

**INTERLOCAL AGREEMENT
FOR WATER AND WASTEWATER
OPERATION AND MAINTENANCE**

Between

CITY OF ARLINGTON, TX

and

CITY OF KENNEDALE, TX

(March 29, 2019)

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INTERLOCAL AGREEMENT FOR WATER AND WASTEWATER OPERATION AND MAINTENANCE

THIS INTERLOCAL AGREEMENT FOR WATER AND WASTEWATER OPERATION AND MAINTENANCE (hereinafter, this “Agreement”) is made and entered into as of March 29, 2019, by and between the City of Kennedale, a municipal corporation organized under the laws of the State of Texas (hereinafter “Municipality”), and the City of Arlington, a municipal corporation organized under the laws of the State of Texas (hereinafter “Operator”). Municipality and Operator are collectively referred to herein as “the Parties.”

WHEREAS, Operator owns, operates and maintains water distribution facilities and sewer collection and treatment facilities; and

WHEREAS, Municipality owns, operates and maintains a water supply and distribution utility and a sewer collection utility that serves customers in the city limits of Municipality and adjacent areas in Tarrant County; and

WHEREAS, the Texas State Legislature has authorized the formulation of interlocal cooperation agreements between and among governmental entities pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended; and

WHEREAS, the Parties have determined that it would be advantageous for Operator to manage, operate, and maintain Municipality’s water distribution facilities and sewer collection facilities; and

WHEREAS, the governing bodies of each Party find that the undertaking is necessary for the benefit of the public, is in the common interest of both Parties and that each Party has the legal authority to provide such service; and

WHEREAS, the covenants and promises set forth in this Agreement constitute adequate consideration to each Party; and

WHEREAS, the Parties, in paying for the performance of governmental functions or in performing such governmental functions pursuant to this Agreement shall make payments therefor only from current revenues legally available to such Party.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, Operator and Municipality, their successors and assigns, agree as follows:

Article 1 DEFINITIONS

“*Additional Services*” shall mean services performed by Operator that are outside of Operator’s scope of Services as set forth in Article 4 of this Agreement.

“*Adjustment Date*” shall mean each and every anniversary of the Commencement Date.

“*Affiliate*” shall mean “related parties” to Operator and Municipality within the meaning of Section 144(a) (3) of the Internal Revenue Code.

“*Agreement*” is defined in the Preamble to this Agreement.

“*Agreement Year*” is defined as any consecutive twelve (12) month period during the term of this Agreement (including the renewal options) that begins on the Commencement Date and subsequently ends on each anniversary of that date.

“*Annual Maintenance Expenditures*” is defined as the total of all expenses incurred annually by Operator in connection with the discharge of its maintenance responsibilities as provided by Section 4.4 of this Agreement. The Annual Maintenance Expenditures shall specifically include, but shall not be limited to, all materials, supplies, parts, tools, outside subcontractors, specialized services, rental equipment and all of Operator's direct labor expenses and related benefits for those individuals assigned by Operator to the operations and maintenance of the Facilities and whose cost is included in the Base Compensation hereunder, but shall exclude the cost of Operator's personnel not typically used for the operation and maintenance of water and sewer facilities. As stated in Section 4.5 hereunder, any individual expenditure for the repair and/or replacement of Facilities' equipment or structure, other than a Capital Improvement, whose unit cost (as to any single event or function) exceeds ten thousand dollars (\$10,000.00) shall be subject to Municipality's prior approval. The cost of such approved expenditures shall be included in the Annual Maintenance Expenditures.

“*Annual Repair and Maintenance Limit*” is defined as the total of all non-routine repairs and maintenance costs (not included as Annual Maintenance Expenditures) to be performed by Operator in an amount up to a maximum of one hundred thousand dollars (\$100,000) for each of the first two years of this Agreement. By way of example, the items set forth in Exhibit A attached hereto are considered to be non-routine repair and maintenance costs that are subject to the Annual Repair and Maintenance Limit.

“*Applicable Law*” is defined as those laws, rules, regulations, codes, administrative and judicial orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, local government, agency or executive or administrative body of any of the foregoing, including CERCLA, SDWA and RCRA, in each case that pertain to the (a) Parties' respective responsibilities under this Agreement; (b) operation or maintenance of the Facilities; (c) health and welfare of individuals working at or visiting the Facilities; and (d) the collection, delivery, treatment and disposal of Municipality's raw and finished water, wastewater, and/or related wastes. This definition specifically includes the terms, conditions, requirements or schedules of any administrative or judicial settlement or enforcement related, in any way, to the Facilities, to the collection, delivery, pretreatment, or treatment of Municipality's raw and finished water and/or wastewater, and to each of Municipality's Environmental Permits issued for the Facilities.

“*Authorized Representative*” is defined in Section 10.1 of this Agreement.

“*Base Compensation*” is defined in Section 6.1 of this Agreement.

“*Baseline Power Rate(s)*” shall mean the electric rates established by Municipality's electric provider in effect as of the Commencement Date for the water distribution system and the sanitary sewer collection system. The Base Compensation may be adjusted to reflect changes to

the Baseline Power Rate(s) on each Adjustment Date or earlier if the Baseline Power Rates are increased by the electric provider during any Agreement Year. Operator shall provide the basis for such adjustment to Municipality for review and approval, which shall not be unreasonably withheld.

“*Capital Improvement(s)*” shall mean changes, modifications, additions, or upgrades to the Facilities constructed or implemented by Operator with Municipality’s prior approval.

“*CERCLA*” is defined as the federal Comprehensive Environmental Response Compensation and Liability Act, as same may be amended from time to time, 42 USC §9601 et seq.

“*Change of Law*” is defined as the occurrence of any of the events listed in (i) through (iv) below, which results or can reasonably be expected to result in (a) the need to make a Capital Improvement at or to the Facilities in order for Operator to operate the Facilities in accordance with this Agreement and Applicable Law; or (b) an increase or decrease to the cost of managing, operating or maintaining the Facilities in accordance with this Agreement and Applicable Law; or (c) a material and adverse effect on the scope of Operator’s liabilities or obligations under this Agreement:

- (i) there is passed or promulgated any federal, state, or other local law, statute, ordinance, rule or regulation different from those existing on the date this Agreement is executed; or
- (ii) there is passed or promulgated any amendment to, or change in, any federal, state, or other local law, statute, ordinance, rule or regulation (including any applicable sales tax regulation) following the date of this Agreement; or
- (iii) following the execution of this Agreement, there comes into existence an order or judgment of any federal, state, or local court, administrative agency or other governmental body containing interpretations of any Applicable Law relating to the operation or maintenance of the Facilities or the health and safety of Operator’s employees that is inconsistent with generally accepted interpretations in effect on the date this Agreement is executed; or
- (iv) after the Commencement Date of this Agreement, any change occurs which affects the issuance or renewal, or causes a suspension, termination, interruption, revocation, denial or failure of renewal (for reasons other than Operator fault or failure by Operator to comply with the terms of this Agreement) of any official permit, license or necessary approval by the USEPA, the Occupational Safety and Health Administration or the State Environmental Agency.

“*Commencement Date*” shall mean the date designated by the parties hereunder for the commencement of their respective obligations. The parties agree that the Commencement Date shall be March 29, 2019.

“*Facilities*” or “*Municipality’s Facilities*” is defined as the water distribution system and sanitary sewer collection system and all associated facilities owned by Municipality as described in Exhibit B to this Agreement.

“*Force Majeure*” is defined as any act, event, or condition to the extent that it adversely impacts the cost of performance of, or adversely affects the ability of, either Party to perform any obligation under this Agreement (except for payment obligations) if such act, event or condition, in light of any circumstances that should have been known or reasonably believed to have existed at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error, omission or failure to exercise reasonable diligence on the part of the Party relying thereon; provided, however, that the contesting Party in good faith or failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error, omission or lack of reasonable diligence of either Party.

- (a) Inclusions subject to the foregoing, such acts, events or conditions may include, but shall not be limited to, the following:
- (i) an act of God, landslide, earthquake, fire, explosion, flood, hurricane, tornado, sabotage, or similar occurrence, acts of a public enemy, terrorism, extortion, war, blockade, insurrection, riot or civil disturbance;
 - (ii) the failure of any appropriate governmental agency or private utility to provide and maintain utilities;
 - (iii) any failure of title to the Facilities or any placement or enforcement of any lien, charge or encumbrance on the Facilities or on any improvements thereon that is not consented to in writing by, or arising out of any action or agreement entered into by, either Party to the Agreement;
 - (iv) the inability of Operator and its subcontractors, after exercising all reasonable effort, to gain and maintain access to all areas of the Facilities and/or adjoining the Facilities where Operator is required to provide services or perform any work hereunder;
 - (v) the preemption, confiscation, diversion, destruction, or other interference by, on behalf, or with authority of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action, in the possession of property, equipment or materials located at the Facilities, or in the performance of the Services to be performed by Operator hereunder;
 - (vi) strikes, work stoppages, or labor disputes affecting Operator and any subcontractor (excluding material suppliers) of Operator;
 - (vii) with respect to Operator, the presence at the Facilities of (i) subsurface structures, materials or conditions having historical, geological, archeological, religious or similar significance; (ii) any habitat of an endangered or protected species; or (iii) functioning subsurface structures used by utilities on, underneath, near or adjacent to the Facilities;
 - (viii) with respect to Operator, (i) the presence anywhere in, on or under the Facilities on the Commencement Date of underground storage tanks; (ii) the presence of

hazardous materials or regulated substances in environmental media anywhere in, on or under the Facilities as of the Commencement Date; (iii) the off-site migration of pollutants and/or off-site contamination, including any migration of pollutants that is not caused by the negligence of Operator; or (iv) contamination of the Facilities from groundwater, soil or airborne hazardous materials or regulated substances migrating from sources outside the Facilities to the extent not caused by Operator's negligence;

- (ix) with respect to Operator, damage to the Facilities caused by third parties not related to or under the control of Operator including, but not limited to, other contractors and subcontractors for Municipality;
 - (x) the failure of any subcontractor or supplier to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event that would constitute Force Majeure if it affected Operator directly, and Operator is not able after exercising all reasonable efforts to timely obtain substitutes; and
 - (xi) the breach of this Agreement by one of the Parties to the extent that it adversely impacts the non-breaching Party's cost of performance under this Agreement or adversely affects the ability of the non-breaching Party to perform any obligation under this Agreement,
- (b) Exclusions. None of the following acts, events or conditions shall constitute an event of Force Majeure:
- (i) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in process, or currency or exchange rate fluctuations;
 - (ii) changes in the financial condition of Municipality, Operator, or any of their Affiliates or subcontractors;
 - (iii) union work rules which increase Operator's operating cost for the Facilities;
 - (iv) any impact of prevailing wage laws on Operator's costs, provided however that such requirements or demands may constitute a Change of Law entitling Operator to additional compensation;
 - (v) the consequence of Operator error, including any errors of Operator Affiliates or subcontractors; and/or
 - (vi) litigation against Municipality and/or Operator.

"Municipality" is defined in the Preamble to this Agreement.

"Municipality's Environmental Permit(s)" or *"Environmental Permit(s)"* shall refer to permits and licenses issued to Municipality and required for the supply of finished water from the

Facilities and/or the collection of wastewater from the Facilities. Copies of all Environmental Permits are attached as Exhibit C to this Agreement.

“*Operator*” is defined in the Preamble to this Agreement.

“*RCRA*” is defined as the Resource Conservation Recovery Act, as same may be amended from time to time, 42 USC §8921 et seq.

“*SDWA*” is defined as the Safe Drinking Water Act, as same may be amended from time to time, 42 USC §300f et seq.

“*Services*” is defined in Section 4.1.

“*Sewer Use Ordinance*” is defined as Municipality’s ordinance, order, regulation or policy which establishes the requirements for persons discharging wastewater into Municipality’s sewer system, as same may be amended from time to time.

“*Shutdown*” is defined as the cessation or substantial interruption of normal operations at the Facilities due to the failure of operating equipment or interruption of the processes of the Facilities for reasons other than the negligence of Operator or its employees, agents or subcontractors.

“*USEPA*” refers to the United States Environmental Protection Agency.

Article 2 PURPOSE

Commencing on the Commencement Date and during the term of this Agreement, Municipality agrees to engage Operator as an independent contractor to operate and maintain the Facilities, and Operator agrees to operate, and maintain the Facilities in accordance with the terms and conditions of this Agreement, Applicable Law, and all permits, licenses, manufacturer’s protocols, and specifications applicable to the operation and maintenance of the Facilities. Each Party hereto agrees that it will cooperate in good faith with the other and its agents, employees, representatives, officers, contractors, and subcontractors to facilitate the performance of the mutual obligations set forth in this Agreement.

Article 3 REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 3.1 Representations and Warranties of Municipality

Municipality hereby represents and warrants that, as of the date hereof:

- (a) It is a municipal corporation of the State of Texas duly organized, validly existing and in good standing under the laws of the State, with all legal right, power and authority to enter into this Agreement, to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, and to enter into and perform its obligations under this Agreement.

- (b) This Agreement, Municipality's execution and delivery of this Agreement and Municipality's performance of its obligations hereunder, have been duly and validly authorized. This Agreement has been validly executed and delivered by Municipality and constitutes a legal, valid, and binding obligation of Municipality, enforceable in accordance with its terms.
- (c) Municipality's execution, delivery, and performance of this Agreement will not conflict with, or result in any violation of, or constitute a default or a condition which upon notice or lapse of time, or both, would constitute a default under any judgment, order, writ, injunction, decree, rule, regulation, permit, license, bonds, debt instruments, note, agreement, mortgage, deed, contract or other instruments that apply to, or which bind Municipality or any of its assets and properties.
- (d) There are no actions, suits, proceedings or governmental investigations pending, or, to its best knowledge, threatened against it or its assets or properties, and no judgments, decrees, orders, rulings, writs or injunctions outstanding against it or its assets or properties, that would in any case have a material adverse effect upon Municipality's ability to execute this Agreement or otherwise to consummate and perform its obligations hereunder.
- (e) Municipality and its representatives are fully familiar with this Agreement and the obligations set forth herein, including all the exhibits and schedules attached to this Agreement, if any, and Municipality is fully capable of performing and complying with the same.

Section 3.2 Representations and Warranties of Operator

Operator hereby represents and warrants to Municipality that, as of the date hereof:

- (a) It is a municipal corporation of the State of Texas duly organized, validly existing and in good standing under the laws of the State, with all legal right, power and authority to enter into this Agreement, to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, and to enter into and perform its obligations under this Agreement.
- (b) This Agreement, Operator's execution and delivery of this Agreement, and Operator's performance of its obligations hereunder, have been duly and validly authorized by Operator by all necessary action. This Agreement has been validly executed and delivered by Operator and constitutes a legal, valid and binding obligation of Operator, enforceable in accordance with its terms.
- (c) Operator's execution, delivery and performance of this Agreement will not conflict with, or result in any violation of, or constitute a default or a condition which upon notice of lapse of time, or both, would constitute a default, under the organizational documents of Operator nor under any judgment, order, writ, injunction, decree, rule, regulation, permit, license, bonds, debt instruments, note, agreement, mortgage, deed, contract or other instruments that apply to, or which bind, Operator or any of its assets or properties.

- (d) There are no actions, suits, proceedings or governmental investigations pending, or, to its best knowledge, threatened against it or its assets or properties, and no judgments, decrees, orders, rulings, writs or injunctions outstanding against it or its assets or properties, that would in any case have a material adverse effect upon Operator's ability to execute this Agreement or otherwise to consummate and perform its obligations hereunder.
- (e) Operator is fully familiar with this Agreement and the obligations set forth herein, including all exhibits and schedules attached to this Agreement, if any, and Operator is capable of performing and complying with same.

Section 3.3 Disclosure of Information

Municipality and Operator each represent and warrant to the other that each has disclosed, and will in the future disclose, any and all information it now has, or may have in the future, relating to the Facilities that may be relevant to the other in performing its duties and obligations. Such information shall include, but shall not be limited to, the appropriate sections of any vulnerability or security assessment performed (including any vulnerability assessments performed in accordance with 42 USCS §300i-2 or any other similar statute), environmental audits, prior permit violations and/or dealings with regulatory agencies.

Article 4 SCOPE OF SERVICES AND OPERATOR'S RESPONSIBILITIES

Section 4.1 General

Subject to the terms and conditions provided herein, Operator shall provide labor, tools, utilities and materials, including an on-site routine stock of chemicals necessary for the operation and maintenance of the Facilities to the extent specifically set forth in this Article 4 (hereinafter the "Services"). The Services include: (a) the distribution of treated water as reasonably necessary to meet the demand for water by Municipality's customers, as well as using reasonable efforts to maintain full water storage capacity levels in all water storage facilities in the distribution system; (b) the operation, maintenance and repair of Municipality's wastewater collection system as reasonably necessary to meet the demand for wastewater collection by Municipality's customers and conveying such wastewater to an appropriate treatment facility for the treatment of domestic wastewater; (c) routine preventive maintenance of the Facilities; (d) laboratory testing and analysis; and (e) preparation and prompt delivery of all applicable and required filings, including discharge reports, to Municipality and to regulatory agencies as prescribed by Applicable Law.

Section 4.2 Standard of Care

The Services provided under this Agreement are of a professional nature and shall be performed in accordance with the degree of skill and care ordinarily exercised by members of Operator's profession in the geographic region of the Facilities.

Section 4.3 Process Control

- (a) Operator shall operate and maintain the Facilities and all equipment and processes contained therein in accordance with relevant operation and maintenance manuals for the Facilities, Applicable Law, and the Environmental Permits.
- (b) During any Municipality-approved construction or other modification of the Facilities, Municipality and Operator will work together to maintain Operator's access to the Facilities and to minimize disruption and outages to the Facilities' existing equipment and components. Municipality and Operator will jointly develop a plan of action that will address protection to the Facilities' equipment and processes during any such construction and/or other rehabilitation period while providing for the continued operation of the Facilities to the extent reasonably possible.

Section 4.4 Routine Maintenance of the Facilities and Equipment

Subject to the limitations set forth in Section 4.5 and Section 6.2 below, Operator shall (i) perform routine preventive maintenance in accordance with manufacturers' specifications and approved operating and maintenance procedures developed for equipment and processes of the Facilities; (ii) repair and/or replace equipment; (iii) clean and lubricate equipment; (iv) make equipment inspections and needed adjustments; (v) perform predictive maintenance as appropriate; (vi) perform plumbing and electrical maintenance; and (vii) maintain all of the Facilities' instrumentation, including instrumentation provided to Operator by Municipality pursuant to this Agreement. Operator shall schedule and track all preventive, corrective, and predictive maintenance and perform spare parts inventory control in accordance with standard industry practice.

Section 4.5 Repairs and Replacement

- (a) Operator shall be responsible for all non-routine repairs and maintenance for the Facilities. During the first and second Agreement Years, Operator's responsibility for repairs and maintenance shall not exceed the Annual Repair and Maintenance Limit (which Annual Repair and Maintenance Limit shall be included in the Base Compensation). During the first and second Agreement Years any and all costs in excess of the Annual Repair and Maintenance Limit shall be the responsibility of Municipality and shall be paid directly by Municipality or reimbursed to Operator in accordance with Section 6.3.
- (b) Operator shall not incur any single maintenance related expenditure whose unit cost exceeds ten thousand dollars (\$10,000.00) without the prior written approval of Municipality, except in the case of emergencies threatening the immediate Shutdown of, or the substantial reduction in the operational capacity of any of the Facilities, or the life, health or property of Municipality and/or Operator, their employees and/or agents or others (for purposes of this Section 4.5 only, all such emergencies shall be referred to collectively and individually as an "Emergency"). When Operator determines that a condition constitutes an Emergency, Operator may begin taking the necessary abatement action, including all necessary equipment repairs, immediately without Municipality's

prior approval. Any cost incurred during the Emergency for non-routine repairs and maintenance costs shall be counted toward the Annual Repair and Maintenance Limit, subject to Municipality's subsequent review and approval. Any such cost unnecessarily incurred in an Emergency shall be borne by Operator without reimbursement by Municipality, but only to the extent it is subsequently determined that Operator's actions in incurring such cost were not consistent with good and prudent industry practice given the information available to Operator at the time the decision to incur such cost was made.

Section 4.6 Staffing

- (a) Operator shall provide qualified and, where required, certified staffing for the operation and maintenance of the Facilities in accordance with Municipality's Environmental Permits.
- (b) Operator shall provide an appropriate level of training for its personnel.
- (c) Municipality currently employs approximately 6 persons to work in Water Distribution and Wastewater Collections, in various positions. Subject to these persons receiving satisfactory results on all pre-employment screenings required by Operator, which may include but are not limited to physical examinations, criminal history check, driving record check, and drug and alcohol screenings as required because of job duties or law, Operator will offer each of these said persons employment into positions within their skillsets to commence on the Commencement Date of this Agreement. Any such person who does not indicate their interest in employment with Operator prior to the Commencement Date will not be offered employment pursuant to this Agreement but may apply for a job with Operator through Operator's Human Resources Department. All persons offered employment with Operator pursuant to this Agreement must sever all employment relationships with Municipality and are subject to the conditions of employment and benefits of a newly hired employee with Operator, which includes a six (6) month probationary period.
- (d) Operator is not acquiring any pending employment claims filed against Municipality, including but not limited to lawsuits, EEOC charges, Worker's Compensation claims, or Texas Workforce Commission claims.

Section 4.7 Testing and Laboratory Analysis

Operator shall perform or shall contract with a laboratory certified by the State to perform all sampling and laboratory analysis required by Municipality's Environmental Permits. Laboratory procedures and analysis shall conform to the then current edition of Standard Methods for the Examination of Water and Wastewater.

Section 4.8 Communications

- (a) To keep Municipality informed about the status of the Facilities, Operator shall, within thirty (30) working days of the Commencement Date, develop an informational

communications program which shall be comprised of a written monthly report to Municipality on the operational status and maintenance of the Facilities.

- (b) Operator shall interface with regulatory agencies in matters related to compliance with Municipality's Environmental Permits. Operator shall, as soon as practicable and in reasonable detail, inform Municipality of the subject matter of such communications with regulatory agencies. All other communications with regulatory agencies, the media, or community groups may occur only upon Municipality's request or with Municipality's prior approval.

Section 4.9 Reports

- (a) Operator shall maintain computerized and other necessary records of operations, maintenance, repair, and improvement activities undertaken at the Facilities.
- (b) Operator shall collect the data for all permit monitoring and operating reports required by Applicable Law or by this Agreement and shall deliver the required monitoring and operating reports to Municipality and to the appropriate regulatory agencies having competent jurisdiction over same. Municipality, however, shall at all times be responsible for maintaining all required permits for the ownership and operation of the Facilities.
- (c) All records and data pertaining to the Facilities, including but not limited to operation reports, laboratory reports and monitoring documentation, but excluding Operator's budgetary and financial information, are the property of Municipality and will be retained per state law.

Section 4.10 Emergency Response

- (a) Operator shall provide emergency response when required. Emergencies include situations in which, absent Operator's action, there is a risk of: (i) the Facilities' noncompliance with Applicable Law; (ii) failure of the Facilities to operate; (iii) circumstances affecting the safety of persons or property; (iv) adverse impact of snow and other extreme weather conditions and other natural or man-made disasters; and (v) the occurrence of an event of Force Majeure or Shutdown.
- (b) Operator shall provide said emergency response on a similar level and management practice that Operator performs for its own retail customers.
- (c) Operator shall notify Municipality of emergency conditions and emergency response actions as quickly as possible.
- (d) All costs incurred by Operator in responding to emergencies shall be part of the Annual Maintenance Expenditure and shall be borne by Municipality only to the extent that the Annual Repair and Maintenance Limit is exceeded, except where specifically provided otherwise, or where such emergency, production stoppage or failure of the Facilities to operate is a direct result of Operator's failure to operate and maintain the Facilities in accordance with the terms of this Agreement.

- (e) In the event of sudden damage or destruction of any portion of the Facilities, or in the event of an emergency which in the reasonable judgment of Operator is likely to result in material loss or damage to any portion of the Facilities, or constitute a threat to human health or safety, Operator may suspend operations of those portions of the Facilities which are reasonably determined to be affected by the emergency and may make such emergency repairs as are necessary to mitigate or reduce such loss, damage or threat. Operator shall provide prompt notice to Municipality of any such damage, destruction or threat and of any emergency repairs that have or will be taken. Municipality and Operator shall cooperate in good faith in pursuing reasonable measures to mitigate any threats to human health or safety, or the environment.

Section 4.11 Accounting Records

Operator shall maintain up-to-date financial and accounting records as they apply to the Annual Maintenance Expenditures. The records shall be kept in accordance with Operator's standard accounting practices and made available to Municipality within thirty (30) working days of Municipality's written request.

Section 4.12 Manufacturers' Warranties

Operator shall be responsible for maintaining warranties on new equipment acquired while Operator is operating the Facilities. In addition, Operator shall assist Municipality in enforcing the warranties and guarantees provided to Operator by Municipality, if any, for existing equipment used in connection with the operation of the Facilities. Under no circumstances shall Operator's obligations hereunder include any express or implied warranties with respect to all Facilities equipment.

Section 4.13 Water Distribution System

Operator shall operate, maintain and repair Municipality's water distribution system in accordance with generally accepted industry standards, environmental regulations, and Operator's standards and practices for its own retail customers.

Section 4.14 Wastewater Collection System

Operator shall operate, maintain and repair Municipality's wastewater collection system, in accordance with generally accepted industry standards, environmental regulations, and Operator's standards and practices for its own retail customers. The scope of services provided for in this Agreement do not include treating wastewater to applicable standards under Applicable Laws or Environmental Permits.

Section 4.15 Meter Reading Billing and Meter Repair Duties

- (a) Operator will install, operate, maintain, and/or replace as needed all water meters utilized in connection with the operation of the Facilities and the cost of this shall be an Annual Maintenance Expenditure and shall be included in the Annual Repair and Maintenance Limit.

- (b) Operator shall repair or replace such meters that are inoperable or damaged within fifteen (15) days of detection of the same by Operator or notice to Operator by Municipality and the costs of all meters, equipment, spare parts and supplies shall be deemed an Annual Maintenance Expenditure and shall be included in the Annual Repair and Maintenance Limit.
- (c) Municipality has contracted with Fathom for utility billing operations for the system. To the extent permitted in Municipality's contract with Fathom, Municipality will assign all of its rights and obligations under the contract to Operator. In the event Municipality's contract with Fathom is terminated, Operator will assume all meter reading and billing responsibilities at a cost calculated in accordance with Exhibit D. The Municipality will provide customer data from Fathom in a form completely compatible with the Operator's databases/systems and the utility billing operations will be successfully run in a test environment prior to the initiation of any live utility billing operations by the Operator. This cost will be paid monthly by Municipality in addition to the Base Compensation. Municipality currently collects rubbish and stormwater utility fees through its utility billing system. Once Operator assumes billing responsibilities, Operator will be responsible for collecting such fees and remitting them to Municipality.
- (d) Operator shall have staff at Kennedale City Hall to allow Kennedale residents to pay utility bills. Municipality shall provide reasonable space and facilities at Kennedale City Hall for this purpose. Operator and Municipality agree that Operator residents will be allowed to pay Operator utility bills at Municipality's City Hall and Municipality's residents shall be allowed to pay utility bills at any Operator bill payment location.

Section 4.16 Water and Wastewater Line Warranty

Operator currently provides a service whereby water and wastewater customers are eligible to obtain a warranty for private water and wastewater lines from a third-party vendor. Subject to approval by the third-party vendor, Operator shall make any such warranty program available to customers of Municipality at the same level as Operator provides such service to its retail customers.

Section 4.17 Capital Improvements Plan

- (a) Annually on a date mutually agreed upon, Operator shall provide Municipality a five-year plan for Capital Improvements to Municipality's Facilities. Such Capital Improvements Plan shall be based on experience, knowledge, and practices employed by Operator for its own system to anticipate growth and regulatory requirements.
- (b) Such Capital Improvements Plans may be utilized by Municipality for determining needed Facilities improvements in its annual budget, as appropriate.
- (c) In the first year of the contract, Operator will construct at its own expense a connection to convey treated water from Operator's system to Municipality's system. Operator shall also be responsible for complying with any TCEQ required interconnection reporting.

- (d) Base Compensation for the first Agreement Year shall include \$250,000 for Capital Improvements to Municipality's Facilities. This amount can be used to defray costs to construct the connection to convey treated water from Operator's system to Municipality's system. In the event the cost of such connection exceeds \$250,000 then such additional cost will be applied to the Capital Improvements allocation in the second Agreement Year.
- (e) Base Compensation for the second Agreement Year shall include an amount for Capital Improvements to Municipality's Facilities equal to the amount of direct cost savings realized by Operator from the reduction of the operation of Municipality's groundwater wells, not to exceed \$250,000.
- (f) For each Agreement Year thereafter, the Base Compensation shall include a minimum of \$250,000 to be expended for Capital Improvements as agreed to by the Parties.
- (g) The amount of Capital Improvements included in the Base Compensation may be adjusted by mutual consent on each renewal of this Agreement as described in Section 6.1.
- (h) Any amount included in the Base Compensation for Capital Improvements that has not been spent for that purpose at the end of each Agreement Year will be reimbursed to Municipality within thirty (30) days following the end of the Agreement Year.
- (i) Any improvements made by Operator to the Facilities shall be in accordance with the Capital Improvements Plans as approved by Municipality. Repayment of the Capital Improvements in excess of the amount included in the Base Compensation will be made in the manner described in Section 5.9 below. At the end of the repayment period, ownership of the installed Capital Improvements shall be vested in Municipality.

Article 5 MUNICIPALITY'S RESPONSIBILITIES

Section 5.1 Permits

Operator shall be responsible for payment of groundwater productions fees to the Northern Trinity Groundwater Conservation District as part of Base Compensation. Municipality shall be responsible for obtaining, maintaining and directly paying for all other state, federal, and local permits and licenses required for ownership, operation and maintenance of the Facilities, including without limitation, Municipality's Environmental Permits. Municipality shall also be responsible for the payment of all other regulatory and governmental fees associated with ownership and operation of the Facilities and Municipality's equipment used in connection with the operation and maintenance of the Facilities. Operator shall provide reasonable assistance to Municipality in obtaining and maintaining all required state, federal, and local permits and licenses associated with the ownership, operation and maintenance of the Facilities.

Section 5.2 Utilities

- (a) Except as otherwise provided herein, Municipality shall assume all responsibility and cost for arranging for the delivery of utility services to the Facilities, including water, electricity, natural gas services, phone and high-speed internet service and shall be responsible for maintaining water service to the Facilities at its sole cost and expense.
- (b) Operator shall assume all costs related to the consumption of electric power at the Well, Pump, and Metering Facilities.

Section 5.3 Compliance with Laws

Municipality will comply with Applicable Law pertaining to the management, ownership, operation, maintenance, repair and replacement of the Facilities to the extent that the responsibility of complying with those laws is not specifically assumed by Operator under the terms of this Agreement. Operator shall not be responsible for Municipality's failure to comply with any provision of Applicable Law that is not otherwise specifically assumed by Operator hereunder.

Section 5.4 License to Use the Facilities

Municipality hereby grants Operator, without charge, a license during the term of this Agreement for Operator's use of the Facilities, including all rights of way, easements, rights of entry, equipment, structures, facilities and vehicles under Municipality's ownership or control and which have been assigned by Municipality to the Facilities including, but not limited to, those items listed in Exhibit B. Notwithstanding the above, Operator will be responsible for all maintenance and repairs on the Facilities, subject to the Annual Repair and Maintenance Limit.

Section 5.5 Notice of Litigation

In the event that Municipality receives notice of or undertakes the defense or the prosecution of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, Municipality shall give Operator prompt notice of such proceedings and shall inform Operator in advance of all hearings regarding such action, claim, suit, proceeding, or investigation. In the event Operator receives notice of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, Operator shall give Municipality prompt notice of such proceedings.

Section 5.6 Access

Municipality shall have full and unrestricted access to any and all parts of the Facilities at any and all times to review the performance of Operator and inspect the Facilities during normal business hours. If notice is not provided prior to any such visit or inspection, such visit or inspection must be announced immediately upon the arrival of Municipality's representative at the Facilities. In connection with such visits and inspections, Municipality agrees on behalf of itself, and further agrees to require its agents, licensees, or invitees, to comply with all reasonable

safety rules and regulations adopted by Operator and/or promulgated by any governmental authority that regulates work place safety.

Section 5.7 Sanitary Sewer Overflow and Infiltration and Inflow

Municipality shall be responsible for complying with applicable sanitary sewer overflow regulations under local, state and federal laws except for overflows directly caused by the actions of Operator in operating or maintaining the sewer Facilities. In order to facilitate compliance, Operator shall notify Municipality and required federal and state agencies immediately of any sanitary sewer overflows and shall provide timely information on the volume of overflows and whether overflows reach waters of the state. Operator shall not be responsible for any such noncompliance or resulting penalties or fines resulting from overflows not caused by the actions of Operator. Municipality shall by ordinance, regulation, and/or service conditions require all users of Municipality's wastewater collection system to comply with Operator's ordinances, rules and regulations regarding utilization of the facilities including, but not limited to Operator's pretreatment ordinances, rules and regulations.

Section 5.8 Approval or Disapproval of Proposed Costs

In the event that Operator provides written notice to Municipality in accordance with Section 4.5(b) that it proposes to incur an expenditure requiring Municipality's approval, Municipality shall provide Operator with approval or disapproval of the proposed action within twenty-four (24) hours of receipt of such notice, unless the expenditure requires approval by Municipality's governing body. Except as provided below, in the event that Operator does not receive notice of approval or disapproval within twenty-four (24) hours, Municipality will be deemed to have approved of the proposed action. If the expenditure requires approval by Municipality's governing body, Municipality shall provide Operator with approval or disapproval of the proposed action within 24 hours following the next available City Council meeting.

Section 5.9 Capital Improvements

Municipality shall plan and fund Capital Improvements recommended by Operator in the Capital Improvements Plan and approved by Municipality in Municipality's annual budget as described in Section 4.17 above. For any Capital Improvements approved in Municipality's budget, Municipality may construct such planned Capital Improvements or may request Operator to construct the planned Capital Improvements at Operator's actual cost for design, construction and planning of such Capital Improvement plus the lower of: (i) ten percent (10%) or (ii) the average rate of return for an investor owned utility in the three most recent water rate cases approved by the Public Utility Commission of Texas, or successor agency. The percentage provided for in the preceding sentence shall be set annually on the anniversary date of this Agreement. Municipality shall provide Operator with evidence of the average rate of return as determined above, if Municipality seeks a rate less than ten percent. Operator will bid, hire and manage all contractors as needed to construct the planned Capital Improvements. Operator will send all invoices for contractors or materials to Municipality for payment. Municipality will send payment for the invoices along with the percentage described above to Operator for distribution. Municipality shall be liable and responsible for any disputes with contractors regarding invoices not paid by Municipality.

Section 5.10 General Authority

Municipality shall perform all duties and discharge all responsibilities and obligations relating to the operation and maintenance of the Facilities not expressly assumed by Operator pursuant to the terms of this Agreement.

Section 5.11 Authority for Water Supply

Municipality currently purchases water from the City of Fort Worth with supplemental supply coming from groundwater wells. Municipality hereby agrees that from and after the Commencement Date of this Agreement all potable water supply purchased from a source other than the City of Fort Worth or groundwater wells shall come from Operator, to the extent that sufficient capacity is available through the Arlington connections to Municipality's water system. Municipality agrees that any reduction of water from groundwater well production or purchased from the City of Fort Worth will be supplemented by the purchase of water from Operator, subject to availability. The City of Fort Worth contract and groundwater well management will be administered by Operator to achieve maximum cost efficiency for Municipality.

Article 6 COMPENSATION**Section 6.1 Base Compensation**

- (a) For each annual period beginning on the Commencement Date, Municipality shall pay Operator an annual fee (the "Base Compensation"). In the first Agreement Year the Base Compensation shall be in the amount of \$1,200,000. In the second Agreement Year the Base Compensation shall be in the amount of \$900,000. The Base Compensation shall be payable in equal monthly installments, in advance, on the first day of each and every month for the duration of this Agreement.
- (b) In subsequent years of this Agreement, the Base Compensation shall be calculated based on expected direct costs incurred by Operator for the Services provided by Operator under this Agreement, plus indirect costs incurred by Operator, plus the cost of Capital Improvements as provided in Section 4.17(f). Direct costs shall include salaries and benefits paid for the six full time positions described in Section 4.6(c), costs of groundwater well operations, equipment and supply costs, and other costs mutually agreed to by the Parties. Indirect costs incurred by Operator shall be equal to the percentage of carrying costs and franchise fees paid by Operator to the City of Arlington, not to exceed ten percent (10%) of Operator's direct costs.
- (c) Notwithstanding the amount of Base Compensation agreed to be paid by Municipality in any year of this Agreement, Municipality agrees to pay for costs that are incurred by Operator from operations of the System that are in excess of the Base Compensation paid for that year, not to exceed ten percent 10% of the Base Compensation without mutual agreement.

- (d) The Base Compensation and the amount of Capital Improvements included in the Base Compensation shall be determined by mutual agreement on each renewal of this Agreement described in Section 7.1(b). If agreement on adjusted Base Compensation and adjusted amount of Capital Improvements included in the Base Compensation cannot be reached by six (6) months prior to the expiration of the then current term, either Party may give notice of the intent to allow the agreement to expire at the end of the current term.

Section 6.2 Annual Repair and Maintenance Limit

Operator will track non-routine repairs and maintenance costs incurred each year against the Annual Repair and Maintenance Limit. If, at any point during the Agreement Year, the amount of non-routine repairs and maintenance costs incurred to that point exceed the Annual Repair and Maintenance Limit, Operator will invoice Municipality for the excess costs in accordance with Section 6.3 and will continue to invoice any additional excess costs on a monthly basis thereafter.

Section 6.3 Additional Services

Except in connection with an Emergency or Shutdown, the Parties shall agree upon a price for any Additional Services to be provided by Operator prior to the delivery of such Additional Services. Municipality shall pay Operator at the agreed price for any Additional Services within forty-five (45) days of receipt of Operator's invoices for such Additional Services, pursuant to the Texas Prompt Payment Act. By way of example, the following items are considered to be Additional Services:

- (a) Expenses resulting from a change in the scope of Services or physical change(s) to the Facilities in accordance with Section 6.4;
- (b) Expenses resulting from a Change of Law in accordance with Section 6.4;
- (c) All repairs necessitated by the occurrence of a disabling event qualifying under the definition of Force Majeure or Shutdown hereunder;
- (d) Special, additional or extraordinary expenses incurred by Operator in providing an emergency response following the occurrence of a disabling event qualifying under the definition of Force Majeure or Shutdown hereunder;
- (e) Water or sewage use fees associated with and/or equated to domestic water usage and/or wastewater discharge including all sewer service charges and volume charges levied under the Sewer Use Ordinance;
- (f) Expenses related to municipal or private surveillance and alarm monitoring by third party vendors;
- (g) Fire protection;

- (h) Professional engineering fees;
- (i) All costs attributable to the consumption of electric power at rates above the Baseline Power Rate(s) (as adjusted in the manner set forth in the definition of such term);
- (j) Capital Improvements approved by Municipality in excess of the Capital Improvements included in Base Compensation, unless agreed to otherwise by the Parties;
- (k) Taxes as provided in Section 6.5 below;
- (l) All expenses necessitated by the repair and/or replacement of equipment or structure damages by Parties unrelated to and not under the supervision of Operator;
- (m) Any and all non-routine repairs and maintenance costs in excess of the Annual Repair and Maintenance Limit; and
- (n) Any cost for each and every other obligation assumed by Municipality pursuant to this Agreement, even if not specifically delineated in Section 6.3.

Section 6.4 Change in Scope

In the event of a change in scope or Change of Law which results in the necessity for either an increase or decrease of ten percent (10%) or more in Operator's cost of providing the Services hereunder, one Party may provide notice to the other Party in accordance with Section 10.9 and the Parties shall negotiate in good faith to adjust the Base Compensation to account for such change in Operator's costs. If the Parties are unable to reach a negotiated agreement within thirty (30) days of the date of notice, then this Agreement may be terminated upon a six month notice by either Party.

Section 6.5 Taxes

If any, Municipality shall pay all property, ad valorem, franchise, sales, use, excise, gross receipts, transaction privilege or other taxes associated with the Services and the ownership, operation and maintenance of the Facilities, other than taxes imposed on Operator's net income or payroll. Municipality shall pay directly or reimburse Operator for any such taxes that Operator may be required to pay under Applicable Law, including without limitation, any and all sales, use, gross receipts and/or transaction privilege taxes due in connection with or as a result of Operator's purchase, consumption, or use, in performing the Services hereunder, of tangible personal property and/or subcontracted services.

Section 6.6 Accrual of Interest on Late Payments

Any and all late payments due to either Party from the other Party shall accrue interest at the rate set by the Texas Prompt Payment Act, from the original due date and until payment is received.

Article 7 TERM AND TERMINATION

Section 7.1 Term

- (a) This Agreement shall remain in full force and effect for five (5) years from the Commencement Date unless terminated for cause as provided in Section 7.2 below.
- (b) Thereafter, this Agreement shall be automatically renewed for successive five (5) year periods unless cancelled in writing by either Party at least six (6) months prior to the expiration of the then current term or unless agreement on adjusted Base Compensation and adjusted amount of Capital Improvements included in the Base Compensation cannot be reached, as described in Section 6.1. Modifications to the Base Compensation shall be made pursuant to Section 6.1 of this Agreement. During the six (6) month cancellation period, Operator will train Municipality in the operation of the system.

Section 7.2 Termination

- (a) The failure of either Party to comply with any of the material terms of this Agreement shall constitute a default. Upon default by one Party, the other Party shall send written Notice of Termination. Such notice shall clearly specify the nature of the default and provide the defaulting Party forty-five (45) days to cure the default. If the default is capable of being cured within forty-five (45) days but is not cured within forty-five (45) days, this Agreement shall terminate at midnight of the forty-fifth (45th) day following receipt of the Notice. In the case of default that cannot be cured within forty-five (45) days, this Agreement shall not terminate so long as the defaulting Party has given written notice of the extension to the other Party and the defaulting Party has commenced and is diligently pursuing a cure. Evidence of such cure and its diligent pursuit shall be provided from the Party determined to be in default to the satisfaction of the other Party.
- (b) In the event of the termination of this Agreement under paragraph (a) of this Section, Municipality shall pay Operator for the Services provided and invoiced by Operator up to the effective date of termination plus the unamortized balance of Capital Improvements that are financed or paid for by Operator as reflected on Operator's financial statements. Payment shall be made within forty-five (45) days of the date of termination.
- (c) In the event of termination of this Agreement under paragraph (a) of this Section, Operator will train Municipality in the operation of the system for a six-month period. Operator will be compensated at the previous year's monthly rate during this six-month period.

Article 8 RISK MANAGEMENT

Section 8.1 Operator's Insurance

- (a) Operator shall provide and maintain the following levels of insurance or risk pool coverage at all times during the term of this Agreement:

- (i) Commercial General Liability Insurance, including contractual liability, with a limit of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate; and
 - (ii) Workers Compensation Insurance in compliance with the statutes of the State of Texas for Operator's employees engaged in the performance of Services hereunder, to the required statutory amount; and
 - (iii) Automobile Liability Insurance with a combined single limit in the amount of one million dollars (\$1,000,000).
- (b) Operator will furnish Municipality with certificates of insurance which evidence that policies providing the required coverage and limits are in full force and effect. Operator agrees to provide Municipality with thirty (30) days' notice prior to cancellation of any policy hereunder.

Section 8.2 Municipality Insurance

Municipality will maintain all risk property insurance for the full replacement value of the Facilities, including coverage for flood and losses resulting from certified and non-certified acts of terrorism.

Section 8.3 Pending Claims against Municipality

Operator is not acquiring any claims pending against Municipality, including but not limited to lawsuits, administrative actions, complaints or investigations.

Article 9 DISPUTE RESOLUTION

Section 9.1 Applicability

To affect a timely and efficient resolution of disputes that may arise during the term of this Agreement, the Parties hereto agree that all claims, controversies and disputes, shall be resolved pursuant to Section 9.2.

Section 9.2 Disputes

Each Party agrees that prior to filing a lawsuit or an administrative complaint with a regulatory agency on an issue related to the terms of this Agreement or otherwise related to water supply in lieu of this Agreement, the Party will submit the dispute to non-binding mediation. This provision survives termination of this Agreement.

Section 9.3 Covenant to Continue Work

During resolution of any dispute under this Article, Operator and Municipality shall each continue to perform all of their respective obligations under this Agreement without interruption or delay.

Article 10 MISCELLANEOUS

Section 10.1 Municipality's and Operator's Representatives

On or before the Commencement Date, Municipality and Operator shall each designate one or more authorized representatives (each an "Authorized Representative") to administer this Agreement. Either Party to this Agreement shall provide written notice to the other Party of any change to the Authorized Representatives no less than fifteen (15) days prior to said change.

Section 10.2 Relationship

The relationship of Operator to Municipality is that of independent contractor for all purposes under this Agreement, including for the purposes of applicable wage, tax, fringe benefit and workers compensation laws. This Agreement is not intended to create, and shall not be construed as creating, between Operator and Municipality, the relationship of principal and agent, joint venturers, co-partners or any other similar relationship, the existence of which is hereby expressly denied.

Section 10.3 Construction

In construing this Agreement, the following principles shall be followed: (i) no consideration shall be given to the captions of the articles, sections, paragraphs or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in construction; (ii) no consideration shall be given to the fact or presumption that any of the Parties had a greater or lesser hand in drafting this Agreement; (iii) examples shall not be construed to limit, expressly or by implication, the matter they illustrate; (iv) the word "includes" and its syntactic variants mean "includes, but is not limited to" and corresponding syntactic variant expressions; (v) the plural shall be deemed to include the singular, and vice versa; (vi) each gender shall be deemed to include the other genders; (vii) each exhibit, appendix, attachment and schedule to this Agreement is a part of this Agreement; and (viii) any reference herein or in any schedule hereto to any agreements entered into prior to the date hereof shall include any amendments or supplements made thereto.

Section 10.4 Entire Agreement; Amendments

This Agreement contains the entire agreement between Municipality and Operator pertaining to the operation and maintenance of Municipality's Facilities and supersedes all prior or contemporaneous communications, representations, understandings or agreements. This Agreement may be modified only by a written amendment signed by both Parties.

Section 10.5 Waiver

The failure on the part of either Party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

Section 10.6 Assignment

This Agreement shall be binding upon the successors and assigns of each of the Parties, but neither party shall assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Municipality may assign this Agreement to a new owner of the Facilities if Municipality sells the Facilities, provided, however, that such assignee expressly and in writing assumes all obligations of Municipality under this Agreement. Nothing contained in this Section 10.6 shall be construed to release either Party for the acts performed by such Party prior to assignment in the event of an assignment of either Party's interest.

Section 10.7 Force Majeure

A Party's performance of any obligation under this Agreement shall be excused if, and to the extent that, the Party is unable to perform because of any event of Force Majeure. In any such event, the Party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the event or cause that excused performance hereunder.

Section 10.8 Governing Law and Venue

The Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The Parties agree that the venue of any action arising from this Agreement shall be in the appropriate State court having competent jurisdiction located in the judicial district in which Operator is located.

Section 10.9 Notices

Except as provided below, all notices will be in writing and shall be deemed given when mailed by first class mail or delivered in person. Notices required to be given to Operator will be addressed to:

City Manager
City of Arlington
101 W Abram St
Arlington, Texas 76010

With a copy to:

Arturo D. Rodriguez, Jr.
Russell Rodriguez Hyde Bullock, L.L.P.
1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
Phone: (512) 930-1317
Fax: (866) 929-1641
Email: arodriguez@txlocalgovlaw.com

Notices required to be given to Municipality will be addressed to:

City Manager
City of Kennedale
405 Municipal Drive
Kennedale, Texas 76060

With a copy to:

Wayne Olson
Taylor, Olson, Adkins, Sralla, Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Phone: 817-332-2580
Email: wolson@toase.com

Notices of Emergency repairs as provided in Section 4.5(b) and responses thereto may be given via email to the following address:

arodriguez@txlocalgovlaw.com
gcampbell@cityofkennedale.com

Further, notices and communications of a routine nature (e.g. day-to-day interaction between employees of Operator and Municipality, including responses to questions) may be sent via email to the appropriate person.

Section 10.10 Severability

Should any part of this Agreement for any reason be declared invalid or void, such declaration will not affect the remaining parts of this Agreement, which will remain in full force and effect as if this Agreement had been executed with the invalid portion eliminated.

Section 10.11 Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

Section 10.12 Modification of Agreement

No change in or modification, termination or discharge of this Agreement, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the Party to be charged therewith or its duly Authorized Representative, provided, however, that any change in or modification, termination or discharge of this Agreement expressly provided for in this Agreement shall be effective as so provided.

Section 10.13 Survival

Termination or expiration of this Agreement shall not release either Party from any liabilities or obligations set forth in this Agreement which (i) the Parties have expressly agreed shall survive any such termination or expiration; or (ii) remain to be performed or by their nature would be intended to be applicable following such termination or expiration.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective as of the date first set forth above.

MUNICIPALITY:

By: _____

Title: _____

OPERATOR:

By: _____

Title: _____

Approved as to form and legal sufficiency this _____ day of _____, _____.

By: _____

**EXHIBIT A
EXAMPLES OF NON ROUTINE MAINTENANCE OR REPAIR COST ESCALATORS**

Examples of Non Routine Maintenance or Repair Cost Escalators	
1	Rental of large or specialized equipment that is not organic to the AWU equipment inventory that provides service beyond our current capabilities such as combination sewer/vacuum truck and track hoes .
2	Relocation of franchise utility infrastructure in order to facilitate a repair.
3	Bypass pumping to facilitate a sanitary sewer repair to infrastructure.
4	Discovery and relocation of services when they are incorrectly connect to the main infrastructure (tied in).
5	Contracting temporary water services in order to complete repairs on infrastructure while maintaining services to affected customers. This will happen if the outage exceeds our current temporary water capability or is of such magnitude or emergency that we have to contract out the service.
6	Concrete Repair caused by water main blowout.
7	Large diameter valve repair or replacement
8	Contractor caused damage in which the operator or municipality must apply for the subrogation
9	New gateway for AMI metering that will allow signal to reach the outer limits of the system.
10	New Services that require main line extension (extending both water and sewer)
11	Well pump maintenance and/or replacement
12	Standpipe/tower rehab or failure
13	Modifications to Municipal Infrastructure to comply with Operator standard details such as angle stop removals which may be considered unsafe devices for on-call personnel
14	Meter Change out program for meters found to be at the end of their useful life focusing on those models that are faded, stopped operating or have exceeded expected life as defined by the original equipment manufacturer .
15	Catastrophic failure of water/sewer lines.
16	Sanitary Sewer Overflow resulting in containment through sandbagging in creeks and the re-capture and return of an unauthorized discharge to the sanitary sewer system.
17	Water/Sewer Repairs near or under retaining walls, railroad tracks or under state highways.
18	Water or Sewer Line Repairs requiring pipe replacement.
19	Malfunctioning meter replacements that exceed the Municipality's annual average number of meter replacements at the inception of the agreement .
The task listed in this document represent a sample of non routine maintenance items. It is not intended to signify an exclusive list of items that may qualify as non routine maintenance.	

EXHIBIT B
DESCRIPTION OF FACILITIES

- I. Water facilities
- II. Wastewater facilities
- III. Other facilities
- IV. Within three months of the Commencement Date of this Agreement, Municipality and Operator shall conduct an inventory of all equipment owned by Municipality and used in the operation of the Facilities. Operator shall provide Municipality with fair market compensation for the purchase of usable equipment.

EXHIBIT C
MUNICIPALITY'S ENVIRONMENTAL PERMITS

NONE

EXHIBIT D
METER READING AND BILLING COST CALCULATION

Customer Service Cost to Kennedale	
	AWU
Cost to produce bill	\$ 0.49
Processing cost/account	\$ 0.07
AMI costs/account	\$ 0.20
C/S charge per account	\$ 0.38
IT charge per account	\$ 0.91
Call center charge	\$ 3.06
# of bills/month	3,000
# of calls/mo.	592
Subtotal monthly/account	\$ 2.65
Call Center charge /year (per call \$ x # of COK calls)	\$ 21,745.03
Subtotal cost/year	\$ 95,545.03
Franchise Fee	\$ 5,254.98
Account transfer cost	To be determined. Will be charged at time of transfer
Annual	\$ 100,800.00
Total monthly/account	\$ 2.80