRETARY

Check area of Interest:

- Keep Rockport Beautiful Advisory Board
- Planning and Zoning Commission
- Tree & Landscaping Committee
- Rockport Heritage District Board
- Park and Leisure Services Advisory Board
- Water Quality Committee
- Other _____
(please add)

Name: Bill Fisher Age (Optional): 70
 Home Address: 801 S. Church
 Home Phone: 361-727-9759 Work Phone: _____
 Business Address: _____
 Resident of City for 14 years Voter Registration No. _____
 Occupation: Retired
 Education: MBA Univ. of Texas
 Special Knowledge or Experience Applicable to City Board or Commission Function: *(attach additional information if needed)*
Vice President of RHADA, previous council member

- Banking/Finance
- Building/Construction
- Real Estate/Development
- Industrial Training
- Business Development
- Promotion/Marketing
- Manufacturing/Industrial Operations
- Law/Contract Administration

Other Information (civic activities, etc.) Board member History Center, Aransas First

I have attended one or more meetings of the board or commission for which I have applied:

- Yes No

Date: May 20, 2016 Signature: Willie D. Foster

RETURN COMPLETED FORM TO THE CITY SECRETARY'S OFFICE

ALL INFORMATION MUST BE FURNISHED IN ORDER TO BE CONSIDERED
 Email to: citysec@cityofrockport.com

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, May 24, 2016

AGENDA ITEM: 9

Deliberate and act to confirm Mayoral appointments of City Council liaisons to various City of Rockport boards, committees and commissions.

SUBMITTED BY: Mayor Charles J. Wax

APPROVED FOR AGENDA: PKC

BACKGROUND: Each year after the May election, the Mayor appoints City Council Members to act as liaisons to the various boards, committees and commissions.

1. **ARANSAS PATHWAYS**
 Council Liaison: Mayor Wax Alternate Liaison: Mayor Pro Tem Rios
2. **COASTAL BEND BAYS AND ESTUARIES**
 Council Liaison: Council Member Villa Alternate Liaison: Council Member Gurtner
3. **COASTAL BEND COUNCIL OF GOVERNMENTS**
 Council Liaison: Mayor Wax Alternate Liaison: Mayor Pro Tem Rios
4. **ECONOMIC DEVELOPMENT COUNCIL**
 Council Liaison: Mayor Wax
5. **ENVIRONMENTAL COMMITTEE FOR WATER ISSUES**
 Council Liaison: Mayor Pro Tem Rios
6. **PARK AND LEISURE SERVICES ADVISORY BOARD**
 Council Liaison: Council Member Villa Alternate Liaison: Council Member Gurtner
7. **PLANNING & ZONING COMMISSION**
 Council Liaison: Council Member Gurtner, as required
8. **ROCKPORT HERITAGE DISTRICT ASSOCIATION**
 Council Liaison: Council Member Day
9. **ROCKPORT HERITAGE DISTRICT BOARD**
 Council Liaison: Council Member Day
10. **TREE LANDSCAPE COMMITTEE**
 Council Liaison: Council Member Gurtner

11. ZONING BOARD OF ADJUSTMENT

Council Liaison: None

12. STORMWATER MANAGEMENT ADVISORY COMMITTEE

Council Liaison: Mayor Wax

Alternate Liaisons: Council Member Villa
Council Member Gurtner

13. TOURISM DEVELOPMENT COUNCIL

Council Liaison: Council Member Gurtner Alternate Liaison: Council Member Day

FISCAL ANALYSIS: N/A

STAFF RECOMMENDATION: Staff recommends that City Council confirm the Mayor's appointments of City Council liaisons to various boards, commissions, and committees, as presented.

CITY COUNCIL AGENDA
Workshop Meeting: Tuesday, May 24, 2016

AGENDA ITEM: 10

Deliberate and act on second and final reading of an Ordinance replacing City of Rockport Code of Ordinances Chapter 42 Article V. "Erosion and Sediment Control" with a Stormwater Ordinance.

SUBMITTED BY: Public Works Director Michael S. Donoho Jr.

APPROVED FOR AGENDA: PKC

BACKGROUND: At the April 26, 2016 City Council Workshop, Environmental Compliance Officer Kendra Baird presented a review of the proposed stormwater ordinance to replace the current City Erosion and Sediment Control Ordinance. Please see the accompanying proposed ordinance for detail.

Council approved the first reading of the Ordinance at the May 10, 2016, Council meeting. There have been no changes in format or content of the Ordinance since the first reading.

FISCAL ANALYSIS: N/A

STAFF RECOMMENDATION: Staff recommends approval of the second and final reading of an Ordinance replacing City of Rockport Code of Ordinances Chapter 42 Article V. "Erosion and Sediment Control" with a Stormwater Ordinance, as presented.

ORDINANCE NO.

AN ORDINANCE REPLACING CITY OF ROCKPORT CODE OF ORDINANCES CHAPTER 42 ARTICLE V. "EROSION AND SEDIMENT CONTROL" WITH A STORMWATER ORDINANCE; PROVIDING FOR THE VALIDITY OF SAID ORDINANCE; REPEALING ALL PRIOR ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDIANED BY THE CITY COUNCIL OF THE CITY OF ROCKPORT, TEXAS:

SECTION 1. CHAPTER 42 ARTICLE V DELETED

Chapter 42 Article V. "Erosion and Sediment Control" of the City of Rockport Code of Ordinances shall be deleted in its entirety and replaced with a Stormwater Ordinance.

SECTION 2. CHAPTER 42 ARTICLE V – REPLACEMENT

Chapter 42 Article V. shall be titled the "Stormwater Ordinance" and contain the following provisions:

Sec. 42-120. Responsibility.

Except as otherwise provided herein, the Director of Public Works (DPW) and Code Enforcement Administrator (CEA) shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon these people may be delegated to other City personnel.

Sec. 42-121. General provisions

- (a) Purposes. The purposes and objectives of this Ordinance are as follows:
(1) To maintain and improve the quality of surface water and groundwater within the City of Rockport and the State of Texas.
(2) To prevent the discharge of contaminated stormwater runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the City of Rockport.
(3) To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers and natural waters of the City.

- 47 (4) To encourage recycling of used motor oil and safe disposal of other hazardous
 48 consumer products.
 49
 50 (5) To facilitate compliance with state and federal standards and permits by owners
 51 and operators of industrial and construction sites within the City.
 52
 53 (6) To enable the City to comply with all federal and state laws and regulations
 54 applicable to stormwater discharges.
 55

56 **Sec. 42-122. Definitions and abbreviations.**
 57

58 Unless a provision explicitly states otherwise, the following terms and phrases, as used in this
 59 Ordinance, shall have the meanings hereinafter designated.
 60

61 *Best management practices (BMP)* means the schedule of activities, prohibitions of practices,
 62 maintenance procedures, and other management practices to prevent or reduce the pollution of
 63 waters of the United States. BMPs also include treatment requirements, operating procedures, and
 64 practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage
 65 from raw material storage.
 66

67 *City* means the City of Rockport, Texas, or the City Council of Rockport.
 68

69 *City Inspector(s)* means the DPW or CEA who go on site to determine if the provisions of
 70 this ordinance are being met.
 71

72 *Code Enforcement Administrator (CEA)* means the person appointed by the City Manager to
 73 enforce City codes or his/her duly authorized representative.
 74

75 *Commencement of construction* means the disturbance of soils associated with clearing, grading,
 76 or excavating activities or other construction activities.
 77

78 *Commercial* means any business, trade, industry, or other activity engaged in for profit.
 79

80 *Director of Public Works (DPW)* means the person appointed by the City Manager to manage
 81 field operations and provide environmental education, or his/her duly authorized representative.
 82

83 *Discharge* means any addition or introduction of any pollutant, stormwater, or any other substance
 84 whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United
 85 States.
 86

87 *Discharger* means any person, who causes, allows, permits, or is otherwise responsible for, a
 88 discharge, including, without limitation, any operator of a construction site or industrial facility.
 89

90 *Domestic sewage* means human excrement, gray water (from home clothes washing, bathing,
 91 showers, dishwashing, and food preparation), other wastewater from household drains, and
 92 waterborne waste normally discharged from the sanitary conveniences of dwellings (including

93 apartment houses and hotels), office buildings, factories, and institutions, that is free from
94 industrial waste.

95

96 *Environmental Protection Agency (EPA)* means the United States Environmental Protection
97 Agency, the regional office thereof, any federal department, agency, or commission that may
98 succeed to the authority of the EPA, and any duly authorized official of EPA or such successor
99 agency.

100

101 *Extremely hazardous substance* means any substance listed in the Appendices to 40 CFR Part
102 355, Emergency Planning and Notification.

103

104 *Facility* means any building, structure, installation, process, or activity from which there is or
105 may be a discharge of a pollutant.

106

107 *Fertilizer* means a solid or non-solid substance or compound that contains an essential plant
108 nutrient element in a form available to plants and is used primarily for its essential plant nutrient
109 element content in promoting or stimulating growth of a plant or improving the quality of a
110 crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal,
111 plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is
112 made.

113

114

115 *Final stabilization* means the status when all soil disturbing activities at a site have been
116 completed, and a uniform perennial vegetative cover with a density of seventy (70%) percent
117 of the cover for unpaved areas and areas not covered by permanent structures has been established,
118 or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles)
119 have been employed.

120

121 *Fire Department* means the Fire Department of the City of Rockport, or any duly authorized
122 representative thereof.

123

124 *Fire protection water* means any water, and any substances or materials contained therein,
125 used by any person other than the Fire Department to control or extinguish a fire.

126

127 *Garbage* means putrescible animal and vegetable waste materials from the handling, preparation,
128 cooking, or consumption of food, including waste materials from markets, storage facilities, and
129 the handling and sale of produce and other food products.

130

131 *Harmful quantity* means the amount of any substance that will cause pollution of water in the
132 State.

133

134 *Hazardous household waste (HHW)* means any material generated in a household (including
135 single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters,
136 camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for
137 the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste
138 under 40 CFR Part 261.

- 139
 140 *Hazardous substance* means any substance listed in Table 302.4 of 40 CFR Part 302.
 141
 142 *Hazardous waste*. Any substance identified or listed as a hazardous waste by the EPA pursuant to
 143 40 CFR Part 261.
 144
 145 *Hazardous waste treatment, disposal, and recovery facility* means all contiguous land, and
 146 structures, other appurtenances and improvements on the land, used for the treatment, disposal, or
 147 recovery of hazardous waste.
 148
 149 *Herbicide* means a substance or mixture of substances used to destroy a plant or to inhibit plant
 150 growth.
 151
 152 *Industrial waste* means any waterborne liquid or solid substance that results from any process
 153 of industry, manufacturing, mining, production, trade, or business.
 154
 155 *Motor vehicle fuel* means any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid,
 156 differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a
 157 motor vehicle.
 158
 159 *Municipal landfill (or landfill)* means an area of land or an excavation in which municipal solid
 160 waste is placed for permanent disposal, and which is not a land treatment facility, a surface
 161 impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated
 162 by the Texas Water Commission).
 163
 164 *Municipal separate storm sewer system (MS4)* means the system of conveyances (including
 165 roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made
 166 channels, or storm drains) owned and operated by the City and designed or used for collecting
 167 or conveying stormwater, and which is not used for collecting or conveying sewage.
 168
 169 *Municipal solid waste* means solid waste resulting from or incidental to municipal, community,
 170 commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street
 171 cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.
 172
 173 *NPDES General Permit for Stormwater Discharges Associated with Industrial Activity (or*
 174 *Industrial General Permit)* means the Industrial General Permit issued by EPA on August 27,
 175 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992,
 176 and any subsequent modifications or amendments thereto.
 177
 178 *NPDES General Permit for Stormwater Discharges from Construction Sites (or Construction*
 179 *General Permit)* means the Construction General Permit issued by EPA on August 27, 1992, and
 180 published in Volume 57 of the Federal Register at page 41217 on September 9, 1992, and any
 181 subsequent modifications or amendments thereto.
 182
 183 *NPDES permit* means a permit issued by EPA (or by the State under authority delegated pursuant
 184 to 33 USC § 1342(b)), as amended, that authorizes the discharge of pollutants to waters of the

185 United States, whether the permit is applicable on an individual, group, or general area-wide basis.
186

187 *Non-point source* means any source of any discharge of a pollutant that is not a "point source."
188

189 *Notice of Intent (NOI)* means the Notice of Intent that is required by either the Industrial General
190 Permit or the Construction General Permit.

191
192 *Notice of Termination (NOT)* means the Notice of Termination that is required by either the
193 Industrial General Permit or the Construction General Permit.

194
195 *Oil* means any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil
196 or any fraction thereof which is liquid at standard conditions of temperature and pressure,
197 sludge, oil refuse, and oil mixed with waste.

198
199 *Operator* means the person or persons who meet either of the following two criteria: (1) they have
200 operational control over the facility specifications (including the ability to make modifications in
201 specifications); and (2) they have the day-to-day operational control over those activities at the
202 facility necessary to ensure compliance with pollution prevention requirements and any permit
203 conditions.

204
205 *Owner* means the person who owns a facility or part of property.
206

207 *Person* means any individual, partnership, co-partnership, firm, company, corporation,
208 association, joint stock company, trust, estate, governmental entity, or any other legal entity; or
209 their legal representatives, agents, or assigns. This definition includes all federal, state, and local
210 governmental entities.

211
212 *Pesticide* means a substance or mixture of substances intended to prevent, destroy, repel, or
213 mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator,
214 defoliant, or desiccant (as these terms are defined in Section 76.001 of the Texas Agriculture
215 Code, as amended).

216
217 *Petroleum product* means a petroleum product that is obtained from distilling and processing
218 crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or
219 aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene,
220 distillate fuel oil, and # 1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-
221 type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of
222 that manufacturing.

223
224 *Petroleum storage tank (PST)* means any one or combination of aboveground or underground
225 storage tanks that contain petroleum products and any connecting underground pipes.

226
227 *Point source* means any discernable, confined, and discrete conveyance, including but not
228 limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
229 concentrated animal feeding operation, landfill leachate collection system, vessel or other floating
230 craft from which pollutants are or may be discharged. This term does not include return flows

231 from irrigated agriculture or agricultural stormwater runoff.

232

233 *Pollutant* means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge,
234 munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded
235 equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into
236 water. The term "pollutant" does not include tail water or runoff water from irrigation or
237 rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

238

239 *Pollution* means the alteration of the physical, thermal, chemical, or biological quality of, or the
240 contamination of, any water in the State that renders the water harmful, detrimental, or injurious
241 to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or
242 impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

243

244 *Qualified personnel* means persons who possess the appropriate competence, skills, and ability
245 (as demonstrated by sufficient education, training, experience, and/or, when applicable, any
246 required certification or licensing) to perform a specific activity in a timely and complete manner
247 consistent with the applicable regulatory requirements and generally- accepted industry standards
248 for such activity.

249

250 *Registered landscape architect (RLA)* means a person who has been duly licensed and registered
251 to practice landscape architecture by the Texas Board of Architectural Examiners.

252 *Registered professional engineer (RPE)* means a person who has been duly licensed and
253 registered by the State Board of Registration for Professional Engineers to engage in the practice of
254 engineering in the State of Texas.

255

256 *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
257 injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer
258 system (MS4) or the waters of the United States.

259

260 *Reportable quantity (RQ)* means for any "hazardous substance," the quantity established and
261 listed in Table 302.4 of 40 CFR Part 302, as amended; for any "extremely hazardous substance,"
262 the quantity established in 40 CFR Part 355, as amended, and listed in Appendix A thereto.

263

264 *Rubbish* means nonputrescible solid waste, excluding ashes, that consist of (A) combustible waste
265 materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard
266 trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including
267 glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn
268 at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

269

270 *Sanitary sewer (or sewer)* means the system of pipes, conduits, and other conveyances which
271 carry industrial waste and domestic sewage from residential dwellings, commercial buildings,
272 industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City
273 sewage treatment plant (and to which stormwater, surface water, and groundwater are not
274 intentionally admitted).

275

276 *Septic tank waste* means any domestic sewage from holding tanks such as vessels, chemical toilets,

277 campers, trailers, and septic tanks.

278

279 *Service station* means any retail establishment engaged in the business of selling fuel for motor
280 vehicles that is dispensed from stationary storage tanks.

281

282 *Sewage (or sanitary sewage)* means the domestic sewage and/or industrial waste that is
283 discharged into the City sanitary sewer system and passes through the sanitary sewer system to
284 the City sewage treatment plant for treatment.

285

286 *Site* means the land or water area where any facility or activity is physically located or conducted,
287 including adjacent land used in connection with the facility or activity.

288

289 *Solid waste* means any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply
290 treatment plant, or air pollution control facility, and other discarded material, including, solid,
291 liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial,
292 mining, and agricultural operations, and from community and institutional activities.

293

294 *State* means the State of Texas.

295

296 *Stormwater* means stormwater runoff, snow melt runoff, and surface runoff and drainage.

297

298 *Stormwater discharge associated with industrial activity* means the discharge from any
299 conveyance which is used for collecting and conveying stormwater and which is directly related
300 to manufacturing, processing, or raw materials storage areas at an industrial plant which is within
301 one of the categories of facilities listed in 40 CFR § 122.26(b)(14), as amended, and which is not
302 excluded from EPA's definition of the same term.

303

304 *Stormwater pollution prevention plan (SWPPP)* means a plan required by either the Construction
305 General Permit or the Industrial General Permit and which describes and ensures the
306 implementation of practices that are to be used to reduce the pollutants in stormwater discharges
307 associated with construction or other industrial activity at the facility.

308

309 *Uncontaminated* means not containing a harmful quantity of any substance.

310

311 *Used oil (or used motor oil)* means any oil that has been refined from crude oil or synthetic oil
312 that, as a result of use, storage, or handling, has become unsuitable for its original purpose
313 because of impurities or the loss of original properties but that may be suitable for further use
314 and is recyclable in compliance with State and federal law.

315

316 *Water in the State (or water)* means any groundwater, percolating or otherwise, lakes, bays, ponds,
317 impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf
318 of Mexico, inside the territorial limits of the State, and all other bodies of surface water, natural or
319 artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and
320 banks of all water courses and bodies of surface water, that are wholly or partially inside or
321 bordering the State or inside the jurisdiction of the State.

322

323 *Water quality standard* means the designation of a body or segment of surface water in the State
 324 for desirable uses and the narrative and numerical criteria deemed by the State to be necessary
 325 to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code,
 326 as amended.

327
 328 *Waters of the United States* means all waters which are currently used, were used in the past,
 329 or may be susceptible to use in interstate or foreign commerce, including all waters which are
 330 subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other
 331 waters the use, degradation, or destruction of which would affect or could affect interstate or
 332 foreign commerce; all impoundments of waters otherwise defined as waters of the United States
 333 under this definition; all tributaries of waters identified in this definition; all wetlands adjacent
 334 to waters identified in this definition; and any waters within the federal definition of "waters of
 335 the United States" at 40 CFR § 122.2, as amended; but not including any waste treatment
 336 systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water
 337 Act.

338
 339 *Wetland* means an area that is inundated or saturated by surface or groundwater at a frequency and
 340 duration sufficient to support, and that under normal circumstances does support, a prevalence
 341 of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include
 342 swamps, marshes, bogs, and similar areas.

343
 344 *Yard waste* means leaves, grass clippings, yard and garden debris, and brush that results from
 345 landscaping maintenance and land-clearing operations.

347 **Sec. 42-123. General prohibition**

- 348
 349 (a) No person shall introduce or cause to be introduced into the municipal separate storm
 350 sewer system (MS4) any discharge that is not composed entirely of stormwater.
 351
 352 (b) It is an affirmative defense to any enforcement action for violation of subsection (a)
 353 of this section that the discharge was composed entirely of one or more of the following
 354 categories of discharges:
 355
 356 (1) water line flushing (excluding discharges of hyperchlorinated water, unless
 357 the water is first dechlorinated and discharges are not expected to
 358 adversely affect aquatic life);
 359
 360 (2) runoff or return flow from landscape irrigation, lawn irrigation, and other
 361 irrigation utilizing potable water, groundwater, or surface water sources
 362 **Runoff from irrigation systems using potable water is prohibited by**
 363 **Ordinance 1619, Drought Contingency and Emergency Plan.;**
 364
 365 (3) discharges from potable water sources;
 366
 367 (4) diverted stream flows;
 368

- 369 (5) rising ground waters and springs;
 370
 371 (6) uncontaminated ground water infiltration;
 372
 373 (7) uncontaminated pumped ground water;
 374
 375 (8) foundation and footing drains;
 376
 377 (9) air conditioning condensation;
 378
 379 (10) water from crawl space pumps;
 380
 381 (11) individual residential vehicle washing;
 382
 383 (12) flows from wetlands and riparian habitats;
 384
 385 (13) dechlorinated swimming pool discharges;
 386
 387 (14) street wash water;
 388
 389 (15) discharges or flows from fire-fighting activities;
 390
 391 (16) other allowable non-stormwater discharges listed in 40 CFR
 392 122.26(d)(2)(iv)(B)(1), as amended;
 393
 394 (17) non-stormwater discharges that are specifically listed in the TPDES Multi
 395 Sector General Permit (MSGP) or the TPDES Construction General permit
 396 (CGP);
 397
 398 (18) a discharge from a temporary car wash sponsored by a civic group school
 399 religious or nonprofit organization where only soap and water are used and
 400 where efforts are made to minimize pollutants in the discharge.
 401
 402 (19) and, other similar occasional incidental non-stormwater discharges, unless
 403 the TCEQ develops permits or regulations addressing these discharges.
 404
 405 (c) No affirmative defense shall be available under Subsection (b) of this section if the
 406 discharge or flow in question has been determined by the DPW to be a source of a pollutant
 407 or pollutants to the waters of the United States or to the MS4, written notice of such
 408 determination has been provided to the discharger, and the discharge has occurred more
 409 than fourteen (14) calendar days beyond such notice. The correctness of the DPW's
 410 determination that a discharge is a source of a pollutant or pollutants may be reviewed
 411 in any administrative or judicial enforcement proceeding.
 412

413 **Sec. 42-124. Specific prohibitions and requirements**
 414

- 415 (a) The specific prohibitions and requirements in this section are not necessarily inclusive
 416 of all the discharges prohibited by the general prohibition in section 42- 123.
 417
- 418 (b) No person shall introduce or cause to be introduced into the MS4 any discharge that
 419 causes or contributes to causing the City to violate a water quality standard, the City's
 420 NPDES permit, or any state-issued discharge permit for discharges from its MS4.
 421
- 422 (c) No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose,
 423 or otherwise introduce or cause, allow, or permit to be introduced any of the following
 424 substances into the MS4:
 425
- 426 (1) Any industrial waste;
 - 427
 - 428 (2) Any used motor oil,
 - 429
 - 430 (3) Any hazardous waste, including hazardous household waste;
 - 431
 - 432 (4) Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
 - 433
 - 434 (5) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil
 435 contaminated by a leaking PST, or any discharge of pumped, confined, or treated
 436 wastewater from the remediation of any such PST release, unless the discharge
 437 satisfies all of the following criteria:
 438
- 439 a. Compliance with all state and federal standards and requirements; and
 - 440
 - 441 b. No discharge containing a harmful quantity of any pollutant.
 - 442
- 443
- 444 (d) No person shall intentionally dump, spill, leak, pump, pour, emit, empty, discharge,
 445 leach, dispose, or introduce any of the following substances into the MS4 and all persons
 446 shall to the maximum extent practicable under prevailing circumstances employ control
 447 measures to prevent the following substances from entering into the MS4:
 448
- 449 (1) Any motor oil, antifreeze, or any other motor vehicle fluid;
 - 450
 - 451 (2) Any garbage, rubbish, or yard waste;
 - 452
 - 453 (3) Any wastewater from a commercial carwash facility; from any vehicle washing,
 454 cleaning, or maintenance at any new or used automobile or other vehicle dealership,
 455 rental agency, body shop, repair shop, or maintenance facility; or from any washing,
 456 cleaning, or maintenance of any business or commercial or public service vehicle,
 457 including a truck, bus, or heavy equipment, by a business or public entity;
 - 458
 - 459 (4) Any wastewater from a commercial mobile power washer or from the washing
 460 or other cleaning of a building exterior that contains any soap, detergent,

- 461 degreaser, solvent, or any other harmful cleaning substance;
- 462
- 463 (5) Any wastewater from floor, rug, or carpet cleaning;
- 464
- 465 (6) Any wastewater from the wash-down or other cleaning of pavement that contains
- 466 any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant,
- 467 or any other harmful cleaning substance; or any wastewater from the wash-down
- 468 or other cleaning of any pavement where any spill, leak, or other release of oil,
- 469 motor fuel, or other petroleum or hazardous substance has occurred, unless all
- 470 harmful quantities of such released material have been previously removed;
- 471
- 472 (7) Any effluent from a cooling tower, condenser, compressor, emissions scrubber,
- 473 emissions filter, or the blow down from a boiler;
- 474
- 475 (8) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro
- 476 mulch material, or from the cleaning of commercial vehicles or equipment
- 477 containing, or used in transporting or applying, such material;
- 478
- 479 (9) Any runoff or wash-down water from any animal pen, kennel, or fowl or livestock
- 480 containment area;
- 481
- 482 (10) Any filter backwash from a swimming pool, fountain, or spa;
- 483
- 484 (11) Any swimming pool water containing any harmful quantity of chlorine, muriatic
- 485 acid or other chemical used in the treatment or disinfection of the swimming pool
- 486 water or in pool cleaning;
- 487
- 488 (12) Any discharge from water line disinfection by super chlorination or other means if
- 489 it contains any harmful quantity of chlorine or any other chemical used in line
- 490 disinfection;
- 491
- 492 (13) Any water from a water curtain in a spray room used for painting vehicles or
- 493 equipment;
- 494
- 495 (14) Any contaminated runoff from a vehicle wrecking yard;
- 496
- 497 (15) Any substance or material that will damage, block, or clog the MS4;
- 498
- 499 (e) No person shall introduce or cause to be introduced into the MS4 any harmful quantity
- 500 of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation
- 501 or other construction activities, or associated with landfilling or other placement or disposal
- 502 of soil, rock, or other earth materials, in excess of what could be retained on site or
- 503 captured by employing sediment and erosion control measures to the maximum extent
- 504 practicable under prevailing circumstances.
- 505
- 506 (f) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the

- 507 MS4, or allow such a connection to continue.
 508
 509 (g) No person shall cause or allow any pavement wash water from a service station to be
 510 discharged into the MS4 unless such wash water has passed through a properly functioning
 511 and maintained, grease, oil, and sand interceptor before discharge into the MS4.
 512
 513 (h) No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose,
 514 or otherwise introduce or cause, allow, or permit to be introduced harmful levels of
 515 pesticides, herbicides and fertilizers into the MS4. All persons shall to the maximum
 516 extent practicable under prevailing circumstances employ control measures to minimize
 517 pesticides, herbicides and fertilizers from entering the MS4. This includes the following:
 518
 519 (1) Applying products according to manufacture recommendations.
 520
 521 (2) Applying products according to all state and federal laws.
 522
 523 (3) Proper storage and disposal.
 524

525 **Sec. 42-125. Release and reporting and cleanup**
 526

- 527 (a) The person in charge of any facility, vehicle, or other source of any spilling,
 528 leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping,
 529 disposing, or any other release of any of the following quantities of any of the following substances
 530 that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United
 531 States, shall immediately telephone and notify the DPW concerning the incident:
 532
 533 (1) An amount equal to or in excess of a reportable quantity of any hazardous
 534 substance, as established under 40 CFR Part 302, as amended;
 535
 536 (2) An amount equal to or in excess of a reportable quantity of any extremely
 537 hazardous substance, as established under 40 CFR Part 355, as amended;
 538
 539 (3) An amount of oil that either (a) violates applicable water quality standards,
 540 or (b) causes a film or sheen upon or discoloration of the surface of the
 541 water or an adjoining shoreline or causes a sludge or emulsion to be
 542 deposited beneath the surface of the water or upon an adjoining shoreline;
 543 or
 544
 545 (4) Any harmful quantity of any pollutant.
 546
 547 (b) The immediate notification required by subsection (a) shall include the following
 548 information:
 549
 550 (1) The identity or chemical name of the substance released, and whether the
 551 substance is an extremely hazardous substance;
 552

- 553 (2) The exact location of the release, including any known name of the waters
554 involved or threatened and any other environmental media affected;
555
- 556 (3) The time and duration (thus far) of the release;
557
- 558 (4) An estimate of the quantity and concentration (if known) of the substance
559 released;
560
- 561 (5) The source of the release;
562
- 563 (6) Any known or anticipated health risks associated with the release and,
564 where appropriate, advice regarding medical attention that may be
565 necessary for exposed individuals;
566
- 567 (7) Any precautions that should be taken as a result of the release;
568
- 569 (8) Any steps that have been taken to contain and/or clean up the released
570 material and minimize its impacts; and
- 571 (9) The names and telephone numbers of the person or persons to be contacted
572 for further information.
573
- 574 (c) Within fourteen (14) calendar days following such release, the responsible person
575 in charge of the facility, vehicle, or other source of the release shall, unless waived
576 by the DPW, submit a written report containing each of the items of information
577 specified above in subsection (b), as well as the following additional information:
578
- 579 (1) The ultimate duration, concentration, and quantity of the release;
580
- 581 (2) All actions taken to respond to, contain, and clean up the released
582 substances, and all precautions taken to minimize the impacts;
583
- 584 (3) Any known or anticipated acute or chronic health risks associated with the
585 release;
586
- 587 (4) Where appropriate, advice regarding medical attention necessary for
588 exposed individuals;
589
- 590 (5) The identity of any governmental/private sector representatives responding
591 to the release; and
592
- 593 (6) The measures taken or to be taken by the responsible person(s) to prevent
594 similar future occurrences.
595
- 596 (d) The notifications required by subsections (b) and (c) above shall not relieve the
597 responsible person of any expense, loss, damage, or other liability which may be
598 incurred as a result of the release, including any liability for damage to the City, to

599 natural resources, or to any other person or property; nor shall such notification
 600 relieve the responsible person of any fine, penalty, or other liability which may be
 601 imposed pursuant to this Ordinance or to state or federal law.

602

603 (e) Any person responsible for any release as described in subsection (a) above shall
 604 comply with all state, federal, and any other local law requiring reporting, cleanup,
 605 containment, and any other appropriate remedial action in response to the release.

606

607 (f) Any person responsible for a release described in subsection (a) above shall
 608 reimburse the City for any cost incurred by the City in responding to the release.

609

610

611 **Sec. 42-126. Stormwater discharges from construction activities**

612

613 (a) General Requirements

614

615 (1) All operators of construction sites shall use best management practices to
 616 control and reduce the discharge, to the MS4 and to waters of the United States, of
 617 sediment, silt, earth, soil, and other material associated with the clearing, grading,
 618 excavation, and other construction activities to the maximum extent practicable
 619 under the circumstances. Such best management practices may include, but not
 620 be limited to, the following measures:

621

622 a. Ensuring that existing vegetation is preserved where possible and that
 623 disturbed portions of the site are stabilized as soon as practicable in
 624 portions of the site where construction activities have temporarily or
 625 permanently ceased. Stabilization measures may include: temporary
 626 seeding, permanent seeding, mulching, geotextiles, sod stabilization,
 627 vegetative buffer strips, protection of trees, preservation of mature
 628 vegetation, and other appropriate measures;

629

630 b. Use of structural practices to divert flows from exposed soils, store flows,
 631 or otherwise limit runoff and the discharge of pollutants from the site to
 632 the extent feasible;

633

634 c. Minimization of the tracking of sediments off-site by vehicles, the
 635 generation of dust, and the escape of other windblown waste from the site;

636

637 d. Prevention of the discharge of building materials, including cement, lime,
 638 concrete, and mortar, to the MS4 or waters of the United States;

639

640 e. Providing general good housekeeping measures to prevent and contain spills
 641 of paints, solvents, fuels, septic waste, and other hazardous chemicals
 642 and pollutants associated with construction, and to assure proper cleanup
 643 and disposal of any such spills in compliance with state, federal, and local
 644 requirements;

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- f. Implementation of proper waste disposal and waste management techniques, including covering waste materials and minimizing ground contact with hazardous chemicals and trash;
- g. Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices in good and effective operating condition; and
- h. Installation of structural measures during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such installed structural measures may include, but not be limited to, the following: stormwater detention structures (including wet ponds); stormwater retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on site; and sequential systems which combine several practices. Operators of construction sites are only responsible for the installation and maintenance of stormwater management measures prior to final stabilization of the site, and are not responsible for maintenance after stormwater discharges associated with construction activity have terminated.

(2) The DPW may require any plans and specifications that are prepared for the construction of site improvements to illustrate and describe the best management practices required by section 42-126 (a) (1) above that will be implemented at the construction site. The City may deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans or observed upon a site inspection by the DPW are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with clearing, grading, excavation, and other construction activities to the maximum extent practicable under the circumstances.

(3) All contractors wishing to receive a building permit from the City shall sign a copy of the following certification statement before receiving said permit:

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit that authorizes the stormwater discharges associated with industrial activity from the construction site identified as part of this certification, with the Stormwater Ordinance of the City of Rockport and for the construction site for which I am responsible.

(4) The certification must include the name and title of the person providing the signature; the name, address, and telephone number of the contracting firm; the address (or other

- 691 identifying description) of the site; and the date the certification is made.
 692
- 693 (5) Qualified personnel (provided by the operator of the construction site) shall
 694 inspect disturbed areas of any construction site that have not been finally
 695 stabilized, areas used for storage of materials that are exposed to precipitation,
 696 structural control measures, and locations where vehicles enter or exit the site,
 697 at least once every seven calendar days and within twenty-four (24) hours of the
 698 end of a storm that is 0.5 inches or greater. All erosion and sediment control
 699 measures and other identified best management practices shall be observed in
 700 order to ensure that they are operating correctly and are effective in preventing
 701 significant impacts to receiving waters and the MS4. Based on the results of the
 702 inspection, best management practices shall be revised as appropriate, and as soon
 703 as is practicable.
 704
- 705 (6) Upon final stabilization of the construction site, the owner (or the duly authorized
 706 representative thereof) shall submit written certification to the DPW that the site has
 707 been finally stabilized. (See definition of final stabilization in this Ordinance.) The
 708 City may deny the approval required to assume occupancy or an additional use
 709 permit for any premises constructed on the site until such certification of final
 710 stabilization has been filed and the DPW has determined, following any appropriate
 711 inspection, that final stabilization has, in fact, occurred and that any required
 712 permanent structural controls have been completed.
 713
- 714 (7) Any owner of a site of construction activity, whether or not he/she is an operator,
 715 is jointly and severally responsible for compliance with the requirements in section
 716 42-126 (a).
 717
- 718 (8) Any contractor or subcontractor on a site of construction activity, who is
 719 not an owner or operator, but who is responsible under his/her contract or
 720 subcontract for implementing a best management practices control measure, is
 721 jointly and severally responsible for any willful or negligent failure on his/her part
 722 to adequately implement that control measure if such failure causes or contributes
 723 to causing the City to violate a water quality standard, the City's NPDES permit,
 724 or any State-issued discharge permit for discharges from its MS4.
 725
- 726 (b) One – up to Five Acre Disturbances.
 727
- 728 (1) All operators of sites of construction activity, including clearing, grading, and
 729 excavation activities, that result in the disturbance of one or more acres of total
 730 land area but less than five acres of total land area, or that are part of a common plan
 731 of development or sale within which one or more but less than five acres of total
 732 land area are disturbed, or who are required to obtain an NPDES permit for
 733 stormwater discharges associated with construction activity, shall comply with the
 734 following requirements (in addition to those in section 42-126 (a)):
 735
 736 a. Any operator who intends to obtain coverage for stormwater discharges

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from a construction site under the NPDES General Permit for Stormwater Discharges From Construction Sites ("the Construction General Permit") shall submit a signed copy of its Construction Site Notice (CSN) to the DPW at least two (2) days prior to the commencement of construction activities. A signed copy of the CSN shall be posted at the construction site as well. If the construction activity is already underway upon the effective date of this Ordinance, the CSN shall be submitted within thirty (30) days.

b. A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the Construction General Permit or any individual or group NPDES permit issued for stormwater discharges from the construction site, and with any additional requirement imposed by or under this Ordinance and any other city ordinance.

c. The SWPPP shall be completed prior to the submittal of the CSN to the DPW and, for new construction, prior to the commencement of construction activities. The SWPPP shall be updated and modified as appropriate and as required by the Construction General Permit and this Ordinance.

d. The DPW may require any operator who is required by section 42-126 (b) (1) (b) to prepare a SWPPP to submit the SWPPP, and any modifications thereto, to the DPW for review. Such submittal and review of the SWPPP may be required by the DPW prior to commencement of or during construction activities at the site.

e. Upon the DPW's review of the SWPPP and any site inspection that he/she may conduct, the City may deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the Construction General Permit, any individual or group NPDES permit issued for stormwater discharge from the construction site, or any additional requirement imposed by or under this Ordinance. Also, if at any time the DPW determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any building permit, grading permit, subdivision plat, site development plan or any other City approval necessary to commence or continue construction, or to assume occupancy, at the site.

f. All contractors and subcontractors identified in a SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

783 I certify under penalty of law that I understand the terms and
 784 conditions of the National Pollutant Discharge Elimination System
 785 (NPDES) permit that authorizes the stormwater discharges associated
 786 with industrial activity from the construction site identified as part of
 787 this certification, with the Stormwater Ordinance of the City of
 788 Rockport, and with those provisions of the Stormwater Pollution
 789 Prevention Plan (SWPPP) for the construction site for which I am
 790 responsible.

- 791
- 792 g. The certification must include the name and title of the person
 793 providing the signature; the name, address, and telephone number of
 794 the contracting firm; the address (or other identifying description) of
 795 the site; and the date the certification is made.
- 796
- 797 h. The SWPPP, and the certifications of contractors and subcontractors
 798 required by section 42-126 (b) (1) (f), and with any modifications
 799 attached, shall be retained at the construction site from the date of
 800 commencement of construction through the date of final stabilization.
- 801
- 802 i. The operator shall make the SWPPP and any modification thereto
 803 available to the DPW upon request (as well as to EPA and State
 804 inspectors).
- 805
- 806 j. The DPW may notify the operator at any time that the SWPPP does not
 807 meet the requirements of the Construction General Permit, any
 808 applicable individual or group NPDES permit issued for stormwater
 809 discharges from the construction site, or any additional requirement
 810 imposed by or under this Ordinance. Such notification shall identify
 811 those provisions of the permit or Ordinance which are not being met
 812 by the SWPPP, and identify which provisions of the SWPPP require
 813 modifications in order to meet such requirements. Within seven (7)
 814 days of such notification from the DPW (or as otherwise provided by
 815 the DPW), the operator shall make the required changes to the SWPPP
 816 and shall submit to the DPW a written certification that the requested
 817 changes have been made.
- 818
- 819 k. The operator shall amend the SWPPP whenever there is a change in
 820 design, construction, operation, or maintenance, which has a
 821 significant effect on the potential for the discharge of pollutants to the
 822 MS4 or to the waters of the United States, and which has not otherwise
 823 been addressed in the SWPPP, or if the SWPPP proves to be
 824 ineffective in eliminating or significantly minimizing pollutants, or in
 825 otherwise achieving the general objective of controlling pollutants in
 826 stormwater discharges associated with construction activity. In
 827 addition, the SWPPP shall be amended to identify any new contractor
 828 and/or subcontractor that will implement a measure in the SWPPP.

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1. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of the storm that is 0.5 inches or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

As an alternative to the above-described inspection schedule of once every fourteen (14) calendar days and within twenty-four (24) hours of a storm event of 0.5 inches or greater, the SWPPP may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, then the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection. The inspections may occur on either schedule provided that the SWPPP reflects the current schedule and that any changes to the schedule are conducted in accordance with the following provisions: the schedule may be changed a maximum of one time each month, the schedule change must be implemented at the beginning of a calendar month, and the reason for the schedule change must be documented in the SWPPP (e.g., end of “dry” season and beginning of “wet” season).

m. Based on the results of the inspections required by section 42-126 (b)(1), the site description and/or the pollution prevention measures identified in the SWPPP shall be revised as appropriate, but in no case later than seven (7) calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven (7) calendar days following the inspection.

n. A report summarizing the scope of any inspection required by section 42-126 (b) (1) (l), and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with section 42-126 (b) (1) (m) above shall be made and retained as part of the SWPPP for at least three (3) years

875 from the date that the site is finally stabilized. Such report shall
 876 identify any incidence of noncompliance. Where a report does not
 877 identify any incidence of noncompliance, the report shall contain a
 878 certification that the facility is in compliance with the SWPPP, the
 879 facility's NPDES permit, and this Ordinance. The report shall be
 880 certified and signed by the person responsible for making it.

881
 882 o. The operator shall retain copies of any SWPPP and all reports required
 883 by this Ordinance or by the NPDES permit for the site, and records of
 884 all data, for a period of at least three (3) years from the date that the
 885 site is finally stabilized.

886
 887 p. Upon final stabilization of the construction site, the owner (or the duly
 888 authorized representative thereof) shall submit written certification to
 889 the DPW that the site has been finally stabilized. (See definition of
 890 final stabilization in this Ordinance.) The City may deny the
 891 approval required to assume occupancy or an
 892 additional use permit for any premises constructed on the site until
 893 such certification of final stabilization has been filed and the DPW has
 894 determined, following any appropriate inspection, that final
 895 stabilization has, in fact, occurred and that any required permanent
 896 structural controls have been completed.

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 898
 899 (c) Five-Acre Disturbances.

900
 901 (1) All operators of sites of construction activity, including clearing, grading, and
 902 excavation activities, that result in the disturbance of five or more acres of total
 903 land area, or that are part of a common plan of development or sale within which
 904 five or more acres of total land area are disturbed, or who are required to obtain
 905 an NPDES permit for stormwater discharges associated with construction activity,
 906 shall comply with the following requirements (in addition to those in section 42-
 907 126 (a)):

908
 909 a. Any operator who intends to obtain coverage for stormwater discharges
 910 from a construction site under the NPDES General Permit for
 911 Stormwater Discharges From Construction Sites shall submit a Notice of
 912 Intent NOI with the Texas Commission of Environmental Quality in
 913 accordance with the Construction General Permit.

914
 915 b. A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared
 916 and implemented in accordance with the requirements of the
 917 Construction General Permit or any individual or group NPDES permit
 918 issued for stormwater discharges from the construction site, and with
 919 any additional requirement imposed by or under this Ordinance and
 920 any other city ordinance.

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- c. The SWPPP shall be completed prior to the submittal of the NOI to the DPW and, for new construction, prior to the commencement of construction activities. The SWPPP shall be updated and modified as appropriate and as required by the Construction General Permit and this Ordinance.
 - d. A copy of any NOI that is required by section 42-126 (c) (1) (a) shall be submitted to the City in conjunction with any application for a building permit, grading permit, site development plan approval, and any other City approval prior to the commencement of construction at the site.
 - e. The DPW may require any operator who is required by section 42-126 (c) (1) (b) to prepare a SWPPP to submit the SWPPP, and any modifications thereto, to the DPW for review. Such submittal and review of the SWPPP may be required by the DPW prior to commencement of or during construction activities at the site.
 - f. Upon the DPW's review of the SWPPP and any site inspection that he/she may conduct, the City may deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the Construction General Permit, any individual or group NPDES permit issued for stormwater discharge from the construction site, or any additional requirement imposed by or under this Ordinance. Also, if at any time the DPW determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any building permit, grading permit, subdivision plat, site development plan or any other City approval necessary to commence or continue construction, or to assume occupancy, at the site.
 - g. All contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit that authorizes the stormwater discharges associated with industrial activity from the construction site identified as part of this certification, with the Stormwater Ordinance of the City of Rockport, and with those provisions of the Stormwater Pollution Prevention Plan (SWPPP) for the construction site for which I am responsible.

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- h. The certification must include the name and title of the person providing the signature; the name, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
 - i. The SWPPP, and the certifications of contractors and subcontractors required by section 42-126 (c) (1) (g), and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.
 - j. The operator shall make the SWPPP and any modification thereto available to the DPW upon request (as well as to EPA and State inspectors).
 - k. The DPW may notify the operator at any time that the SWPPP does not meet the requirements of the Construction General Permit, any applicable individual or group NPDES permit issued for stormwater discharges from the construction site, or any additional requirement imposed by or under this Ordinance. Such notification shall identify those provisions of the permit or Ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven (7) days of such notification from the DPW (or as otherwise provided by the DPW), the operator shall make the required changes to the SWPPP and shall submit to the DPW a written certification that the requested changes have been made.
 - l. The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in stormwater discharges associated with construction activity. In addition, the SWPPP shall be amended to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP.
 - m. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of the storm that is 0.5 inches or greater. Disturbed areas and areas used for storage of

1013 materials that are exposed to precipitation shall be inspected for
 1014 evidence of, or the potential for, pollutants entering the drainage
 1015 system. Erosion and sediment control measures identified in the
 1016 SWPPP shall be observed to ensure that they are operating correctly.
 1017 Where discharge locations or points are accessible, they shall be
 1018 inspected to ascertain whether erosion control measures are effective in
 1019 preventing significant impacts to receiving waters or the MS4.
 1020 Locations where vehicles enter or exit the site shall be inspected for
 1021 evidence of off-site sediment tracking.

1022
 1023 As an alternative to the above-described inspection schedule of once
 1024 every fourteen (14) calendar days and within twenty-four (24) hours of
 1025 a storm event of 0.5 inches or greater, the SWPPP may be developed
 1026 to require that these inspections will occur at least once every seven (7)
 1027 calendar days. If this alternative schedule is developed, then the
 1028 inspection must occur on a specifically defined day, regardless of
 1029 whether or not there has been a rainfall event since the previous
 1030 inspection. The inspections may occur on either schedule provided that
 1031 the SWPPP reflects the current schedule and that any changes to the
 1032 schedule are conducted in accordance with the following provisions:
 1033 the schedule may be changed a maximum of one time each month, the
 1034 schedule change must be implemented at the beginning of a calendar
 1035 month, and the reason for the schedule change must be documented in
 1036 the SWPPP (e.g., end of "dry" season and beginning of "wet" season).

1037
 1038 n. Based on the results of the inspections required by section 42-126 (c)
 1039 (1) (m), the site description and/or the pollution prevention measures
 1040 identified in the SWPPP shall be revised as appropriate, but in no case later than
 1041 seven (7) calendar days following the inspection. Such modifications shall
 1042 provide for timely implementation of any changes to the SWPPP within seven
 1043 (7) calendar days following the inspection.

1044
 1045 o. A report summarizing the scope of any inspection required by section
 1046 42-126 (c) (1) (m), and the name(s) and qualifications of personnel
 1047 making the inspection, the date(s) of the inspection, major
 1048 observations relating to the implementation of the SWPPP, and actions
 1049 taken in accordance with section 42-126 (c) (1) (n) above shall be
 1050 made and retained as part of the SWPPP for at least three (3) years
 1051 from the date that the site is finally stabilized. Such report shall
 1052 identify any incidence of noncompliance. Where a report does not
 1053 identify any incidence of noncompliance, the report shall contain a
 1054 certification that the facility is in compliance with the SWPPP, the
 1055 facility's NPDES permit, and this Ordinance. The report shall be
 1056 certified and signed by the person responsible for making it.

1057
 1058

- 1059 p. The operator shall retain copies of any SWPPP and all reports required
 1060 by this Ordinance or by the NPDES permit for the site, and records of
 1061 all data for a period of at least three (3) years from the date that the
 1062 site is finally stabilized.
 1063
- 1064 q. Where a site has been finally stabilized and all stormwater discharges
 1065 from construction activities that are authorized by this Ordinance and
 1066 by the NPDES permit for those construction activities are eliminated,
 1067 or where the operator of all stormwater discharges at a facility changes,
 1068 the operator of the construction site shall submit to the DPW a Notice
 1069 of Termination (NOT) in accordance with the Construction General
 1070 Permit.
 1071
- 1072 r. Upon final stabilization of the construction site, the owner (or the duly
 1073 authorized representative thereof) shall submit written certification to
 1074 the DPW that the site has been finally stabilized. (See definition of
 1075 final stabilization in this Ordinance.) The City may deny the
 1076 approval required to assume occupancy or an
 1077 additional use permit for any premises constructed on the site until
 1078 such certification of final stabilization has been filed and the DPW has
 1079 determined, following any appropriate inspection, that final
 1080 stabilization has, in fact, occurred and that any required permanent
 1081 structural controls have been completed.
 1082

1083 **Sec. 42-127. Compliance monitoring**
 1084

- 1085 (a) Right of Entry: Inspection and Sampling. City Inspectors shall have the right to enter the
 1086 premises of any person reasonably suspected by the City of discharging pollutants into the
 1087 municipal separate storm sewer system (MS4) or to waters of the United States to determine
 1088 if the discharger is complying with all requirements of this Ordinance, and with any state
 1089 or federal discharge permit, limitation, or requirement. Dischargers shall allow the City
 1090 Inspectors ready access to all parts of the premises for the purposes of inspection, sampling,
 1091 records examination and copying, and for the performance of any additional duties.
 1092 Dischargers shall make available to the City Inspector, upon request, any SWPPPs,
 1093 modifications thereto, self-inspection reports, monitoring records, compliance evaluations,
 1094 Notices of Intent, and any other records, reports, and other documents related to
 1095 compliance with this Ordinance and with any state or federal discharge permit.
 1096
- 1097 (1) Where a discharger has security measures in force which require proper
 1098 identification and clearance before entry into its premises, the discharger shall
 1099 make necessary arrangements with its security guards so that, upon presentation
 1100 of suitable identification, the City Inspector will be permitted to enter without
 1101 unreasonable delay for the purposes of performing his/her responsibilities.
 1102
- 1103 (2) The City Inspector shall have the right to set up on the discharger's property, or
 1104 require installation of, such devices as are necessary to conduct sampling and/or

- 1105 metering of the discharger's operations.
- 1106
- 1107 (3) When pollutants have been discharged the DPW may require any discharger to
- 1108 the MS4 or waters of the United States to conduct specified sampling, testing,
- 1109 analysis, and other monitoring of its stormwater discharges, and may specify the
- 1110 frequency and parameters of any such required monitoring.
- 1111
- 1112 (4) The DPW may require that discharger to install monitoring equipment as necessary
- 1113 at the discharger's expense. The facility's sampling and monitoring equipment
- 1114 shall be maintained at all times in a safe and proper operating condition by the
- 1115 discharger at its own expense. All devices used to measure stormwater flow and
- 1116 quality shall be calibrated to ensure their accuracy.
- 1117
- 1118 (5) Any temporary or permanent obstruction to safe and easy access to the facility
- 1119 to be inspected and/or sampled shall be promptly removed by the discharger at the
- 1120 written or verbal request of the City Inspector and shall not be replaced. The costs
- 1121 of clearing such access shall be borne by the discharger.
- 1122
- 1123 (6) Unreasonable delays in allowing the City Inspector access to the discharger's
- 1124 premises shall be a violation of this Ordinance.
- 1125
- 1126 (b) Search Warrants. If the City Inspector has been refused access to any part of the premises
- 1127 from which stormwater is discharged, and he/she is able to demonstrate probable cause to
- 1128 believe that there may be a violation of this Ordinance or any state or federal discharge
- 1129 permit, limitation, or requirement, or that there is a need to inspect and/or sample as part
- 1130 of a routine inspection and sampling program of the City designed to verify compliance
- 1131 with this Ordinance or any order issued hereunder, or to protect the overall public health,
- 1132 safety, and welfare of the community, then the City Inspector may seek issuance of a
- 1133 search warrant from any court of competent jurisdiction.
- 1134

1135 **Sec. 42-128. Publication**

1136

- 1137 (a) Publication of Dischargers in Significant Noncompliance. The DPW may periodically
- 1138 publish, in a daily newspaper generally distributed within the City, a list of owners and
- 1139 operators of discharges to the MS4 or waters of the United States from sites of
- 1140 construction and industrial activity which, during the previous three (3) months, were in
- 1141 significant noncompliance with the requirements of this Ordinance. The term "significant
- 1142 noncompliance" shall mean:
- 1143
- 1144 (1) Introducing or causing to be introduced into the waters of the United States
- 1145 any discharge that violates a water quality standard;
- 1146
- 1147 (2) Introducing or causing to be introduced into the MS4 any discharge that causes
- 1148 or contributes to causing the City to violate a water quality standard, the City's
- 1149 NPDES permit, or any state-issued discharge permit for discharges from the City's
- 1150 MS4;

- 1151
 1152 (3) Any connection of a line conveying sanitary sewage, domestic or industrial, to
 1153 the MS4, or allowing any such connection to continue;
 1154
 1155 (4) Any discharge of pollutants to the MS4 or waters of the United States that has
 1156 caused an imminent or substantial endangerment to the health or welfare of
 1157 persons or to the environment, or has resulted in the DPW's exercise of his/her
 1158 emergency authority to halt or prevent such a discharge;
 1159
 1160 (5) Any violation that has resulted in injunctive relief, civil penalties, or criminal fine
 1161 being imposed as a judicial remedy under section 42-131 of this Ordinance; or
 1162
 1163 (6) Any other violation(s) which the DPW determines to be chronic or especially
 1164 dangerous to the public or to the environment.
 1165
 1166 (7) Any failure to comply with a compliance schedule, whether imposed by the City
 1167 or by a court.
 1168

1169 **Sec. 42-129. Administrative enforcement remedies**

- 1170
 1171 (a) Warning Notice. When the DPW finds that any person has violated, or continues to violate,
 1172 any provision of this Ordinance, or any order issued hereunder, the DPW may serve
 1173 upon that person a written Warning Notice, specifying the particular violation believed to
 1174 have occurred and requesting the discharger to immediately investigate the matter and to
 1175 seek a resolution whereby any offending discharge will cease. Investigation and/or
 1176 resolution of the matter in response to the Warning Notice in no way relieves the alleged
 1177 violator of liability for any violations occurring before or after receipt of the Warning
 1178 Notice. Nothing in this subsection shall limit the authority of the DPW to take any
 1179 action, including emergency action or any other enforcement action, without first issuing a
 1180 Warning Notice.
 1181
 1182 (b) Notification of Violation. When the DPW finds that any person has violated, or continues
 1183 to violate, any provision of this Ordinance, or any order issued hereunder, the CEA may
 1184 serve upon that person a written Notice of Violation. Within ten (10) days of the receipt
 1185 of this notice, the violator shall take corrective action to bring the violation into
 1186 compliance. If the alleged violator denies that any violation occurred and/or contends
 1187 that no corrective action is necessary, an explanation of the basis of any such denial or
 1188 contention shall be submitted to the CEA within ten (10) days of receipt of the notice.
 1189 Submission of an explanation and/or plan in no way relieves the alleged violator of liability
 1190 for any violations occurring before or after receipt of the Notice of Violation. Nothing in
 1191 this section shall limit the authority of the CEA to take any action, including emergency
 1192 action or any other enforcement action, without first issuing a Notice of Violation.
 1193
 1194 (c) Consent Orders. The CEA may enter into Consent Orders, assurances of voluntary
 1195 compliance, or other similar documents establishing an agreement with any person
 1196 responsible for noncompliance with any provision in this Ordinance or any order issued

1197 hereunder. Such documents may include specific action to be taken by the person to
 1198 correct the noncompliance within a time period specified by the document. Such
 1199 documents shall have the same force and effect as the administrative orders issued
 1200 pursuant to sections 42-129 (e), (f) and (g) this Ordinance and shall be judicially
 1201 enforceable.

1202

1203 (d) Show Cause Hearing. The CEA may order any person who has violated, or continues
 1204 to violate, any provision of this Ordinance, or any order issued hereunder, to appear before
 1205 the CEA and show cause why a proposed enforcement action should not be taken. Notice
 1206 shall be served on the alleged violator specifying the time and place for the hearing, the
 1207 proposed enforcement action, the reasons for such action, and a request that the alleged
 1208 violator show cause why the proposed enforcement action should not be taken. The notice
 1209 of the hearing shall be served personally or by registered or certified mail (return receipt
 1210 requested) at least ten (10) days prior to the hearing. Such notice may be served on any
 1211 authorized representative of the alleged violator. The hearing shall be conducted pursuant
 1212 to the rights and procedures specified in section 42-130 (a) (7) of this Ordinance. A show
 1213 cause hearing shall not be a bar against, or prerequisite for, taking any other action against
 1214 the alleged violator.

1215

1216 (e) Compliance Orders. When the CEA finds that any person has violated, or continues to
 1217 violate, any provision of this Ordinance, or any order issued hereunder, the CEA may
 1218 issue an order to the violator directing that the violator come into compliance within a
 1219 specified time limit. Compliance orders also may contain other requirements to address
 1220 the noncompliance, including additional self-monitoring, and management practices
 1221 designed to minimize the amount of pollutants discharged to the MS4 and waters of the
 1222 United States. A compliance order may not extend the deadline for compliance established
 1223 by a state or federal standard or requirement, nor does a compliance order relieve the person
 1224 of liability for any violation, including any continuing violation. Issuance of a
 1225 compliance order shall not be a bar against, or a prerequisite for, taking any other action
 1226 against the violator.

1227

1228 (f) Remediation, Abatement, and Restoration Orders. When the CEA finds that a person has
 1229 violated, or continues to violate, any provision of this Ordinance, or any order issued
 1230 hereunder, and that such violation has adversely affected the MS4, the waters of the
 1231 United States or any other aspect of the environment, the CEA may issue an order to the
 1232 violator directing him/her to undertake and implement any appropriate action to remediate
 1233 and/or abate any adverse effects of the violation upon the MS4, the waters of the United
 1234 States, or any other aspect of the environment, and/or to restore any part of the MS4, the
 1235 waters of the United States, or any other aspect of the environment that has been
 1236 harmed. Such remedial, abatement, and restoration action may include, but not be limited
 1237 to: monitoring, assessment, and evaluation of the adverse effects and determination of
 1238 the appropriate remedial, abatement, and/or restoration action; confinement, removal,
 1239 cleanup, treatment, and disposal of any discharged or released pollution or contamination;
 1240 prevention, minimization, and/or mitigation of any damage to the public health, welfare,
 1241 or the environment that may result from the violation; restoration or replacement of City
 1242 property or natural resources damaged by the violation. The order may direct that the

1243 remediation, abatement, and/or restoration be accomplished on a specified compliance
 1244 schedule and/or be completed within a specified period of time. An order issued under
 1245 this Subsection does not relieve the violator of liability for any violation, including any
 1246 continuing violation. Issuance of an order under this Subsection shall not be a bar against,
 1247 or a prerequisite for, taking any other action against any responsible party.
 1248

1249 (g) Emergency Cease and Desist Orders. When the CEA finds that any person has violated,
 1250 or continues to violate, any provision of this Ordinance, or any order issued hereunder,
 1251 or that the person's past violations are likely to recur, and that the person's violation(s)
 1252 have caused or contributed to an actual or threatened discharge to the MS4 or waters of
 1253 the United States which reasonably appears to present an imminent or substantial
 1254 endangerment to the health or welfare of persons or to the environment, the CEA may
 1255 issue an order to the violator directing it immediately to cease and desist all such violations
 1256 and directing the violator to:

- 1257
- 1258 (1) Immediately comply with all Ordinance requirements; and
 - 1259
 - 1260 (2) Take such appropriate preventive action as may be needed to properly address
 - 1261 a continuing or threatened violation, including immediately halting operations and/or
 - 1262 terminating the discharge.
 - 1263

1264 Any person notified of an emergency order directed to it under this Subsection
 1265 shall immediately comply and stop or eliminate its endangering discharge. In the
 1266 event of a discharger's failure to immediately comply voluntarily with the
 1267 emergency order, the CEA may take such steps as deemed necessary to prevent or
 1268 minimize harm to the MS4 or waters of the United States, and/or endangerment to
 1269 persons or to the environment, including immediate termination of a facility's
 1270 water supply, sewer connection, or other municipal utility services. The CEA may
 1271 allow the person to recommence its discharge when it has demonstrated to the
 1272 satisfaction of the CEA that the period of endangerment has passed, unless further
 1273 termination proceedings are initiated against the discharger under this Ordinance.
 1274 A person that is responsible, in whole or in part, for any discharge presenting
 1275 imminent endangerment shall submit a detailed written statement, describing the
 1276 causes of the harmful discharge and the measures taken to prevent any future
 1277 occurrence, to the CEA within two days of receipt of the emergency order. Issuance
 1278 of an emergency cease and desist order shall not be a bar against, or a prerequisite
 1279 for, taking any other action against the violator.
 1280

1281 (h) "Red Tags". Whenever the CEA finds that any operator of a construction site has violated,
 1282 or continues to violate, any provision of this Ordinance, or any order issued thereunder, the
 1283 CEA may order that a "Red Tag" be issued to the operator, posted at the construction site,
 1284 and distributed to all City departments and divisions whose decisions affect any activity
 1285 at the site. Unless express written exception is made by the CEA, the "Red Tag" shall
 1286 prohibit any further construction activity at the site and shall bar any further inspection or
 1287 approval by the City associated with a building permit, grading permit, subdivision plat
 1288 approval, site development plan approval, or any other City approval necessary to

1289 commence or continue construction or to assume occupancy at the site. Issuance of a "Red
1290 Tag" order shall not be a bar against, or a prerequisite for, taking any other action against
1291 the violator.

1292

1293 **Sec. 42-130. Right to reconsideration, hearing, and appeal**

1294

1295 (a) Reconsideration and Hearing

1296

1297 (1) Any person subject to a Compliance Order under section 42-129 (e), a
1298 Remediation, Abatement, or Restoration Order under section 42-129 (f), an
1299 Emergency Cease and Desist Order under section 42-129 (g), or a Red Tag Order
1300 under section 42-129 (h) of this Ordinance may petition the CEA to reconsider
1301 the basis for his/her order within thirty (30) days of the affected person's notice of
1302 issuance of such an order.

1303

1304 (2) Failure to submit a timely written petition for reconsideration shall be deemed
1305 to be a waiver of any further right to administrative reconsideration or review of
1306 the order.

1307

1308 (3) In its petition, the petitioning party must indicate the provisions of the order
1309 objected to, the reasons for the objection(s), any facts that are contested, the
1310 evidence that supports the petitioner's view of the facts, any alternative terms of an
1311 order that the petitioner would accept, and whether the petitioning party requests a
1312 hearing on its petition.

1313

1314 (4) The effect of any Compliance Order under section 42-129 (e), Remediation,
1315 Abatement, or Restoration Order under section 42-129 (f), and any Red Tag Order
1316 under section 42-129 (h) shall be stayed pending the CEA's reconsideration of the
1317 petition, and any hearing thereon, unless the CEA expressly makes a written
1318 determination to the contrary. The effectiveness of any Emergency Cease and
1319 Desist Order under section 42- 1 2 9 (g) shall not be stayed pending the CEA's
1320 reconsideration, or any hearing thereon, unless the CEA expressly and in writing
1321 stays his/her emergency order.

1322

1323 (5) Within ten (10) days of the submittal of a petition for reconsideration, the CEA
1324 shall either (1) grant the petition and withdraw or modify the order accordingly;
1325 (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if
1326 a hearing has been requested and a material issue of fact has been raised, set a hearing
1327 on the petition.

1328

1329 (6) Written notice of any hearing set by the CEA pursuant to section 42-130

1330 (a) (5) above shall be served on the petitioning party personally or by
1331 registered or certified mail (return receipt requested) at least ten (10) days prior to
1332 the hearing. Such notice may be served on any authorized representative of the
1333 petitioning party.

1334

- 1335 (7) The CEA may himself/herself conduct the hearing and take evidence, or he/she
 1336 may designate any employee of the City or any specially-designated attorney or
 1337 engineer to:
- 1338
 - 1339 a. issue in the name of the City notices of hearing requesting the
 1340 attendance and testimony of witnesses and the production of
 1341 evidence relevant to any matter involved in the hearing;
 - 1342
 - 1343 b. take evidence;
 - 1344
 - 1345 c. transmit a report of the evidence and hearing, including transcripts
 1346 and other evidence, together with recommendations to the CEA for
 1347 action thereon. At any hearing held pursuant to this Subsection,
 1348 testimony taken shall be under oath and recorded. Any party is
 1349 entitled to present his/her case or defense by oral or documentary
 1350 evidence and to conduct such cross- examination as may be required
 1351 for a full and true disclosure of the facts. A transcript will be
 1352 made available to any party to the hearing upon payment of the
 1353 usual charges thereof.
 - 1354
 - 1355 (8) After the CEA has reviewed the evidence, he/she shall either (1) grant the petition;
 1356 (2) deny the petition; or (3) grant the petition in part and deny it in part. The CEA
 1357 may modify his/her order as is appropriate based upon the evidence and arguments
 1358 presented at the hearing and his/her action on the petition. Further orders and
 1359 directives as are necessary and appropriate may be issued.
 - 1360
 - 1361 (b) Appeal
 - 1362
 - 1363 (1) Any person whose petition for reconsideration by the CEA has not been
 1364 granted in its entirety and who remains adversely affected by the CEA's order, or
 1365 who is subject to an order of the CEA issued following a Show Cause Hearing
 1366 under section 42-129 (d), may appeal the action of the CEA to the City Council by
 1367 filing a written appeal with the City Council within ten (10) days of the person's
 1368 notice of the CEA's adverse action on the petition for reconsideration, or within
 1369 ten (10) days of the person's notice of the issuance of the order following the Show
 1370 Cause Hearing, as the case may be.
 - 1371
 - 1372 (2) Failure to submit a timely written appeal to the City Council shall be deemed
 1373 to be a waiver of further administrative review.
 - 1374
 - 1375 (3) In its written appeal to the City Council, the appealing party shall indicate the
 1376 particular provisions of the order objected to, the particular determinations of the
 1377 CEA that are contested, the reasons that the CEA's order and/or determinations
 1378 are contested, and any alternative order that the appealing party would accept.
 - 1379
 - 1380 (4) The effect of the CEA's order, as issued or modified, shall not be stayed pending

the appeal to the City Council, unless the City Council expressly so states.

- (5) Within thirty (30) days of the submittal of a written appeal to the City Council, the City Council shall hear and consider the appeal in open meeting. The appellant shall be notified at least three (3) days in advance of the date and time of the City Council meeting at which the appeal will be heard and considered.
- (6) The appellant shall have the right to public appearance before the City Council to present oral and written statements in support of his/her appeal. If the City Council wishes to consider testimony of witnesses or other evidence beyond that in the record of any hearing before the CEA the City Council may remand the matter to the CEA for the taking of additional testimony or other evidence.
- (7) Upon consideration of any written and oral statements made to the City Council, as well as the record made before the CEA, the City Council shall act on the appeal by affirming, vacating, or modifying the order of the CEA, and/or by remanding the matter to the CEA for further action.
- (8) Following final action by the City Council on the appeal, any adversely affected party may challenge such action by the City Council in an appropriate court of competent jurisdiction.

Sec. 42-131. Judicial enforcement remedies

(a) Civil Remedies

- (1) Whenever it appears that a person has violated, or continues to violate, any provision of this Ordinance that relates to:
- a. the preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;
 - b. the preservation of public health or to the fire safety of a building or other structure or improvement;
 - c. the establishment of criteria for land subdivision or construction of buildings, including street design;
 - d. dangerously damaged or deteriorated structures or improvements;
 - e. conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
 - f. point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into the MS4. The City may invoke Sections 54.011 - 54.017 of the Texas Local Government Code, as amended, and petition the State district court or the county court at law of Aransas County, through the City Attorney, for either the injunctive relief specified in section 42-131 (a) (2) or the civil penalties specified in section 42-131 (a) (3) below, or both the specified injunctive relief and civil penalties.

- 1427
1428 (2) Pursuant to Section 54.016 of the Texas Local Government Code, as amended,
1429 the City may obtain against the owner or the operator of a facility a temporary
1430 or permanent injunction, as appropriate, that:
1431
1432 a. prohibits any conduct that violates any provision of this Ordinance that
1433 relates to any matter specified in sections 42-131 (a) (1) (a)-(f) above; or
1434
1435 b. compels the specific performance of any action that is necessary for
1436 compliance with any provision of this Ordinance that relates to any matter
1437 specified in sections 42-131 (a) (1) (a)-(f) above.
1438
1439 (3) Pursuant to Section 54.017 of the Texas Local Government Code, as amended,
1440 the City may recover a civil penalty of not more than one thousand dollars
1441 (\$1,000) per day for each violation of any provision of this Ordinance that relates
1442 to any matter specified in sections 42-131 (a)
1443 (1) (a)-(e) above, and a civil penalty of not more than five thousand
1444 (\$5,000) per day for each violation of any provision of this Ordinance that
1445 relates to any matter specified in section 42-131 (a) (1) (f) above, if the
1446 City proves that:
1447
1448 a. the defendant was actually notified of the provisions of the
1449 Ordinance; and
1450
1451 b. after the defendant received notice of the Ordinance provisions, the
1452 defendant committed acts in violation of the Ordinance or failed to
1453 take action necessary for compliance with the Ordinance.
1454
- 1455 (b) Criminal Penalties
1456
- 1457 (1) Any person, who has violated any provision of this Ordinance, or any order
1458 issued hereunder, shall be strictly liable for such violation regardless of the presence
1459 or absence of a culpable mental state, except as expressly provided herein, and
1460 shall, upon conviction, be subject to a fine of not more than two thousand dollars
1461 (\$2000.00) per violation, per day, or any greater fine authorized by State statute.
1462
- 1463 (2) Any person who has knowingly made any false statement, representation, or
1464 certification in any application, record, report, plan, or other documentation filed,
1465 or required to be maintained, pursuant to this Ordinance, or any order issued
1466 hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate
1467 any monitoring device or method required under this Ordinance shall, upon
1468 conviction, be subject to a fine of not more than two thousand dollars (\$2000.00)
1469 per violation, per day, or any greater fine authorized by State statute.
1470
1471
1472
1473 (3) In determining the amount of any fine imposed hereunder, the court shall take into

1474 account all relevant circumstances, including, but not limited to, the extent of harm
1475 caused by the violation, the magnitude and duration of the violation, any economic
1476 benefit gained through the violation, corrective actions by the violator, the
1477 compliance history of the violator, the knowledge, intent, negligence, or other
1478 state of mind of the violator, and any other factor as justice requires.
1479

1480 (c) Civil Suit Under the Texas Water Code. Whenever it appears that a violation or threat of
1481 violation of any provision of Section 26.121 of the Texas Water Code, as amended, or any
1482 rule, permit, or order of the Texas Water Commission, has occurred or is occurring
1483 within the jurisdiction of the City of Rockport, exclusive of its extraterritorial jurisdiction,
1484 the City, in the same manner as the Texas Water Commission, may have a suit instituted
1485 in a state district court through its City Attorney for the injunctive relief or civil penalties
1486 or both authorized in Subsection (a) of Section 26.123 of the Texas Water Code, as
1487 amended, against the person who committed or is committing or threatening to commit
1488 the violation. This power is exercised pursuant to Section 26.124 of the Texas Water Code,
1489 as amended. In any suit brought by the City under this section 42-131 (c), the Texas Water
1490 Commission is a necessary and indispensable party.
1491

1492 (d) Remedies Nonexclusive. The remedies provided for in this Ordinance are not exclusive
1493 of any other remedies that the City may have under state or federal law or other City
1494 ordinances. The City may take any, all, or any combination of these actions against a
1495 violator. The City is empowered to take more than one enforcement action against any
1496 violator. These actions may be taken concurrently.
1497

1498
1499 **Sec. 42-132. Supplemental Enforcement Action**
1500

1501 (a) Performance Bonds. The CEA may, by written notice, order any owner or operator of a
1502 source of stormwater discharge associated with construction or industrial activity to file
1503 a satisfactory bond, payable to the City, in a sum not to exceed a value determined by
1504 the CEA to be necessary to achieve consistent compliance with this Ordinance, any
1505 order issued hereunder, any required Best Management Practice, and/or any SWPPP
1506 provision, and/or to achieve final stabilization of the site. The City may deny approval
1507 of any building permit, grading permit, subdivision plat, site development plan, or any
1508 other City permit or approval necessary to commence or continue construction or any
1509 industrial activity at the site, or to assume occupancy, until such a performance bond has
1510 been filed.
1511

1512 (b) Liability Insurance. The CEA may, by written notice, order any owner or operator of a
1513 source of stormwater discharge associated with construction or industrial activity to
1514 submit proof that it has obtained liability insurance, or other financial assurance, in an
1515 amount not to exceed a value determined by the CEA, that is sufficient to remediate,
1516 restore, and abate any damage to the MS4, the waters of the United States, or any other
1517 aspect of the environment that is caused by the discharge.
1518

1519 (c) Public Nuisances. A violation of any provision of this Ordinance, or any order issued

1520 hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed
1521 by the CEA. Any person(s) creating a public nuisance shall be subject to the provisions of
1522 the City Code governing such nuisances, including reimbursing the City for any costs
1523 incurred in removing, abating, or remedying said nuisance.
1524

1525
1526 **SECTION 3. REPEALER**

1527
1528 Any previously adopted ordinances, and any subsequent amendments to them, which are in conflict
1529 with this Ordinance, are all hereby repealed.

1530
1531 **SECTION 3. SEVERABILITY**

1532
1533 If any provision, section, sentence, clause or phrase of this Ordinance, or the application of same to
1534 any person or set of circumstances is, for any reason held to be unconstitutional, void, or invalid,
1535 the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the
1536 intent of the City County in adopting this Ordinance that no portion hereof, or provisions or
1537 regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality
1538 of any other portion hereof, and all provisions of this Ordinance are declared severable for that
1539 purpose.

1540
1541 **SECTION 4. EFFECTIVE DATE**

1542
1543 This Ordinance shall become effective immediately upon adoption by second and final reading.
1544

1545
1546
1547 **APPROVED** on first reading on this the 10th day of May 2016.
1548

1549
1550
1551 **CITY OF ROCKPORT, TEXAS**

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1554
1555 Charles J. Wax, Mayor
1556

1557
1558 **ATTEST:**

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1562 Teresa Valdez, City Secretary
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APPROVED, PASSED and ADOPTED on second and final reading this the _____ day of May 2016.

CITY OF ROCKPORT, TEXAS

Charles J. Wax, Mayor

ATTEST:

Teresa Valdez, City Secretary

DRAFT 04/26/16

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ARTICLE V. EROSION AND SEDIMENT CONTROL

Sec. 42-120. Responsibility.

It shall be joint duty and responsibility of the directors of public works and building and development or their authorized representatives to administer, implement and enforce the provisions of this article.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-121. Applicability.

Only erosion and sedimentation from a construction site which impacts public property and public rights-of-way are governed by this article. It is not a violation of this article if erosion and sediment loss from a construction site occurs upon private property and is deposited upon private property unless the flow travels through the MS4.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-122. Definitions and abbreviations.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meaning hereinafter designated. Any terms not defined by this article are understood to be defined by the Texas Construction General Permit TXR150000 or its successor.

Best management practice (BMP) or control measure means the schedule of activity, prohibition, maintenance procedures, structural controls, and other management practices meant to prevent or reduce the discharge of pollutants. BMPs or control measures also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

City of Rockport Erosion and Sediment Control Manual means a document prepared by the City of Rockport that contains details on the use and maintenance of erosion and sediment controls.

Clearing or commencement of construction means the initial disturbance of soils associated with clearing, grading, or excavation, activities, as well as other construction-related activities (e.g., stockpiling of fill material, demolition).

Common plan of development is defined by the Texas Construction General Permit TXR150000 or its successor.

Construction general permit (CGP) means the Texas Construction General Permit TXR150000, its successor or any other state regulation to control runoff from construction sites issued by the Texas Commission on Environmental Quality (TCEQ) or the state regulatory authority.

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Construction sites(s) means any clearing, grading, and excavating that results in land disturbance. A construction site also includes but not limited to any stockpiling or other activity that result in exposed soils. This includes the construction of pools and installation and maintenance and the installation of and maintenance of public utilities such as telephone, gas, electric, telecommunications, etc. This excludes the disturbance of soils for emergency activities that are immediately necessary for the protection of life, property, or natural resources.

CSN means construction site notice as defined by the Construction General Permit TXR150000 or its successor.

Control measure see best management practice (BMP) above.

Director means the director of public works and/or the director of building and development or their authorized representatives.

Drainage way or conveyance means curbs, gutters, manmade channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport stormwater runoff.

Erosion control means a measure that minimizes erosion to the maximum extent practicable.

Erosion and sediment control submittal packet means documents, including a set of plans prepared by or under the direction of the owner or operator of the construction site that indicate the specific measures and sequencing to be used to control erosion and sediment on a construction site during and after construction and supporting documents as specified by the City of Rockport Erosion and Control Manual.

Final stabilization means all soil disturbing activities at the site have been completed and a uniform (i.e. evenly distributed, without large bare areas) perennial vegetative cover with a density of a least 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geo-textiles) have been employed. These conditions are applicable to all construction sites, including individual residential lot construction sites.

Grading means changing elevation of a parcel of land by means of moving earthen material including excavation or fill of material, including the resulting conditions thereof.

Multi-sector general permit (MSGP) means the Texas Multi-Sector General Permit, TXR050000, its successor, or any other state regulation to control runoff from industrial sites issued by the Texas Commission on Environmental Quality (TCEQ) or the state regulatory authority.

Municipal separate storm sewer system (MS4) means the separate storm sewer system owned and operated by the city. The MS4 includes all drainage ways, stormwater conveyances, bar ditches, swales, and streets owned and operated by the city or any private drainage way that drains to or

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contributes flow to the public drainage system and conveys stormwater discharges to the surface water of the state.

NOC means notice of change as defined by the Construction General Permit TXR150000 or its successor.

NOI means notice of intent as defined by the Construction General Permit TXR150000 or its successor.

NOT means notice of termination as defined by the Construction General Permit TXR150000 or its successor.

Operator means the person or persons who, either individually or taken together, meet either of the following two criteria: (1) has operational control over the facility specifications (including the ability to make or direct modifications in specifications); or (2) has day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

Owner means the person who owns a facility or part of a facility.

Perimeter control means a form of erosion control that prevents sediment from leaving the site.

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

Pollutant means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, sediment, and industrial, municipal, and agricultural waste discharged into surface water of the state.

Sediment control means measures that minimize eroded sediment from leaving the site to the maximum extent practicable.

Secondary containment means a structure designed to capture spills or leaks, as from a container or tank, and has the capacity to hold 110 percent of the original container.

Site means a parcel of land or a contiguous combination thereof, where grading is performed as a single unified operation.

Surface water in the state as defined by the Construction General Permit TXR150000 or its successor.

Texas Surface Water Quality Standards means the standards set forth in Title 30, Chapter 307 of the Texas Administrative Code.

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Temporary stabilization means a condition where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. Temporary stabilization may include BMPs listed in the integrated stormwater management (ISWM) manual produced by the council of governments or subsequent similar documents (i.e. temporary seeding, geo-textiles, mulches, perimeter controls, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place.)

Waters of the United States as defined by the Construction General Permit TXR150000 or its successor.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-123. Applicability of article and compliance requirements.

(a) This article shall apply to all construction sites within the city limits of the City of Rockport.

(b) *Requirements for sites disturbing less than one acre or within a common plan of development that is disturbing less than one acre.*

(1) All construction sites disturbing less than one acre of land or within a common plan of development that is disturbing less than one acre of land shall comply with all sections of this article except as otherwise noted.

(2) Any construction site disturbing less than one acre may be required, if directed by director of public works, to comply with this article.

(c) *Requirements for sites disturbing more than one acre or within a common plan of development that is disturbing more than one acre:*

(1) All construction sites disturbing more than one acre of land or within a common plan of development that is disturbing more than one acre of land shall comply with all sections of this article.

(2) The owner or operator shall ensure that copies of the notice of intent (NOI), notice of change (NOC), notice of termination (NOT), and construction site notice (CSN) are provided to the city when appropriate.

(d) *Requirement for all construction sites.*

(1) All sites shall comply with the requirements of the current construction general permit (CGP), when appropriate based upon the acreage of the construction site.

(2) *Inspections:*

i. All construction sites shall be inspected or cause to be inspected by the owner or operator of the site for evidence of or potential for violations of this article.

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Construction sites subject to the CGP shall be inspected at frequency required by the CGP or more frequently if directed by the director of public works.

ii. All construction sites shall be inspected or caused to be inspected by the owner or operator within 24 hours after all rain events exceeding two inches in addition to inspection requirements in this section. Rain events are determined by the measurement documented by the city.

iii. All owners or operators of a construction site disturbing more than one acre of land or within a common plan of development that is disturbing more than one acre of land shall document inspections. When such a project is released for construction by the city, as described in this article, the city will provide the applicant with a number and access code for that job on the website. The applicant shall:

a. Within ten working days of receipt of the permit number and access code, enter the website and create and/or confirm a list of erosion and sediment control practices that are proposed on the approved plan.

b. Within ten working days of the actual start of work - enter the website and document that the practices have been installed in accordance with the approved plan.

c. Provide an electronic version of inspection documentation at the frequency indicated by the erosion control submittal packet and of event driven inspections. Documentation will be of the condition of the practices and will note any repairs needed and action taken.

d. Within ten working days of installation of final stabilization enter the website and note that the project has been terminated and a notice of termination (NOT) has been submitted to the TCEQ and the city, when appropriate.

e. Upon written notice by an agent of the city to the applicant or the applicant's designated representative regarding an erosion control action or repair needed to bring the site into compliance, the owner or operator shall comply with noted actions or repairs, and record such actions within 48 hours of the notification and prior to the next rain event. Failure to record such actions within 72 hours of notification shall be a violation of this article.

(3) *Erosion and sediment control measures.* Erosion and sediment control measure shall be designed and established at the construction site in a manner that minimizes erosion and retain sediment on-site to the maximum extent practicable with consideration of the topography, soil type, and rainfall. BMPs and control measures described in the Integrated Stormwater Management (ISWM) Manual produced by the Texas Council of Governments or subsequent versions are minimum control measure where appropriate; however, BMPs not listed in the ISWM Manual may be considered.

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- (4) *Preserve existing vegetation.* The owner or operator of the site shall ensure that existing vegetation is preserved to the maximum extent practicable. Should the existing vegetation not be preserved, the owner or operator shall take steps necessary to stabilize the site in order to prevent erosion.
- (5) *Stabilization.* Erosion control and stabilization measures must be initiated as soon as practicable in portions of the construction site where construction activities have temporarily ceased. These measures must be initiated no more than 14 days after the construction activity in that portion of the construction site where activity has temporarily or permanently ceased, except where earth disturbing activities will be resumed within 21 days.
- (6) *Minimize off-site tracking.* Off-site tracking of sediment, in the form of mud, rocks, dirt, etc. is not permitted. Where required to prevent off-site tracking of sediment, a construction entrance shall be established and maintained.
- (7) *Maintenance.*
- i. All temporary stabilization measures shall be maintained until final stabilization is established and a notice of termination (NOT) is filed with the TCEQ, when required by the CGP, and the finalization of a Rockport Termination Inspection has been conducted, as described in herein, or transfer of operations control has been completed, as required by the CGP, when appropriate based on the acreage of the construction site.
 - ii. The owner or operator of any site shall perform maintenance as necessary to maintain the continued effectiveness of stormwater controls with 48 hours of discovery of failure, damage, or compromise and prior to the next rain event.
 - iii. Failure to maintain BMPs in proper working order shall be a violation of this article.
- (8) *Sediment or silt accumulation.* Should the control measures at a site fail, in part or in total, the owner or the operator shall remove all sediment and siltation accumulation caused by BMP failure from the city's MS4, including streets and rights-of-way, within 48 hours of discovery or prior to the next rain event. Removal includes sweeping streets, sidewalks, and other infrastructure and removing sediment from the MS4.
- (9) *Good housekeeping measures for chemicals and wastes.* Good housekeeping measures shall be provided on-site to prevent and contain spills of paints, solvents, fuels, septic waste and other chemicals hazardous to the public or environment or might cause polluted runoff. Proper cleanup and disposal of any such spills shall be in accordance with state, federal, and local requirements.
- (10) *Waste.*

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- i. A location shall be established on-sited, or near the site, for personal and construction waste so as to prevent waste from involuntarily leaving the site.
 - ii. Proper waste disposal and waste management techniques shall be implemented, including covering waste materials, minimizing ground contact with regulated or hazardous chemicals and trash, and keeping trash receptacles off of paved surfaces or other locations that drain directly to a storm drain system or local waterway.
- (11) *Sanitary waste.* Sanitary waste facilities shall be maintained so that the waste does not create a hazard to the public or the environment. Sanitary waste facilities should not be placed over any paved surfaces.
- (12) *Dust suppression.* Techniques shall be employed to prevent air-borne dust from leaving the site.
- (13) *Street sweeping to remove sediments and siltation.*
- i. Sediments and other materials that enter the streets shall be limited to the greatest extent practicable.
 - ii. Street sweeping shall be conducted in a manner that minimizes dust, including sweeping during periods of minimal wind or using a vacuum sweeper.
 - iii. All property owners or operators within a common plan of development are expected to coordinate efforts to prevent sedimentation from entering the MS4. All owners or operators of contributing construction sites, as determined at the discretion of the city, shall be held responsible jointly and severally to remove sediments from the street.
 - iv. In absence of a coordinated effort amongst all property owners or operators, the city reserves the right to abate the problem and charge all the property owners contributing to the violation.
- (14) *Temporary concrete batch plants.* Temporary concrete batch plants shall comply with zoning requirements.
- (15) *Concrete wash-out.*
- i. An operator shall specify a containment area and/or a concrete wash-out device that will be established and maintained for all sites.
 - ii. Signs six square feet in size and emblazoned with "CONCRETE WASHOUT AREA" in both English and Spanish shall be posted in full view of any concrete delivery trucks.

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iii. Failure of concrete delivery trucks to utilize specified concrete wash-out areas shall be a violation of this article.

(16) No off street parking shall be permitted on vacant lots or where construction has commenced with the exception of short term delivery not to exceed two hours on approved surfaces. Signs six square feet in size and emblazoned with "OFF STREET PARKING PROHITED" in both English and Spanish shall be posted on vacant lots by developers and on permitted lots by the contractor.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-124. Responsibility of all on-site personnel.

It is a violation of this article for any person to damage or allow to be damaged any temporary or permanent stormwater control measures through their actions or inactions without promptly restoring the control measure to an effective and efficient state.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-125. Training required.

After 180 days of the effective date of this article:

(1) No contractor or subcontractor shall commence work on a construction site without first attending training on stormwater impacts from construction activities and maintenance of control measures.

a. Training shall be provided by the city.

b. Prior training or training provided by another entity shall be considered by city staff. Staff shall consider the merits of said alternative training and may disapprove of this training for any reason.

c. Proof of attendance of training provided by the city shall be provided in the form of a certificate.

(2) Contractors shall have proof of attendance available for inspection at any construction site. The contractor shall be responsible for ensuring that each of its employees is knowledgeable of the conditions of this article.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-126. Allowable discharges.

The following non-stormwater discharges may be discharged from the construction site:

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- (1) Water line flushing (excluding discharges of hyper-chlorinated water, unless the water is first de-chlorinated and discharges are not expected to adversely affect aquatic life);
- (2) Runoff or return from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater or surface water resources;
- (3) Discharges from potable water sources;
- (4) Diverted stream flows;
- (5) Rising ground waters and springs;
- (6) Uncontaminated ground water infiltration;
- (7) Uncontaminated pumped ground water;
- (8) Flows from wetlands and riparian habitats;
- (9) Discharges or flows from fire fighting activities (fire fighting activities do not include washing of trucks, runoff water from training activities, test water from fire suppression systems, and similar activities);
- (10) Other allowable non-stormwater discharges listed in 40 CFR § 122.26(d)(92)(iv)(B)(1) or its successor;
- (11) Non-stormwater discharges that are specifically listed in the multi sector general permit (MSGP) and the CGP; and
- (12) Other similar occasional incidental non-stormwater discharges unless the TCEQ develops permits or regulations addressing these discharges.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-127. Prohibited discharges.

The following list of discharges from a construction site to the City of Rockport's MS4 are prohibited:

- (1) Excessive amounts of sediment that would cause accumulation of sediment in the City of Rockport's MS4.
- (2) Motor oil or other vehicle fluids;
- (3) Concrete truck wash out water;

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- (4) Rinse water or waste water from operations that are contaminated with chemicals or waste products from operations, including pool installations products;
- (5) Wash-off water associated with concrete cutting and exposed aggregate pressure washing;
- (6) Trash or debris associated with the construction site;
- (7) Runoff that would cause the City of Rockport's MS4 to discharge into the waters of the state water that would violate the Texas Surface Water Quality Standards; and
- (8) Any polluted liquids.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-128. Erosion and sediment control submittal required.

An erosion and sediment control submittal packet shall be submitted to the city and reviewed and released by the city prior to the commencement of any activity on a construction site. Commencement of activity before the submittal, review and release of an erosion and sediment control submittal packet shall be a violation of this article.

- (1) The erosion and sediment control submittal packet shall include all documentation required by the city's erosion control submittal process as defined in the city erosion and sediment control manual.
- (2) The erosion and sediment control submittal packet shall be submitted to the city no later than ten days prior to commencement of any construction activities.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-129. Review and release for implementation and responsibility.

(a) The city shall review each erosion and sediment control submittal packet submitted for any construction site to determine its conformance with the provision of this article. The city shall, in writing:

- (1) Acknowledge the receipt of the erosion and sediment control submittal packet and its completeness for review;
- (2) Release for implementation the erosion and sediment control submittal packet, subject to reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and release work subject to these conditions; or

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- (3) Deny release for implementation the erosion and sediment control submittal packet, indicating the reasons and procedure for submitting a revised plan. Re-submittal and release for implementation of an erosion and sediment control submittal packet must occur before clearing or commencement of construction at a construction site.
- (b) *Temporary approval.* With approval from the director of public works, a construction site may be temporarily approved for clearing or commencement of construction before approval of the erosion and sediment control submittal packet. This temporary approval may be revoked at any time for any reason a director sees fit for revocation.
- (c) *Responsibility.* The owner or operator shall not be relieved of responsibility for damage to persons or property otherwise imposed by law, and the city or its officers or agents will not be made liable for such damage, by
- (1) The release for implementation of an erosion and sediment control submittal packet under this article;
 - (2) The compliance with provisions of the erosion and sediment control submittal packet or with conditions attached to it by the city;
 - (3) Failure of city officials to observe or recognize hazardous or unsightly conditions;
 - (4) Failure of city officials to recommend denial of release for implementation of an erosion and sediment control submittal packet or to deny an erosion and sediment control submittal packet;
 - (5) Granting exemptions from the requirements of this article.
- (d) Materials used for temporary erosion control or sediment control (e.g., silt fences, inlet protection) and established in support of the construction site, shall be removed by owner or operator of the site once final stabilization has been established.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-130. Termination of operational control.

- (a) A final acceptance of public improvement associated with land development, issuance of a certificate of occupancy for a building or the issuance of a final "Green Tag" for other construction covered by this article shall be contingent upon an inspection for termination.
- (b) Submit a notice of termination (NOT):
- (1) Where an NOI has been submitted to the TCEQ, a letter of final acceptance of public improvement, a certificate of occupancy, or final "Green Tag" shall not be issued until final stabilization is established and maintained as specified in the released erosion control submittal packet. The developer for a subdivision or other large plat shall continue to

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maintain all temporary erosion and sediment control until final stabilization has been established on all those lots within the subdivision or large plat for which a building permit has not been issued or transfer of operational control has been established in compliance with the CGP.

(2) A NOT should not be submitted to the TCEQ or other regulatory agency unless all requirements for submittal have been completed, when required by the CGP.

(3) The city reserves the right to refuse issuance of the final acceptance or certificate of occupancy when in disagreement with submittal of an NOT.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-131. Right of entry: inspection and sampling.

A director or authorized representative shall have the right to enter any site to determine if the owner or operator is complying with all requirements of this article, and with any state or federal discharge permit limitation, or requirement. Owners or operators shall allow a director ready access to all parts of the site for the purposes of inspections, sampling, records examination and taking photos, copying, and for performance of any addition duties. Owners or operator shall make available to the director, upon request, any SWPPP's modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and any other records, reports and other documents related to compliance with this article and with any state or federal discharge permit.

(1) Where the owner or operator has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the directors or their authorized representative(s) will be permitted to enter without delay for purposes of performing their responsibilities.

(2) A director shall have the right to set up on the site, or require installation of, such devices as are necessary to conduct sampling and/or metering of the owner or operator's operations. Operator must reimburse the city for costs related to sampling or damaged or lost equipment.

(3) A director may require any owner or operator to conduct specified sampling, testing, analysis, and other monitoring of its stormwater discharges, and may specify the frequency and parameters of any such required monitoring.

(4) A director may require the owner or operator to install monitoring equipment as necessary at the discharger's expense. The site's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

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(5) Any temporary or permanent obstruction to safe and easy access to the site to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or verbal request of a director and shall not be replaced. The costs of clearing such access shall be borne by the authorized representative.

(6) Unreasonable delays in allowing a director access to the site shall be a violation of this article

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-132. Search warrants.

If a director, or his/her authorized representative, has been refused access to any part of a site from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then a director may seek issuance of a search warrant from any court of competent jurisdiction. For purposes of this article the city manager, director of public works, the director of planning and development, the city engineer, and the duly authorized representatives of these city departmental directors are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-133. Warning notice.

When a director finds that any person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, a director may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the owner or operator to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the warning notice in no way relieve the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this article shall limit the authority of a director to take any action, including emergency action or any other enforcement action, without first issuing a warning notice.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-134. Notification of violation.

When a director finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, a director may serve upon that person a written notice of violation. Within ten calendar days of the receipt of this notice, an explanation of the violation and

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a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the issuing director. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the issuing director within ten calendar days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violation occurring before or after receipt of the notice of violation. Nothing in this article shall limit the authority of a director to take any action, including emergency action or any other enforcement action, without first issuing a notice of violation. A director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any person responsible for noncompliance with any provision in this article or any order issued hereunder. Such documents may include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to this article and shall be judicially enforceable.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-135. Show cause hearing.

A director may order any person who has violated, or continues to violate, any provision of this article, or any order issued hereunder, to appear before the director and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing for all enforcement actions shall be served personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in this article. A show cause hearing shall not be a bar against or prerequisite for, taking any other action against the alleged violator.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-136. Compliance orders.

When a director finds that any person has violated, continues to violate, or threatens to violate, any provision of this article, or any order issued hereunder, the director may issue an order to the violator directing that the violator come into compliance within a specified time limit, prior to commencement or continuance of operation, or immediately. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the state. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

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(Ord. No. 1460, § 1, 8-11-09)

 **Sec. 42-137. Remediation, abatement, and restoration orders.**

When a director finds that a person has violated, or continues to violate, any provision of this article or any order issued hereunder, and that such violation has adversely affected the MS4, or the waters of the state, the director may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, or the waters of the state, and/or to restore any part of the MS4, or the waters of the state. Such remedial, abatement, and restoration action may include, but not limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of city property or natural resource damaged by the violation. The order may direct that the remediate, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this article does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this article shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

(Ord. No. 1460, § 1, 8-11-09)

 **Sec. 42-138. Emergency cease and desist orders.**

(a) When a director finds that any person has violated, continues to violate, or threatens to violate, any provision of this article, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s), or threatened violation(s), have caused or contributed to an actual or threatened discharge to the MS4 or waters of the state which reasonable appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the director may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (1) Immediately comply with all requirements of this article; and
- (2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

(b) Any person notified of an emergency order directed to it under this article shall immediately comply and stop or eliminate its endangering discharge. In the event of a person's failure to immediately comply voluntarily with the emergency order, a director may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the state, including immediate termination of a site's water supply, sewer connection, or other municipal utility services. A director may allow the person to commence or recommence its discharge when it has demonstrated to the satisfaction of the director that the period of endangerment has passed, unless

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further termination proceeding are initiated against the person. The cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the person under this article. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the issuing director within ten calendar days of receipt of the emergency cease and desist order.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-139. Stop work orders.

Whenever a director finds that any owner or operator of a construction site has violated, threatens to violate, or continues to violate, any provision of this article, or any order issued hereunder, the director may issue a stop work order to the owner or operator, and require that a copy of the stop work order be posted at the construction site and distributed to all city departments and divisions whose decisions affect any activity at the construction site. Unless express written exception is made by the issuing director, the stop work order shall prohibit any further construction activity, or any commencement of construction activity, at the site and shall bar any further inspection or approval by the city associated with a building permit, grading permit, or any other city approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a stop work order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-140. Reconsideration and hearing.

- (a) Any person subject to a compliance order, a remediation, abatement, or restoration order, an emergency cease and desist order, or a stop work order under this article may petition the issuing director to reconsider the basis for his/her order within 15 calendar days of the affected person's notice of issuance of such an order.
- (b) Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.
- (c) In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.
- (d) The effect of any compliance order, remediation, abatement, or restoration order, and any stop work order under article shall be stayed pending the issuing director's reconsideration of the petition, and any hearing thereon, unless the issuing director expressly makes a written determination to the contrary. The effectiveness of any emergency cease and desist order under this article shall not be stayed pending the issuing director's reconsideration, or any hearing thereon, unless the issuing director expressly and in writing stays his/her emergency order.

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(e) Within 30 calendar days of the submittal of a petition for reconsideration, the issuing director shall either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition without a hearing, if no material issue of fact is raised; or if a hearing has been requested and a material issue of fact has been raised, set a hearing of the petition.

(f) Written notice of any hearing set by the issuing director pursuant to this section shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.

(g) The issuing director may himself/herself conduct the hearing and take evidence, or he/she may designate any employee of the city or any specially-designated attorney or engineer to:

- (1) Issue in the name of the city notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;
- (2) Take evidence;
- (3) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the director for action thereon.

At any hearing held pursuant to this section, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

(h) After the issuing director has reviewed the evidence, he/she shall either:

- (1) Grant the petition;
- (2) Deny the petition; or
- (3) Grant the petition in part and deny it in part.

The issuing director may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-141. Appeal.

Any person who remains adversely affected by a director's order after petitioning for reconsideration pursuant to this article, or who is subject to an order of a director issued following

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a show cause hearing under this article, may challenge the final action of the director in an appropriate court of competent jurisdiction.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-142. Civil remedies.

(a) Whenever it appears that a person has violated, or continues to violate, any provision of this article that relates to:

- (1) The preservation of public safety relating to the materials or methods used in construction of any structure or improvement of real property;
- (2) The preservation of public health or to the fire safety of a building or other structure or improvement;
- (3) The establishment of criteria for land subdivision or construction of buildings, including street design;
- (4) Dangerously damaged or deteriorated structures or improvements;
- (5) Conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
- (6) Point source effluent limitations or the discharge of a pollutant, other than from a non point source, into the MS4.

The city may invoke Sections 54.012 - 54.017 of the Texas Local Government Code and petition the state district court or the county court at law of Aransas County, through the city attorney, for either the injunctive relief specified in this article or the civil penalties specified below, or both the specified injunctive relief and civil penalties.

(b) Pursuant to Section 54.016 of the Texas Local Government Code, the city may obtain against the owner or operator of a site a temporary or permanent injunction, as appropriate, that:

- (1) Prohibits any conduct that violates any provision of this article that relates to any matter specified above; or
- (2) Compels the specific performance of any action that is necessary for compliance with any provision of this article that relates to any matter specified above.

(c) Pursuant to Section 54.017 of the Texas Local Government Code, the city may recover a civil penalty of not more than \$1,000.00 per day of each violation of any provision of this article that relates to any matter specified above, and a civil penalty of not more than \$5,000.00 per day for each violation of any provision of this article that relates to any matter specified above, if the city proves that:

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- (1) The defendant was actually notified of the provisions of the article; and
- (2) After the defendant received notice of the provisions of this article, the defendant committed acts in violation of the article or failed to take action necessary for compliance with the article.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-143. Criminal penalties.

- (a) Any person who has violated any provision of this article, or any order issued hereunder, shall be strictly liable for such violation, regardless of the presence or absence of a culpable mental state, and shall, upon conviction, be subject to a fine of not more than \$2,000.00 per violation, per day.
- (b) Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this article or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this article shall, upon conviction, be subject to a fine of not more than \$2,000.00 per violation, per day.
- (c) In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-144. Civil suit under the Texas Water Code.

Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of the Texas Water Code, or any rule, permit, or order of the Texas Commission of Environmental Quality, has occurred or is occurring within the jurisdiction of the city, exclusive of its extraterritorial jurisdiction, the city, in the same manner as the Texas Commission on Environmental Quality, may have a suit instituted in a state district court through its city attorney for the injunctive relief or civil penalties or both authorized in Sections 7.031 and 7.032 of the Texas Water Code, against the person who committed or is committing or threatening to commit the violation. This power is exercised pursuant to Section 7.351 of the Texas Water Code. In any suit brought by the city under this article, the Texas Commission on Environmental Quality is a necessary and indispensable party.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-145. Remedies nonexclusive.

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

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-146. Performance and maintenance bonds.

A director may, by written notice, order any owner or operator of a source of stormwater discharge associated with construction or industrial activity to file a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance with this article, any order issued hereunder, any required best management practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site. The city may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other city permit or approval necessary to commence or continue construction or any industrial activity at the site, or to assume occupancy, until such a performance or maintenance bond has been filed.

(Ord. No. 1460, § 1, 8-11-09)

Sec. 42-147. Liability insurance.

A director may, by written notice, order any owner or operator of a source of stormwater discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount greater than or equal to a value determined by the director, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the state, or any other aspect of the environment that is caused by the discharge.

(Ord. No. 1460, § 1, 8-11-09)

Secs. 42-148—42-179. Reserved.

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, May 24, 2016

AGENDA ITEM: 11

Deliberate and act on approval to issue a Request for Proposals to connect the Cape Velero waterline to the waterline on Rattlesnake Point Road.

SUBMITTED BY: Public Works Director, Michael S. Donoho, Jr.

APPROVED FOR AGENDA: PKC

BACKGROUND: Currently the Cape Velero area is served by a single 12-inch water line that is approximately 2.5 miles in length. This dead end line feeds an 8-inch distribution system that services multiple customers.

The detention time in the 12-inch dead end line affects chlorine residuals in the system to the point where we must spend approximately 90 minutes each day flush more than 30,000 gallons per day to maintain proper chlorine residuals at the end of the system. The cost to maintain the flushing is over \$50,000 per year, not including the equipment and labor to perform this daily task. There is also the intangible cost of wasting the water resource, especially during a drought.

On Rattlesnake Point Road, the City's 8-inch dead end water line that is serving over 200 Copano Water Company customers. Engineering studies done at the request of a developer have determined that this 8-inch dead end line is at its maximum capacity.

City staff has determined that the solution to both issues would be to directionally drill an 8-inch water line under Peet's Bend and connect the two water systems. This would loop the system and allow constant flow of water with out flushing to properly maintain chlorine residuals and allow future development in both areas of approximately 15 additional homes. Preliminary estimates are from \$600,000 to \$800,000 to loop the systems with a scope of work listed in the table below.

ITEM	DESCRIPTION	UNIT	QUAN
WATER IMPROVEMENTS			
1	8" PVC C900 installed by conventional trenching	LF	8300
2	8" Fusible C900 PVC installed by HDD	LF	1802
3	Tie to Exist. 8" with 8" TS and Gate Valve	LS	1
4	Tie to Exist. 8"	LS	1
5	Dewatering	LS	1
6	Air Release / Vacuum Valves	EA	2
7	8" D.I. 90° Bend	EA	2
8	8" D.I. Tee	EA	1
9	8" D.I. Cross	EA	1
10	8" Gate Valve	EA	9
11	Fire Hydrant Assembly	EA	6
12	Driveway Repair	SY	245

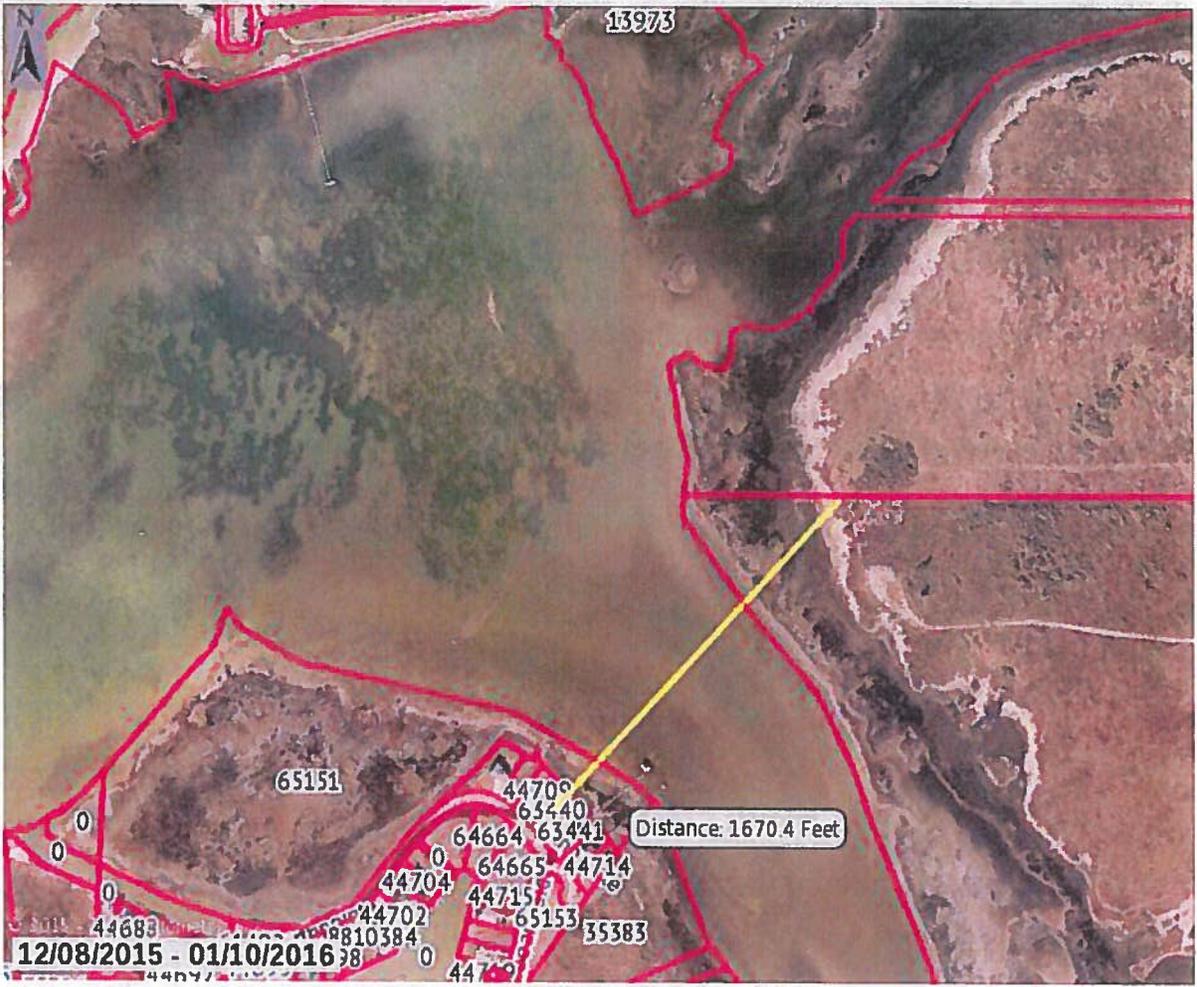
The developer for the Rattlesnake Point project has submitted a letter of commitment agreeing to contribute \$89,950 towards this project.

In January 2016, the City acquired a 15-foot wide piece of property at 9 Northpointe Drive for the purpose of a 10-foot permanent utility easement to accommodate the 8-inch waterline needed to loop the systems and no further easements of right-of-way acquisition is required.

The accompanying aerial photograph shows the approximate path of the line.

FISCAL ANALYSIS: Funding will come from the 2007 Bond (account 92-6418010 Water Capital Improvements) and the 2009 Bond (account 10- 6572080 Cape Valero Loop Line). The return on investment should be less than 10 years given the developer's contribution, water and labor savings, and revenue from additional customers. There will also be additional *ad valorem* revenue from properties benefiting from new access to the water line.

STAFF RECOMMENDATION: Staff recommends approval to issue a Request for Proposals for connecting the Cape Valero and Rattlesnake Point water lines, as presented.



The location for the proposed project is identified in the accompanying map. The map shows the location of the proposed project relative to the surrounding area. The map also shows the location of the proposed project relative to the surrounding area.

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