

**Agreement for the Sale and
Delivery of Treated Water - Wholesale Customer –
City of Kennedale**

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

THIS AGREEMENT (the “Agreement”) entered into this 29th day of March, 2019 (the “Effective Date”) by and between the City of Arlington (“Arlington”), and the City of Kennedale (“Kennedale”), hereinafter collectively referred to as the (“Parties”), evidences a binding agreement between the Parties regarding the construction of a water transmission line and the purchase of treated water service. For good and valuable consideration and in consideration of the agreements contained in this Agreement, the adequacy, receipt, and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Recitals

WHEREAS, Arlington is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas, with its corporate limits and extraterritorial jurisdiction (“ETJ”) extending in portions of Ellis, Johnson, and Tarrant Counties, Texas; and

WHEREAS, Kennedale is a home rule municipal corporation operating under and governed by the laws and Constitution of the State of Texas, within Tarrant County, Texas; 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 governing body of each Party finds that this Agreement is necessary for the benefit of the public and that each Party has the legal authority to provide the governmental functions which are the subject of this Agreement; and

WHEREAS, the governing body of each Party finds that the undertaking in this Agreement is in the common interest of both Parties hereto; and

WHEREAS, the covenants and promises constitutes 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;

WHEREAS, Arlington has available a supply of Raw Water from which it can provide Treated Water, and it owns, operates, and maintains facilities for storing, treating and transmitting Treated Water; and

WHEREAS, it is deemed to be in the best interest of both Arlington and Kennedale that said Parties do enter into a mutually satisfactory agreement by means of which Kennedale may obtain Treated Water from Arlington; and

WHEREAS, Kennedale owns, operates and maintains a distribution system to furnish water service to the customers within its service area; and

WHEREAS, the Parties desire to cooperate in the construction of the Treated Water Transmission Line to be constructed within the corporate limits of Arlington to connect to the Kennedale Water System in order to provide Treated Water to Kennedale; and

NOW, THEREFORE, pursuant to and permitted by the laws of the State of Texas, for and in consideration of the covenants, conditions and undertakings hereinafter described, and subject to each and every term and condition of this Agreement, the Parties contract, covenant and agree as follows:

ARTICLE I
Findings and Purpose

- 1.1 Recitals.** The recitals hereinabove set forth are incorporated herein for all purposes and are found to be true and correct.
- 1.2 No Grant of Equity or Ownership.** Unless otherwise stated, no provision of this Agreement shall be construed to create any type of joint or equity ownership of any property or any partnership or joint venture. Unless otherwise stated, neither this Agreement, nor any acts of the Parties hereunder, nor Kennedale's payments, shall be construed as granting to or otherwise vesting in Kennedale any right, title, interest, or equity in the Arlington Raw Water System nor in the Arlington Treated Water System or any element thereof.
- 1.3 Purpose.** This Agreement provides the terms and conditions whereby Treated Water may be purchased by Kennedale from Arlington. Further, this Agreement provides for the cost of the Treated Water Transmission Line to provide Treated Water to the Kennedale Water System.

ARTICLE 2
Definitions and Interpretation

- 2.1 Definitions.** The following terms and expressions used in this Agreement shall mean:

Agreement means this "Agreement for the Sale and Delivery of Treated Water – Wholesale Customer – City of Kennedale" and any subsequent amendments agreed to in writing by the Parties.

Arlington Raw Water System means all facilities, structures, improvements, property, rights, certificates of adjudication, permits, licenses, certificates, contracts and other property of any nature whatsoever, now or hereafter owned by Arlington, in connection with the storage, diversion, transportation, and delivery of Raw Water.

Arlington Treated Water System means all facilities, structures, improvements, property, rights, permits, licenses, certificates, and other property of any nature whatsoever, now or hereafter owned by Arlington, in connection with the diversion,

storage, transportation, treatment, and delivery of Treated Water to Kennedale at the Delivery Point.

AWWA means the American Water Works Association.

Business Day means any Day other than Saturdays, Sundays and Arlington published holidays.

CCN means certificate of convenience and necessity issued by the Public Utility Commission or any predecessor or successor agency of the State of Texas.

Day means a 24-hour period from 12:00 a.m. to 11:59 p.m.

Delivery Point means the point at which Arlington agrees to deliver Treated Water under this Agreement. The location of the Delivery Point is approximately 1004 Little School Road and is shown on Exhibit A. The Parties may mutually agree upon additional delivery points.

Demand Management means water conservation or rationing measures imposed on Kennedale necessitated by Arlington or TRWD rationing the use of Water to its retail customers.

Effective Date means the date this Agreement is executed as shown on the signature page.

Emergency means a bona-fide emergency condition created by unforeseeable mechanical failure, by unprecedented high rate of Treated Water usage, such as might result from a major fire or a major water main break, or by circumstances beyond the Parties' control.

Expiration Date means the last day this Agreement is in effect pursuant to Section 8.1, absent the renewal of this Agreement.

Fiscal Year is the fiscal year of Arlington from October 1 through September 30.

GPM or gpm means gallons per minute.

Kennedale Water System means all facilities, structures, improvements, property, rights, permits, licenses, certificates, and other property of any nature whatsoever, now or hereafter owned by Kennedale, in connection with the diversion, storage, transportation, treatment, and delivery of Treated Water to customers of Kennedale.

Maximum Allowed Daily Demand means a Maximum Day Usage of 2.0 MGD unless a mutually agreed upon change is made by the Parties in writing.

Maximum Allowed Rate of Flow means the maximum allowed usage on a per minute basis which shall not exceed 1,500 gpm for this Agreement unless mutually agreed upon by the Parties in writing.

Maximum Day Usage means the measured daily maximum usage as determined through Meter readings.

Meter(s) means the metering facility or devices installed or to be installed at the Metering Point to measure the amount of Treated Water delivered to Kennedale

by Arlington as provided in this Agreement. If necessary, installation shall include a back flow device in order to prevent back flow of water into the Arlington Treated Water System.

Metering Point means the location at which the Meter(s) is installed.

MGD means million gallons per day.

Operation and Carrying Cost means the cost by Arlington to provide Treated Water to Kennedale. Such costs shall include management, maintenance, debt service, and other costs related to the provision of Treated Water to Kennedale.

Party means either Arlington or Kennedale, and “Parties” means Arlington and Kennedale, collectively.

Rate of Flow means usage on a per minute basis (i.e., gallons per minute (gpm)).

Rate Year means each twelve-month period beginning January 1 and ending December 31 of the same calendar year.

Raw Water means water that is purchased by Arlington from TRWD and is in its natural state prior to treatment.

Raw Water Charge means the charge calculated by applying the Raw Water Rate to the number of gallons of Treated Water provided to Kennedale by Arlington as measured by the Meter(s) and billed on a monthly basis.

Raw Water Rate means the raw water rate charged to Arlington for Raw Water by TRWD.

Regulatory Costs means all costs, fees, charges, tariffs, or penalties imposed by the State of Texas, the U.S. Government, any local regulatory entity, or any agency thereof.

Regulatory Requirements means all applicable requirements and provisions of federal, state, and county constitutions, laws, statutes, rules, regulations and ordinances enacted or issued from time to time, including, without limitation, all applicable sections of the Texas Water Code and the rules and regulations of the Texas Commission on Environmental Quality, Public Utility Commission, and the Texas Administrative Code, and all judicial and administrative orders, judgments, and decrees of any governmental authority having jurisdiction concerning the matters contained herein issued from time to time.

Treated Water means water treated by Arlington so that it is potable water meeting the minimum water quality requirements for human consumption as prescribed by the Texas Commission on Environmental Quality or other appropriate regulatory agency with jurisdiction.

Treated Water Transmission Line means the water transmission line that is funded by Kennedale up to the Delivery Point, and is to be installed in the general location identified and being wholly or partially constructed as shown in Exhibit A. Said line will be maintained by Kennedale, including replacement and repair costs.

Should Arlington install said line at Kennedale's expense, it shall be done at Arlington's cost.

TRWD means the Tarrant Regional Water District.

Volume Charge means the charge calculated by applying the Volume Rate to the number of gallons of Treated Water provided to Kennedale by Arlington as measured by the Meter(s) and billed on a monthly basis.

Volume Rate means the dollar amount per 1,000 gallons applied to Kennedale's metered usage of Treated Water in order to calculate the Volume Charge. The Volume Rate includes the following costs associated with providing Treated Water to Kennedale:

- i. Arlington's raw water costs from TRWD, which are captured within the Raw Water Rate;
- ii. Electrical costs;
- iii. Chemical costs;
- iv. Regulatory Costs; and
- v. Operation and Carrying Cost.

Water means Raw Water or Treated Water, or both Raw and Treated Water, as indicated by the context in which the word appears.

Water Conservation means those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, and/or increase the recycling and reuse of water.

Wholesale Customer means the class of customers, including, but not limited to Kennedale, to whom, under the terms of a specific agreement, Arlington sells and provides Treated Water for re-sale.

2.2 Interpretations. The following principles shall control the interpretation of this Agreement:

- (a) Unless otherwise stated, reference to any document, other than a license, certificate of adjudication or permit, means the document as amended or supplemented from time to time.
- (b) Reference to any party or governmental regulatory agency means that entity and its successors and assigns.
- (c) Misspelling of one or more words in this Agreement shall not void the Agreement. Such misspelled words shall be read so as to have the meaning apparently intended by the Parties.
- (d) Words of any gender used in this Agreement shall be held and construed to include any other gender.
- (e) Words in the singular number shall be held to include the plural, unless the context otherwise requires.

- (f) Articles and headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

ARTICLE 3
Water Provided Under Agreement

3.1 Treated Water.

- (a) **Delivery and Acceptance.** Subject to the successful connection of one way interconnection at delivery point(s), Arlington agrees to furnish and sell to Kennedale Treated Water delivered at the Delivery Point up to the limits, and at the times, set forth in this Agreement or such lesser amount as Arlington may be able to supply in the event of an Emergency. Kennedale agrees to accept delivery under the conditions of this Agreement and to pay for the water in accordance with the terms herein.
- (b) **Source of Supply and Capacity.** Arlington's agreement to make Treated Water available is limited to the extent that Raw Water is available and the extent to which capacity is available in the Arlington Treated Water System as determined in the sole discretion of Arlington.
- (c) **Additional Water.** To the extent Treated Water is available in amounts greater than the Maximum Allowed Daily Demand, Arlington may, at its sole discretion, provide Kennedale with additional Treated Water subject to the charges described in Article 5. Should Arlington elect to provide Kennedale with Treated Water in excess of the Maximum Allowed Daily Demand, Arlington may terminate or reduce providing Treated Water at the excess amount by providing Kennedale with twenty-four (24) hours written notice of such termination or reduction. Kennedale agrees that Arlington will never be obligated during the term of this Agreement to make Treated Water available to Kennedale in excess of the Maximum Allowed Daily Demand or the available supply as determined in Section 3.1(b). **The purchase of any additional supplies of Treated Water over the Maximum Allowed Daily Demand does not guarantee that Arlington will make Treated Water available on that basis at any time other than the timeframe Arlington elects to provide additional supplies of Treated Water to Kennedale.**
- (d) **Water Pressure.** Arlington agrees to furnish and sell to Kennedale Treated Water delivered under the operating pressure prevailing in the Arlington Treated Water System at the Delivery Point. **Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, Arlington does not represent or guarantee to Kennedale that Treated Water provided to Kennedale under this Agreement will be provided at any specific minimum pressure at the Delivery Point, and Arlington is under no obligation with respect thereto. Kennedale understands and acknowledges that maintaining a certain water pressure in Kennedale's delivery system will require the use of storage or pumps on Kennedale's system.**

(e) **Interruption of Service.** Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, Arlington shall be entitled at any and all times to install, repair, maintain, and replace such equipment or devices or to take any other action under an Emergency (including reduction or cessation of water service to Kennedale) as necessary or appropriate to allow Arlington at all times to maintain a minimum pressure as required by applicable law or regulation at all retail service locations directly served by the Arlington Treated Water System. Arlington shall use commercially reasonable efforts to work with Kennedale to install, repair, maintain, and replace such equipment and devices at a time to minimize the impact on the Kennedale Water System. Arlington may install at the Delivery and/or Metering Points appropriate devices to monitor and enforce all or any of these limitations. In the event of such service interruptions, Arlington shall make every reasonable effort to expedite the restoration of service in a timely manner.

3.2 Regulatory Requirements. Kennedale acknowledges and agrees that this Agreement defines the extent of Arlington's obligations to supply Treated Water to Kennedale and that, except as expressly provided by this Agreement, Arlington is under no obligation to provide Kennedale with a sufficient amount of Treated Water for Kennedale to meet its minimum production, storage, service pump, or pressure maintenance requirements, or any other requirements imposed on Arlington by virtue of 30 Texas Administrative Code Chapters 290 or 291, 16 Texas Administrative Code Chapter 24 or any other Regulatory Requirements.

3.3 Delivery Point. Subject to the conditions set forth herein, Arlington agrees to divert, transport, treat, and deliver Treated Water to Kennedale at the Delivery Point. The location of the Delivery Point shall be mutually agreed upon by and between Kennedale and Arlington, and the Delivery Point shall not be moved or relocated except by their mutual consent in writing.

3.4 Relocated Delivery Point. Requests for a relocated Delivery Point shall be submitted in writing by the requesting Party. If the relocated Delivery Point is mutually agreed upon, the requesting Party will be responsible for funding all costs related to constructing the improvements, including the costs for any easements and/or rights-of-way, unless the Parties agree on a division of costs based on mutual benefit. If Kennedale is the requesting Party, the following provisions shall apply:

- (1) If Arlington is to construct all necessary improvements, Kennedale shall be responsible for reimbursing Arlington, as agreed upon in writing, including the acquisition of any easements or rights-of-way. Prior to beginning construction, the Parties will enter into a written agreement for Kennedale (i) to approve the amount of anticipated construction costs and (ii) to specify the manner and timeframe for such reimbursement to Arlington and the time for construction.
- (2) If Kennedale is to construct the necessary improvements for a relocated Delivery Point, Kennedale will submit documents to acquire easements or rights-of-way and will submit plans for the construction of the

improvements to Arlington for approval prior to construction commencing. If Arlington approves the documents and plans submitted, Arlington will give Kennedale notice of said approval in writing within a commercially reasonable time. During the construction, Arlington may, but is not obligated to, inspect improvements under construction at its sole cost. Arlington may, but is not obligated to, make a final inspection and approval, at its sole cost, after construction of the improvements is completed and before the improvements are approved, by Arlington, for use.

3.5 Additional Delivery Points and Delivery Line. It is anticipated that Kennedale may request an additional delivery point(s) and/or delivery line(s). Such request(s) shall be made in writing by Kennedale and Arlington and shall provide a written response within a commercially reasonable amount of time of receipt of such request. If additional delivery point(s) and/or line(s) are mutually agreed upon, the Parties shall decide whether Arlington or Kennedale will be responsible for constructing such improvements.

- (1) If Arlington is to construct such necessary improvements, Kennedale shall be responsible for reimbursing Arlington for the entire cost of the improvements, including the acquisition of any easements or rights-of-way. Prior to beginning construction, the Parties will enter into a written agreement for Kennedale (i) to approve the amount of anticipated construction costs and (ii) to specify the manner and timeframe for such reimbursement to Arlington and the time for construction.
- (2) If Kennedale is to construct the necessary improvements for an additional Delivery Point and/or delivery line(s), Kennedale will submit documents to acquire easements and/or right-of-way and will submit plans for the construction of the improvements to Arlington for approval prior to construction commencing; provided, however, such approval shall not be unreasonably withheld or delayed. If Arlington approves the documents and plans submitted, Arlington will give Kennedale notice of said approval in writing. During the construction of such improvements, Arlington may, but is not obligated to, inspect improvements under construction at its sole cost. All costs for the construction of the improvements, including the costs for any easements and/or right-of-way, shall be borne by Kennedale. Arlington may, but is not obligated to, make a final inspection and approval, at its sole cost, after construction of the improvements are completed and before the improvements are approved, by Arlington, for use; provided, however, such approval shall not be unreasonably withheld or delayed.

3.6 Improvements to Existing Delivery Point. If Kennedale requests that improvements be made to a Delivery Point, Kennedale shall submit the request in writing to Arlington. If Arlington approves the request, the Parties will then decide whether Arlington or Kennedale will be responsible for constructing the improvements and

shall follow the procedures set forth in Section 3.4; provided, however, such approval shall not be unreasonably withheld or delayed.

- 3.7 Responsibilities for additional Water Line that Connects to the Metering Point.** Kennedale shall be responsible for the construction and associated construction costs of any additional water transmission line that connects to the Metering Point. Kennedale shall maintain ownership of said water transmission line for the term of this Agreement and shall be responsible for the maintenance and repair of said water transmission line.
- 3.8 Accessing the additional Water Line that Connects to Metering Point.** At no time during the term of this Agreement shall there be any connections to or tap into the Treated Water Transmission Line, if any, that connects to the Metering Point without the prior agreement of the Parties; provided, however, such agreement shall not be unreasonably withheld or delayed. The water measurement and flow control of any connection to said Treated Water Transmission Line will be subject to Article 4 of this Agreement. Billing for this Meter shall be as agreed upon by the Parties. Any such connection shall be metered separately as agreed upon by the Parties. All cost associated with the design, construction of the connection and meter(s) shall be borne by the requesting Party.
- 3.9 Valves at Delivery Point.** All valves releasing water from the Arlington Treated Water System to the Kennedale Water System shall be solely operated and maintained by Arlington. Kennedale shall not obstruct or block access to those valves.
- 3.10 Property of Arlington.** Any acquired easements and/or right-of-way shall name Arlington as a grantee for the portion of the easement and/or rights-of-way on Arlington's side of the Delivery Point. Upon the completion of construction and final approval by Arlington of any new, relocated or improved Delivery Point and/or Metering Point, the constructed improvements and metering device and appurtenances shall become the property of Arlington.

ARTICLE 4

Metering and Rate of Flow Control

- 4.1 Treated Water Measurement and Control.** Kennedale shall install, at its sole cost and expense, a Meter(s) and appropriate valves, back flow prevention, flow controllers, and other appropriate equipment at the Metering Point to measure and control the amount of Treated Water delivered to Kennedale under the terms of this Agreement. Said Meter shall be specified by Arlington and meet appropriate AWWA standards. Said Meter(s) shall be installed and tested prior to actual water delivery. Upon installation of the Meter(s), valves, and related equipment, said equipment shall become the sole property of Arlington to be owned, operated, and maintained by Arlington.
- 4.2 Rate-of-Flow Controllers.** The rate at which Treated Water is withdrawn by Kennedale from the Arlington System shall be regulated by rate-of-flow controllers. The rate of withdrawal will be controlled so that the maximum rate shall not exceed the Maximum Allowed Rate of Flow without a specific written request by Kennedale to Arlington. Notwithstanding anything in this Agreement to the contrary, approval

of a request to increase the rate of flow and the length of time the request will be met, will be at Arlington's sole discretion. Arlington will respond to the request within 96 hours of receiving the request. If Arlington approves the request, Arlington will make the adjustments within 48 hours of responding to the request. Rate of Flow setting shall be solely operated and maintained by Arlington. All meters and associated facilities will be designed to measure an instantaneous flow rate and totalized flow and ability to transmit to both Kennedale and Arlington SCADA.

4.3 Calibration of Meters.

- (a) **Testing.** Meters will be serviced and calibrated as necessary. Copies of the results of such calibration and all related information shall be provided to Kennedale within 30 days of such calibration. Kennedale shall have access to the Meter(s) at all reasonable times; provided, however, that any reading, calibration or adjustment to such Meter(s) shall be done by employees or agents of Arlington, or other mutually approved third party calibration agent, in the presence of representatives of Kennedale and Arlington, if so requested by Kennedale. Arlington shall provide Kennedale with 72 hours written notice prior to such reading, calibration or adjustment.
- (b) **Inaccuracy.** Upon any calibration, if it is determined that the accuracy envelope of such Meter(s) is found to be lower than ninety-five percent (95%) or higher than one hundred five percent (105%) expressed as a percentage of the full scale of the Meter(s), or Meter(s) fail to perform to AWWA water metering standards (whichever is more restrictive), then the registration of the flow as determined by such defective Meter(s) shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable; or, if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months. In the event it is determined that there are inaccuracies with any Meter, Arlington shall debit or credit Kennedale's invoice in the subsequent month, as appropriate, to reflect Kennedale's prior overpayments or underpayments. Arlington shall debit or credit Kennedale's account in an amount equal to the difference between the amount actually paid by Kennedale and the amount that should have been paid by Kennedale, as determined by the corrected registration of the flow of the inaccurate Meter during the period of inaccuracy as determined in this subsection. Payment adjustments for inaccurate flow measurements will be applied to volume charges only. The Meter(s) will be properly sealed, and the seals shall not be broken unless representatives of both Kennedale and Arlington have been notified and given a reasonable opportunity to be present.
- (c) **Meter out of Service - No Readings.** If the Meter(s) used to determine the flow of Treated Water to Kennedale is out of service or out of repair so that the amount of Treated Water metered cannot be ascertained or computed from the reading thereof, the Treated Water delivered during the period such Meter(s) is out of service or out of repair shall be estimated and agreed upon by Kennedale and Arlington upon the basis of the best data available. The basis for estimating such flow includes, but is not limited to, extrapolation of

past patterns of flow for said Meter(s) under similar conditions. In the event that Kennedale and Arlington cannot agree on the extrapolated estimate of Treated Water volume delivered before the payment due date, Kennedale will make payment to Arlington based on the same month in the previous year on or before the payment due date. After making such payment, Kennedale may request that the matter be submitted to non-binding mediation as hereinafter provided. Arlington may also request that the matter be submitted to non-binding mediation, as hereinafter provided.

4.4 Meter Reading.

- (a) Arlington will read all Meter(s) provided for herein at monthly intervals, and Kennedale and Arlington shall have free access to read these Meter(s) daily. It shall be the duty of both Kennedale and Arlington to give immediate notice, each to the other, should any Meter(s) be found to not be functioning properly, and, upon such notice, repairs to such Meter(s) shall be made promptly.
- (b) Kennedale shall have access to records on the Meter(s) readings during reasonable business hours and shall be furnished a copy of readings upon request.

4.5 Additional Testing of the Meter(s). Kennedale shall have the right to request Arlington to test any Meter(s), but no more frequently than once per month. Upon any such request, Arlington agrees to perform its testing and calibration of the Meter(s) with notice to Kennedale, and the Parties shall be entitled to jointly observe any testing, calibration, and adjustments that are made to the Meter(s), in the event such modifications shall be necessary. For such additional testing requests, Arlington shall give Kennedale notice forty-eight (48) hours in advance of the time when any such testing shall occur. Kennedale shall pay the cost of any such additional testing request for any Meter(s) if the test shows that such Meter(s) is accurate (within five percent (5%) registration), but Arlington shall pay the costs of such additional test if the results indicate that such Meter(s) is not accurate (in excess of five percent (5%) registration).

ARTICLE 5 Fees, Billing, and Payment

5.1 Charges for Water.

- (a) **Treated Water.** Kennedale will pay to Arlington the fees and charges for the Treated Water delivered by Arlington that may include Late Fees.

5.2 Water Rates.

- (a) **Initial Rates.** Upon the Effective Date, the Volume Rate shall be:

Volume Rate - \$2.32 per 1,000 gallons

The Maximum Day Demand is 2.0 MGD

The component costs of the Volume Rate on the Effective Date is:

Raw Water Costs - \$1.27 per 1,000 gallons

Electrical Costs - \$0.11 per 1,000 gallons

Chemical Costs - \$0.12 per 1,000 gallons

Regulatory Costs - \$0.00

Operation and Carrying Costs - \$0.82 per 1,000 gallons

- (b) **Subsequent Rates.** The Operation and Carrying Costs component of the Volume Rate shall increase at the same rate of the retail residential rate of Arlington. The new Volume Rate will be instituted and be effective on the first calendar day of the month following the adoption of the rate by Arlington. Raw Water Rates will be adjusted as TRWD adjusts its raw water rate charged to Arlington and shall be passed through to Kennedale as is, without further surcharge by Arlington. The additional cost of treatment of Treated Water will also be passed through in the rates upon 60 days notice of the increase. Regulatory Costs, Electrical Costs, and Chemical Costs components of the Volume Rate will be adjusted as charged to Arlington and shall be passed through to Kennedale “as is” without further surcharge by Arlington.

5.3 **Billing and Payment.**

- (a) **Volume Charge.** Each month during the term of this Agreement, Arlington shall read the Meter(s) measuring Treated Water being provided to Kennedale. The number of gallons of Treated Water measured by the Meter(s) will be multiplied by the Volume Rate to determine the Volume Charge. Arlington shall prepare and deliver to Kennedale a statement showing the Volume Charge for all Treated Water delivered to Kennedale. Payment shall be made by the 30th day after receipt of the statement. A minimum volume charge for 0.10 MGD will be charged each month if Kennedale’s reading does not meet the minimum volume requirement of 0.10 MGD.
- (b) **Late Fees.** If Kennedale is late in the payment of any charge or fee due and payable to Arlington under this Agreement, late payments shall bear per annum interest at a rate equal to the lesser of two percentage points (2%) above the Prime Interest Rate as published in the Wall Street Journal on the Day said statement becomes delinquent, or the maximum allowed by law to be charged to Kennedale. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, Kennedale shall be in default under

this Agreement, and Arlington may invoke the remedies specified herein or otherwise available by law.

- 5.4 Inspection and Audit.** Complete records and accounts required to be maintained by each Party shall be kept for a period of five (5) years. Each Party shall at all times, upon notice, have the right at reasonable times to examine and inspect said records and accounts during normal business hours. If required by any law, rule or regulation, a Party shall make said records and accounts available to federal and/or state auditors.

ARTICLE 6

Treated Water Transmission Line

- 6.1 Treated Water Transmission Line.** Kennedale shall be responsible for all costs for the construction of any transmission line or facilities needed to connect to the Delivery Point and any other cost for facilities to provide conveyance of Treated Water to Kennedale.
- 6.2 Treated Water Transmission Line Operation.** Arlington shall operate, maintain, and own any facility related to the Treated Water Transmission Line on the Arlington side of the Delivery Point, at Kennedale's expense, and Kennedale shall be responsible for all costs related to the Treated Water Transmission Line after the Delivery Point into the Kennedale Water System.
- 6.3 Future Treated Water Transmission Lines.** Cost sharing arrangements and operational responsibilities for the future treated water transmission lines or facilities shall be established through either written agreement separate from this Agreement or as an amendment to this Agreement.
- 6.4 Water Transmission Rights and Fees.**
- (a) Use of Water Facilities.** Arlington and Kennedale acknowledge that the water facilities or improvements installed by Kennedale or by developers or others may be used by Arlington to transmit water through Kennedale's territory to portions of Arlington's water system outside such area. Arlington's right to use Kennedale's water system for transmitting water shall be conditioned on such transmission not negatively affecting water service and pressures within the Kennedale service area. In addition, Arlington's right to transmit water shall not violate Kennedale's existing agreement for water service with Fort Worth by prohibiting the transmission of water in excess of that delivered to the Kennedale Water System by Arlington.
 - (b) Initial Transmission Fee.** Arlington shall pay an initial transmission fee of ten (10) cents per thousand gallons of water transmitted by Arlington through the Kennedale service area, said price to remain in effect during the initial five (5) years of this Agreement. Arlington shall remit said payments to Kennedale on or before the 15th day of each month, based upon the quantity of water measured by meters for the prior month.
 - (c) Adjustment of Fees.** Effective with the commencement of the second five (5) year period and at the commencement of each successive five (5) year period thereafter, the rate will be adjusted by a percentage equal to the net percentage

by which rates for residential customers within Kennedale service area were adjusted during the preceding five (5) year period.

- (d) **Termination of Water Transmission Rights.** Kennedale agrees that upon expiration or termination of this Agreement or the expiration or termination of any extension term hereof for any reason whatsoever, the right of Arlington to continue to transmit water through the water system located in Kennedale's service area to portions of Arlington's system located outside such area shall remain in effect, regardless of ownership of the water system or any portions thereof, subject to the provisions in this section. Notwithstanding the above, at any time after this Agreement or any extension term hereof has expired or been terminated, Kennedale may terminate Arlington's right to transmit water through Kennedale's water system upon giving ten (10) years written notice to Arlington. During such ten (10) year period, rates shall be adjusted as provided in subsection (c) above. Upon the expiration of such ten (10) year period, Arlington shall no longer be entitled to transmit water through the water system located in Kennedale's service area unless Arlington and Kennedale negotiate an extension at a mutually agreeable rate.

ARTICLE 7

Restrictions and Conditions

- 7.1 Resale of Treated Water.** Kennedale and Arlington agree that the Treated Water supplied to Kennedale by Arlington shall be used solely by Kennedale to meet the reasonable water supply needs of Kennedale's retail potable water customers to include residential, commercial and industrial (including gas well sites) located within Kennedale's city limits and any additional service area within Kennedale's CCN, as currently authorized or as may be amended in the future.
- 7.2 Amendment to Certificate of Convenience and Necessity.** Kennedale agrees that during the term of this Agreement it will not amend its Water CCN to increase its service area within the ETJ of Arlington without the prior written consent of Arlington.
- 7.3 Water Conservation and Demand Management.**
- (a) **Water Conservation.** Kennedale shall cooperate with and assist Arlington and TRWD in their efforts to promote Water Conservation. This may include the development of any conservation or rationing plans by either Arlington, TRWD, or Kennedale that may be necessary or appropriate to address operational constraints, whether or not the same are required by any state or federal regulatory agency. Additionally, upon the development and distribution of model drought contingency or water conservation plans by Arlington, Kennedale agrees to implement a drought contingency or water conservation plan that meets or exceeds the water conservation goals adopted by Arlington. Kennedale shall provide a copy of any drought contingency or water conservation plan adopted by Kennedale to Arlington within 30 days from the Effective Date.

- (b) **Demand Management.** If Arlington or TRWD shall manage Water demand through rationing the use of Water to its retail customers, Kennedale shall achieve or exceed the targeted water conservation goals mandated by Arlington. Kennedale may utilize any water conservation measure, policy, or practice in order to achieve said water conservation goals demanded by Arlington. Rationing does not relieve Kennedale from its obligation to pay the minimum monthly Volume Charge, unless such rationing extends for a continuous period exceeding 90 days. A failure to meet said water conservation measures by Kennedale shall be considered a breach of this Agreement.
- (c) **Temporary Rationing.** Where an Emergency may dictate temporary conservation or rationing requirements for either Arlington or Kennedale, either Party may implement any measures considered appropriate by it to alleviate the Emergency. If Kennedale implements measures to alleviate an Emergency, Kennedale shall notify Arlington in writing within five (5) days of implementing such measures. Action taken under this subsection does not relieve Kennedale from its obligation to pay the minimum monthly Volume Charge.

7.4 Federal and State Laws. This Agreement is subject to all applicable federal and state laws and any applicable permits, amendments, orders, or regulations of any state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, order, rule or regulation in any forum having jurisdiction. Kennedale agrees to abide by any changes in this Agreement made necessary by any new, amended, or revised state or federal regulation.

7.5 Support of Arlington on Permits and Governmental Agency Approvals. Kennedale shall use commercially reasonable efforts to support and assist Arlington in obtaining permits and approvals from governmental agencies in order to protect, repair, maintain, replace, add to, supplement and/or enlarge the Arlington Raw Water System and/or the Arlington Treated Water System. Such support and assistance shall include, but is not limited to: providing information to Arlington when requested by Arlington in order to facilitate any permit or approval; providing written and oral statements of support and assistance or testimony, information, and evidence if appropriate and if requested by Arlington in order to obtain any permit or approval; and taking all such other action as may be appropriate to support and assist Arlington in obtaining any permit or approval.

7.6 Other Contracts. It is understood by the Parties that Kennedale also purchases treated water for the Kennedale Water System from the City of Fort Worth pursuant to a separate contract (the Fort Worth Contract). Nothing in this Agreement shall be interpreted to allow or require an action to be taken that would contravene or place Kennedale in breach of the Fort Worth Contract.

ARTICLE 8
Term of Agreement and Extension

8.1 Term of Agreement. Unless terminated as provided in this Agreement, this Agreement shall commence upon the Effective Date and shall remain in effect for a term of twenty (20) years subject to renewal for two additional ten (10) year renewals as provided in Section 8.2.

8.2 Renewal of Agreement.

- (a) Kennedale shall have the option to renew this Agreement for a quantity of water and at a rate as may be mutually agreed in writing by the Parties. In the absence of renewal, and except as specifically provided to the contrary, this Agreement and the obligations of this Agreement shall end on the Expiration Date. Kennedale expressly acknowledges that it has no right or entitlement to Raw Water or Treated Water from Arlington after the expiration of this Agreement except to the extent that this Agreement is renewed as provided herein.
- (b) Kennedale is required to give notice of its intent to terminate this Agreement, at least three (3) years prior to the Expiration Date. Kennedale's failure to provide notice of intent to terminate on or before three (3) years prior to the Expiration Date of this Agreement shall constitute Kennedale's determination to renew, subject to mutually agreeable contract terms.
- (c) If this Agreement is not renewed, Kennedale shall nonetheless pay Arlington for all Volume Charges for Treated Water delivered to Kennedale after the expiration of this Agreement, along with all applicable charges, including Late Fees, at the rate for Construction Block Structure approved by Arlington.

ARTICLE 9
Termination and Default

9.1 Termination by Mutual Consent. This Agreement may be terminated at any time, in whole or in part, by the mutual written consent of Kennedale and Arlington. In the event of termination of this Agreement by such mutual consent, the Parties shall make no claim of any kind whatsoever against each other, their agents or representatives, by reason of such termination or any act incident thereto. If the Parties agree to terminate this Agreement, Kennedale shall nonetheless pay Arlington for all Volume Charges for Treated Water delivered prior to the termination of this Agreement, along with all penalties such as Late Fees under the terms of this Agreement. The provisions of this section survive termination of this Agreement.

9.2 Default. 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 to the other Party of the anticipated reasonable time to cure 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.

- (a) If Arlington terminates this Agreement, Kennedale shall nonetheless pay Arlington for all Volume Charges for Treated Water delivered prior to the termination of this Agreement, along with all applicable Late Fees under the terms of this Agreement, and shall be obligated to pay said charges during the time Kennedale is in default and during which time this Agreement is in effect. The provisions of this subsection survive termination of this Agreement.
- (b) In the event of termination of this Agreement under this Section 9.2, all rights, powers, and privileges of Kennedale hereunder shall cease and terminate.

ARTICLE 10

Force Majeure

10.1 Definition. The term *Force Majeure* as used herein shall mean a cause or causes beyond the reasonable control of the Party claiming *Force Majeure*, and shall include but not be limited to natural disasters, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States of America or the State of Texas or any civil or military authority, insurrections, riots, epidemics, lightning, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions and breakage or accidents to machinery, pipelines, or facilities; however, lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any *Force Majeure* shall be remedied with all dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party or Parties when such settlement is unfavorable in the judgment of the Party having the difficulty.

10.2 Notice; Suspension of Obligations. By reason of Force Majeure, if any Party hereto shall be rendered partially or wholly unable to carry out its obligations under this Agreement, then such Party shall give notice in writing of such Force Majeure to the other Party within a reasonable time after occurrence of the event or cause relied on, so far as it is affected by such Force Majeure. Monthly Demand Charges for services actually received from Arlington hereunder, shall be suspended during the continuance of the inability then claimed, and such Party shall endeavor to remove or overcome such inability with all commercially reasonable dispatch; and until such inability has been removed, no Party shall be deemed to be in default of this Agreement. 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.

ARTICLE 11

Ownership, Liability, Indemnification, and Insurance

- 11.1 Responsibility for Damages for Water.** Arlington shall be the owner of and responsible for the Treated Water only to the Delivery Point. After the Treated Water has passed through the Delivery Point, it becomes the property and responsibility of Kennedale. Unless otherwise provided in this Agreement, responsibility for damages arising from the improper treatment, transportation, and delivery of all Treated Water provided under this Agreement shall remain with Arlington to the Delivery Point. Upon passing through the Delivery Point, liability for all damages arising from improper transportation and delivery of the Treated Water after it leaves the Arlington system shall pass to Kennedale. Arlington's sole responsibility is to provide to Kennedale at the Delivery Point potable water meeting the minimum quality requirements for human consumption as prescribed by the Texas Commission on Environmental Quality or appropriate governing agency. The Parties are further responsible for the lines, structures and other appurtenances as shown and delineated in Exhibit "A" which is incorporated herein, for all purposes or as otherwise stated in this Agreement. The Parties will be responsible and liable for those lines, structures and appurtenances which are attributed to either Arlington or Kennedale as noted on Exhibit "A". A new Exhibit "A" will be attached to this Agreement upon the completion of construction if necessary to reflect any changes during the design and construction of the improvements.
- 11.2 Immunities under State Law.** Nothing in this Agreement shall be construed as waiving sovereign immunity or any other immunity that Arlington or Kennedale may be entitled to under state or federal law.
- 11.3 Direct or Consequential Damages.** Neither Arlington nor Kennedale shall be liable to the other for loss, either direct or consequential, arising out of damage to or destruction of the rights-of-way or the facilities thereon, when such loss is caused by an act of God, or for any damages that are covered by property insurance. All such claims for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Party or by any of their respective agents, servants, or employees.
- 11.4 Indirect or Consequential Damages.** Kennedale's or Arlington's liability, if any, to the other Party in contract or in tort under this Agreement specifically excludes any and all indirect or consequential damages that may arise from providing Water to Kennedale or that may arise from the operation, maintenance, and management of the Arlington Raw Water System and the Arlington Treated Water System.
- 11.5 Waiver of Subrogation.** It is the intention and agreement of both Parties that any insurance carriers involved shall not be entitled to subrogation under any circumstances against any Party to this Agreement. Neither Party shall have any interest or claim in the other's insurance policy or policies, or in the proceeds thereof, unless specifically covered therein.

**ARTICLE 12
Dispute Resolution**

- 12.1 Non-binding mediation.** 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.

**ARTICLE 13
Notice**

- 13.1 Manner of Giving Notice.** Unless otherwise provided in this Agreement, any notice, communication, request, reply, advice, approval or consent herein provided or permitted to be given, made, or accepted by either Party to the other, must be in writing and may be given or be served by depositing the same in the United States Mail postpaid and registered or certified and addressed to the Party to be notified with return receipt requested, or by delivering the same to the Mayor or City Manager, addressed to the Party to be notified. Any such matter deposited in the mail in the manner hereinabove described shall become exclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the earlier of actual receipt of notice or the expiration of four (4) days after it is so deposited. Any such notice given in any other manner shall be effective only if and when received by the Party to be notified.

- 13.2 Notice to Arlington.**

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

- 13.3 Notice to Kennedale.**

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

- 13.4** The Parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by written notice to the other Party.

- 13.5** Notices and communications of a routine nature (e.g. day-to-day interaction between employees of Arlington and Kennedale, including responses to questions) may be sent via email to the appropriate person.

ARTICLE 14
Miscellaneous Provisions

- 14.1 Governing Law.** This Agreement shall be governed by the applicable law of the State of Texas and due performance by each Party or any action arising under this Agreement shall lie in Tarrant County, Texas. Jurisdiction and venue shall be in Tarrant County, Texas, and each of the Parties submits to personal jurisdiction in the state district courts in such county.
- 14.2 No Waiver.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to any of the Parties nor to create any legal rights or claim on behalf of any third party. No Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas or the United States.
- 14.3 Entire Agreement.** This Agreement and any Exhibits hereto embody the entire agreement and understanding of the Parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the Party against whom enforcement of any amendment, waiver or consent is sought. This Agreement may not be amended or modified except in writing executed by all Parties and authorized by their respective governing bodies.
- 14.4 Partial Invalidity.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the remaining provisions will be unaffected. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the Parties shall, upon the request of a Party, promptly renegotiate in good faith a new provision to eliminate the invalidity and to restore this Agreement, as nearly as possible, to its original intent and effect.
- 14.5 Duty to Review and Revise.** The Parties will review and revise this Agreement to ensure compliance with federal and state laws and rules and regulations as necessary.
- 14.6 Survival.** Any provision that by its terms survives the termination of this Agreement shall bind the Parties' legal representatives, heirs, and assigns as set forth herein.
- 14.7 Assignment.** This Agreement shall not be assignable by either Party without the prior written consent of the other Party nor in contravention of any other provisions contained herein.
- 14.8 Benefits.** This Agreement shall bind and the benefits thereof shall inure to the respective Parties hereto, their heirs, legal representative, executors, administrators, successors, and assigns. This Agreement shall not be construed as creating any rights in any third party or any duty to any third party.
- 14.9 Multiple Copies.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

14.10 Deadlines. To the extent that the date for any payment or notice due hereunder by either Party shall fall on a day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.

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

City of Arlington

By: _____

ATTEST:

APPROVED AS TO FORM:
City Attorney

By: _____
Mary W. Supino, City Secretary

By: _____

City of Kennedale

By: _____
George Campbell, City Manager

ATTEST:

By: _____
Leslie Galloway, City Secretary