

KENNEDALE CITY COUNCIL AGENDA
SPECIAL MEETING | October 19, 2017
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE
SPECIAL SESSION – 5:30 PM | WORK SESSION – 6:00 PM

I. CALL TO ORDER

NOTE: Pursuant to §551.071, Texas Government Code, City Council reserves the right to adjourn into Executive Session at any time during the Work Session or the Regular Session to discuss posted Executive Session items or to seek legal advice from the City Attorney on any item posted on the agenda.

II. REGULAR SESSION

III. ROLL CALL

IV. REQUIRED APPROVAL ITEMS (CONSENT)

All matters listed under Required Approval Items (Consent) have been previously discussed, require little or no deliberation, or are considered to be routine by the City Council. If discussion is desired, an item can be removed from the Consent Agenda and considered separately.

A. Consider authorizing the City Manager to enter into an Agreement for Wastewater Service Between the City of Fort Worth, Texas, and the City of Kennedale, Texas **(Postponed on August 21 and September 18, 2017)**

B. Consider approval of an amendment to the 2017 Interlocal Agreement for Rabies Control with the City of Fort Worth, extending the contract through FY2018, and authorizing the City Manager to sign the amendment

V. EXECUTIVE SESSION

The City Council may meet in closed session at any time during the Work Session or the Regular Session, pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda and legal issues regarding the Open Meetings Act.

The City Council may meet in closed session pursuant to the Texas Government Code for the following matters:

A. Pursuant to Section 501.071: Consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda and legal issues regarding the Open Meetings Act.

B. Pursuant to Section 501.072: To deliberate the purchase, exchange, lease, or value of real property, including Building 1 of Kennedale TownCenter, located at 201 W. Kennedale Parkway.

VI. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

VII. WORK SESSION

Council may convene into the conference (jury) room.

A. At this time, City Council will begin interviewing advisory board applicants.

VIII. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Kennedale will provide for reasonable accommodations for persons attending City Council meetings. This building is wheelchair accessible, and parking spaces for disabled citizens are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meetings. Please contact the City Secretary at 817.985.2104 or (TDD) 1.800.735.2989

CERTIFICATION

I certify that a copy of the October 19, 2017, agenda was posted on the City Hall bulletin board next to the main entrance of the City Hall building, 405 Municipal Drive, of the City of Kennedale, Texas, in a place convenient and readily accessible to the general public at all times and said agenda was posted at least 72 hours preceding the schedule time of said meeting, in accordance with Chapter 551 of the Texas Government Code.

A handwritten signature in cursive script, reading "Leslie Galloway", written in black ink.

Leslie Galloway, City Secretary

Staff Report to the Honorable Mayor and City Council

Date: October 19, 2017

Agenda Item No: REQUIRED APPROVAL ITEMS (CONSENT) - A.

I. Subject:

Consider authorizing the City Manager to enter into an Agreement for Wastewater Service Between the City of Fort Worth, Texas, and the City of Kennedale, Texas (**Postponed on August 21 and September 18, 2017**)

II. Originated by:

Larry Ledbetter, Director of Public Works

III. Summary:

The City of Kennedale's current wastewater contract with the City of Fort Worth expires at the end of September 2017. The City of Fort Worth wishes to continue providing wastewater services and has provided a new contract for consideration. The new contract would be effective October 1, 2017, and expire September 30, 2037.

The contract with Fort Worth provides wastewater service for the area West of Village Creek (in the Oakcrest Addition) and also includes businesses including QT, Popeye's, McDonald's, and Fort Worth Tower (FWT). This area produces approximately 5% of Kennedale's total wastewater flow, with the remaining 95% contracted through the City of Arlington.

Staff recommends authorizing the City Manager to enter into a contract Agreement for Wastewater Service between the City of Fort Worth, Texas and the City of Kennedale, Texas.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	CurrentConsideration_FW Wastewater Contract 2017	CurrentConsideration_FW Wastewater Contract 2017.pdf
2.	Historical_FW Wastewater Contract_1994	Historical_FW Wastewater Contract_1994.pdf

AGREEMENT FOR WASTEWATER SERVICE BETWEEN
THE CITY OF FORT WORTH, TEXAS, AND
CITY OF KENNEDALE, TEXAS

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AGREEMENT FOR WASTEWATER SERVICE BETWEEN
THE CITY OF FORT WORTH, TEXAS, AND
CITY OF KENNEDALE, TEXAS

STATE OF TEXAS §
COUNTY OF TARRANT §

This Contract and Agreement ("Agreement") is made and entered into this ___ day of _____, 20__, by and between the City of Fort Worth, a municipal corporation located in Tarrant County, Texas, acting by and through Jesus J. Chapa, its duly authorized Assistant City Manager, hereinafter called "Fort Worth," and the City of Kennedale, located in Tarrant County, Texas, acting by and through Brian Johnson, its duly authorized Mayor, hereinafter called "Customer," and hereinafter collectively referred to as the "Parties".

R E C I T A L S

- A. WHEREAS the public health, welfare and safety of the residents of Fort Worth and Customer require the development of adequate systems of sewage collection and disposal, the elimination of water pollution and the preservation of the water resources of the area; and
- B. WHEREAS Fort Worth and Customer are required to comply with standards and treatment methods for wastewater as set forth in federal, state and local laws and regulations and permits; and
- C. WHEREAS Fort Worth and Customer have an interest in maintaining and restoring the chemical, physical and biological integrity of waters and water resources and preventing pollution in said waters and water resources, and planning the use, development, restoration, preservation and enhancement of said waters and water resources; and;
- D. WHEREAS, Fort Worth and Customer have previously entered into a contract, being known as Fort Worth City Secretary Contract No. 20141, dated February 8, 1994 together with any and all amendments thereto dated March 25, 1997 and May 6, 2008, said contract[s] and amendments, if any, providing for wholesale wastewater services; and;
- E. WHEREAS, Customer desires to continue to contract for wholesale wastewater service and Fort Worth desires to continue to provide wholesale wastewater service under contract to Customer; and
- F. WHEREAS, Chapter 552 of the Texas Local Government Code and Chapter 791 of the Texas Government Code, authorize Fort Worth and Customer to enter into this Agreement;

NOW, THEREFORE, KNOW ALL BY THESE PRESENTS that for and in consideration of the mutual covenants, promises and agreements contained herein, Fort Worth and Customer do hereby covenant and agree as follows:

ARTICLE 1. Definitions

The following definitions apply throughout this Agreement:

- 1.1 Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA"), as amended (33 U.S.C. 1251, et seq.).
- 1.2 Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter specified by procedure in Method 5210B in the Standard Methods for the Examination of Water and Wastewater, and results expressed in terms of weight and concentration (milligrams per liter (mg/L))
- 1.3 Calibration. Verification of primary measuring device and secondary instrumentation accuracy utilizing standard primary device procedures and calibration signals and/or a separate flow measurement instrument.
- 1.4 Capital Improvements. Any of the following facilities which provide utility services and that have a life expectancy of three (3) or more years, whether such capital improvements are located within the extraterritorial jurisdiction or corporate limits of Fort Worth or Customer: wastewater treatment facilities, metering and sampling facilities, control systems and appurtenances, storage or retention facilities, and all major collectors and interceptors that are eighteen inches (18") and greater in diameter and lift stations, if any, associated therewith.
- 1.5 Chapter 395. Chapter 395 of the Texas Local Government Code, as it may be amended or re-codified from time to time.
- 1.6 Customer Connection. See Point of Entry.
- 1.7 Customer System. The facilities of Customer used for pretreatment, collection and transportation of wastewater to the Point of Entry.
- 1.8 Customer's Service Area (or "Service Area"). Unless otherwise shown on **Exhibit A**, the Customer's Service Area is the area within the Customer's city limits (its corporate boundaries), and does not include the Customer's extra-territorial jurisdiction.
- 1.9 Delivery Facilities. All facilities used for the transmission of wastewater to the Fort Worth System that are on the Customer's side of the Point of Entry and directly connected to the Fort Worth System, including all upstream pipelines of the same or larger diameter.
- 1.10 Director. The Director of the Fort Worth Water Department or his designee.
- 1.11 Domestic Accounts. Single-family and residential duplex dwellings served by one meter. This definition is used only in the context of determining billing Per Connection.
- 1.12 Facility Expansion. The expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or an expansion of an existing facility to better serve existing development.

1.13 Fiscal Year. The fiscal year of Fort Worth, which is from October 1st through September 30th.

1.14 Fort Worth System. Fort Worth's wastewater system, including all facilities for wastewater collection, storage and retention, treatment, treated wastewater disposal, sludge handling and disposal, and producing finished wastewater for beneficial reuse. As used in this Agreement, the term "Fort Worth System" does not include any beneficial reuse pipelines and its related distribution facilities.

1.15 Impact Fee. A capital contribution funding or recouping the cost of Capital Improvements necessitated by and attributable to new development or new connections to the Fort Worth System, subject to and as provided in **Article 22** of this Agreement.

1.16 Industrial User. A person (as defined in the Act) that introduces pollutants into the Fort Worth System from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.

1.17 Industrial Wastes. Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade or business.

1.18 Infiltration. Water that has migrated from the ground into the wastewater system.

1.19 Inflow. Water other than wastewater that enters a sewerage system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, Infiltration water.

1.20 Liquid Waste. The water-borne solids, liquids, and gaseous substances derived from certain sources including, but not limited to, grease trap, septic tank, chemical toilet waste and sand trap waste.

1.21 Metering and sampling facility. The meter, meter vault, and all metering and telemetry equipment required to measure and/or sample Customer wastewater flows that enter the Fort Worth System.

1.22 Non-Domestic Accounts. Commercial, industrial, multi-family or other accounts that are not considered Domestic Accounts. This definition is used only in the context of determining billing Per Connection.

1.23 Unmetered Area(s). Areas within the Customer's corporate or certificated boundaries that generate wastewater that do not drain into a part of the Customer System for which wastewater flow is measured by an approved metering and sampling facility.

1.24 Parties. Fort Worth and the Customer, or each individually.

1.25 Per Connection. Billing or charging "Per Connection" means charging for Unmetered Area connections as provided in § 6.3.

1.26 PILOT. Payment in Lieu of Taxes, as described in **Exhibit C**.

1.27 Point of Entry. The Point of Entry (or "Customer's Connection") is the upstream entry point to each metering and sampling facility from which the Customer's wastewater flows into the Fort Worth System, as shown on **Exhibit A** and described in § 2.3.

1.28 POTW. Publicly owned treatment works.

1.29 Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a Publicly Owned Treatment Works. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes by other means, except as prohibited by 40 CFR Section 403.6(d).

1.30 Pretreatment Requirements. Pollutant concentration discharge limitation and reporting requirements stipulated in Fort Worth City Code Article VI: Industrial Wastewater, and any amendments thereto, and the Customer's Code, as hereinafter amended, and Federal Pretreatment Standards promulgated by the U.S. Environmental Protection Agency.

1.31 Sanitary Sewer Evaluation Survey. A Sanitary Sewer Evaluation Survey or "SSES" is a survey as described in § 4.4

1.32 Significant Industrial User or "SIU".

- (a) All Industrial Users subject to Categorical Pretreatment Standards under 40 CFR § 403.6 and 40 CFR Chapter I, Subchapter N, as amended from time to time;
- (b) Any other Industrial User that discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blow-down wastewater); contributes a process wastestream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Director on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR § 403.8(f)(6)); or
- (c) Any other person or entity that falls within the definition of Significant Industrial User in the Fort Worth City Code, as it may be amended from time to time.

1.33 Standard Methods. Those testing or analysis procedures as prescribed in the then current edition of "Standard Methods for Examination of Water and Wastewater," published by the American Public Health Association and/or the U.S. Environmental Protection Agency Manual of Methodologies for the Examination of Water and Wastewaters, or as will otherwise comply with procedures specified in state and federal discharge permits held by Fort Worth.

1.34 Street Rental. The Street Rental charged to the wholesale customers of the Fort Worth System is intended to be compensation for use of public rights-of-way. The Street Rental is established at five percent (5%) of the revenue requirements, excluding Payment in Lieu of Taxes (PILOT). The Street Rental cannot be decreased without the consent of Fort Worth in its sole discretion and, in the event of an increase, can only be increased in one percent (1%) increments once every five (5) years starting on the anniversary date of this Agreement, and shall never exceed the rate being collected from the natural gas franchised utility serving the City of Fort Worth or the rate collected from the retail wastewater customers of Fort Worth, whichever is less.

1.35 System Cost. System Cost, as provided in § 7.1.2.

1.36 TCEQ. The Texas Commission on Environmental Quality or its successor agency.

1.37 Total Suspended Solids (TSS). Solids, measured in mg/L, that either float on the surface of, or are in suspension in, water, wastewater or other liquids, and which are largely removable by a laboratory filtration device. Also referred to as Total Non-Filterable Residue.

1.38 TRA Contract. Fort Worth City Secretary Contract No. 16054 "Trinity River Authority of Texas – Denton Creek Regional Wastewater Treatment System Contract," and Fort Worth City Secretary Contract No. 8632 between the Trinity River Authority of Texas and the City of Fort Worth entered into as of the 20th day of February, 1976, and any amendments to those agreements.

1.39 Wastewater. All liquid or water-carried waste products from whatever source derived, together with such Inflow and Infiltration as may be present, whether treated or untreated, which is discharged into or permitted to enter into the Fort Worth System. The words "wastewater" and "sewage" are interchangeable.

1.40 Wastewater Permits. The TCEQ Texas Pollutant Discharge Elimination System permit issued to Fort Worth for the Village Creek Water Reclamation Facility, as it may be renewed or amended from time to time or any another POTW, wastewater treatment plant or water reclamation facility that is owned or operated (directly or through contract) by Fort Worth.

1.41 Wastewater Strength. The concentrations of BOD and TSS and, where relevant or applicable under TCEQ or EPA regulations, concentrations of other wastewater pollutants or contaminants.

ARTICLE 2. Customer Connection to the Fort Worth System

2.1 Consent to Connect. All subject to the Customer's compliance with the terms and conditions of this Agreement, Fort Worth agrees that the Customer may connect its System to the Fort Worth System at the agreed Point(s) of Entry and that Fort Worth will accept for collection, transportation, treatment and disposal the wastewater that the Customer delivers to the Fort Worth System through the agreed Point(s) of Entry.

2.2 Delivery and Payment. Customer agrees to deliver wastewater into the Fort Worth System and to pay for Fort Worth's wastewater services all in accordance with the terms and conditions of this Agreement.

2.3 Connection Points. Customer shall connect its System to the Fort Worth System only at the Point(s) of Entry designated on Exhibit "A" and at such additional points of entry as may later be mutually agreed upon in writing signed by both Parties. Where no metering facility is used (Unmetered Area connections), the Point of Entry is where the Customer's System connects to the Fort Worth System, unless otherwise mutually agreed upon in writing.

2.4 Customer Delivery Facilities. Unless otherwise agreed by the Parties in writing, Customer is responsible for the design, contracting, construction and financing of its Delivery Facilities and the acquisition of any necessary rights-of-way and easements for, to and from such facilities. All designs, materials and specifications shall conform to or be at least as stringent as Fort Worth's requirements for such facilities. The Customer shall submit to the Director for written approval all plans and specifications for any Delivery Facilities. Such approval shall not be unreasonably withheld; however, no construction of such Delivery Facilities will begin until such approval has been given. Upon completion, Customer shall provide record drawings in a format reasonably acceptable to Fort Worth. Customer agrees that Fort Worth has the right to make periodic inspections during construction of the Delivery Facilities. Final completion and connection of such Delivery Facilities to the Point of Entry is subject to the continuing inspection and written approval of the Director.

2.5 Wastewater from Adjacent Areas. At the request of the Director, Customer agrees to allow wastewater from areas and premises adjacent to the Customer's boundaries and within the boundaries of Fort Worth's or another Fort Worth wholesale customer's service area, to flow through Customer's System, subject to the Texas Water Code and TCEQ regulations regarding service areas. The metered quantity of wastewater from this area transported into the Fort Worth System each month shall be measured Per Connection or, at the option of Customer or Fort Worth, and where the wastewater flows are of sufficient volume that metering is practicable, metering and sampling facilities may be installed at the expense of Fort Worth to meter and sample all wastewater from this adjacent area. The quantity of wastewater from this adjacent area shall be deducted from the quantity of the Customer's wastewater passing through the Customer's connection to the Fort Worth System before volume charges for wastewater service to Customer are computed and, if the meter serving those customers has been equipped to measure it, the Customer's billing shall also be adjusted for differences in the Wastewater Strength of the adjacent area. When additional pipeline capacity is required to transport the flows, Customer agrees that it shall be responsible for its proportional cost of the additional capacity needed to serve Customer's current or projected future flows as agreed upon by the Customer and Fort Worth. The cost of additional infrastructure shall be borne by the Customer and Fort Worth, in proportion to the projected flow volumes of each. Customer shall not be responsible for the cost of additional capacity needed solely to serve adjacent areas not under Customer's jurisdiction.

ARTICLE 3. Operation and Maintenance

3.1 Customer System. Customer agrees to maintain its System in good condition and to make repairs in a timely manner. Fort Worth shall not have any responsibility or liability now or ever for the operation or maintenance of the Customer System, except as the Parties may otherwise agree in writing.

3.2 Fort Worth System. Fort Worth agrees to maintain its System in good condition and to make repairs in a timely manner. Customer shall not have any responsibility or liability now or ever for the operation or maintenance of the Fort Worth System, except as otherwise provided in this Agreement.

3.3 Metering and Sampling Facilities. After transfer to Fort Worth as provided in **Article 4**, Fort Worth shall become solely responsible for the operation and maintenance of metering and sampling facilities connected to its System.

ARTICLE 4. Metering and Sampling Facilities and System Infrastructure Improvements

4.1 Customer Connections and Metering and Sampling Facilities. Either Customer or Fort Worth, with written consent of the Director and execution of the necessary agreements, may construct the Customer Connection, Metering and Sampling Facilities.

4.1.1 Cost of Customer Connection. Customer shall pay the cost of each new, enlarged or additional Customer connection to the Fort Worth System and related metering and sampling facilities, including new or modified wholesale meters as necessary to accommodate increased Customer flows. Such Customer costs include costs of: design, engineering; site acquisition and preparation; construction and inspection; the facility equipment, the final connection, and all necessary easements and rights-of-way, including those for access to the meter site.

4.1.2 Facilities Transfer to Fort Worth. Customer shall transfer (or arrange for transfer) to Fort Worth all metering and sampling facilities connecting the Customer's System to the Fort Worth System, together with the sole authority to operate and maintain the facilities. All transfers shall be within 60 days of the Effective Date or the completion of the facilities, whichever is later, and shall be accomplished with documents in a form satisfactory to Fort Worth. Thereafter, Fort Worth shall be solely responsible for the operation, and maintenance of the metering and sampling facilities, and such costs shall be a System Cost.

4.1.3 Site Transfer to Fort Worth. Unless otherwise prohibited by law or contract, Customer shall transfer to Fort Worth all of Customer's fee simple or other property rights in the land that is the site for the metering and sampling facilities. To the extent that the property is larger than necessary, or Customer needs to retain a portion of the property for other purposes, Fort Worth or Customer may choose to exclude that portion of the property that is not reasonably necessary for the operation, maintenance, sampling and testing, repair or replacement of the facilities. All transfers shall be within 60 days of the Effective Date or the

completion of the facilities, whichever is later, and shall be accomplished with documents in a form satisfactory to Fort Worth.

- 4.1.4 Access. Customer will secure and transfer to Fort Worth continuous rights of access, ingress and egress to the Customer metering and sampling facilities and, subject to any necessary consents, transfer or assign to Fort Worth any permits, access agreements, licenses, easements or rights-of-way that Fort Worth agrees are needed for the continuous operation and maintenance of, and access to, all metering and sampling facilities for as long as this Agreement is in effect.
- 4.1.5 Credit for Transfers. The Customer's transfers to Fort Worth under §§ 4.1.2 - 4.1.4 above shall be treated as a Customer contribution for rate purposes, but the transfers shall not be any indicia of equity ownership in the metering and sampling facilities or in the Fort Worth System.
- 4.1.6 Fort Worth Optional Construction. As determined by the Director for the efficient operation of the Fort Worth System or service to its customers, and unless otherwise agreed in writing by both Parties, Fort Worth shall have the option, but not the obligation, to design and construct, to acquire site property, and to obtain necessary permits, ingress, egress and access agreements, licenses, easements or rights-of-way for:
- (a) Additional Customer metering and sampling facilities not in existence on the Effective Date (for example, for Unmetered Areas), including any modifications to the Customer's Delivery Facilities necessary to accommodate a complete initial installation satisfactory to Fort Worth; and
 - (b) Improvement, expansion, upgrading or replacement of existing or future Customer metering and sampling facilities.

Customer has the right to review Fort Worth's proposed construction, expansion, and replacement plans for such construction before it begins. All costs of such optional construction undertaken by Fort Worth shall be a System Cost.

- 4.1.7 Operation and Maintenance Expenses. Expenses incurred by Fort Worth for the operation and maintenance of Customer metering and sampling facilities shall be System Costs and shall include the following:
- (a) Electricity at the facility;
 - (b) Initial telemetry connection to the facility and the control center, and any routine periodic charges for telephone, data or other communication services;
 - (c) Meter calibration;

- (d) Parts, materials and supplies for calibration, repair and maintenance of the facilities;
- (e) Labor cost plus fringe benefits and indirect costs for calibration, repair and maintenance of the facilities; and
- (f) Maintenance of ingress, egress and meter facility site.

4.2 Capacity Improvements Customer and Fort Worth agree to cooperate in determining the need for additional downstream Capital Improvements, and related construction schedules and cost-participation and will seek to manage downstream flows and/or peak flows consistent with Fort Worth's and the Customer's master planning or capital improvement planning. Customer agrees to notify Fort Worth before it begins constructing significant expansions or additions to its System.

4.3 Cost of New, Enlarged or Additional Connections. Except for the System Cost authorized in § 4.1.6 above, Customer shall pay the cost of each new, enlarged or additional Customer connection to the Fort Worth System, including the cost of the Delivery Facilities, the Metering and Sampling Facilities, and the Customer's proportionate share of any improvements required for that connection or related service to be provided after the Point of Entry. The Customer's cost shall be calculated in the same manner as the "developer's cost" for special facilities, including pipelines, under Fort Worth's then-existing Water and Wastewater Installation Policy, as determined by the Director. Customer will pay that amount to Fort Worth before making the new, enlarged or additional connection to the Fort Worth System, and the amount shall not be a System Cost.

4.4 Peak Flow and Remediation. In any 12-month period, if the volume of the Customer's wholesale wastewater flow into the Fort Worth System for any one day exceeds 4 times the average of the Customer's actual daily flow, averaged over the prior 3 fiscal years, then a Sanitary Sewer Evaluation Survey (SSES) is required in response to the exceedance, as follows.

- 4.4.1 Within a reasonable time after such an exceedance, Fort Worth will send a Notice to Customer stating the specific date(s) and volumes of the flows that resulted in the exceedance, and describing the schedule and procedures for submitting the results and implementing the required SSES.
- 4.4.2 The SSES is a survey of the affected portion of the Customer System sufficient to identify the cause or source of the wastewater flows that have resulted in the exceedance. The SSES may include activities such as additional flow measurements, smoke tests or inspections and the final report shall list specific remedial actions. The costs of the SSES and performance of the remedial actions recommended in the SSES must be borne by Customer, to the extent necessary to eliminate or accommodate the Customer's increased flows.
- 4.4.3 If Customer fails to perform the SSES and pay the costs of the remedial action as required by this § 4.4 and the exceedance is repeated then, in addition to any remedies available under **Article 21**, Fort Worth has the right to recover from the Customer all of Fort Worth's incremental costs of handling the increased flows,

such as infrastructure improvements and any regulatory agency fines that may be levied, or corrective action required by TCEQ, as a result of the Customer's repeated exceedance(s). Fort Worth shall provide documentation that the Customer's exceedances resulted in such incremental costs and any costs recovered from Customer shall not also be included as a System Costs.

- 4.4.4 The Director may waive the requirement for the Customer to perform the SSES or to implement recommended remedial action if, in his sole opinion, the SSES or the recommended remediation is not necessary to protect the interests of Fort Worth.

4.5 Construction Standards. Any design, construction, installation or replacement of wholesale meters, sampling facilities, Delivery Facilities, or other Capital Improvements for providing service under this Agreement shall comply with 30 Texas Administrative Code Ch. 217 and Fort Worth's standards and specifications, as they are in effect at the time of the construction. After initial construction, the "time of the construction" is the date of any subsequent upgrade or replacement.

4.6 Transfer to Customer upon Termination. Upon expiration or termination of this Agreement under its terms by either Party, Fort Worth shall transfer back to Customer any metering and sampling facilities, rights of access, ingress and egress, and any permits, access agreements, licenses or easements and rights-of-way that Customer previously conveyed, transferred or assigned to Fort Worth under the terms of this **Article 4**.

ARTICLE 5. Rights-of-Way

5.1 Rights-of-Way Granted by Customer. Customer shall grant, without charge to Fort Worth, such easements and rights-of-way along public highways or other property owned by Customer, as requested by Fort Worth, in order to construct and maintain wastewater mains or facilities within the Customer's Service Area to provide wastewater service to Customer and to other areas. If two or more locations are mutually acceptable to Fort Worth and Customer, then Customer may select the final location from among them. Upon notice from Customer and at Fort Worth's expense, Fort Worth will move its wastewater lines or other facilities located in such street rights-of-way or on other property owned by Customer when reasonably necessary to the performance of essential governmental duties by Customer. Fort Worth's relocation costs under this § 5.1 shall be a System Cost to the extent that the lines are related to service to Fort Worth's wholesale wastewater customers.

5.2 Rights-of-Way Granted by Fort Worth. Fort Worth shall grant, without charge to Customer, such easements and rights-of-way along public highways or other property owned by Fort Worth, as requested by Customer, in order to construct and maintain wastewater mains or facilities within Fort Worth to provide wastewater service to Customer under this Agreement. If two or more locations are mutually acceptable to Fort Worth and Customer, then Fort Worth may select the final location from among them. Upon notice from Fort Worth and at the Customer's expense, Customer will move such wastewater mains or facilities when located in such street rights-of-way or other property owned by Fort Worth when reasonably necessary to performance of essential governmental duties by Fort Worth.

5.3 Construction Standards. All work done by or on behalf of Fort Worth under this paragraph will be performed in accordance with specifications equal to those applying to work of a similar nature performed within Fort Worth, and the applicable Party will use its best efforts to restore the others' property to as near original condition as feasible unless otherwise mutually agreed in writing.

5.4 Conflicts. Fort Worth and Customer agree to coordinate the location of the mains and/or facilities in the other's easements and rights-of-way in order to prevent further conflicts insofar as is reasonably practicable.

ARTICLE 6. Metering and Sampling

6.1 Meter Reading. Fort Worth will read all Customer Point of Entry meters at monthly intervals, and the Parties shall have free access to read these respective meters daily, if either Party so desires. Each Party has the duty to give immediate notice to the other of any meter that it finds is not functioning properly, and Fort Worth shall promptly investigate and make any necessary repairs.

6.2 Flows to be Metered. All flow discharged into the Fort Worth System by Customer shall be metered, unless specifically agreed otherwise by both Parties in writing. Fort Worth agrees to allow those Customers served on a per connection basis, with prior approval from Fort Worth to remain on per connection until conditions allow for the flow to be metered.

6.3 Unmetered Areas. If, in the judgment of the Director, the sewage generated within one or more areas of the Customer cannot be accurately measured by an approved type of metering station, then the charge for sanitary sewer service within that drainage area will be calculated Per Connection as follows: For monthly billing purposes, the total gallons of sewage for the Unmetered Areas will be calculated as the sum of: (i) the total gallons of metered water of all Non-Domestic Accounts within the area plus (ii) the number of Domestic Accounts within the area times 10,500 gallons. The Parties agree that the 10,500 gallons for Domestic Accounts already accounts for Inflow and Infiltration, and therefore needs no further adjustment for it. The total volume so derived each month will be used as the basis for calculating the total wastewater charges due each month for that Unmetered Area and such charges will be added to any other charges for metered connections. For all such Unmetered Areas, Customer will be responsible for providing data each month on the number of Domestic Accounts and the metered water volume of all Non-Domestic Accounts. This data will be provided by Customer to Fort Worth no later than the 5th of each calendar month.

6.4 Calibration. Fort Worth shall calibrate and routinely service the meters no less than once during each six (6) month period. Copies of the results of such calibration and all related information shall be provided to Customer. Fort Worth shall notify the Customer at least seventy-two (72) hours in advance of the date and time for any calibration and Customer may observe, if so desired.

6.5 Customer Access. Customer shall have access to the metering and sampling facilities at all reasonable times; provided, however that any reading, calibration or adjustment to such

metering equipment shall be done only by employees or agents of Fort Worth, or other mutually approved third party calibration agent in the presence of representatives of Customer and Fort Worth, if so requested by Customer. Notice of any proposed third-party calibration shall be provided to all Parties at least seventy-two (72) hours in advance.

6.6 Records. All readings of meters will be entered into the records maintained by Fort Worth. Customer shall have access to such records during reasonable business hours and shall be furnished with monthly totalizer readings for each Customer Point of Entry metering and sampling facility.

6.7 Accuracy and Corrections. Upon any calibration, if it is determined that the accuracy envelope of such meter 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, the registration of the flow as determined by such defective meter 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

6.8 Meter Out of Service. If any meter used to determine volume from Customer is out of service or out of repair so that the amount of wastewater metered cannot be ascertained or computed from the reading thereof, the wastewater delivered through the period such meter is out of service or out of repair shall be estimated and agreed upon by the Parties on 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 metering station under similar conditions. If Parties cannot reach agreement on the extrapolated estimate of wastewater volume delivered, then agreement on the flow volume will be determined by § 24.4 dispute resolution.

6.9 Wastewater Strength Sampling. Fort Worth shall periodically sample and test the wastewater at the metering and sampling facilities or other agreed upon sampling points for the purposes of billing for the Wastewater Strength. Unless otherwise agreed in writing, sampling and testing of wastewater shall occur three times per year. To determine the Wastewater Strength, Fort Worth shall collect twenty-four (24) hour flow-weighted composite samples for a period of not less than five (5) consecutive twenty-four (24) hour periods. Fort Worth will provide Customer with a minimum of seven (7) day advance notice of intent to sample, or such notice as is sufficient to allow Customer to arrange the services of a qualified laboratory. If, at the request of Customer or at the request of the Director, more extensive sampling and testing is desired, it shall be paid for by the Party making the request and shall be done in compliance with this **Article 6**. If Customer requests such additional sampling and testing, then Fort Worth shall invoice Customer and payment shall be made within ten (10) days after receipt of invoice. The notice required in this section shall include the planned dates, times, and location(s) of sampling. Fort Worth shall analyze the samples collected in accordance with standard methods. Customer may be present during the initial setup of sampling equipment and at the time of pickup for each twenty-four (24) hour composite sample. Fort Worth agrees, if requested, to split the wastewater samples with Customer.

6.10 Compliance Monitoring. If in the opinion of the Director, compliance monitoring is required, the Director may order that additional monitoring be performed with or without prior

notice to Customer. Such compliance monitoring is to be in addition to the periodic sampling and testing set forth in § 6.9. All information obtained as a result of such compliance monitoring shall be provided to the Customer upon request. Fort Worth will provide notice of such compliance monitoring to Customer within a reasonable time thereafter.

6.11 System Cost. Costs incurred by Fort Worth under this **Article 6** will be a System Cost.

ARTICLE 7. Rates and Charges

7.1 Method of Rate Determination.

7.1.1 Wholesale wastewater rates will be based upon an annual cost-of-service rate study, with a rate study conducted every three years by an independent utility rate consultant as provided for in § 7.1.4. The independent utility rate consultant shall be selected by the Director from a list of qualified firms submitted to the Director by the Wholesale Wastewater Advisory Committee. All firms to be considered must identify all employees previously employed by the City of Fort Worth within 5 years of the submittal date. All cost-of-service studies shall be conducted utilizing the utility cost basis of determining revenue requirements applicable to the wholesale customer class and shall be a System Cost.

7.1.2 The System Cost (i.e., the cost-of-service for the wholesale customer class) shall include allocated reasonable and necessary operation and maintenance expense; depreciation expense; a fair and reasonable return on allocated capital facilities as provided in § 7.1.3; general and administrative costs; commodity charges; the cost of treating wastewater, including Inflow and Infiltration; TRA Contract charges; Street Rental (calculated as provided in § 1.34); and Payment In Lieu of Taxes ("PILOT" calculated as provided in **Exhibit C**). To determine the allocation and distribution of costs to the wholesale customer class, the independent utility rate consultant shall consider at least the following factors: total volume, rate of flow, Wastewater Strength, metering, and customer related costs such as accounting, billing, monitoring, and pretreatment and SIU permitting. Capital related costs will consist of depreciation expense and return on original cost rate base. The "rate base" shall consist of all allocated capital facilities, net of depreciation and contributions, and shall include construction work in progress, a reasonable allowance for working capital, and a reasonable inventory of materials and supplies necessary for the efficient operation of the Fort Worth System. The methodology shall be that used in the most recent wholesale wastewater rate study completed and approved by the Fort Worth City Council before the Effective Date, which Customer acknowledges having received prior to executing this Agreement. Records of the original cost and the accumulated depreciation of all capital facilities shall be maintained in the Fort Worth computerized asset tracking system. These records shall be available for inspection at the Fort Worth Water Department during reasonable business hours upon request by Customer.

- 7.1.3 Fort Worth shall be allowed to earn and recover in rates a rate-of-return on the rate base as described in § 7.1.2. That rate of return shall be equal to the weighted average imbedded cost of outstanding debt plus one and one-half percent (1-1/2%). The Parties agree that this rate of return is reasonable.
- 7.1.4 Every three years, beginning with Fiscal Year 2020, a detailed wholesale wastewater rate study will be performed by an independent utility rate consultant selected by the Director in conformance with § 7.1.1. The same methodology used in the immediate previous rate study will be utilized by the rate consultant so selected. In the interim Fiscal Years between detailed rate studies, Fort Worth will adjust wholesale wastewater rates annually, using the same methodology as the last detailed rate study, and will utilize the actual operating data for the twelve (12) month period ending September 30th of the prior year, adjusted for all known and measurable changes in cost data that may have occurred since the last audited financial statement. Such adjustments should allow for year-end trending and the spreading of non-recurring expenses over an appropriate benefit period.
- 7.1.5 Changes in the wholesale wastewater rate methodology will be allowed if recommended by a majority vote of the Wholesale Wastewater Advisory Committee and approved by the Fort Worth City Council. For purposes of this § 7.1.5, a majority is defined as any combination of Fort Worth wholesale customers that generated more than fifty percent (50%) of the wholesale wastewater flows into the Fort Worth System during the immediate past Fiscal Year.

7.2 Initial Rates. The rates and charges as of the Effective Date shall be those calculated by the most recent wholesale wastewater cost of service study and adopted by the Fort Worth City Council to take effect during the current Fiscal Year, and include the Volume Charges, Wastewater Strength Charges (per pound of BOD and TSS) and Monthly Customer Charges.

7.3 Billing and Payment. Bills for wastewater service under this Agreement shall be rendered to Customer monthly by Fort Worth, and shall be due and payable by Customer not more than thirty (30) days from the billing date. The bills will show current charges, as well as past-due charges, if any. Current charges are the amount due for wastewater services provided since the prior billing period. Past-due charges shall be the total amount unpaid from all prior billings as of the current billing date. Payments received by Fort Worth shall first be applied to the past-due charges, if any, and thereafter to the current charges.

7.4 Billing Dispute. If Customer disputes a bill and is unable to resolve the difference informally, Customer shall notify the Director in writing. If the Director and Customer are unable to resolve the disputed bill, agreement on the bill will be determined by § 24.4 dispute resolution procedures. Dispute of a bill is not grounds for non-payment. If a bill or other payment is not paid as specified in this Agreement, a finance charge of ten percent (10%) per annum will be calculated from the date which the payment was required to be made. If a billing adjustment is agreed upon or otherwise established by dispute resolution, then the amount found to be overcharged will be credited to Customer's account together with an interest charge of ten

percent (10%) per annum calculated from the date Fort Worth received payment of the disputed bill.

7.5 Services are Essential and Necessary. The Parties agree that services obtained pursuant to this Agreement are essential and necessary to the operation of Customer's System and that all payments made by Customer hereunder shall constitute reasonable and necessary operating expenses of Customer's System within the meaning of § 1502.056 of the Texas Government Code and the provisions of any and all ordinances of Customer authorizing the issuance of any revenue bonds of Customer which are payable from its waterworks and wastewater systems.

7.6 Customer to Collect Sufficient Revenues. Customer agrees, throughout the term of this Agreement, to fix and collect such rates and charges for wastewater service to be supplied as will produce revenues in an amount equal to at least (i) all of operation and maintenance expenses of such system, including specifically its payments under this Agreement; and (ii) all other amounts as required by law and the provisions of the ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding, including the amounts required to pay all principal of and interest on such bonds and other obligations.

7.7 Customer to Adopt User Charge. Customer specifically agrees to adopt and maintain in effect for the life of this Agreement an ordinance providing for a user charge system in full accord with relevant EPA and TCEQ regulations

7.8 Rate Adjustments. Customer understands that Fort Worth City Council has the right to annually revise the rates charged to cover all reasonable, actual, and expected costs. Revision of rates shall be pursuant to the provisions set forth in this Agreement. Fort Worth shall give Customer a minimum of six (6) months notice of intent to revise rates. Fort Worth will furnish members of the Wholesale Wastewater Advisory Committee a draft copy of the cost-of-service study of the proposed rates sixty (60) days prior to Fort Worth submitting a rate increase request to its City Council. Within thirty (30) days of receiving the draft study, the Wholesale Wastewater Advisory Committee will submit its written comments on the draft study to Fort Worth, and Fort Worth will respond to these comments as soon thereafter as possible. If the Wholesale Wastewater Advisory Committee has not provided its written comments within said period, the Wholesale Wastewater Advisory Committee is deemed to have accepted the proposed rates contained in the draft study, and Customer agrees that it will be bound by the rates as approved by the Fort Worth City Council. The rates approved by the Fort Worth City Council shall be the rates to be used in this Agreement for the succeeding Fiscal Year.

7.9 Wholesale Services Purchased by Fort Worth. Fort Worth purchases wholesale wastewater services under the terms of the TRA Contracts. Any future wholesale contracts between Fort Worth and a regional wastewater utility service provider that may be needed for Fort Worth to properly operate its System or meet the needs of its retail and wholesale wastewater customers will be included in calculating the System Cost as provided in § 7.1.2 in a similar manner as the TRA Contract charges.

ARTICLE 8. Industrial Connection and Monitoring

8.1 Additional Connections. Customer agrees that it will not permit any Significant Industrial User within its jurisdiction to connect directly or indirectly either to the Customer System or to the Fort Worth System without at least ninety (90) days' prior written notice to the Director of such intent to connect. Customer shall provide the Director with such information pertaining to volume and composition of flow as may be requested by the Director.

8.2 Quality. Customer agrees to conduct any and all monitoring, sampling and inspection of Customer System and Industrial Users as necessary to insure that Industrial Waste introduced into the Customer System meets the quality standards set out in § 9.3. Upon request to Customer, a representative of Fort Worth will be permitted to observe Customer's collection of samples from Industrial Users, and Customer agrees to furnish Fort Worth separate duplicate samples for independent testing, and, upon request, to provide the Director sample analysis results and pretreatment records.

8.3 Sampling and Industrial User Disconnections. Customer agrees that Fort Worth shall have the right to sample wastewater at all Points of Entry and such other locations as may be mutually agreed in writing by both Parties for the purpose of determining the volume and quality of wastewater entering the Fort Worth System. Customer agrees to disconnect from the Customer's System any Industrial User found to be in violation of allowable discharges or who refuses access to its facilities for the purpose of sampling wastewater being discharged into the Customer System; provided, however, that the disconnected Industrial User shall be afforded the same rights, privileges of appeal and deficiency cure periods as are Industrial Users operating within Fort Worth's jurisdiction.

8.4 Questionable or Prohibited Discharges. Following Fort Worth's notice to the Customer, Customer shall grant to Fort Worth the right to enter Customer's jurisdiction if Fort Worth has information or evidence that questionable or prohibited discharges are entering the Fort Worth System from the Customer System. Customer agrees to assist Fort Worth in investigating such discharges and in locating and eliminating any prohibited discharges.

ARTICLE 9. Wastewater Quality

9.1 Industrial Wastes. The potential effects of certain types of Industrial Wastes upon sewers and sewage treatment processes require careful consideration of each industrial connection, and is of concern both to Fort Worth and the Customer. Accordingly, Customer shall regulate the discharge of Industrial Waste as required by this **Article 9**.

9.2 Customer Wastewater Quality Ordinance. Customer agrees that on or before thirty (30) days from date of execution of this Agreement it shall enact and cause to be enforced an ordinance or resolution enabling Customer to enforce within its jurisdiction regulations governing industrial waste that are at least as stringent as the provisions of the current Fort Worth City Code Ch. 12.5, Articles VI (Industrial Wastewater) and VII (Liquid Waste) and any necessary and reasonable amendments thereto, and state and applicable federal regulations relating to 1) discharged substances; 2) prohibited discharges; 3) pretreatment requirements; 4) industrial discharge permitting system; and 5) industrial self-monitoring reports. Customer

agrees to enact and enforce ordinances or any amendments to these Fort Worth Code Articles, or any future Fort Worth ordinances relating to Industrial Waste discharges, prohibited or controlled wastes or pretreatment requirements and such amendments and future ordinances shall become incorporated as additional exhibits to this Agreement; provided, however, Fort Worth shall provide Customer with a copy of such proposed ordinances or amendments at least sixty (60) days prior to the presentation of such ordinances or amendments to the Fort Worth City Council during which time Customer shall have an opportunity to review same. Customer shall adopt and enforce such proposed ordinances or amendments no later than the effective date of the Fort Worth ordinance or amendment.

9.3 Customer Wastewater Quality. Customer agrees that the quality of the wastewater discharged into the Customer System shall be equal to or better than the quality standards established by Fort Worth City Code Ch. 12.5, Articles VI (Industrial Wastewater) and VII (Liquid Waste) or any amendment adopted pursuant to Section § 9.2.

9.4 Customer SIU Permits. Customer shall require all Significant Industrial Users within its jurisdiction that ultimately discharge into the Fort Worth System to apply for and obtain a permit from Customer allowing such discharge. Such permit shall require SIUs to abate prohibited substances from their discharge as a condition to discharging wastewater into the Customer System. The permit application shall contain, as a minimum, the following information required by **Fort Worth City Code § 12.5-632** (or other information as the section may require upon amendment from time to time):

- 9.4.1 All information required by Fort Worth City Code § 12.5-651;
- 9.4.2 Description of activities, structures, equipment and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the Customer System;
- 9.4.3 Number and type of employees, hours of operation, and proposed or actual hours of operation;
- 9.4.4 Each product produced by type, amount, process or processes and rate of production;
- 9.4.5 Type and amount of raw materials processed (average and maximum per day);
- 9.4.6 Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains and appurtenances by size, location and elevation, and all points of discharge;
- 9.4.7 Time and duration of discharges; and
- 9.4.8 Any other information as may be deemed necessary by the Director to evaluate the wastewater discharge or the discharge permit application.

Customer shall provide Fort Worth a copy of such application and permit, if issued, within fourteen (14) days after issuance.

ARTICLE 10. Resale of Wastewater Services and Large Volume Retail Customers

10.1 No Service Outside the Customer's Service Area. Customer shall not provide any wastewater service to retail or wholesale customers outside of its Service Area unless it obtains the express written consent of the Director and an amendment to its Service Area for the proposed service, and such consent may also require additional improvements as provided in § 4.3. Customer shall not share its wastewater facilities with any other governmental or corporate entity outside of the Customer's Service Area without the express written consent of Fort Worth. Fort Worth neither recognizes nor approves any existing agreements between Customer and any developer, landowner, governmental entity, industrial customer or other large-volume customer for existing or projected wastewater service outside of the Customer's Service Area, unless authorized by Additional Terms attached as **Exhibit D** and shown on the Service Area map attached as **Exhibit A**.

10.2 Large Volume Users. Unless Customer obtains the prior written consent of the Director, the Customer shall not provide or agree to provide future wastewater service within its Service Area to any developer, landowner, governmental entity, industrial customer or other large-volume customer for existing or projected wastewater flows that would exceed 500,000 gallons per day to be served through the Fort Worth System. The Director agrees that consent for such wastewater service within the Customer's Service Area shall not be unreasonably withheld, but may require improvements as provided in § 4.3. The consent required by this § 10.2 does not replace and is in addition to other requirements of this Agreement, including **Articles 8 & 9** for industrial connections.

10.3 Wholesale Customer Compliance. If Customer has Fort Worth's consent to provide any wholesale wastewater service through the Fort Worth System, Customer shall require its wholesale customers: to comply with **Article 8** (Industrial Connection and Monitoring), **Article 9** (Wastewater Quality) and **Article 22** (Impact Fees) of this Agreement, and any other provisions of the Agreement required by the Director, and to enact and enforce any and all ordinances necessary to comply with these requirements.

ARTICLE 11. Infiltration and Inflow

11.1 Prevention. The Customer covenants and agrees that it has an obligation to prevent Infiltration and Inflow into its System and then into the Fort Worth System. Customer further covenants and agrees to maintain strict supervision and maintenance of its System to prevent connections through which surface drainage can enter ultimately into the Fort Worth System, and to employ best management practices to reduce Inflow and Infiltration to the extent practicable. Customer shall not make, nor shall it permit to be made, any connection which will contribute storm water run-off from rainwater spouts, rainwater areas, streets, gutter drains or other source into its System.

11.2 Standards for Customer's Retail Connections. Customer covenants and agrees that all sewer connections within its jurisdiction that ultimately enter into the Fort Worth System shall be constructed in accordance with applicable specifications and standards that are equal to or more protective than those of the Fort Worth Water Department.

11.3 Customer Overflows. If Customer reports any sewer overflow to TCEQ containing any reference in the report to Fort Worth's System or Fort Worth's Wastewater Permits, then Customer shall send a Notice to Fort Worth with an attached copy of the report at the same time that it sends the report to TCEQ.

ARTICLE 12. Sludge Disposal

Customer recognizes the importance of utilizing sludge in a timely and proper manner. Customer will cooperate with Fort Worth in any environmentally sound sludge utilization program meeting federal and state standards within the Customer's Service Area.

ARTICLE 13. Wastehaulers

Customer agrees to adopt the North Central Texas Council of Government's model ordinance, or one similar to it, regulating liquid wastehaulers within Customer's Service Area. At a minimum such ordinance shall require liquid wastehaulers to be permitted and provide for a manifest system. Further, the Customer's ordinance shall prohibit the introduction of liquid waste, including waste from septic tanks and chemical toilets, into the Customer System, directly or indirectly.

ARTICLE 14. Reports and Records

14.1 Data and Information. If requested by the Director, and/or Customer, the other Party shall provide quarterly the following:

- 14.1.1 Actual number of customer accounts discharging directly or indirectly into the Fort Worth System and/or Customer System within the Customer's Service Area;
- 14.1.2 Classification of Domestic Accounts and Non-Domestic Accounts within its Service Area by number and percentage of accounts discharging directly or indirectly into the Fort Worth System and/or Customer System within the Customer's Service Area.
- 14.1.3 Customer's contracts for wastewater services from all providers other than the Fort Worth System, including collection and treatment contracts with other entities;
- 14.1.4 Customer's Water and Wastewater Master Plans, Capital Improvements Plans and Land Use Plans; and

- 14.1.5 Additional data which may assist Fort Worth and/or Customer in developing methodology for cost of service studies and Impact Fees; provided, however, that Fort Worth shall not request data that will require Customer to incur unreasonable expenses in providing such data.

ARTICLE 15. Notices

15.1 Required Notice. Except in the case of an Emergency, any notice or other communication that is required, given or provided for under this Agreement shall be in writing, and addressed as follows:

To Fort Worth: Water Director
 City of Fort Worth
 200 Texas Street
 Fort Worth, TX 76102

To Customer: City Manager
 City of Kennedale
 405 Municipal Drive
 Kennedale, Texas 76060

With an additional copy to be given to a Customer representative, if designated in writing by Customer.

15.2 Delivery and Receipt. Notice shall be either (a) delivered personally, (b) sent by United States certified mail, postage prepaid, return receipt requested, (c) placed in the custody of a nationally recognized overnight carrier for next day delivery, or (d) sent via telecopy or facsimile (fax) transmission. Notice shall be deemed given when received if delivered personally or sent via telecopy or facsimile transmission with written confirmation of receipt; forty-eight (48) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by nationally recognized overnight carrier for next day delivery. If requested by Fort Worth or Customer, notices shall also be sent to specified email addresses.

15.3 Change of Address Notices. Each Party shall provide notice in writing, as provided in § 15.1 of any change in its address.

ARTICLE 16. 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; and further, if required by any law, rule or regulation, make said records and accounts available to federal and/or state auditors.

ARTICLE 17. Ownership and Liability

17.1 Ownership. No provision of this Agreement shall be construed to create any type of joint or equity ownership of any property, any partnership or joint venture, nor shall same create any other rights or liabilities and Customer payments (whether past, present, or future) will not be construed as granting Customer partial ownership of, pre-paid capacity in, or equity in the Fort Worth System.

17.2 Liability. Liability for damages arising out of the receipt, transportation, delivery, storage, treatment, handling and/or disposal of all wastewater discharged into the Fort Worth System shall remain with the Customer, together with title to the wastewater, until the wastewater passes through the Point of Entry. Thereafter, Fort Worth shall have liability for damages arising out of the receipt, transportation, delivery, storage, treatment, handling and/or disposal of all wastewater discharged into the Fort Worth System, save and except that title to, and liability for a discharge from the Customer's System that violates this Agreement shall remain with the Customer. Each Party agrees to save, release and hold harmless the other Party from all claims, demands, and causes of action, damages, losses and costs, fines and expenses, including reasonable attorneys' fees, and all response, remediation and corrective action costs (collectively "Liabilities") that may be asserted by anyone, including state and federal administrative agencies, at any time on account of the contents, transportation, delivery, reception, storage, treatment handling and/or disposal of the wastewater while it is in the control of such Party, except that Customer shall save, release and hold harmless Fort Worth from all Liabilities that may be asserted by anyone at any time on account of any discharge originating in the Customer System that does not comply with the terms of this Agreement, even if the liability arises out of Fort Worth's strict liability. To the extent that the liability of Fort Worth is attributable to wholesale customer discharges, but cannot be attributed to a specific wholesale customer, the liability shall be a System Cost. This covenant is not made for the benefit of any third party.

17.3 Independent Contractors. Contracts made and entered into by either Customer or Fort Worth for the construction, reconstruction or repair of any Delivery Facility shall include the requirement that the independent contractor(s) must provide adequate insurance protecting both the Customer and Fort Worth as co-insured. Such contracts must also provide that the independent contractor(s) covenant to indemnify, hold harmless and defend both the Customer and Fort Worth against any and all suits or claims for damages of any nature arising out of the performance of such contracts.

ARTICLE 18. Compliance with Permit Conditions

Customer acknowledges that Fort Worth is the holder of discharge permits issued by the United States and the State of Texas. Customer agrees that it will comply with all permit conditions in any way relating to the collection system and the discharge into the Fort Worth System. Customer agrees, that if a fine is assessed against Fort Worth for any violation of any permit condition, and the violation is attributable to any act of omission or commission by Customer, that it shall indemnify and hold Fort Worth harmless from all Liabilities that result from the omission or commission by the Customer as provided in § 17.2. If the permit violation cannot be attributed to any specific customer or if the Liabilities are not reimbursed by the responsible

customer for any reason then, to the extent that the fines and expenses are attributable to wholesale customers, such fine is a System Cost.

ARTICLE 19. Term

This Agreement expires on September 30, 2037. It may be renewed on terms mutually agreeable to the Parties.

ARTICLE 20. Force Majeure

20.1 Notice and Suspension. If by any reason of force majeure either Party shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation of the Customer to make payments required under this Agreement, then if such Party shall give notice and full particulars of such force majeure in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

20.2 Definition. The term "force majeure," as used in this Article, means acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of wastewater collection, transportation, storage or treatment facilities, and inability on the part of Fort Worth to provide the wastewater services hereunder or of the Customer to deliver wastewater hereunder on account of any other cause not reasonably in the control of the Party claiming such inability.

ARTICLE 21. Breach, Termination and Other Remedies

21.1 Termination by Mutual Consent. This Agreement may be terminated in whole or in part by the mutual consent of Customer and Fort Worth. Fort Worth's decision on whether to consent to termination remains within its sole discretion; however, before consenting to termination, Fort Worth shall consult with WCAC regarding the circumstances of the proposed termination.

21.2 Termination for Material Breach. Notwithstanding anything in this Agreement to the contrary, any material breach by either Party to perform any of its duties or obligations under this Agreement, or to faithfully keep and perform any of the terms, conditions and provisions of this Agreement, shall be cause for termination of this Agreement by the non-breaching Party in the manner set forth in this § 21.2. Upon such breach, the non-breaching Party may notify the breaching Party of the non-breaching Party's intention to terminate this Agreement if the breaching Party fails to cure such breach within ninety (90) days from the date of the notice. The notice must include a reasonable description of the breach. The non-breaching Party shall notify the breaching Party in writing upon acceptance of the cure of any breach. If by the ninetieth (90th) day the breaching Party fails or refuses to cure such breach pursuant to the terms and

conditions of this Agreement, then the non-breaching Party shall have the right to terminate this Agreement with six months additional notice to the breaching Party.

21.3 Termination for Repeated Breach. Upon a second (or any repeated) breach of a similar nature by a Party and irrespective of any cure of such breach, the non-breaching Party may, after six (6) months notice to the breaching Party, terminate this Agreement. That notice must be provided within a reasonable time after the repeated breach that is the basis for the termination.

21.4 Material Breach. The following breach, default or failure to perform a duty or obligation under this Agreement is a material breach:

- a. Failure to adopt and enforce any ordinance that the Customer is required by this Agreement to adopt and enforce;
- b. Failure to pay any bill, charge, or fee as required by this Agreement, including Impact Fees.
- c. Connecting to or discharging into the Fort Worth System at any point that is not expressly authorized under the terms of this Agreement;
- d. Failure to provide Fort Worth ingress and egress for purposes of sampling or operation and maintenance of any Customer Point of Entry, including the metering and sampling facility;
- e. Failure to permit any sampling of wastewater authorized by this Agreement, whether at the point of connection or within the Customer's System;
- f. Failure to provide to Fort Worth the rights-of-way that Customer is required to provide under the terms of this Agreement;
- g. Failure to investigate discharges or disconnect Industrial Users of Customer pursuant to **§§ 8.3 and 8.4**;
- h. Failure to comply with **Article 9** (Wastewater Quality), including failure to maintain the required quality of discharge and failure comply with the requirements pertaining to SIU;
- i. Failure to comply with **Article 10** (Resale of Wastewater Services and Large Volume Retail Customers); or
- j. Failure to comply with **Article 18** (Compliance with Permit Conditions).

All other breaches are deemed to be non-material.

21.5 Notice and Cure. In the event of a material or non-material breach, default or failure to perform a duty under this Agreement, the non-breaching Party may send a notice of such default to the breaching Party. The notice must include a reasonable description of the breach. If the breaching Party fails to cure the breach, default or failure within 60 days of that notice, then the non-breaching Party may give the breaching Party a second notice of its failure to cure the breach. Failure to cure the breach within 30 days after the second notice shall constitute a repeated breach, and may result in termination of this Agreement as provided in **§ 21.3** for repeated breach. Fort Worth may, upon breach by a Customer, surcharge the Customer an amount developed and calculated by Fort Worth intended to reimburse Fort Worth for any damages each month, including 10% interest, until Customer cures that breach. Because failure to perform obligations under this Agreement cannot be adequately compensated in money damages alone, the Parties shall have available to them the equitable remedy of specific performance in addition to any other legal or equitable remedy as may be provided by law.

21.6 Notice and Cure for Nonpayment of Impact Fees. If the breach is based on the non-payment or underpayment of Impact Fees, then the Customer shall pay Fort Worth the amount of the non-payment or under-payment within 60 days of the notice required by §§ 21.2 or 21.5, plus interest at a rate of 10% of the amount owed, accruing from the time at which the payment was due. An additional charge of \$500.00 will be added if no Impact Fee report was filed.

21.7 Notice and Cure for Breach of SIU Obligations. If Customer breaches its obligations to enforce the provisions of §§ 9.2 or 9.4, then the § 21.2 90-day notice provisions do not apply and the Director, in his sole discretion, may send a notice setting the time in which the Customer shall cure the breach, and may surcharge Customer an amount developed and calculated to reimburse Fort Worth for any damages each month, including 10% interest, until Customer cures that breach. If Customer fails or refuses to cure the breach within the stated time then, in addition to other remedies available under this Agreement, Fort Worth shall have the right to declare this Agreement terminated after six (6) months additional notice to Customer.

21.8 Effect of Termination. Upon termination of this Agreement under this **Article 21**, all rights, powers, and privileges of Customer and Fort Worth under this Agreement shall cease and terminate, and neither Party shall make any claim of any kind whatsoever against the other Party, its agents or representatives, by reason of termination or any act incident to termination, if the terminating Party acted reasonably and the termination was not unreasonable, or arbitrary and capricious. If this Agreement is not renewed before it expires, and the Parties are negotiating in good faith regarding the provisions of a new agreement, then the Parties may extend the date for termination, in writing that refers to this § 21.8 and is signed by both Parties. If this Agreement is not renewed, or if the Agreement is terminated by one of the Parties pursuant to this **Article 21**, then this Agreement requires Customer to develop alternative or replacement wastewater services before the expiration or termination of this Agreement; this requirement may be enforced by the equitable remedy of specific performance, sought by court order, in addition to any other legal or equitable remedy as may be provided by law. No continuation of the service obligation exists or will be implied after expiration or termination.

21.9 No Waiver by Fort Worth. Any failure by Fort Worth to terminate this Agreement, or the acceptance by Fort Worth of any benefits under this Agreement, for any period of time after a material breach, default or failure by Customer shall not be determined to be a waiver by Fort Worth of any rights to terminate this Agreement for any subsequent material breach, default or failure.

21.10 No Waiver by Customer. Any failure by Customer to terminate this Agreement, or the acceptance by Customer of any benefits under this Agreement, for any period of time after a material breach, default or failure by Fort Worth shall not be determined to be a waiver by Customer of any rights to terminate this Agreement for any subsequent material breach, default or failure.

ARTICLE 22. Impact Fees

22.1 Calculation of Impact Fees

- 22.1.1 The amount of the Impact Fee to be paid by Customer shall be based upon the size of water meter and shall be equal to the amount of the Impact Fee adopted by Fort Worth and collected for the same size water meter and type of connection within the jurisdiction of Fort Worth. However, regardless whether the connection would qualify as "new development" for purposes of the Customer's System, the Impact Fee due to Fort Worth shall include an amount equal to the Impact Fee for each connection not only to new construction, but also to existing structures or connections not previously served through the Fort Worth System, for example those taken off septic systems or diverted from other city, developer or homeowner wastewater systems
- 22.1.2 The dollar amount of the Impact Fee shall be consistent with the Fort Worth ordinance adopting Impact Fees in accordance with all applicable state and federal regulations, including Chapter 395, and its calculation shall include only those costs allowed under § 395.012 (or its amended or successor statute) that are associated with Capital Improvements necessary to provide service to new development.
- 22.1.3 Nothing in this Agreement shall be deemed to prevent either Fort Worth or Customer from charging their own retail customers an Impact Fees that differs from the Impact Fee amount authorized by this Agreement.

22.2 Payment of Impact Fees.

- 22.2.1 On a quarterly basis, Customer shall pay to Fort Worth an Impact Fee for each new, enlarged or newly served connection for wastewater service made within Customer's Service Area served by the Fort Worth System.
- 22.2.2 As part of the Customer's application to Fort Worth for any new Point of Entry, and before construction of the facilities required for the Point of Entry, Customer shall pay to Fort Worth an amount equal to the Impact Fee for each existing sewer connection that will flow through the new or enlarged Point of Entry when it is first completed, and is not currently being served by the Fort Worth System. Upon connection of the new Point of Entry, Customer shall pay all unpaid Impact Fees for connections made since the initial payment with the application, and begin quarterly payments for additional connections to the Point of Entry as required in § 22.2.1.

22.3 Use of Impact Fees. As required by Chapter 395, Fort Worth agrees that all money remitted to it pursuant to this **Article 22** will be placed in an interest bearing account to pay only for the cost of constructing Capital Improvements included in Fort Worth's Chapter 395 capital improvements plan, and will not be used for operation and maintenance expenses. Once expended, such funds and all interest earned thereon will be considered a "contribution" for rate

setting purposes only. To the extent that the cost of any Capital Improvement is recovered through Impact Fees, it shall not be included in the System Cost.

22.4 Impact Fee Report. Customer shall provide to Fort Worth information that relates to the making of new and/or enlarged connections within its jurisdiction as may be requested by the Director, including building permits, with each quarterly payment required in this **Article 22**.

22.5 No Waiver. Neither Fort Worth nor Customer shall waive any Impact Fee due from new or enlarged connections to its respective system within its jurisdiction. However, either Fort Worth or Customer may pay such Impact Fee into the interest bearing Impact Fee account required by § 22.3.

22.6 Customer Impact Fee Committee ("CIFIC"). The Wholesale Wastewater Advisory Committee created pursuant to **Article 23** shall select five (5) of its members to a subcommittee to be known as the Customer Impact Fee Committee ("CIFIC"). As required by Texas Local Government Code § 395.052, at least every five (5) years Fort Worth will update the land use assumptions and capital improvements plan upon which the Fort Worth Impact Fees are based, or make the determination under Chapter 395 that no update is required. Fort Worth shall submit a copy of the annual report of Fort Worth Impact Fee projects and expenditures to the Wholesale Wastewater Advisory Committee Rate Subcommittee. Every five years in conjunction with Fort Worth's updates, the CIFIC shall submit a list of qualified engineers or planning consultants to the Director, and the Director shall select a consultant from such list to assist Fort Worth in developing land use assumptions, identifying capital improvements, and formulating capital improvement plans and Impact Fees. The consultant shall be responsible to Fort Worth and its citizen's advisory committee, but shall also report to the CIFIC. The cost of the consultant shall be deemed a System Cost, to the extent that its work pertains to the wholesale customer class, and except to the extent that such cost is recovered through Impact Fees. If the CIFIC fails to submit a list of consultants to Fort Worth, Fort Worth shall select the consultant.

22.7 Capital Improvements Plan. Fort Worth agrees that only the Capital Improvements as defined in § 1.4 shall be included in the capital improvements plan for the purpose of determining Impact Fees; provided however, Fort Worth may include other capital improvements for the purpose of determining Impact Fees to its own retail customers. Fort Worth shall not be required to include all of its capital improvements in its Chapter 395 capital improvements plan. The CIFIC shall be responsible for working with Fort Worth and its consultants to determine the Capital Improvements to be included in the calculation of any Impact Fees. The CIFIC shall recommend to the Wholesale Wastewater Advisory Committee which Capital Improvements should be included in the calculation of any Impact Fees. The CIFIC shall also meet with Fort Worth's citizen advisory committee as such citizen's advisory committee reviews and considers land use assumptions, the capital improvements plan and Impact Fees.

22.8 Dissemination of Documents. Prior to the adoption of any land use assumptions, capital improvements plan, or Impact Fees assessed by Fort Worth, the CIFIC shall be furnished a copy of the proposed land use assumptions, capital improvement plans or Impact Fees at least thirty (30) days prior to any scheduled hearing thereon. Any revised Impact Fee adopted pursuant to

such updated capital improvements plan shall not take effect for a period of at least ninety (90) days after adoption by Fort Worth.

22.9 Current Impact Fees. Customer agrees to pay Impact Fees in the amounts determined pursuant to this **Article 22**. On the Effective Date, those impact fees are the Impact Fees most recently adopted by the Fort Worth City Council before the Effective Date. Thereafter the Impact Fees are those in effect by Fort Worth ordinance at the time the new or enlarged connection is made, or additional retail customers are added to Customer System flows that enter the Fort Worth System.

22.10 Changes to Chapter 395. Fort Worth and Customer agree that the methodology for the calculation of Impact Fees required by this Agreement shall be consistent with the methodology prescribed by Chapter 395. If that statutory methodology is amended or replaced by a new statute, the Wholesale Wastewater Advisory Committee may engage legal counsel to work with Fort Worth to propose amendments to this Agreement to conform it to such amendment or new statute. The reasonable cost of such legal counsel shall be a System Cost.

ARTICLE 23. Wholesale Wastewater Advisory Committee

Customer's governing body shall annually appoint a representative to be a voting member of the Wholesale Wastewater Advisory Committee which Committee is hereby created and established and whose purpose shall be to consult with and advise Fort Worth, through the Director, on matters pertaining to planning, improvements, grants, rate studies, budgets, administration, and additional wholesale customers, whether same be wholesale customers of Customer or Fort Worth. The Committee, at its first meeting, shall elect a Chairman, Vice Chairman and Secretary. The Committee may establish bylaws governing the election of officers, meeting dates and other matters pertinent to its functioning.

ARTICLE 24. Miscellaneous

24.1 Favored Nations. Fort Worth and Customer agree that if Fort Worth should enter into any future Agreement for supplying wholesale wastewater service to any municipality under more favorable terms or conditions than set forth herein, this Agreement shall be amended to provide the same terms and conditions with respect to the wastewater service to be provided to Customer under this Agreement.

24.2 Subject to Laws and Permits. 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 in this Agreement 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. Customer agrees to abide by any changes in this Agreement made necessary by any new, amended, or revised state or federal regulation; however the Parties may not enact rules or laws that conflict with this Agreement.

24.3 Entry on Customer's Premises. Upon prior notice by the Director, Customer shall allow any duly authorized employee of Fort Worth who presents proper credentials to access any

premises located within Customer's Service Area or served by Customer as may be necessary for the purpose of inspections and observation, measurements, sampling and testing and/or auditing, in accordance with the provisions of this Agreement. Customer may elect to accompany the Fort Worth representative. To the extent permitted by law, Fort Worth agrees to be responsible to Customer for any damage or injury to person or property caused by the negligence of such duly authorized employee while such employee is in the course and scope of their employment.

24.4 Alternative Dispute Resolution.

24.4.1 The Parties shall endeavor, but only to the extent permitted by applicable law and at no additional cost to Customer, to settle all disputes arising out of or relating to this Agreement by amicable negotiations.

24.4.2 Any and all disputes arising out of or relating to this Agreement that cannot be resolved informally will be submitted to mediation. The place of mediation shall be in Tarrant County, Texas. A mediator shall be jointly agreed to by both Parties, and the mediator selected shall have expertise in the purchase of wastewater treatment services. Either Party may apply for injunctive relief until the mediation decision is rendered or the controversy is otherwise resolved. Either Party may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that Party, pending the Parties' mediated resolution of the controversy. Each Party shall initially bear its own costs and expenses; however, unless otherwise agreed in mediation, Fort Worth's costs in mediation, including expenses, reasonable attorneys' fees and other costs, shall be a System Cost. Nothing occurring during mediation shall be considered evidence in court.

24.4.3 If mediation is not successful, either Party may commence litigation to resolve the dispute. Fort Worth's litigation costs shall be a System Cost.

24.5 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; and further, if required by any law, rule or regulation, make said records and accounts available to federal and/or state auditors. The responding Party shall make the records available promptly upon request.

24.6 Use and Sale of Treated Effluent. Customer agrees that Fort Worth has the right to own and to use or sell any effluent produced from the Customer's wastewater as a result of the services rendered under this Agreement. Customer agrees that it is not entitled to credit of any type, either in the exchange of water, money, or other consideration, for any effluent delivered to Fort Worth's Village Creek Water Reclamation Facility, another wastewater treatment plant or water reclamation facility that is owned and operated by Fort Worth, or another POTW. Diversion of Untreated Effluent.

24.7 Diversion of Untreated Effluent. Because cost recovery, as well as management of capacity and operation of the Fort Worth System, require continuous and predictable wastewater flows, Customer shall not divert any wastewater flows or wastewater connections (except as necessary to cease prohibited discharges) once they have begun discharging into the Customer System for treatment under this Agreement.

24.8 Assignment. Customer may not assign this Agreement without the prior written consent of Fort Worth. Fort Worth may not assign this Agreement without the prior written consent of Customer, except that if Fort Worth's wastewater utility is designated as a regional wastewater or sewer utility agency by a duly authorized regulatory body, or if Fort Worth elects to contract with or assign this Agreement to a regional wastewater or sewer authority or utility to provide all or part of the services covered by this Agreement, the Customer hereby agrees and grants Fort Worth the right to assign this Agreement under the following conditions. The regional authority or utility shall assume and receive the same obligations, responsibilities and benefits as Fort Worth, and Fort Worth or the regional authority or utility will notify the Customer of such assignment at least ninety (90) days prior to its effective date.

24.9 No Waiver. No waiver by either Party of any term or condition of this Agreement, or failure to give notice of any breach, shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

24.10 Venue. The Parties agree that this Agreement is performable in Tarrant County, Texas and that the courts of Tarrant County are a proper forum for the determination of any dispute arising under this Agreement.

24.11 Construction. As used in this Agreement, the term "including" means "including without limitation," the words "shall" and "will" are mandatory and the word "may" is permissive, and the term "days" means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular.

24.12 Effect of Agreement. This Agreement is for the collection and treatment of Customer's wastewater and for related infrastructure and capital contributions as set forth herein. Unless expressly stated in this Agreement, any other Agreements that may be in effect between the Parties for the construction of infrastructure or other subject matters shall remain in full force and effect.

24.13 Severability. If any term or provision in this Agreement is held to be invalid or unenforceable by any legislative act or court of competent jurisdiction, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Parties as expressed in this Agreement, then such invalid or unenforceable provision shall be deemed severed from this Agreement without invalidating the remainder of this Agreement, and a new provision shall be deemed substituted in lieu of the provision severed, which new provision shall, to the extent possible, accomplish the intent of the Parties as evidenced by the provision severed, and without affecting any other term or provision in this Agreement.

24.14 System Regulatory Actions. Customer agrees, upon Fort Worth's request, to give reasonable consideration to supporting Fort Worth, and shall not oppose Fort Worth, on any permit applications or governmental approvals related to the Fort Worth System.

24.15 Additional Contract Terms. Additional contract terms that apply to the Customer, but not Fort Worth's other wholesale customers, are contained in **Exhibit D** "Additional Terms."

24.16 Exhibits. All exhibits attached to this Agreement are incorporated into this Agreement by reference, for all intents and purposes of this Agreement, as follows:

- Exhibit A Map showing the boundaries of the Customer's Service Area and mutually agreed point(s) of connection.
- Exhibit B Example of Monthly Wholesale Wastewater Bill Calculation
- Exhibit C Calculation of PILOT and Cost-of-Service Revenue Requirement to Recover the Cost of PILOT
- Exhibit D Additional Terms [if any]

ARTICLE 25. Effective Date

The effective date and time of this Agreement for all purposes is October 1, 2017 at 12:01 a.m. Upon the Effective date, the Wholesale Wastewater Contract then in effect between Fort Worth and the Customer is terminated and superseded by this Agreement.

IN TESTIMONY WHEREOF, after proper action by the respective governing bodies of the Parties, this Agreement has been executed in quadruplicate copies, each of which is considered to be an original.

ATTEST:

CITY OF FORT WORTH

Mary Kayser
City Secretary, City of Fort Worth

Jesus J. Chapa
Assistant City Manager, City of Fort Worth

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Christa R. Lopez-Reynolds
Sr. Assistant City Attorney, City of Fort Worth

APPROVAL RECOMMENDED:

John Carman, Director
City of Fort Worth Water Department

By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

Name of Employee

Title

ATTEST:

CITY OF KENNEDALE

City Secretary

By: _____
Mayor

APPROVED AS TO FORM AND LEGALITY:

City Attorney
Date: _____

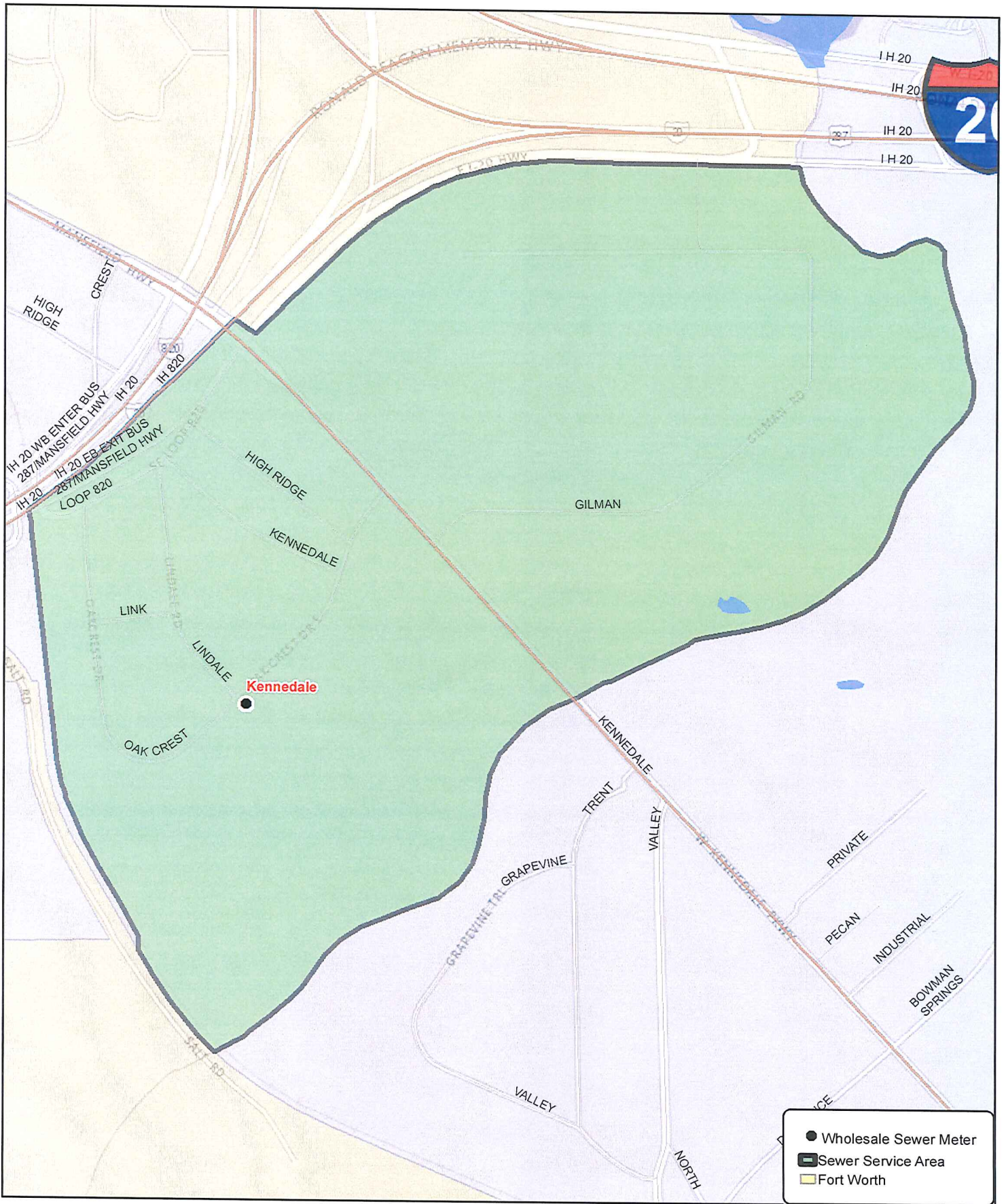
APPROVAL RECOMMENDED:

Print Name: _____
Title: _____

EXHIBIT A

MAP

Boundaries of the Customer's Service Area and
Mutually Agreed Point(s) of Entry



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 UNAUTHORIZED REPRODUCTION IS A VIOLATION OF APPLICABLE LAWS

THIS DATA IS TO BE USED FOR A GRAPHICAL REPRESENTATION ONLY.
 THE ACCURACY IS NOT TO BE TAKEN USED AS DATA PRODUCED FOR
 ENGINEERING PURPOSES OR BY A REGISTERED PROFESSIONAL LAND
 SURVEYOR. THE CITY OF FORT WORTH ASSUMES NO RESPONSIBILITY
 FOR THE ACCURACY OF SAID DATA

Kennedale: Wastewater Service Area



0 0.0475 0.095 0.19 Miles



EXHIBIT B

EXAMPLE OF MONTHLY WHOLESALE WASTEWATER BILL CALCULATION

Sample Wholesale Wastewater Bill.

Billing for Oct 1 to Oct
31, 2015

FY14 Rates	Volume	<u>\$1.2784</u>	BOD	<u>\$0.3532</u>	TSS	<u>\$0.2514</u>
	Service	<u>\$75.00</u>				

Meter Readings:

Current	443,683,000
Previous	409,666,000
Gallons	34,017,000

Billing Calculations:

Volume:
Gallons * Rate/1,000 \$43,487.33

BOD:
Strength * 8.34 *
Gallons/1,000,000
Strength: 220 \$22,044.76

TSS:
Strength * 8.34 *
Gallons/1,000,000
Strength: 213 \$15,191.72

Service:	<u>\$75.00</u>
Total Due	\$80,798.82

EXHIBIT C

CALCULATION of PILOT and Cost-of-Service Revenue Requirement to Recover the Cost of PILOT

NARUC	Description	Original Cost	Accumulated Depreciation	CWIP	Net Asset Base
310.00	Land & Land Rights	\$714,375			\$714,375
325.00	Electric Equipment - Treatment	\$160,720	\$36,562		\$124,158
332.00	Water Treatment Equipment	\$87,010	\$11,601		\$75,409
334.00	Computer Equipment	\$5,845	\$2,776		\$3,069
350.00	Land & Land Rights - Collection Structures & Improvements -	\$2,253,986	\$1,750	\$95,000	\$2,347,236
351.00	Collection	\$8,602,142	\$2,633,660		\$5,968,482
354.00	Metering Equipment & Structures	\$886,955	\$886,955		\$0
355.00	Meter Stations	\$3,185,037	\$2,831,134	\$6,999,264	\$7,353,166
360.00	Land & Land Rights - Pumping	\$675,016			\$675,016
361.00	Structures & Improvements	\$11,214,763	\$2,620,965		\$8,593,798
363.00	Electric Pumping Equipment	\$5,185,660	\$2,773,039		\$2,412,621
370.00	Land & Land Rights - Plant Structures & Improvements -	\$8,417,155			\$8,417,155
371.00	Pumping	\$122,803,279	\$81,871,598	\$144,829	\$41,076,510
372.00	Treatment & Disposal Equipment	\$182,373,057	\$118,349,068	\$4,834,395	\$68,858,385
373.00	Odor Conrol System	\$9,750,516	\$3,375,404		\$6,375,112
374.00	Outfall Sewer Lines	\$1,359,125	\$693,135		\$665,990
375.00	Other Treatment & Disposal	\$84,867,001	\$12,465,183		\$72,401,817
389.00	Land & Land Rights	\$365,360			\$365,360
390.00	Other Structures & Improvements	\$1,942,178	\$679,575	\$14,215	\$1,276,818
391.00	Office Furniture and Equipment	\$4,367,875	\$4,151,297		\$216,578
392.00	Transportation Equipment	\$15,447,320	\$12,983,736		\$2,463,584
393.00	Stores Equipment Tools, Shop and Garage	\$90,520	\$86,444		\$4,076
394.00	Equipment	\$1,201,618	\$818,843		\$382,776
395.00	Laboratory Equipment	\$1,456,642	\$936,524		\$520,117
396.00	Power Operated Equipment	\$460,353	\$381,031		\$79,322
397.00	Communications Equipment	\$260,308	\$255,170		\$5,138
398.00	Miscellaneous Equipment	\$16,443	\$8,222		\$8,222
Total		\$468,150,258	\$248,853,671	\$12,087,703	\$231,384,290

Tax Rate/\$100	\$0.8550
PILOT	\$1,978,336
Wholesale	
Share	25.29%
Wholesale	
PILOT	\$500,338

All Data from City of Fort Worth Financial
System

EXHIBIT D
ADDITIONAL TERMS

WHOLESALE WASTEWATER CONTRACT

STATE OF TEXAS §

COUNTY OF TARRANT §

This contract made and entered into this, the 8th day of February, 1994, by and between the City of Fort Worth, Texas, a municipal corporation, acting herein by and through its Assistant City Manager, Mike Groomer, who is duly authorized so to act, hereinafter referred to as "Fort Worth," and the City of Kennedale, Texas, a municipal corporation, acting herein by and through its City Administrator, Ted Rowe, who is duly authorized so to act, hereinafter referred to as "Customer."

WHEREAS, the public health, welfare and safety of the residents of Fort Worth and Customer require the development of adequate systems of sewage collection and disposal, the elimination of water pollution and the preservation of the water resources of the area; and

WHEREAS, Fort Worth is required to comply with standards and treatment methods for wastewater as set forth in federal, state and local laws and regulations and permits; and

WHEREAS, Fort Worth and Customer have an interest in maintaining and restoring the chemical, physical and biological integrity of waters and water resources and insuring the reduction of pollution in said waters and water resources, and planning the use, development, restoration, preservation and enhancement of said waters and water resources; and

OFFICIAL RECORD

CITY SECRETARY

FT. WORTH, TEX.

WHEREAS, Customer desires to contract for wastewater treatment service for a particular area located within Customer's service area, and Fort Worth is agreeable to provide wastewater treatment service to that particular area of Customer's service area; and

WHEREAS, Sections 402.001 and 402.075 of the Texas Local Government Code and Chapter 791 of the Texas Government Code authorize Fort Worth and Customer to enter into this agreement;

NOW, THEREFORE, Fort Worth and Customer, in consideration of the terms, covenants and conditions herein contained, hereby agree as follows:

1. Definitions

When used in this contract, these terms shall be defined as follows:

1.1 Act or "the Act" - The Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA"), as amended (33 U.S.C. 1251, et seq.).

1.2 Biochemical Oxygen Demand (BOD) - The quantity of oxygen utilized in the biochemical oxidation of organic matter specified by procedure in Standard Methods, and results expressed in terms of weight and concentration (milligrams per liter (mg/l)).

1.3 Calibration - Verification of primary measuring device and secondary instrumentation accuracy utilizing standard primary device procedures and calibration signals and/or a separate flow measurement instrument.

1.4 Customer System - That portion of Customer's facilities within the particular service area described in Exhibit

"A" attached hereto and incorporated herein. Used for pretreatment, collection and transportation of wastewater to the point of entry.

1.5 Delivery facilities - That portion of Customer's facilities necessary for the transmission of wastewater to the Fort Worth System that are on the Customer's side of the point of entry that are constructed specifically to allow Fort Worth to serve Customer, solely limited to that particular service area described in Exhibit "A".

1.6 Director - The Fort Worth Water Department Director or his designee.

1.7 Domestic accounts - Single-family and residential duplex dwellings served by one meter. This definition is used only in the context of determining billing on a per-connection basis.

1.8 Fort Worth Expense - Expenses incurred by Fort Worth related to the wastewater utility, such expenses to be allocated as a System Cost if so determined in future cost-of-service studies.

1.9 Fort Worth System - Fort Worth's wastewater collection and treatment system.

1.10 General Benefit Capital Facilities - Wastewater facilities that provide utility services and benefits common to all customers; this includes wastewater treatment facilities, metering and sampling facilities, control systems and appurtenances, and all major collectors and interceptors that are eighteen inches (18") and greater in diameter.

1.11 Indirect Discharge - The discharge or the introduction of industrial wastes from any source regulated under Section 307(b)

or (c) of the Act, (33 U.S.C. 1317), into the Fort Worth System (including holding tank waste discharged into the system).

1.12 Industrial User - A source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to Section 402, of the Act, (33 U.S.C. 1342).

1.13 Industrial wastes - All water-borne solids, liquids or gaseous substances resulting from industrial, manufacturing or food processing operations, or from the development of a natural resource, or any mixture of these with water or domestic sewage.

1.14 Infiltration - Water that has migrated from the ground into the wastewater system.

1.15 Inflow - Water other than wastewater that enters a sewerage system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration water.

1.16 Liquid Waste - The water-borne solids, liquids, and gaseous substances derived from certain sources including, but not limited to, grease trap, septic tank, chemical toilet waste and sand trap waste.

1.17 Metering and sampling facility - The meter, meter vault, and all metering and telemetry equipment required to measure

and/or sample wastewater flows of the Customer at point of entry or other such locations, as may be mutually agreed upon in writing.

1.18 Non-domestic account - Commercial, industrial, multi-family or other accounts that are not considered domestic accounts. This definition is used only in the context of determining billing on a per-connection basis.

1.19 Non-metered area - Areas within the Customer's corporate or certificated boundaries that generate wastewater that do not drain into a part of the Customer System for which wastewater flow is measured by an approved metering and sampling facility.

1.20 Point of entry - The metering facility or, where no metering facility is utilized, the point of connection to the Fort Worth System, unless otherwise mutually agreed upon in writing.

1.21 Pretreatment - The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a Publicly Owned Treatment Works. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes by other means, except as prohibited by 40 CFR Section 403.6(d).

1.22 Pretreatment requirements - Pollutant concentration discharge limitation and reporting requirements stipulated in Fort Worth Ordinance No. 10880 and any amendments thereto, and the

Customer's Code, as hereinafter amended, and Federal Pretreatment Standards promulgated by the U.S. Environmental Protection Agency.

1.23 Significant industrial user - Any industry which discharges industrial wastes directly or indirectly into the Fort Worth System or Customer System that:

- discharges 25,000 gallons per day or more of industrial wastes;
- is subject to the National Pretreatment Standards: Categorical Standards of the U.S. Environmental Protection Agency; or,
- has a reasonable potential, in the opinion of the Director, to adversely affect the Fort Worth System due to discharge of wastewater with abnormally high strength or limited and/or prohibited substances.

1.24 Standard methods - Those testing or analysis procedures as prescribed in the then current edition of "Standard Methods for Examination of Water and Wastewater," published by the American Public Health Association and/or the U.S. Environmental Protection Agency Manual of Methodologies for the Examination of Water and Wastewaters, or as will otherwise comply with procedures specified in state and federal discharge permits held by Fort Worth.

1.25 System cost - Operating expenses and capital related costs incurred by Fort Worth pursuant to the provision of wastewater collection and treatment service to the wholesale class of sewer customers. Such costs are to be collected by Fort Worth

as a component of the annual cost of providing wholesale wastewater service.

1.26 Wholesale System Access Fee - A capital contribution funding or recouping the costs of General Benefit Facilities Capital Improvements, or Facility Expansions necessitated by and attributable to new development.

1.27 Total Suspended Solids (TSS) - Solids, measured in mg/l, that either float on the surface of, or are in suspension in, water, wastewater or other liquids, and which are largely removable by a laboratory filtration device. Also referred to as Total Non-Filterable Residue.

1.28 Wastewater - All liquid or water-carried waste products from whatever source derived, together with such ground water infiltration and surface water inflow as may be present, whether treated or untreated, which is discharged into or permitted to enter into the Fort Worth System. The words "wastewater" and "sewage" are interchangeable.

1.29 Capital Improvements - means any of the following facilities which provide utility services and benefits common to all customers and that have a life expectancy of three or more years, whether such capital improvements are located within the jurisdictional limits of Fort Worth or Customer: wastewater treatment facilities, metering and sampling facilities, control systems and appurtenances, and all major collectors and interceptors that are eighteen inches (18") and greater in diameter and lift stations, if any, associated therewith.

1.30 Facility Expansion - The expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or an expansion of an existing facility to better serve existing development.

2. Connection to the Fort Worth System

2.1 The parties hereto covenant and agree that this contract solely provides for wastewater service to that portion of Customer's service area described in Exhibit "A" attached hereto and incorporated herein. Nothing contained herein shall be construed so as to affect the existing contract between the parties hereto, same being City of Fort Worth City Secretary Contract No. 7182, as amended by City of Fort Worth City Secretary Contract Nos. 7927, 9047 and 13391, it being the intent of the parties that this agreement is strictly limited to that portion of Customer's service area described in Exhibit "A. No addition to the area being served hereunder shall be permitted except by written amendment to this contract. Any and all references to service area, customer system, impact fees, metering and sampling facilities and the like contained herein are also limited to that area described in Exhibit "A".

2.2 Fort Worth agrees to accept all wastewater generated from Customer's service area described in Exhibit "A" at the point of connection as shown on Exhibit "B", attached hereto and

incorporated herein, and at such additional points as may later be mutually agreed upon in writing signed by both parties hereto.

2.3 The cost of all delivery facilities necessary to convey wastewater to the designated points of entry, whether shown on Exhibit "B" or mutually agreed upon at a later date, together with the cost of connection of the Customer System to the Fort Worth System, with the exception of metering and sampling facilities, shall be borne by Customer.

2.4 Unless mutually agreed to in writing by Fort Worth and Customer, Customer shall be responsible for the design, contracting, construction and financing of delivery facilities and acquisition of any necessary rights-of-way and easements to and from such facilities. All designs, materials and specifications shall conform to Fort Worth's requirements as a minimum. Plans and specifications for any delivery facility which actually connects to the Fort Worth System shall be submitted to the Director for written approval. Such approval shall not be unreasonably withheld. No construction shall begin until such approval has been given. Customer agrees that Fort Worth has the right to make periodic inspections during the construction phase of the delivery facilities. Final acceptance of such facility from the point of connection up to and including the metering and sampling facility is subject to the inspection and written approval of the Director.

2.5 After the date of this contract, Customer agrees not to provide retail service to any new customer whose need for wastewater service would exceed 500,000 gallons per day without

written notice to and the written approval of the Director.

3. Maintenance of Customer System

Customer agrees to maintain its system in good condition and to make repairs in a timely manner. Fort Worth shall not have any responsibility or liability now or ever for the operation of the Customer System, except as agreed to in writing by the parties hereto.

4. Maintenance of Fort Worth System

Fort Worth agrees to maintain its system in good condition and to make repairs in a timely manner. Customer shall not have any responsibility or liability now or ever for the operation of the Fort Worth System, except as otherwise provided herein.

5. Metering and Sampling Facilities

5.1 Beginning on the effective date of this contract, Fort Worth shall have the exclusive right to use, operate, and maintain Customer metering and sampling facilities and Fort Worth shall become solely responsible for the operational and maintenance responsibilities associated with such facilities. Customer will continuously provide a route of ingress and egress to said metering and sampling facilities for Fort Worth. Fort Worth shall have the discretion to construct improvements, expansions, and replacements to said facilities as a system cost and at the timing of Fort Worth's needs subject to the review by Customer of all proposed construction, expansion, and replacement plans. Customer will also grant and provide to Fort Worth such permits or easements as are necessary for the continuous operation and maintenance of all

metering and sampling facilities. All such costs incurred by Fort Worth for operation, maintenance, construction, expansion, and replacement of Customer metering and sampling facilities shall be considered system costs.

5.2 Fort Worth shall have the right to use the flume described in paragraph 7.1 hereof for purposes of metering and sampling. Fort Worth, at its sole discretion, may install such additional facilities as may be necessary, including, but not limited to the installation of electricity and other equipment, to place in operation a metering station located at or near the flume. Any costs incurred by Fort Worth under this section shall be a system cost. If Customer constructs the additional facilities, Customer may either transfer ownership of such newly constructed facilities, together with all necessary access easements and rights-of-way to Fort Worth in a form satisfactory to Fort Worth or may grant to Fort Worth the right of ingress and egress to such facilities, together with the authority to operate and maintain the facilities as specified in Section 5.1, within sixty (60) days of such completion. Thereafter, Fort Worth shall operate and maintain the facilities as a system cost and treat any ownership transfer as a contribution for rate purposes, but same shall not be an indicia of equity ownership.

5.3 Expenses incurred by Fort Worth for the operation and maintenance of Customer metering and sampling facilities shall be system costs and shall include, but not necessarily be limited to, the following:

- A. Cost of electricity at the facility;
- B. Cost of the initial installation of the telemetry service at the facility and to the control center and cost of monthly lease charge for the telephone line;
- C. Cost of calibration;
- D. Cost of parts, materials and supplies required for repairs, calibrations and upgrading of the facilities;
- E. Labor cost plus fringe benefits and indirect costs for repairs, calibrations and upgrading of the facilities;
- F. Maintenance of ingress and egress and meter facility site.

5.4 Replacement of facilities described in this section or equipment therein occasioned as a result of obsolescence due to age, excessive maintenance, growth or other reasons as determined by the Director shall be a system cost. Any replacement facility or equipment therein shall comply with Fort Worth's standards and specifications.

5.5. Upon expiration or termination of this agreement by either party, Fort Worth shall transfer to Customer ownership of any property easements, metering and sampling facilities and rights-of-way conveyed to Fort Worth pursuant to the terms of this Section 5.

6. Rights-of-Way

6.1 Customer shall grant, without charge to Fort Worth, such easements and rights-of-way along public highways or other property owned by Customer, as requested by Fort Worth, in order for Fort

Worth to construct or maintain mains or facilities within the corporate limits of Customer to provide wastewater collection to Customer and to other areas. Upon notice from Customer and at Fort Worth expense, Fort Worth will move such wastewater mains or facilities located in such street right-of-way, or other property owned by Customer when reasonably necessary to the performance of essential governmental duties by Customer.

6.2 Fort Worth shall grant, without charge to Customer, such easements and rights-of-way along with public highways or other property owned by Fort Worth, as requested by Customer, in order for Customer to construct and maintain wastewater mains or facilities within Fort Worth to provide wastewater collection to Customer. Upon notice from Fort Worth and at Customer's expense, Customer will move such wastewater mains or facilities when located in such street rights-of-way or other property owned by Fort Worth when reasonably necessary to the performance of essential governmental duties by Fort Worth.

6.3 All work done by or on behalf of Fort Worth under this Section 6 will be performed in accordance with specifications equal to those applying to work of a similar nature performed within Fort Worth, but neither party hereto will be required to restore the other's property to a condition exceeding its original condition, unless otherwise mutually agreed in writing. Fort Worth and Customer agree to coordinate the location of the mains and/or facilities in the other's easements and rights-of-way in order to prevent further conflicts insofar as reasonably practicable.

7. Metering and Sampling

7.1 Customer agrees to have its engineer consult with Fort Worth on the installation of a flume at or near the point of connection to the Fort Worth System and within the delivery facility. Customer is responsible for the cost of the design of the flume and the design must be approved in writing by the Director prior to installation and connection to the Fort Worth System. The cost of the installation of the flume shall be borne by Customer.

7.2 The parties agree that as of the date of this contract, the wastewater to be introduced into the Fort Worth system by Customer will not be recorded by a meter. The volume of wastewater for billing purposes will be determined by using the total water sold by Customer to consumers located within the service area described in Exhibit "A" plus 1% for infiltration and inflow, provided, however, that any water sold by Kennedale within the service area that is measured by an irrigation or yard meter and which is not connected to the sanitary sewer system shall not be included in calculating the total water sold. Customer will be responsible for providing to Fort Worth data each month of all metered water. This data will be provided by Customer to Fort Worth no later than the 5th of each calendar month. Upon activation of the meter, billing will be based upon the readings from the meter registering the volume of wastewater flowing through the meter.

7.3 At such time as the Director may determine in his/her sole discretion, a meter may be installed. The cost of same shall be that as provided for in Section 5.2 hereof.

7.4 Customer shall have access to the metering and sampling facilities at all reasonable times; provided, however, that any reading, calibration or adjustment to such metering equipment shall be done by employees or agents of Fort Worth, or other mutually approved third party calibration agent, in the presence of representatives of Customer and Fort Worth, if so requested by Customer. Notification of any proposed tests shall be provided to the Customer at least seventy-two (72) hours prior to such tests being conducted.

7.5 All readings of meters will be entered in ink upon bound journals maintained by Fort Worth. Customer shall have access to such records during reasonable business hours and shall be furnished with monthly totalizer readings for each point of entry metering and sampling facility.

7.6 Fort Worth shall calibrate and routinely service the meters no less than once during each six (6) month period. Copies of the results of such calibration and all related information shall be provided to Customer. Fort Worth shall notify the Customer at least seventy-two (72) hours in advance of the date and time for any calibration and Customer may observe, if so desired.

7.7 Upon any calibration, if it is determined that the accuracy envelope of such meter 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, the registration of the flow as determined by such defective meter 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.

7.8 If any meter used to determine volume from Customer is out of service or out of repair so that the amount of wastewater metered cannot be ascertained or computed from the reading thereof, the wastewater delivered through the period such meter is out of service or out of repair shall be estimated and agreed upon by the parties hereto 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 metering station under similar conditions. In the event that the parties hereto cannot agree on the extrapolated estimate of wastewater volume delivered, agreement on the flow volume will be determined by third party arbitration.

7.9 Fort Worth shall periodically determine the quality of the wastewater at the metering and sampling facilities or other agreed upon sampling points for the purposes of billing for the strength of the wastewater. The sampling and testing shall be done in accordance with the wholesale wastewater customer monitoring handbook, dated October, 1990, prepared by Gutierrez, Smouse, Wilmut and Associates, Inc., as it may be amended from time to

time. Fort Worth will provide Customer with a minimum of seven (7) day advance notification of intent to sample, or such notification as is sufficient to allow Customer to arrange the services of a qualified laboratory. If, at the request of Customer or at the request of the Director, more extensive monitoring is desired, such additional monitoring shall be paid for by the party making the request and shall be done in compliance with Section 7. If Customer requests such additional monitoring, Fort Worth shall invoice Customer and payment shall be made within ten (10) days after receipt of invoice.

The notification required in this section shall include the planned dates, times, and location(s) of sampling. Fort Worth shall analyze the samples collected in accordance with standard methods. Customer may be present during the initial setup of sampling equipment and at the time of pickup for each twenty-four (24) hour composite sample. Fort Worth agrees, if requested, to split said wastewater samples with Customer.

7.10 If in the opinion of the Director, compliance monitoring is required, the Director may order that additional monitoring be performed with or without prior notice to Customer. Said compliance monitoring is to be in addition to the periodic sampling set forth in Section 7.8. All information obtained as a result of such compliance monitoring shall be provided to the Customer upon request. Fort Worth will provide notice of such compliance monitoring to Customer within a reasonable time thereafter.

7.11 If Customer disputes Fort Worth results of analyses and the parties hereto cannot settle such dispute, such dispute will be determined by third party arbitration.

7.12 All costs incurred by Fort Worth under this section will be considered to be a system cost.

8. Rates and Charges

8.1 Wholesale wastewater rates will be based upon cost-of-service rate studies performed by independent utility rate consultants, as provided for in Section 8.4 hereof. The independent utility rate consultant shall be selected by the Director from a list of five highly qualified firms submitted by the Wastewater System Advisory Committee. The cost of such studies will be a system cost. All cost-of-service studies shall be conducted utilizing the utility cost basis of determining revenue requirements applicable to the wholesale customer class.

8.2 The cost-of-service for the wholesale customer class shall include allocated reasonable and necessary operation and maintenance expenses, depreciation expense and a fair and reasonable return on allocated capital facilities. To determine the allocation and distribution of costs to the wholesale customer class, the independent utility rate consultant shall consider at least the following factors: total volume, rate of flow, wastewater quality, metering, and customer-related costs such as accounting, billing, and monitoring. Capital-related costs will consist of depreciation expense and return on original cost rate base. On a periodic basis as determined by the Director the depreciation

rates on all general benefit capital facilities shall be studied, and new salvage values, useful lives, and annual rates of depreciation shall be developed from such studies. The rate base shall consist of all allocated capital facilities, net of depreciation and appropriate contributions, and shall include construction work in progress, a reasonable allowance for working capital, and a reasonable inventory of materials and supplies necessary for the efficient operation of the Fort Worth System. On a periodic basis as determined by the Director, a cash "lead-lag" study shall be conducted to determine the appropriate level of working capital at the same time as the above depreciation rate study is done. Records of the original cost and the accumulated depreciation of all capital facilities shall be maintained in the Fort Worth Fixed Asset Tracking System. These records shall be available for inspection at the Fort Worth Water Department during reasonable business hours upon request by Customer.

8.3 Fort Worth shall be allowed an adequate opportunity to earn a reasonable rate of return. The return shall be sufficient to assure confidence in the financial soundness of the utility, shall be adequate to maintain and support its credit, shall enable it to raise the money necessary for the proper discharge of its public duties, and shall be equal to the weighted average imbedded cost of outstanding debt plus one-and-one-half percent (1-1/2%).

8.4 For the fiscal years beginning October 1, 1995, 1998, 2001, 2004, 2007, 2010, 2013, and 2016, a complete detailed rate study will be performed by an independent utility rate consultant

selected by the Director in conformance with Section 8.1 hereof. The same methodology as used in the immediate previous rate study will be utilized by the utility rate consultant so selected. In the interim period between complete detailed rate studies, wholesale wastewater rates shall be adjusted by Fort Worth using the same methodology adopted at the time of the last complete detailed rate study utilizing the actual operating data for the most current twelve month period ending September 30th, adjusted for known and measurable changes in cost data which may have occurred since the last audited statement.

8.5 Changes in the wholesale wastewater rate methodology will be allowed if recommended by a majority of the Wastewater System Advisory Committee and approved by the Fort Worth City Council. For purposes of the section, a majority is defined as any combination of Wholesale Customers contributing a total of more than fifty percent (50%) of the wholesale sewage flow in the immediate past fiscal year.

8.6 The charges for the initial period of this contract shall be from the date of its execution through September 30, 1993, and are as follows:

Volume Charge	\$0.3542 per 1000 gallons
BOD Strength	
Charges	\$0.1723 per pound of BOD
TSS Strength	
Charges	\$0.1389 per pound of TSS
Monthly Billing Charges	\$75.00

8.7 Bills for wastewater treatment and disposal service shall be rendered to Customer monthly by Fort Worth. All such bills shall be due and payable by Customer not more than thirty (30) days from the billing date. The bills will show current charges, as well as past-due charges, if any. Current charges shall be the amount due for wastewater collection, treatment and disposal service provided since the prior billing period. Past-due charges shall be the total amount unpaid from all prior billings as of the current billing date. Payments received by Fort Worth shall first be applied to the past-due charges, if any, and thereafter to the current charges.

8.8 If Customer disputes a bill and is unable to resolve the difference informally, Customer shall notify the Director in writing. If the Director and Customer are unable to resolve the disputed bill, agreement on the bill will be determined by third party arbitration. Dispute of a bill is not grounds for non-payment. In the event a payment is not paid as specified in this agreement, a finance charge of ten percent (10%) per annum will be calculated from the date which the payment was required to be made. In the event the bill established by arbitration is less than the disputed bill, then the amount found to be incorrect will be credited to the Customer's account together with an interest charge of ten percent (10%) per annum calculated from the date payment of the disputed bill was received.

8.9 The parties hereto agree that services obtained pursuant to this contract are essential and necessary to the operation of Customer's waterworks and wastewater facilities and that all payments made by each Customer hereunder shall constitute reasonable and necessary operating expenses of Customer's waterworks and wastewater systems within the meaning of Article 1113, Vernon's Annotated Texas Statutes, and the provisions of any and all ordinances of Customer authorizing the issuance of any revenue bond issues of Customer which are payable from its waterworks and wastewater systems.

8.10 Customer agrees, throughout the term of this agreement, to fix and collect such rates and charges for wastewater service to be supplied as will produce revenues in an amount equal to at least (i) all of operation and maintenance expenses of such system, including specifically its payments under this agreement; and (ii) all other amounts as required by law and the provisions of the ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding, including the amounts required to pay all principal of and interest on such bonds and other obligations.

8.11 Customer specifically agrees to adopt and maintain in effect for the life of this contract an ordinance providing for a user charge system in full accord with relevant EPA regulations.

8.12 If a court, the Texas Water Commission, or any federal or state regulatory authority finds that Fort Worth's rates, policies, or methodologies for calculating rates for the collection

and/or treatment of wastewater delivered by Customer to Fort Worth under this agreement are unreasonable or otherwise unenforceable, Fort Worth has the option to terminate this agreement without liability to Customer. By signing this agreement, Customer stipulates and agrees that Fort Worth and its other customers will be prejudiced if Customer avoids the obligation to pay the rates for the wastewater services specified in this agreement while accepting the benefits of obtaining such services from Fort Worth. Nothing in this agreement shall be construed as an undertaking by Fort Worth to furnish wastewater services to Customer except pursuant to this agreement. If Customer initiates or participates in any proceeding regarding Fort Worth's rates, policies, or methodologies for calculating rates under this agreement and advocates a position that is adverse to Fort Worth and Fort Worth prevails, Customer shall pay Fort Worth for its expenses including attorney's fees in the proceeding within fifteen (15) days after Fort Worth's demand for payment. Customer stipulates and agrees that the rates, policies and methodologies for calculating rates are just, reasonable and without discrimination.

9. Industrial Connection and Monitoring

9.1 Customer agrees that it will not permit any significant industrial user within its jurisdiction to connect directly or indirectly either to its system or to the Fort Worth System without at least thirty (30) days' prior written notification to the Director of such intent to connect. Customer shall provide the

Director with such information pertaining to volume and composition of flow as may be requested by the Director.

9.2 Customer agrees to conduct any and all monitoring, sampling and inspection of Customer System and industrial users as necessary to insure that industrial waste introduced into the Customer System meets the quality standards set out in Section 10.2 hereof. Upon request to Customer, a representative of Fort Worth will be permitted to observe Customer's collection of samples from industrial users, and Customer agrees to furnish Fort Worth separate duplicate samples for independent testing, and, upon request, to provide the Director sample analysis results and pretreatment records.

9.3 Customer agrees that Fort Worth shall have the right to sample wastewater at all points of entry and such other locations as may be mutually agreed to in writing by both parties for the purpose of determining the volume and quality of wastewater entering the Fort Worth System. Customer agrees to disconnect from its system any industrial user found to be in violation of allowable discharges or who refuses access to its facilities for the purpose of sampling wastewater being discharged into the Customer System; provided, however, that said disconnected industrial user shall be afforded the same rights, privileges of appeal and deficiency cure periods as are industrial users operating within Fort Worth's jurisdiction.

9.4 Following notice to Customer by Fort Worth, Customer grants to Fort Worth the right to enter Customer's jurisdiction if

Fort Worth determines that questionable discharges or prohibited discharges are entering the Fort Worth System emanating from the Customer System. Customer agrees to assist Fort Worth in locating and eliminating such prohibited discharges.

10. Wastewater Quality

10.1 Customer agrees that on or before thirty (30) days from date of execution of this contract it shall enact and cause to be enforced an ordinance enabling Customer to enforce within its jurisdiction regulations governing industrial waste that are at least as stringent as the provisions of the current Fort Worth Ordinance No. 10880 and any necessary and reasonable amendments thereto, (attached hereto and marked as Exhibit "C" and made a part hereof for all intents and purposes) and state and applicable federal regulations relating to 1) discharged substances; 2) prohibited discharges; 3) pretreatment requirements; 4) industrial discharge permitting system; and 5) industrial self-monitoring reports. Customer agrees to enact and enforce ordinances or any amendments to Ordinance No. 10880, or any future ordinances relating to industrial discharges, prohibited or controlled wastes or pretreatment requirements and such amendments and future ordinances shall become incorporated as additional exhibits to this contract; provided, however, Fort Worth shall provide Customer with a copy of such proposed ordinances or amendments at least sixty (60) days prior to the presentation of such ordinances or amendments to the Fort Worth City Council during which time Customer shall have an opportunity to review same. Customer shall

adopt and enforce such proposed ordinances or amendments no later than the effective date of the Fort Worth ordinance or amendment.

10.2 Customer agrees that the quality of the wastewater discharged into the Customer System shall be equal to or better than the quality standards established by Fort Worth Ordinance No. 10880, or any amendment adopted pursuant to Section 10.1.

10.3 Customer shall require all significant industrial users within its jurisdiction that ultimately discharge into the Fort Worth System to apply for and obtain a permit from Customer allowing such discharge. Such permit shall require industrial users to abate prohibited substances from their discharge as a condition to discharging wastewater into the Customer System. The permit application shall contain, as a minimum, the following:

1. Name and address of discharger;
2. Agent for discharger;
3. Type of industry;
4. Products produced or services rendered; and
5. Chemicals being stored and/or used.

Customer shall provide Fort Worth a copy of such application and permit, if issued, within fourteen (14) days after issuance.

11. Resale of Wholesale Wastewater Services

11.1 Customer is prohibited from providing wholesale wastewater services without the prior recommendation of the Wastewater System Advisory Committee and without the prior written consent of the City Council of Fort Worth. Customer shall provide

the Director a copy of the proposed contract with its wholesale customer.

11.2 If the consent as required in Section 11.1 is given, Customer shall require its wholesale customer to comply with Sections 9, 10 and 28 of this contract and to enact and enforce any and all necessary ordinances.

12. Infiltration and Inflow

Customer agrees that it has an obligation to prevent infiltration and inflow into its System and then into the Fort Worth System. Customer further agrees that all sewer connections within its jurisdiction which ultimately enter into the Fort Worth System will be constructed in accordance with applicable specifications and standards at least equal to those of the Fort Worth Water Department or the Standard Specifications for Public Works Construction issued to the North Central Texas Council of Government. Further, Customer covenants and agrees to maintain strict supervision and maintenance of its System to prevent connections through which surface drainage can enter ultimately into the Fort Worth System. Customer shall not make, nor shall it permit to be made, any connection which will contribute storm water run-off from rainwater spouts, drainage areas, streets, gutter drain or other source into its sanitary sewer system.

13. Sludge Disposal

Customer recognizes the importance of utilizing sludge in a timely and proper manner. Customer will cooperate with Fort Worth

in any environmentally sound sludge utilization program meeting federal and state standards within the area served by Customer.

14. Wastehaulers

Customer agrees to adopt the North Central Texas Council of Government's model ordinance, or one similar to it, regulating liquid wastehaulers within Customer's service area. At a minimum such ordinance shall require liquid wastehaulers to be permitted and provide for a manifest system. Further, said ordinance shall prohibit the introduction of liquid waste into the Customer System, directly or indirectly.

15. Assistance

15.1 In the event Customer requests assistance with its System, Fort Worth may, at its option, assist Customer. Customer agrees to pay Fort Worth its actual costs incurred, including, but not limited to, labor and material expended. Nothing herein shall be construed to require Fort Worth to assist Customer. Such costs will be invoiced to Customer and payment made within ten (10) days after receipt of invoice.

15.2 In the event Fort Worth requests assistance with its System, Customer may, at its option, assist Fort Worth. Fort Worth agrees to pay Customer its actual costs incurred, including, but not limited to, labor and material expended. Nothing herein shall be construed to require Customer to assist Fort Worth. Such costs will be invoiced to Fort Worth and payment made within ten (10) days after receipt of invoice.

16. Payment and Finance Charge

The parties hereto agree that the failure to make any payments within the times provided for herein results in additional cost to the party to be paid; therefore, the parties agree that any payment required herein not made within thirty (30) days of the billing date shall be subject to a finance charge of ten percent (10%) per annum to be calculated from the date which the payment was required to be made.

17. Reports and Records

If requested by the Director, and/or Customer, the other party shall provide quarterly the following data: Actual number of customer accounts discharging directly or indirectly into the Fort Worth System and/or Customer System within their respective service areas; classification of domestic and nondomestic accounts within its service area by number and percentage of accounts discharging directly or indirectly into the Fort Worth System and/or Customer System within its service area.

Either party may request additional data which may assist them in developing methodology for cost of service studies, planning studies for analyzing federal grants, and wholesale system access fees; provided, however, that neither party shall request data that will require the other party to incur unreasonable expenses in providing such data.

18. Notices

Any notice, communication, request, reply or advice herein provided or permitted to be given, made or accepted by either party to the other party must be in writing to:

City of Fort Worth: Water Director
 City of Fort Worth
 1000 Throckmorton Street
 Fort Worth, Texas 76102

Customer: City Administrator
 City of Kennedale
 209 North Hope Rd
 Kennedale, Texas 76060

The parties hereto shall indicate in writing any change that may occur in such respective addresses from time to time.

19. Inspection and Audit

Complete records and accounts required to be maintained by each party hereto 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; and further, if required by any law, rule or regulation, make said records and accounts available to federal and/or state auditors.

20. Consent

20.1 Whenever, under the terms of this agreement, Fort Worth is permitted to give its written consent or approval, Fort Worth, in its discretion, may give or may refuse such written consent or approval and, if given, may restrict, limit or condition such

consent or approval in any manner it shall deem advisable; however, consent will not be unreasonably withheld.

21. Waiver, Remedy, Severability

21.1 No waiver by either party hereto of any term or condition of this agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

21.2 In addition to any other remedy as may be provided by law, this agreement shall be specifically enforceable by the parties hereto. Venue for any action shall be in Tarrant County, Texas.

21.3 It is agreed that, in the event any term or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such term or provision shall in no way affect any other term or provision contained herein; further, this agreement shall then continue as if such invalid term or provision had not been contained herein.

22. Ownership and Liability

22.1 No provision of this agreement shall be construed to create any type of joint or equity ownership of any property, any partnership or joint venture, nor shall same create any other rights or liabilities and Customer payments (whether past, present, or future) will not be construed as granting Customer partial ownership of, pre-paid capacity in, or equity in the Fort Worth System.

22.2 Liability for damages arising out of the transportation, delivery, reception, treatment, and/or disposal of all wastewater discharged into the Fort Worth System shall remain in Customer, together with title thereto, until such wastewater passes through the point of connection to the Fort Worth System, at which time liability for such damage shall pass to Fort Worth, save and except that title to any prohibited discharge and any liability therefor shall not pass to Fort Worth unless such prohibited discharge originated in the Fort Worth System. Further, the parties hereto agree to indemnify, save and hold the other party harmless from any and all claims, demands, causes of action, damages, losses, costs, fines and expenses, including reasonable attorney's fees, that may be asserted by anyone at any time on account of the transportation, delivery, reception, treatment and/or disposal while title to the wastewater is in such party. If such liability for damages is not attributable to a specific customer or Fort Worth, such liability becomes a Fort Worth expense.

22.3 Contracts made and entered into by either Customer or Fort Worth for the construction, reconstruction or repair of any delivery facility shall include the requirements that the independent contractor(s) must provide adequate insurance protecting both the Customer and Fort Worth as insured. Such contract must also provide that the independent contractor(s) covenant to indemnify, hold harmless and defend both the Customer

and Fort Worth against any and all suits or claims for damages of any nature arising out of the performance of such contract.

23. Compliance with Permit Conditions

Customer acknowledges that Fort Worth is the holder of discharge permits issued by the United States and the State of Texas. Customer agrees that it will comply with all permit conditions in any way relating to its collection system and the discharge into the Fort Worth System. Customer agrees, that in the event a fine is assessed against Fort Worth for any violation of any permit condition, and the violation is attributable to any act of omission or commission by Customer, to indemnify Fort Worth and pay to Fort Worth the amount of such fine. If such fine is not attributable to a specific customer, such fine becomes a Fort Worth expense.

24. Life of Contract

This contract shall expire on September 30, 2017 and thereafter shall be subject to renegotiation between the parties hereto.

25. Force Majeure

No party hereto shall be considered to be in default in the performance of any of the obligations hereunder (other than obligations of either party to pay costs and expenses) if such failure of performance shall be due to an uncontrollable force beyond the control of the parties, including but not limited to, the failure of facilities, flood, earthquake, tornado, storm, fire,

lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute and action or non-action by a failure to obtain the necessary authorizations and approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage, or restraint by a court order or public authority, which by the exercise of due diligence and foresight such party could not have reasonably been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Either party rendered unable to fulfill any obligation by reason of an uncontrollable force shall exercise due diligence to remove such inability with all reasonable dispatch.

In the event the proper operation of the Fort Worth System, as a result of the above, requires Fort Worth to temporarily interrupt all or part of the services to Customer, no claims for damage shall be made by Customer against Fort Worth. Fort Worth will exercise its best efforts to insure that such interruptions will not adversely affect the health and welfare of Customer's residents.

26. Termination

This agreement may be terminated in whole or in part by the mutual consent of Customer and Fort Worth. Notwithstanding anything contained herein to the contrary, any material breach by either party hereto to perform any of the duties or the obligations assumed by such party hereunder or to faithfully keep and perform any of the terms, conditions and provisions hereof shall be cause for termination of this agreement by Fort Worth in the manner set forth in this paragraph. Fort Worth shall deliver to Customer

ninety (90) days prior written notice of its intention to so terminate this agreement if Customer fails to cure or adjust such material breach, including in such notice a reasonable description of the breach. If within said ninety (90) days Customer shall fail or refuse to cure such default to the satisfaction of Fort Worth, then and in such event, Fort Worth shall have the right with six months advance written additional notice to Customer and without any liability whatsoever on the part of Fort Worth to declare this agreement terminated. In the event of termination of this agreement, all rights, powers, and privileges of Customer hereunder shall cease and terminate and Customer shall make no claim of any kind whatsoever against Fort Worth, its agents or representatives, by reason of such termination or any act incident thereto, provided Fort Worth acted reasonably and such termination was not unreasonable, arbitrary and capricious. Fort Worth shall advise Customer in writing immediately upon acceptance of the cure of any default. The following breach, default or failure to perform a duty or obligation shall be considered to be a material breach:

- a. Failure to adopt and enforce any ordinance required to be adopted and enforced herein;
- b. Failure to make any payment of any bill, charge or fee as provided for in this agreement;
- c. Making any connection to the Fort Worth system at any point except as provided in Section 2.2 hereof;
- d. Failure to provide Fort Worth ingress and egress for

purposes of sampling and operation and maintenance of any metering or any sampling facility;

- e. Failure to provide Fort Worth rights-of-way as required herein;
- f. Failure to permit any sampling of wastewater as provided for herein;
- g. Failure to disconnect industrial users of Customer pursuant to Section 9.3;
- h. Failure to maintain the quality of discharge as required in Sections 10.2 and 10.3;
- i. Failure of Customer to comply with Section 11.2 hereof;
- j. Failure of Customer to comply with Section 23 hereof.
- k. The provision of wholesale wastewater service without the prior written consent of the City Council of the City of Fort Worth.

In the event of any other nonmaterial breach, default or failure to perform duties under this agreement, Fort Worth shall deliver to Customer sixty (60) days advance written notice of such default. If Customer fails to cure such breach, default or failure, then Fort Worth shall give Customer written notice of such failure to cure and may surcharge Customer Five Thousand Dollars (\$5,000) per month until such time as Customer cures such nonmaterial default.

Any failure by Fort Worth to so terminate this agreement or the acceptance by Fort Worth of any benefits under this agreement for any period of time after such material breach, default or failure by Customer shall not be determined to be a waiver by Fort Worth of any rights to terminate this agreement for any subsequent material breach, default or failure.

Any failure by Customer to so terminate this agreement or the acceptance by Customer of any benefits under this agreement for any period of time after such breach, default or failure by Fort Worth shall not be determined to be a waiver by Customer of any rights to terminate this agreement for any subsequent material breach, default or failure.

27. Regional Wastewater Authority

In the event Fort Worth is designated as a regional wastewater authority or agency by a duly authorized regulatory body, or if Fort Worth should elect to contract with or assign this contract to a regional wastewater authority to provide all or part of the services covered by this agreement, the parties hereto agree that any such regional wastewater authority may, by way of assignment of this agreement, assume the same obligations and receive the same benefits as Fort Worth. Customer hereby grants to Fort Worth the specific right to assign this agreement subject to the provisions of this section.

28. Wholesale System Access Fees

28.1 On a quarterly basis, Customer agrees to pay Fort Worth a Wholesale System Access Fee for each new or enlarged connection

for wastewater service made within Customer's service area served by the General Benefit Capital Facilities of the Fort Worth system. The Wholesale System Access Fee to Customer for each such connection shall be based upon the size of water meter and shall be equal to the Wholesale System Access Fee collected for the same size water meter made within the jurisdiction of Fort Worth. The calculation of said Wholesale System Access Fee shall be consistent with all applicable state and federal regulations, including Chapter 395, Texas Local Government Code, or any amendment or successor statute thereto, and shall include only those costs associated with General Benefit capital expansions and capital improvements necessary to provide service to new development. Nothing within this contract shall be deemed to prevent either Fort Worth or Customer from charging their own retail customers impact fees in excess of the Wholesale System Access Fee charge provided for herein.

28.2 Fort Worth agrees that all monies remitted to it pursuant to this Section will be placed in a separate interest bearing account to pay only for the cost of constructing capital improvements or facility expansions as permitted by Chapter 395, Texas Local Government Code, or any amendment thereto, or by any successor statute thereto, and will not be used for operation and maintenance expenses. Once expended, such funds and all interest earned thereon will be considered a "contribution" for rate setting purposes only.

28.3 Customer shall provide to Fort Worth such information that relates to the making of new and/or enlarged connections within its jurisdiction as may be requested by the Director, including but not limited to building permits, with each quarterly payment required in this section.

28.4 Neither Fort Worth nor Customer shall waive any impact fee due from a retail customer for a new or enlarged connection to its respective system within its jurisdiction. However, either Fort Worth or Customer may pay such impact fee into the fund required for paying for the capital improvements.

28.5 The Wastewater System Advisory Committee created pursuant to Section 29 hereof shall select five (5) of its members to a subcommittee to be known as the Customer Impact Fee Committee (CIFC). Every three years, beginning June, 1993, Fort Worth will update the land use assumptions and capital improvements plan upon which the Wholesale System Access Fees are based. In June 1993 and every three years thereafter, the CIFC shall submit a list of five qualified engineers or planning consultants to the Director. The Director shall select a consultant from such list to assist Fort Worth in developing land use assumptions, identifying capital improvements, and formulating capital improvement plans and access fees. The consultant shall be responsible to Fort Worth and its citizen's advisory committee, but shall also report to the CIFC. The cost of the consultant shall be deemed a System Cost. In the event the CIFC fails to submit a list of five consultants to Fort

Worth, Fort Worth shall select a consultant to perform in the manner described herein.

28.6 Fort Worth agrees that only those capital improvements as defined in section 1.29 hereof shall be included in the capital improvements plan for the purpose of determining Wholesale System Access Fees; provided, however, Fort Worth may include other capital improvements for the purpose of determining impact fees to its own retail customers. Fort Worth shall not be required to include all capital improvements in any capital improvements plan. The CIFIC shall be responsible for working with Fort Worth and its consultant to determine the capital improvements to be included in the calculation of any Wholesale System Access Fees. The CIFIC shall recommend to the Wastewater System Advisory Committee which capital improvements should be included in the calculation of any Wholesale System Access Fees. The CIFIC shall also meet with Fort Worth's citizen advisory committee as such citizen's advisory committee reviews and considers land use assumptions, the capital improvements plan and impact fees.

28.7 Prior to the adoption of any land use assumptions, capital improvements, or access fees, the CIFIC shall be furnished a copy of the proposed land use assumptions, capital improvement plan or access fees at least 30 days prior to any scheduled hearing thereon.

28.8 Each year Fort Worth shall provide to the Wholesale Wastewater Advisory Committee an audited financial statement of the Fort Worth Water Department's records.

28.9 Fort Worth and Customer agree that the methodology for the calculation of Wholesale System Access Fees required herein is consistent with the methodology prescribed by Chapter 395, Texas Local Government Code. In the event that such statutory methodology is amended or replaced by a new statute, the Wholesale Wastewater Advisory Committee may engage legal counsel to work with Fort Worth to propose amendments to this contract to conform it to such amendment or new statute. The reasonable cost of such legal counsel shall be a system cost.

29. Wastewater System Advisory Committee

Customer's governing body shall annually appoint a representative to be a voting member of the Wastewater Advisory Committee, whose purpose shall be to consult with and advise Fort Worth, through the Director, on matters pertaining to planning, improvements, grants, rate studies, budgets, administration, and additional wholesale customers, whether same be wholesale customers of Customer or Fort Worth. The Committee may establish bylaws governing the election of officers, meeting dates and other matters pertinent to its functioning.

30. Effective Date

This contract, together with all terms and conditions and covenants, shall be effective as of the date of connection of the Customer system to the Fort Worth System.

31. Miscellaneous

31.1 This agreement is subject to all applicable federal and state laws and any applicable permits, ordinances, or amendments

adopted pursuant to Section 10.1 rules, orders and 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, ordinance, order, rule or regulation in any forum having jurisdiction.

31.2 The Customer agrees to abide by any changes in this agreement made necessary by any amendment or revision to state or federal regulations.

31.3 Upon prior notice by Fort Worth, any duly authorized employee of Fort Worth bearing proper credentials and identification shall notify Customer of need for access to any premises located within Customer's city limits or served by Customer as may be necessary for the purpose of inspections and observation, measurement, sampling and testing and/or auditing, in accordance with the provisions of this contract. Customer may elect to accompany the Fort Worth representative. To the extent permitted by law, Fort Worth agrees to indemnify Customer for any damage or injury to person or property caused by the negligence of such duly authorized employee while such employee is in the course and scope of his employment.

31.4 In each instance herein where reference is made to a federal or state regulation, it is the intention of the parties that, at any given time, the current federal or state regulation shall apply. If a publication or reference work referred to herein is discontinued or ceases to be the generally accepted work in its field, or if conditions change, or new methods or processes are

implemented by Fort Worth, new standards shall be adopted which are in compliance with state and federal laws and any valid rules and regulations pursuant thereto.

31.5 Fort Worth must comply with all federal, state and local government requirements to obtain grants and assistance for system design, system construction and studies. Customer agrees to assist Fort Worth in compliance by setting adequate rates, establishing proper user charges and complying with governmental requirements.

31.6 Section headings in this agreement are for convenience only and do not purport to accurately or completely describe the contents of any section. Such headings are not to be construed as a part of this agreement or any way defining, limiting or amplifying the provisions hereof.

31.7 Whenever any disputed matter herein is to be specifically determined by the use of an arbitrator, the following procedure is to be followed. The party requesting that the dispute be settled by arbitration shall serve on the other party a request in writing that such matter be handled by arbitration. Customer and Director shall mutually agree in writing on the selection of an impartial arbitrator. Such agreement shall be made within ten (10) days from the date that the request for arbitration is received. If an agreement is not reached on the selection of the impartial arbitrator on or before the tenth (10th) day after the date that notice is received, the Director shall immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association of the Federal Mediation and Conciliation

Service, or their successor in function. The Customer and Director may mutually agree on one of the seven arbitrators on the list. If they do not agree within five (5) working days after the receipt of the list, Customer and Director shall alternate striking a name from the list and the name remaining shall be the impartial arbitrator. Customer and Director shall mutually agree on a date for the arbitration hearing. The decision of the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

31.8 Customer agrees to notify Fort Worth in writing within five (5) business days in the event that Customer issues any type of permit authorizing the drilling of a water well or becomes aware that a water well has been drilled within the service area described in Exhibit "A".

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective officers thereunto duly authorized.

ATTEST:

Alice Cruesen
City Secretary

CITY OF FORT WORTH

By: *Mike Dugan*
City Manager

APPROVED AS TO FORM AND LEGALITY:

[Signature]
City Attorney

Date: *2/7/94*

C-14159
Contract Authorization

1-25-94
Date

ATTEST:

CITY OF KENNEDALE

Rachy Turner
City Secretary

By: [Signature]
City Administrator

APPROVED AS TO FORM AND LEGALITY:

[Signature]
City Attorney

Date: 9-15-93



Staff Report to the Honorable Mayor and City Council

Date: October 19, 2017

Agenda Item No: REQUIRED APPROVAL ITEMS (CONSENT) - B.

I. Subject:

Consider approval of an amendment to the 2017 Interlocal Agreement for Rabies Control with the City of Fort Worth, extending the contract through FY2018, and authorizing the City Manager to sign the amendment

II. Originated by:

Tommy Williams, Police Chief

III. Summary:

This is a one-year extension of the contract with the City of Fort Worth for the impoundment of seized and stray animals as well as other services.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	Current Consideration_FY2018 Rabies ILA Extension	Kennedale ILA A Rabies Control FY18.pdf
2.	Historical_2017 Rabies Control Contract	2017+Rabies+Control+ILA.pdf

AMENDMENT TO
CITY SECRETARY CONTRACT NO. 48788
INTERLOCAL AGREEMENT
FOR RABIES CONTROL
CITY OF FORT WORTH AND CITY OF KENNEDALE

THIS AMENDMENT AGREEMENT TO CITY SECRETARY CONTRACT (CSC) NO. 48788 is made and entered into by and between the **CITY OF FORT WORTH**, a home-rule municipal corporation situated in Tarrant, Denton, Parker, and Wise Counties, Texas, acting by and through its duly authorized Assistant City Manager (hereinafter referred to as “City”), and **CITY OF KENNEDALE**, Texas (“Kennedale”), collectively known as “the parties”.

RECITALS

WHEREAS, on March 6, 2017, the City and Kennedale made and entered into an Interlocal Agreement (CSC No. 48788) (“Agreement”) in accordance with Chapter 791 of the Texas Government Code for the purpose of limited rabies control under Chapter 826 of the Texas Health and Safety Code, also known as the Rabies Control Act of 1981; and

WHEREAS, Section 3 of the Agreement provides that the Agreement will terminate on September 30, 2017, unless otherwise extended in writing by the parties; and

WHEREAS, Kennedale and the City wish to renew the Agreement for an additional one year term, unless extended as provided below; and

NOW, THEREFORE, City and Kennedale acting herein and by and through their duly authorized representatives mutually agree to the following amendment of the Agreement:

1. Section 3. Term of the Agreement is deleted in its entirety and replaced with the following:

3.
TERM

Unless terminated pursuant to the terms herein, this Agreement shall be for a term of one year, beginning October 1, 2017, and ending on September 30, 2018. In addition, the term may be extended by mutual written agreement of the parties, for up to two (2) one-year terms.

2. Except as amended by this Amendment, all of the terms and conditions of the Agreement, as amended, are ratified and remain in full force and effect.

This Amendment shall be effective on October 16, 2017.

CITY OF FORT WORTH

Fernando Costa
Assistant City Manager

Date: _____

RECOMMENDED

Dr. Timothy Morton
Asst. Code Compliance Director

APPROVED AS TO FORM
AND LEGALITY

Melinda Ramos
Sr. Assistant City Attorney

ATTEST:

Mary J. Kayser
City Secretary

M&C C-28077

CONTRACT COMPLIANCE MANAGER:

By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

By: _____

Name: _____

Title: _____

CITY OF KENNEDALE

George Campbell
City Manager

Date: _____

APPROVED AS TO FORM
AND LEGALITY

Wayne Olson
City Attorney

ATTEST:

Leslie Galloway
City Secretary

STATE OF TEXAS

§

§

COUNTY OF TARRANT

§

INTERLOCAL AGREEMENT FOR RABIES CONTROL
CITY OF KENNEDALE

THIS AGREEMENT is made and entered into by and between the City of Fort Worth, a home-rule municipal corporation situated in Tarrant, Denton, Parker, and Wise Counties, Texas, acting by and through its duly authorized Assistant City Manager (hereinafter referred to as “City”), and the City of Kennedale, Texas, a home-rule municipal corporation located in Tarrant County, Texas, acting by and through its duly authorized Mayor (hereinafter referred to as “Kennedale”).

WHEREAS, Chapter 791 of the Texas Government Code authorizes the formulation of interlocal cooperation agreements between and among municipalities and counties for the performance of governmental functions; and

WHEREAS, Chapter 826 of the Texas Health and Safety Code, also known as the Rabies Control Act of 1981 (hereinafter referred to as the “Act”), requires governing bodies of each municipality to designate a local rabies control authority to enforce the Act and minimum standards for rabies control adopted by the Texas Department of State Health Services; and

WHEREAS, Section 826.016 of said Act authorizes a municipality to enter into agreements with public entities to carry out activities required or authorized under the Act; and

WHEREAS, Kennedale wishes to participate in an interlocal agreement with City for the purpose of limited rabies control in the City of Kennedale; and

WHEREAS, Kennedale and City mutually desire to be subject to the provisions of Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act.

NOW, THEREFORE, it is agreed as follows:

1.

PURPOSE

The purpose of this Interlocal Agreement is to enter into an Agreement between City and Kennedale whereby, subject to the terms and conditions hereinafter set forth and consideration specified below, City agrees to provide Kennedale with limited rabies control services in the City of Kennedale, and City agrees to provide impoundment and quarantine facilities for animals pursuant to this Agreement for the benefit of Kennedale.

2.
DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

ACT shall mean the Rabies Control Act of 1981, codified as Chapter 826 of the Texas Health and Safety Code.

ANIMAL shall mean any living, vertebrate creature, domestic or wild, other than homo sapiens.

ANIMAL CARE AND CONTROL CENTER shall mean a facility located in Fort Worth, Texas, which is operated by the City for the purpose of impounding and caring for animals as prescribed by law.

BITE shall mean a bite or scratch capable of transmitting rabies, which is inflicted by an animal on a human.

CAT shall mean a commonly domesticated member of the Felidae (feline) family, other than a lion, tiger, bobcat, jaguar, panther, leopard, cougar, or other prohibited animal.

DANGEROUS DOG shall mean a dog that makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog is being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

DAY shall mean a calendar day or any part thereof.

DOG shall mean canis familiaris.

QUARANTINE shall mean the strict confinement of a biting animal, in accordance with the Act and the Rules.

RABIES shall mean an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.

RULES shall mean the rules adopted by the Texas Department of State Health Services for rabies control and eradication under 25 TAC § 169.21 et seq.

STRAY shall mean roaming with no physical restraint beyond the premises of an animal's owner or keeper.

3.
TERM

Unless terminated pursuant to the terms herein, this Agreement shall be for a term of one year, beginning on October 1, 2016 and ending on September 31, 2017. In addition, the term may be extended by mutual written agreement of the parties, for up to three additional (3) one-year terms.

4.
SERVICES BY CITY

- A. Hours
City agrees to perform the services described herein for Kennedale in the City of Kennedale, between the hours of 8:00 a.m. and 4:00 p.m. weekdays and weekends, excluding holidays, with no after hours service provided.
- B. Rabies Response
In the manner and to the extent that it deems appropriate and in accordance with the Rules and the Act, bite animals which are presented by Kennedale to the City will be handled by the City in accordance with the Act and Texas Administrative Code, §169.33 Submission of Specimens for Laboratory Examination.
- C. Impoundment of Dogs
City will board dogs delivered to the City's Animal Care and Control Center by Kennedale officials pursuant to Section 6.

5.
DUTIES OF KENNEDALE

- A. Kennedale agrees that it will retain all responsibility for enforcement of all aspects of the Act not covered in Paragraph 4 of this Agreement, including criminal enforcement.
- B. Kennedale agrees that it will pursue, at its discretion, the issuance and execution of warrants or other court orders necessary for the seizure of animals requiring quarantine or testing under Section 4 (C) of this Agreement, whose owners have failed or refused to place them for quarantine or testing. Kennedale further agrees that City is not required to pursue the issuance and execution of such warrants.

6.
IMPOUNDMENT AND DISPOSITION OF ANIMALS

- A. A live, stray dog impounded by the City under this Agreement shall be held for a period of not less than seventy-two 72 hours, unless released earlier to its owner ("Animal Owner") or as described in subsection 6.D. below. A quarantined animal shall be held or presented for testing according to the Act and the Rules. Kennedale shall provide in

writing to the City the date of the bite incident and the animal's date of release from quarantine. Kennedale shall pay charges for impounded dogs as specified in Exhibit "A."

- B. Prior to the expiration of the impoundment period, the City may destroy an impounded dog if the Animal Services Administrator or Animal Control Manager of the City or the Animal Care and Control's veterinarian recommends and approves such action.
- C. Impounded animals will be released to their owners upon:
 - (1) Proof of identification;
 - (2) Payment of Exhibit "B" fees;
 - (3) The animal is vaccinated against rabies at the owner's expense if the animal is a dog or a cat over 12 weeks of age and the owner does not have an unexpired rabies vaccination certificate for the animal.
- D. The ownership of impounded or quarantined animals that have not been released to their owners on the expiration of the impoundment or quarantine period shall lie with Kennedale, and Kennedale authorizes the City to place the animals for adoption, to transfer them to other animal welfare organizations, or to be euthanized at the sole discretion of the City or as required by law. Kennedale specifically requests the City euthanize all animals from Kennedale that are not adopted or transferred.
- E. All quarantined animals from Kennedale not reclaimed by their owner will be disposed of pursuant to Section 6D. above, and Kennedale will be billed for the cost in accordance with the fee schedule.
- F. Kennedale will be billed for all impounded dogs and quarantined animals delivered by or from the Kennedale in accordance with Exhibit "A" below.
- G. The City will impound and hold dogs from Kennedale which have been seized by Kennedale only under Chapters 821 or 822 of the Texas Health and Safety Code. Kennedale agrees to request, pursuant to Chapters 821 and 822, an Appeals Bond to cover the fees estimated to be charged to the Animal Owner under Exhibit "B" and Kennedale agrees to pay the City all fees which would have been charged the Animal Owner in the event the court does not require the Animal Owner to pay the fees or where the Animal Owner is ordered by the court to pay and fails to pay.

7.
EXCLUSIONS

- A. Nothing in this Agreement shall be deemed as designating the City or an officer or employee of the City as the "local health authority" or "local rabies control authority" of Kennedale as those terms are defined or used in Title 10 of the Texas Health and Safety Code, Vernon's Texas Codes Annotated.
- B. Nothing in this Agreement shall be deemed as requiring the City to investigate reports of dangerous dogs, to register dangerous dogs, or otherwise regulate dangerous dogs in the

City of Kennedale under the authority of Chapter 822 Subchapter D. of the Texas Health and Safety Code, Vernon's Texas Codes Annotated.

- C. Nothing in this Agreement shall be deemed as requiring the City to quarantine or present for testing domestic animals that have been bitten by or directly exposed by physical contact to a rabid animal or its fresh tissues.
- D. City shall not impound stray animals if Kennedale fails to enact and maintain rules or ordinances pursuant to Sections 826.015 and 826.033 of the Texas Health and Safety Code that require animals to be restrained at all times.

8.

RESPONSIBILITY FOR EMPLOYEES

City employees who provide services under this Agreement are deemed to be City employees when providing such services. City will exercise complete control over the hiring, training, supervision, and conduct of such employees. City will be responsible for all wages and applicable payroll deductions, unemployment taxes, workers' compensation insurance, vacations, holidays, and fringe benefits for such employees and for all uniforms, vehicles, and equipment used by such employees for providing services under this Agreement. Kennedale shall have no direct supervisory authority over such employees except in emergency situations where the exercise of supervision by Kennedale becomes necessary for resolution of the emergency. Regarding workers' compensation insurance, the City shall not waive its right to subrogate against Kennedale for losses incurred in the course of City's services rendered to Kennedale under this Agreement.

9.

COMPENSATION

- A. As fair compensation for the services rendered Kennedale agrees to pay City for its services based on the schedule attached hereto as Exhibit "A", as pertinent, which is hereby incorporated as a part of this Agreement as if it were set forth at length. City may adjust any fee listed in Exhibit "A" during the term of this Agreement by giving Kennedale 120 days
- B. Head and shipment preparation fees shall be as described in Exhibit "A".
- C. Kennedale will not pay City more than **\$55,000.00**, in total per contract year, for services rendered during the term of this Agreement. This amount shall herein constitute a **not to exceed** limitation placed upon this Agreement, and when such amount is reached, City will cease providing such services. City agrees to provide the Kennedale with an itemized monthly bill. Kennedale agrees to promptly pay such bills upon presentation by the City, such payments to be made from current revenues available to Kennedale, within thirty (30) days of receipt. In the event of the termination of this Agreement, City shall bill Kennedale for any outstanding balance, regardless of the amount, and Kennedale agrees to promptly pay such bill, within thirty (30) days of receipt.

- D. Pursuant to the requirements of Section 791.011(d)(3) of the Texas Government Code, the amount due City shall be paid from revenues available to Kennedale in that current fiscal year.

10.

FEEES CHARGED ANIMAL OWNERS

Kennedale hereby agrees that City may charge, or cause to be charged, the fees set out in “Exhibit B” to the owners of animals that have been impounded or quarantined. “Exhibit B” is hereby incorporated as a part of this Agreement as if it were set forth at length. City is hereby authorized to increase said fees during the terms of this Agreement by giving Kennedale 120 days’ notice. Notwithstanding the fees charged to animal owners, Kennedale shall remain responsible to the City for the fees set out in Exhibit “A.”

11.

LIABILITIES

- A. To the extent permitted by law, Kennedale shall be responsible for all work-related deaths, injuries or diseases of Kennedale employees, and for property damage, personal injury or death caused by such employees, relating to work provided pursuant to this Agreement.
- B. To the extent permitted by law, City shall be responsible for all work-related deaths, injuries or diseases of City employees, and for property damage, personal injury or death caused by City employees or volunteers relating to work provided pursuant to this Agreement.
- C. Kennedale shall be responsible for all property damages, personal injuries and death caused by the use of City and Kennedale equipment and vehicles caused by Kennedale employees or volunteers pursuant to this Agreement. Furthermore, Kennedale shall be responsible for the repair or replacement of all such equipment and vehicles damaged, destroyed, lost or stolen by Kennedale employees or volunteers during the provision of services hereunder.
- D. City shall be responsible for all property damages, personal injuries and death caused by the use of City equipment and vehicles caused by City employees or volunteers pursuant to this Agreement. Furthermore, City shall be responsible for the repair or replacement of all such equipment and vehicles damaged, destroyed, lost or stolen caused by City employees or volunteers during the provision of services hereunder.

12.

IMMUNITY & THIRD PARTIES

- A. Kennedale expressly waives its right to assert immunity from suit for a claim forming the basis of a suit between the City and Kennedale alleging a breach of this Agreement. Kennedale does this as consideration for the City’s offer to enter into this Contract with

Kennedale. No third party may use this waiver in any way and no waiver of immunity in favor of a third party is intended by this Agreement.

- B. Nothing in this Agreement shall be construed to expand the liability of City or Kennedale beyond the scope of Chapter 101 of the Texas Civil Practice and Remedies Code unless specifically stated herein.

13.
TERMINATION

It is further agreed by and between City and Kennedale that City and Kennedale shall each have the right to terminate this Agreement upon thirty (30) days written notice to the other party.

14.
ENTIRETY

This Agreement contains all commitments and agreements of the parties hereto, and no other oral or written commitments shall have any force or effect if not contained herein.

15.
MODIFICATION

This Agreement may be modified by the mutual agreement of the parties, if the modification is in writing and signed by City and Kennedale.

16.
SEVERABILITY

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

17.
AUTHORITY

This Agreement is made for City and Kennedale as an Interlocal Agreement pursuant to VTCA, Government Code, Chapter 791.

18.
AUTHORIZATION

The undersigned officer and/or agents of the parties hereto are properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties

hereto, and each party hereby certifies to the other that any necessary resolutions extending such authority have been duly passed and are now in full force and effect.

19.
FORCE MAJEURE

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war; civil commotion; acts of God; inclement weather; governmental restrictions, regulations, or interferences; fires; strikes; lockouts, national disasters; riots; material or labor restrictions; transportation problems; or any other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

20.
FISCAL FUNDING LIMITATION

If for any reason, at any time during any term of this Agreement, either city fails to appropriate funds sufficient for the City to fulfill its obligations under this Agreement, that City may terminate this Agreement to be effective on the later of (i) thirty (30) days following delivery of written notice of the city's intention to terminate or (ii) the last date for which funding has been appropriated by the City Council for the purposes set forth in this Agreement.

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**SIGNATURE PAGE
INTERLOCAL AGREEMENT FOR RABIES CONTROL
CITY OF FORT WORTH AND KENNEDALE**

CITY OF FORT WORTH

Fernando Costa
Assistant City Manager

Date: _____

RECOMMENDED

Dr. Timothy Morton
Asst. Code Compliance Director

**APPROVED AS TO FORM
AND LEGALITY**

Melinda Ramos
Assistant City Attorney

ATTEST:

Mary J. Kayser
City Secretary

M&C _____

CITY OF KENNEDALE

By: _____
Title: Mayor or Manager

**APPROVED AS TO FORM
AND LEGALITY**

City Attorney

EXHIBIT A

SCHEDULE OF FEES PAID BY KENNEDALE

Impoundments/Boarding Fee:

Kennedale shall pay the City a flat fee of \$400.00 per dog or quarantine animal delivered to the City by Kennedale officials during the term of this agreement.

SPECIMEN HEAD PREPARATION AND SHIPMENT

Per Animal Head Specimen

\$200.00 per specimen

EXHIBIT B

SCHEDULE OF FEES TO BE PAID TO CITY **BY OWNERS RECLAIMING ANIMALS**

Rabies vaccination fee	\$ 9.00 per reclaimed dog or cat
Spay or neuter fee	\$50.00 per cat \$80.00 per dog
Microchip Fee	\$12.00 per reclaimed dog or cat
Daily board fees:	
Kenneling (dog, cat, small animal)	\$30.00 per day
Kenneling (other than dogs, cats or small animal)	\$30.00 per day
Quarantined animals and dangerous dogs	\$50.00 per day



Staff Report to the Honorable Mayor and City Council

Date: October 19, 2017

Agenda Item No: WORK SESSION - A.

I. Subject:

At this time, City Council will begin interviewing advisory board applicants.

II. Originated by:

III. Summary:

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments: