

KENNEDALE CITY COUNCIL AGENDA
REGULAR MEETING | MARCH 19, 2019
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE
WORK SESSION at 5:30 PM | REGULAR SESSION at 7:00 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. WORK SESSION

- A. Presentation of the FYE 2018 annual audit draft – Comprehensive Annual Financial Report (CAFR)
- B. Discussion of items on the Regular Agenda

III. REGULAR SESSION

IV. ROLL CALL

V. INVOCATION

VI. UNITED STATES PLEDGE AND TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State under God; One and Indivisible."

VII. VISITOR AND CITIZEN FORUM

At this time, anyone with business before the City Council may address the Council, provided that an official 'Speaker's Request Form' has been completed and submitted to the City Secretary prior to the start of the meeting. All comments must be directed towards the Mayor and Council as a whole, rather than individual Council members or staff. Speakers must limit comments to the subject matter as listed on the submitted form. No formal action or discussion can be taken on these items.

VIII. REPORTS AND ANNOUNCEMENTS

In addition to specific matters listed below, the City Council may receive reports about items of community interest, including but not limited to recognition of individual officials, citizens, or departments, information regarding holiday schedules, and upcoming or attended events.

- A. Updates from the City Council
- B. Updates from the City Manager
- C. Updates from the Mayor
 - Proclaiming Saturday, May 18, 2019 'Kids to Parks Day' in the City of Kennedale, celebrated by KIDFISH and Bark in the Park at Sonora Park

IX. MONITORING INFORMATION

- A. Monthly Financials – February 2019
- B. Monthly EDC Financials and Activity Report

X. INCIDENTAL ITEMS

XI. 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 approval of the minutes from the February 19, 2019 Regular Meeting
- B. Discuss and consider acceptance of independent auditor's draft report (Comprehensive Annual Financial Report (CAFR)) for the fiscal year ended September 30, 2018

XII. DECISION ITEMS

- A. Hold a Public Hearing and consider authorizing the City Manager to enter into a contract to transfer the operation and maintenance of the Kennedale water and sewer systems to the City of Arlington
- B. Hold a Public Hearing and consider authorizing the City Manager to enter into a contract to purchase potable water from the City of Arlington

XIII. 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 of any item posted on the agenda and legal issues regarding the Open Meetings Act.

- A. Discussion of pending legal matters regarding Ron Sturgeon vs. City of Kennedale
- B. Discussion with the City Attorney regarding proposed contracts to purchase potable water from the City of Arlington and to transfer the operation and maintenance of the Kennedale water and sewer systems to the City of Arlington
- C. *Pursuant to Section 551.074 deliberation of the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee:*

Discussion of City Manager's Annual Evaluation

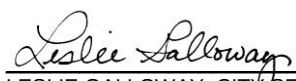
XIV. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

XV. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Kennedale will provide for reasonable accommodations for persons attending meetings. This facility is wheelchair accessible and accessible parking spaces are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meeting. Please contact the City Secretary at 817-985-2104 or (TTY) 1-800-735-2989.

CERTIFICATION

I DO HEREBY CERTIFY THAT A COPY OF THE MARCH 19, 2019 KENNEDALE CITY COUNCIL AGENDA WAS POSTED ON THE BULLETIN BOARD NEXT TO THE MAIN ENTRANCE OF CITY HALL (405 MUNICIPAL DRIVE; KENNEDALE, TX 76060), IN A PLACE CONVENIENT AND READILY ACCESSIBLE TO THE GENERAL PUBLIC AT ALL TIMES; AND THAT SAID AGENDA WAS POSTED AT LEAST SEVENTY-TWO (72) HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING, IN ACCORDANCE WITH CHAPTER 551 OF THE TEXAS GOVERNMENT CODE.


LESLIE GALLOWAY, CITY SECRETARY



Date: March 19, 2019

Agenda Item No: WORK SESSION - A.

I. Subject:

Presentation of the FYE 2018 annual audit draft – Comprehensive Annual Financial Report (CAFR)

II. Originated by:

Brady Olsen, Finance Director

III. Summary:

The draft of the CAFR was not yet available at the time this packet was published, but will be provided to the City Council in time for the meeting.

During the Work Session, Kevin Kemp of BKD will present the CAFR draft for FYE 2018 (October 1, 2017 – September 30, 2018).

GENERAL NOTES TO KEEP IN MIND, REGARDING THIS DOCUMENT

- The EDC is not included in this audit, as they undergo a separate audit, which will be presented at the next Regular Meeting of the EDC Board, on Tuesday, March 26, at 7:00 p.m..
- The term 'Governmental Funds' encompasses all non-Water/Sewer Funds; the term 'Non-Major Governmental Funds' includes LEOSE (Law Enforcement Officers Standards and Education), Park Dedication, Capital Projects, Roadway Impact Fees, Library Building, and Capital Bond Funds; and the term 'General Fund' refers to all other funds (not just our budgetary General Fund) and includes Streets, Capital Replacements, etc.
- 'Water and Wastewater' includes restricted water and sewer impact fees; however, the Stormwater Fund is reported separately.

We will be providing more in-depth analysis of the year end financials at a later date.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:



Date: March 19, 2019

Agenda Item No: WORK SESSION - B.

I. Subject:

Discussion of items on the Regular Agenda

II. Originated by:

III. Summary:

At this time, the Council may choose to discuss any item on the agenda.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:



Date: March 19, 2019

Agenda Item No: REPORTS AND ANNOUNCEMENTS - A.

I. Subject:

Updates from the City Council

II. Originated by:

III. Summary:

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:



Date: March 19, 2019

Agenda Item No: REPORTS AND ANNOUNCEMENTS - B.

I. Subject:

Updates from the City Manager

II. Originated by:

George Campbell, City Manager

III. Summary:

Updates and information from City Manager George Campbell, if any.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:



Date: March 19, 2019

Agenda Item No: REPORTS AND ANNOUNCEMENTS - C.

I. Subject:

Updates from the Mayor

- Proclaiming Saturday, May 18, 2019 'Kids to Parks Day' in the City of Kennedale, celebrated by KIDFISH and Bark in the Park at Sonora Park

II. Originated by:

Leslie Galloway, City Secretary & Communications Coordinator

III. Summary:

Updates and information from Mayor Brian Johnson, if any.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

1.	2019_03.19_KidsToParks	2019_03.19_KidsToParks.pdf
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PROCLAMATION

Kids to Parks Day

SATURDAY, MAY 18, 2019

WHEREAS, May 18, 2019, is the ninth Kids to Parks Day organized and launched by the National Park Trust held annually on the third Saturday of May; and

WHEREAS, Kids to Parks Day empowers kids and encourages families to get outdoors and visit America's parks, public lands, and waters; and

WHEREAS, we should encourage children to lead a more active lifestyle to combat issues of childhood obesity, diabetes, hypertension, and hypercholesterolemia; and

WHEREAS, Kids to Parks Day will broaden children's appreciation for nature and outdoors; and

NOW THEREFORE, I, Mayor Brian Johnson, do hereby proclaim Saturday, May 18, 2019

KIDS TO PARKS DAY

in the City of Kennedale, which will be celebrated by the hosting of KIDFISH from 9:00 a.m. to noon and Bark in the Park from 10:00 a.m. to 2:00 p.m. at Sonora Park; and I urge residents of Kennedale to make time on this date to take the children in their lives to this event or any neighborhood, state, or national park.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused the Seal of the City of Kennedale, Texas, to be affixed this 19th day of March 2019.

MAYOR BRIAN JOHNSON



Date: March 19, 2019

Agenda Item No: MONITORING INFORMATION - A.

I. Subject:

Monthly Financials – February 2019

II. Originated by:

Brady Olsen, Finance Director

III. Summary:

Monthly financials and sales tax update as produced by the Finance Department. Of note, these figures will change as we close out the year and work with our new auditors

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

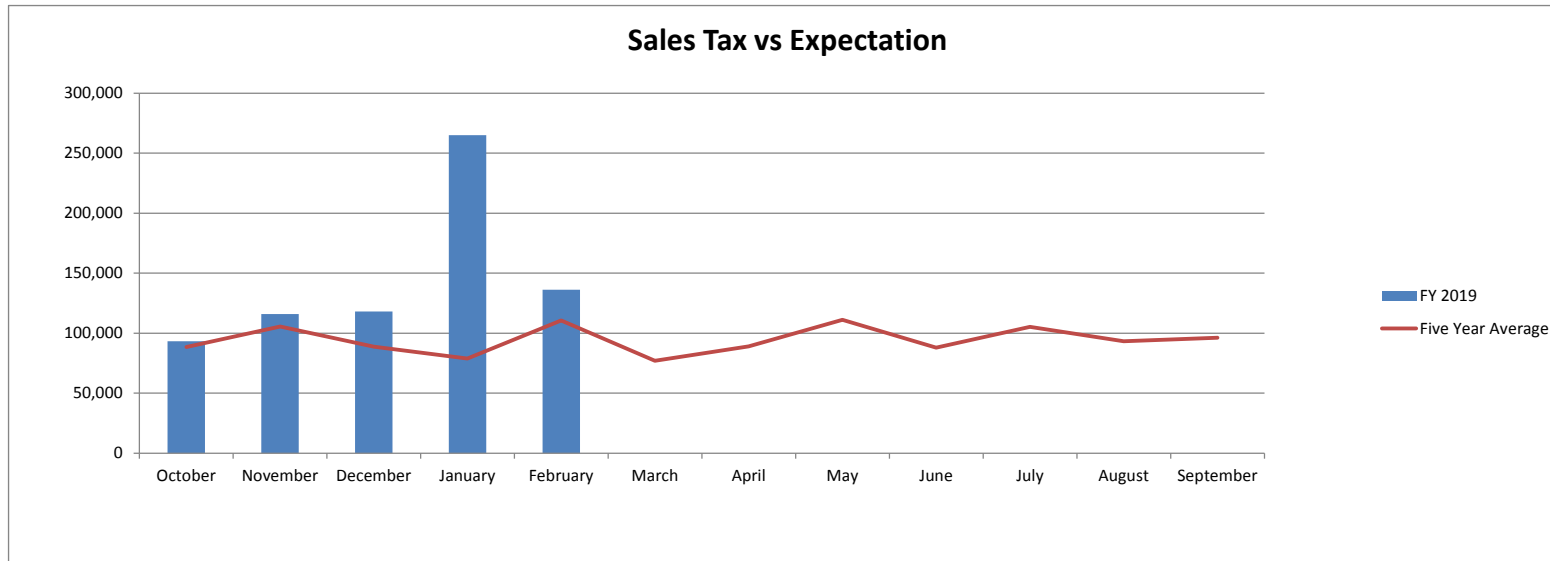
VII. Alternative Actions:

VIII. Attachments:

1.	Sales Tax Update-February	Sales Tax Update-February.pdf
2.	2019_02 Monthly Financials	2019_02 Monthly Financials.pdf

Sales Tax By Month

Year	October	November	December	January	February	March	April	May	June	July	August	September	Total
FY2019	\$ 93,144	\$ 116,039	\$ 118,085	\$ 265,081	\$ 136,298	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 728,647
FY2018	\$ 103,820	\$ 114,506	\$ 86,956	\$ 95,425	\$ 163,502	\$ 95,017	\$ 123,760	\$ 129,363	\$ 108,885	\$ 123,268	\$ 118,770	\$ 89,090	\$ 1,352,361
FY2017	\$ 88,748	\$ 116,156	\$ 81,855	\$ 88,956	\$ 105,794	\$ 78,644	\$ 87,130	\$ 100,121	\$ 80,241	\$ 100,943	\$ 49,590	\$ 86,549	\$ 1,064,725
FY2016	\$ 93,137	\$ 119,137	\$ 97,985	\$ 75,878	\$ 116,006	\$ 87,589	\$ 79,516	\$ 114,543	\$ 83,718	\$ 84,586	\$ 87,693	\$ 91,377	\$ 1,131,165
FY2015	\$ 71,955	\$ 94,438	\$ 82,545	\$ 73,782	\$ 107,571	\$ 72,312	\$ 81,193	\$ 119,350	\$ 128,463	\$ 165,756	\$ 146,297	\$ 177,697	\$ 1,321,359
FY2014	\$ 65,971	\$ 89,600	\$ 94,982	\$ 67,373	\$ 97,781	\$ 69,685	\$ 79,236	\$ 93,957	\$ 77,496	\$ 71,927	\$ 86,597	\$ 67,978	\$ 962,584
FY2013	\$ 100,850	\$ 93,890	\$ 70,338	\$ 60,406	\$ 90,009	\$ 62,374	\$ 60,955	\$ 96,061	\$ 63,409	\$ 67,304	\$ 83,919	\$ 78,075	\$ 927,591
*Net payment after correcting an audit error.													\$ -



Industry	Amount	% Change	Adjusted Change YTD		FYTD
General Services	\$32,676.86	-3.14%	-11.46%	\$49,651.84	\$129,880.69
Retail	\$31,684.01	4.04%	-1.91%	\$57,636.50	\$128,659.20
Manufacturing	\$27,723.29	-41.97%	33.11%	\$51,424.56	\$119,842.11
Wholesale	\$16,791.98	-34.01%	122.34%	\$35,201.80	\$85,834.89
Professional Services	\$15,976.86	-5.44%	57.88%	\$31,351.61	\$86,311.27
Food	\$8,928.68	3.51%	10.33%	\$17,942.87	\$44,355.84
Agricultural	\$3,756.95	7057.11%	0.00%	\$167,007.05	\$143,784.96
Miscellaneous	\$157.85	1.09%	48.43%	\$310.36	\$1,206.98
Accommodation	\$0.00	0.00%	0.00%	\$0.00	\$0.00

CITY OF KENNEDALE
ANNUAL PROGRAM OF SERVICES
February 2019

REVENUE SUMMARY BY FUND

REVENUES	FY17-18 YTD	FY17-18 ACTUAL*EST	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL EARNED	% OF CY BUDGET EARNED	BUDGET REMAINING
GENERAL FUND	\$ 4,521,755	\$ 6,771,513	\$ 6,406,759	\$ 697,718	\$ 4,690,636	66.8%	73.2%	\$ 1,716,123
OTHER GENERAL FUNDS	\$ 262,349	\$ 1,035,991	\$ 941,983	\$ 30,910	\$ 247,698	25.3%	26.3%	\$ 694,285
GENERAL FUND	\$ 4,784,104	\$ 7,807,504	\$ 7,348,742	\$ 728,628	\$ 4,938,334	61.3%	67.2%	\$ 2,410,408
								\$ -
GENERAL DEBT SERVICE FUND	\$ 1,271,632	\$ 1,580,366	\$ 1,518,995	\$ 111,766	\$ 1,286,603	80.5%	84.7%	\$ 232,392
								\$ -
WATER/SEWER FUND	\$ 1,696,529	\$ 4,804,352	\$ 4,010,901	\$ 288,894	\$ 1,555,093	35.3%	38.8%	\$ 2,455,808
STORMWATER UTILITY FUND	\$ 108,038	\$ 264,150	\$ 254,950	\$ 22,626	\$ 111,752	40.9%	43.8%	\$ 143,198
WATER IMPACT FUND	\$ 64,048	\$ 165,170	\$ 120,450	\$ 248	\$ 16,489	38.8%	13.7%	\$ 103,961
SEWER IMPACT FUND	\$ 30,272	\$ 93,162	\$ 32,664	\$ 220	\$ 9,576	32.5%	29.3%	\$ 23,088
WATER/SEWER FUND	\$ 1,898,887	\$ 5,326,834	\$ 4,418,965	\$ 311,988	\$ 1,692,910	35.6%	38.3%	\$ 2,726,055
EDC4B FUND	\$ 518,011	\$ 991,633	\$ 629,752	\$ 74,462	\$ 288,370	52.2%	45.8%	\$ 341,382
CAPITAL FUND	\$ 64,532	\$ 186,462	\$ 172,535	\$ 21,112	\$ 774,751	34.6%	449.0%	\$ (602,216)
SPECIAL REVENUE FUND	\$ 1,785	\$ 43,873	\$ 127,497	\$ 1,797	\$ 1,830	4.1%	1.4%	\$ 125,667
TOTAL REVENUES	\$ 8,538,951	\$ 15,936,672	\$ 14,216,486	\$ 1,249,753	\$ 8,982,798	53.6%	63.2%	\$ 5,233,688

EXPENDITURE SUMMARY BY FUND

EXPENDITURES	FY17-18 YTD	FY17-18 ACTUAL*EST	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY BUDGET EXPENSED	% OF CY BUDGET EXPENSED	BUDGET REMAINING
GENERAL FUND	\$ 2,495,321	\$ 6,364,257	\$ 7,028,284	\$ 617,150	\$ 2,561,951	39.2%	36.5%	\$ 4,466,333
OTHER GENERAL FUND	\$ 426,747	\$ 1,063,510	\$ 1,197,369	\$ 80,637	\$ 332,097	40.1%	27.7%	\$ 865,272
GENERAL FUND	\$ 2,922,068	\$ 7,427,767	\$ 8,225,653	\$ 697,787	\$ 2,894,048	39.3%	35.2%	\$ 5,331,605
GENERAL DEBT SERVICE FUND	\$ 1,167,910	\$ 1,420,004	\$ 1,511,744	\$ 977,410	\$ 1,258,784	82.2%	83.3%	\$ 252,960
WATER/SEWER FUND	\$ 1,759,794	\$ 3,785,683	\$ 4,659,521	\$ 759,061	\$ 1,481,839	46.5%	31.8%	\$ 3,177,682
STORMWATER UTILITY FUND	\$ 70,138	\$ 174,057	\$ 139,764	\$ 50,670	\$ 73,147	40.3%		
WATER IMPACT FUND	\$ -	\$ 153,573	\$ 152,525	\$ -	\$ -			
SEWER IMPACT FUND	\$ -	\$ 60,000	\$ 60,000	\$ -	\$ -			
WATER/SEWER FUND	\$ 1,829,932	\$ 4,173,313	\$ 5,011,810	\$ 809,731	\$ 1,554,986	43.8%	31.0%	\$ 3,456,824
EDC4B FUND	\$ 406,118	\$ 1,013,841	\$ 539,912	\$ 59,501	\$ 146,193	40.1%	27.1%	\$ 393,719
CAPITAL FUND	\$ 7,293	\$ 186,536	\$ 130,170	\$ 7,743	\$ 12,232	3.9%	9.4%	\$ 117,938
SPECIAL REVENUE FUND	\$ 1,000	\$ 26,919	\$ 11,767	\$ 1,650	\$ 1,650	3.7%	14.0%	\$ 10,117
TOTAL EXPENDITURES	\$ 6,334,321	\$ 14,248,380	\$ 15,431,056	\$ 2,553,822	\$ 5,867,893	44.5%	38.0%	\$ 9,563,163

CITY OF KENNEDALE
ANNUAL PROGRAM OF SERVICES
February 2019
EXPENDITURE SUMMARY BY DEPARTMENT

GENERAL FUND	FY17-18 YTD	FY17-18 ACTUAL*EST	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL EXPENSED	% OF CY BUDGET EXPENSED	BUDGET REMAINING
CITY MANAGER	\$ 127,984	\$ 363,210	\$ 365,464	\$ 38,309	\$ 139,275	35.2%	38.1%	\$ 226,189
MAYOR/CITY COUNCIL	\$ 60,488	\$ 158,561	\$ 127,323	\$ 19,468	\$ 72,588	38.1%	57.0%	\$ 54,735
CITY SECRETARY	\$ 56,917	\$ 130,433	\$ 164,073	\$ 22,190	\$ 70,500	43.6%	43.0%	\$ 93,573
MUNICIPAL COURT	\$ 40,762	\$ 89,732	\$ 108,148	\$ 6,639	\$ 37,895	45.4%	35.0%	\$ 70,253
HUMAN RESOURCES	\$ 48,996	\$ 165,966	\$ 104,909	\$ 6,962	\$ 32,485	29.5%	31.0%	\$ 72,424
FINANCE	\$ 162,695	\$ 341,293	\$ 358,365	\$ 46,274	\$ 109,281	47.7%	30.5%	\$ 249,084
POLICE	\$ 905,499	\$ 2,257,421	\$ 2,686,196	\$ 241,783	\$ 967,530	40.1%	36.0%	\$ 1,718,666
FIRE	\$ 673,149	\$ 1,744,007	\$ 1,907,680	\$ 131,884	\$ 585,643	38.6%	30.7%	\$ 1,322,037
COMMUNITY DEVELOPMENT	\$ 91,345	\$ 338,010	\$ 372,090	\$ 33,997	\$ 140,380	27.0%	37.7%	\$ 231,710
SENIOR CITIZEN CENTER	\$ 19,704	\$ 49,877	\$ 54,028	\$ 4,680	\$ 17,938	39.5%	33.2%	\$ 36,090
LIBRARY	\$ 100,500	\$ 311,250	\$ 268,259	\$ 29,478	\$ 141,737	32.3%	52.8%	\$ 126,522
NONDEPARTMENTAL	\$ 207,283	\$ 414,496	\$ 511,749	\$ 35,487	\$ 246,699	50.0%	48.2%	\$ 265,050
TOTAL EXPENDITURES	\$ 2,495,322	\$ 6,364,256	\$ 7,028,284	\$ 617,151	\$ 2,561,951	39.2%	36.5%	\$ 4,466,333

WATER/SEWER FUND	FY17-18 YTD	FY17-18 ACTUAL*EST	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY BUDGET EXPENSED	% OF CY BUDGET EXPENSED	BUDGET REMAINING
UTILITY BILLING	\$ 326,106	\$ 1,412,952	\$ 1,293,973	\$ 162,100	\$ 428,891	23.1%	33.1%	\$ 865,082
WATER OPERATIONS	\$ 665,117	\$ 1,383,929	\$ 1,576,197	\$ 89,364	\$ 340,141	48.1%	21.6%	\$ 1,236,056
DEBT	\$ 464,750	\$ 175,327	\$ 509,680	\$ 317,386	\$ 470,199	265.1%		
W&S CAPITAL	\$ 2,765	\$ 87,176	\$ 654,796	\$ 39,500	\$ 39,500		6.0%	\$ 615,296
NONDEPARTMENTAL	\$ 301,056	\$ 726,299	\$ 624,875	\$ 150,711	\$ 203,108	41.5%	32.5%	\$ 421,767
TOTAL EXPENDITURES	\$ 1,759,794	\$ 3,785,683	\$ 4,659,521	\$ 759,061	\$ 1,481,839	46.5%	31.8%	\$ 3,177,682

STREET IMPROVEMENT FUND	FY17-18 YTD	FY17-18 ACTUAL*EST	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY BUDGET EXPENSED	% OF CY BUDGET EXPENSED	BUDGET REMAINING
STREETS	\$ 225,198	\$ 630,950	\$ 740,910	\$ 60,346	\$ 221,914	35.7%	30.0%	\$ 518,996
PARKS MAINTENANCE	\$ 29,836	\$ 80,379	\$ 125,920	\$ 8,216	\$ 30,679	37.1%	24.4%	\$ 95,241
CAPITAL	\$ -	\$ 60,555	\$ 79,058	\$ -	\$ -			
TOTAL EXPENDITURES	\$ 255,034	\$ 771,884	\$ 945,888	\$ 68,562	\$ 252,593	33.0%	26.7%	\$ 693,295

EDC4B FUNDS	FY17-18 YTD	FY17-18 ACTUAL*EST	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY BUDGET EXPENSED	% OF CY BUDGET EXPENSED	BUDGET REMAINING
ADMINISTRATION	\$ 49,383	\$ 142,581	\$ 168,360	\$ 49,333	\$ 55,919	34.6%		
DEBT SERVICE	\$ 85,053	\$ 325,006	\$ 320,432	\$ -	\$ 45,219	26.2%		
TOWN SHOPPING CENTER	\$ 271,682	\$ 338,348	\$ 51,120	\$ 4,430	\$ 39,317	80.3%		
TOWNCENTER REDEVELOPMENT	\$ -	\$ 177,712	\$ -	\$ 5,738	\$ 5,738			
TOTAL EXPENDITURES	\$ 406,118	\$ 983,647	\$ 539,912	\$ 59,501	\$ 146,193	41.3%	27.1%	\$ 393,719



Date: March 19, 2019

Agenda Item No: MONITORING INFORMATION - B.

I. Subject:

Monthly EDC Financials and Activity Report

II. Originated by:

Brady Olsen, Finance Director

III. Summary:

Reports from the previous EDC meeting are attached for your reference.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

1.	2019_01 Monthly Financials - EDC	2019_01 Monthly Financials - EDC.pdf
2.	Sales Tax Update-January EDC	Sales Tax Update-January EDC.pdf

**CITY OF KENNEDALE
ANNUAL PROGRAM OF SERVICES
January 2019**

ECONOMIC DEVELOPMENT CORPORATION FINANCIALS SUMMARY

Budget Amendment

Monthly Information

1. \$88,541 Sales Tax continues strong growth; Includes 1 large one-time back payment
2. Still in year end closing process. Adjustments made in September that may not match this month's report.
3. Per Council direction, a separate bank account has been created. Working to finalize accounting before transferring funds.
4. Fund has recovered to a respectable cash position
5. EDC director engaged in long-term planning, including relationship with Chamber, hotel status, and Red's Roadhouse.

Rental Fees, MMD Tax and Rental Insurance are reported on the Accrual Basis of Accounting, while all other revenues and expenditures are reported on the Cash Basis. This procedure has been in effect for several years, but can be changed should the Board wish.

Brady Olsen
Finance Director

ADDITIONAL INFORMATION

FUND 15- OPERATING FUND (ALL BILLS AND REVENUE RECEIVED IN THIS FUND)
FUND 19- CAPITAL BOND FUND (REMAINING CAPITAL MONEY)
FUND 95- RESERVE FUND FOR DEBT REQUIREMENTS

**CITY OF KENNEDALE
ANNUAL PROGRAM OF SERVICES
January 2019**

EDC CASH POSITION

CATEGORY	DESCRIPTION	FY18-19 YTD
FROM PREVIOUS MONTHS REPORT:		
BEGINNING CASH BALANCE - FUND 15	(Operating Cash)	\$ 168,108
BEGINNING TEXPOOL BALANCE - FUND 15	(Operating Investments)	\$ -
BEGINNING TEXPOOL BALANCE - FUND 19	(Unspent bond proceeds)	\$ -
BEGINNING CASH BALANCE - FUND 95	(Required reserves)	\$ 122,355
BEGINNING CASH BALANCE - TOTAL		\$ 290,463
BEGINNING AVAILABLE CASH - TOTAL		168,108
TOTAL REVENUES MINUS EXPENDITURES FOR MONTH		\$ 77,424 *
ENDING CASH BALANCE - FUND 15	(Operating Cash)	\$ 264,226
ENDING TEXPOOL BALANCE - FUND 15	(Operating Investments)	\$ -
ENDING TEXPOOL BALANCE - FUND 19	(Unspent bond proceeds)	\$ -
ENDING CASH BALANCE - FUND 95	(Required reserves)	\$ 122,808
ENDING CASH BALANCE - TOTAL		\$ 387,034
UNAVAILABLE CASH - EARMARKED		
RESERVES FOR LEVERAGE NOTE	(Required reserves)	\$ 122,808
TOTAL UNAVAILABLE CASH		\$ 122,808
AVAILABLE CASH		\$ 264,226

*Due to prior period adjustments, beginning cash balance plus monthly income will not always be an exact match for ending cash balance

CITY OF KENNEDALE
ANNUAL PROGRAM OF SERVICES
January 2019

COMBINED EDC4B FUNDS SUMMARY

CATEGORY	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
BEGINNING FUND BALANCE	\$ 313,866	\$ 313,866	\$ 134,784		\$ 303,248			
AD VALOREM TAXES	-	-	35,000	-	-	#DIV/0!	0.0%	35,000
SALES/BEVERAGE TAXES	58,969	447,132	384,598	88,541	128,441	13.2%	33.4%	256,157
INVESTMENT EARNINGS	973	5,399	65	218	2,570	18.0%	3953.8%	(2,505)
MISCELLANEOUS INCOME	11,294	65,891	24,120	200	6,679	17.1%	27.7%	17,441
SURPLUS SALES/RENTALS	369,754	487,579	185,969	-	55,464	75.8%	29.8%	130,505
TRANSFERS	-	-	29,719	-	-	0.0%	0.0%	-
TOTAL REVENUES	\$ 440,990	\$ 1,006,002	\$ 659,471	\$ 88,959	\$ 193,154	43.8%	29.3%	\$ 436,598
SUPPLIES	-	-	2,100	-	-	#DIV/0!	0.0%	2,100
MAINTENANCE	83,617	127,298	29,920	-	16,727	65.7%	55.9%	13,193
SUNDRY	52,793	183,614	187,460	6,526	19,804	28.8%	10.6%	167,656
DEBT	46,443	172,418	165,607	5,009	45,219	26.9%	27.3%	120,388
TRANSFERS	33,794	152,588	184,544	-	-	22.1%	0.0%	184,544
CAPITAL	-	177,712	-	-	-	0.0%	#DIV/0!	-
TOTAL EXPENDITURES	\$ 216,647	\$ 813,629	\$ 569,631	\$ 11,534	\$ 81,749	26.6%	14.4%	\$ 487,882
REVENUES OVER EXPENDITURES	\$ 224,342	\$ 192,373	\$ 89,840	\$ 77,424	\$ 111,405			
ENDING FUND BALANCE	\$ 538,208	\$ 506,239	\$ 224,624		\$ 414,653			
FUND BALANCE AS % OF EXP	248.4%	62.2%	39.4%	0.0%	507.2%			
RESERVE (\$115,000) REQUIREMENT)	\$ -	\$ -	\$ 115,000	\$ -	\$ -			
RESERVE SURPLUS/(SHORTFALL)	\$ 538,208	\$ 506,239	\$ 109,624	\$ -	\$ 414,653			

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CITY OF KENNEDALE
ANNUAL PROGRAM OF SERVICES
January 2019

15: EDC4B FUND

CATEGORY	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
BEGINNING FUND BALANCE	\$ 164,460	\$ 164,460	\$ (15,517)		\$ 152,017			
AD VALOREM TAXES	-	-	35,000	-	-	#DIV/0!	0.0%	35,000
SALES/BEVERAGE TAXES	58,969	447,132	384,598	88,541	128,441	13.2%	33.4%	256,157
INVESTMENT EARNINGS	551	3,574	65	141	1,917	15.4%	2949.4%	(1,852)
MISCELLANEOUS INCOME	11,294	65,891	24,120	200	6,679	17.1%	27.7%	17,441
SURPLUS SALES/RENTALS	369,754	487,579	185,969	-	55,464	75.8%	29.8%	130,505
TOTAL REVENUES	\$ 440,568	\$ 1,004,177	\$ 629,752	\$ 88,882	\$ 192,501	43.9%	30.6%	\$ 437,251
SUPPLIES	-	-	2,100	-	-	#DIV/0!	0.0%	2,100
MAINTENANCE	83,617	127,298	29,920	-	16,727	65.7%	55.9%	13,193
SUNDRY	52,793	183,614	187,460	6,526	19,804	28.8%	10.6%	167,656
DEBT	46,443	172,418	165,607	5,009	45,219	26.9%	27.3%	120,388
TRANSFERS	33,794	152,588	154,825	-	-	22.1%	0.0%	154,825
CAPITAL	-	177,712	-	-	-	0.0%	#DIV/0!	-
TOTAL EXPENDITURES	\$ 216,647	\$ 813,629	\$ 539,912	\$ 11,534	\$ 81,749	26.6%	15.1%	\$ 458,163
REVENUES OVER EXPENDITURES	\$ 223,920	\$ 190,548	\$ 89,840	\$ 77,347	\$ 110,752			
ENDING FUND BALANCE	\$ 388,380	\$ 152,017	\$ 74,323		\$ 262,769			
FUND BALANCE AS % OF EXP	179.3%	18.7%	13.8%	0.0%	321.4%			
RESERVE (NO REQUIREMENT)	\$ -	\$ -	\$ -	\$ -	\$ -			
RESERVE SURPLUS/(SHORTFALL)	\$ 388,380	\$ 152,017	\$ 74,323	\$ -	\$ 262,769			

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CITY OF KENNEDALE
ANNUAL PROGRAM OF SERVICES
January 2019

15: EDC4B FUND

ACCOUNT	ACCOUNT NAME	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
4002-00-00	MMD TAX-CURRENT YEAR	-	-	35,000	-	-	#DIV/0!	0.0%	35,000
	AD VALOREM TAXES	\$ -	\$ -	\$ 35,000	\$ -	\$ -	#DIV/0!	0.0%	\$ 35,000
4081-00-00	SALES TAX	58,969	447,132	384,598	88,541	128,441	13.2%	33.4%	256,157
	SALES/BEVERAGE TAXES	\$ 58,969	\$ 447,132	\$ 384,598	\$ 88,541	\$ 128,441	13.2%	33.4%	\$ 256,157
4401-00-00	INVESTMENT INCOME	551	3,574	65	141	1,917	15.4%	2949.4%	(1,852)
	INVESTMENT EARNINGS	\$ 551	\$ 3,574	\$ 65	\$ 141	\$ 1,917	15.4%	2949.4%	\$ (1,852)
4409-00-00	MISCELLANEOUS INCOME	11,294	36,095	24,120	200	6,679	31.3%	27.7%	17,441
4415-00-00	INSURANCE REIMBURSEMENTS	-	14,898	-	-	-	0.0%	0.0%	-
	MISCELLANEOUS INCOME	\$ 11,294	\$ 65,891	\$ 24,120	\$ 200	\$ 6,679	17.1%	27.7%	\$ 17,441
4805-00-00	RENTAL FEES-SHOPPING CENTER	20,575	105,856	185,223	-	55,464	19.4%	29.9%	129,759
4806-00-00	RENTAL INSURANCE	-	2,350	746	-	-	0.0%	0.0%	746
4902-00-00	PROCEEDS-DEBT/LOAN/LEASE	-	30,194	-	-	-	0.0%	#DIV/0!	-
4884-00-01	SALE OF ASSETS	349,179	349,179	-	-	-	100.0%	#DIV/0!	-
	SURPLUS SALES/RENTALS	\$ 369,754	\$ 487,579	\$ 185,969	\$ -	\$ 55,464	119.4%	#DIV/0!	\$ 130,505
	TOTAL REVENUES	\$ 440,568	\$ 1,004,177	\$ 629,752	\$ 88,882	\$ 192,501	43.9%	30.6%	\$ 437,251
	TOTAL REVENUES (EXCLUDING INTEREST/TRANSFERS)	\$ 440,017	\$ 1,000,603	\$ 629,687	\$ 88,741	\$ 190,584			

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CITY OF KENNEDALE
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15: EDC4B FUND
01: ADMINISTRATION

ACCOUNT	ACCOUNT NAME	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
5240-01-00	PRINTED SUPPLIES	-	-	2,000	-	-		0.0%	2,000
5260-01-00	GENERAL OFFICE SUPPLIES	-	-	50	-	-	0.0%	0.0%	50
5261-01-00	POSTAGE	-	-	50	-	-	0.0%	0.0%	50
	SUPPLIES	\$ -	\$ -	\$ 2,100	\$ -	\$ -		0.0%	\$ 2,100
5501-01-00	ADVERTISING	-	35	1,200	-	-	0.0%	0.0%	1,200
5510-01-00	ASSOC DUES/PUBLICATIONS	-	4,890	5,320	-	-	0.0%	0.0%	5,320
5525-01-00	TRAINING/SEMINARS	-	-	250	-	-	#DIV/0!	0.0%	250
5565-01-00	LEGAL SERVICES	3,900	20,855	13,000	-	-	18.7%	0.0%	13,000
5567-01-00	AUDIT SERVICES	-	2,000	4,250	-	-	0.0%	0.0%	4,250
5570-01-00	SPECIAL SERVICES	5,752	13,774	250	-	-	41.8%	0.0%	250
5578-01-00	TRAVEL	-	-	100	-	-	0.0%	0.0%	100
5595-01-00	ADMIN CHARGE-GENERAL FUND	27,216	81,647	117,890	-	-	33.3%	0.0%	117,890
5615-01-00	FUNCTIONAL GRANT	3,799	19,380	24,000	6,526	6,526	19.6%	27.2%	17,474
	SUNDRY	\$ 40,667	\$ 142,581	\$ 166,260	\$ 6,526	\$ 6,526	28.5%	3.9%	\$ 159,734
	CAPITAL	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%		\$ -
	TOTAL EXPENDITURES	\$ 40,667	\$ 142,581	\$ 168,360	\$ 6,526	\$ 6,526	28.5%	3.9%	\$ 161,834

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**CITY OF KENNEDALE
ANNUAL PROGRAM OF SERVICES
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**15: EDC4B FUND
01: ADMINISTRATION
03: DEBT SERVICE**

ACCOUNT	ACCOUNT NAME	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY BUDGET USED	% OF CY BUDGET USED	BUDGET REMAINING
5643-01-03	2007 \$1.2M TAX BOND-INTEREST	27,378	54,831	50,735	-	25,321	49.9%	49.9%	25,414
5644-01-03	2007 \$1.2M TAX BOND-PRINCIPAL	-	60,000	60,000	-	-	0.0%	0.0%	60,000
5645-01-03	2011 \$1.7M TX LEVERAGE-INT	5,431	17,926	12,834	1,720	6,774	30.3%	52.8%	6,060
5646-01-03	2011 \$1.7M TX LEVERAGE-PRI	13,634	39,661	42,038	3,289	13,123	34.4%	31.2%	28,915
	DEBT	\$ 46,443	\$ 172,418	\$ 165,607	\$ 5,009	\$ 45,219	26.9%	27.3%	\$ 120,388
5702-01-03	TRANSFER OUT-DEBT SERVICE FUND	33,794	152,588	154,825	-	-	22.1%	0.0%	154,825
	TRANSFER	\$ 33,794	\$ 152,588	\$ 154,825	\$ -	\$ -	22.1%	0.0%	\$ 154,825
	TOTAL EXPENDITURES	\$ 80,237	\$ 325,006	\$ 320,432	\$ 5,009	\$ 45,219	24.7%	14.1%	\$ 275,213

**CITY OF KENNEDALE
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15: EDC4B FUND**02: TOWN SHOPPING CENTER**

ACCOUNT	ACCOUNT NAME	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
5403-02-00	BUILDING MAINTENANCE	83,617	127,298	29,920	-	16,727	65.7%	55.9%	13,193
	MAINTENANCE	\$ 83,617	\$ 127,298	\$ 29,920	\$ -	\$ 16,727	65.7%	55.9%	\$ 13,193
5530-02-00	ELECTRIC SERVICES	1,645	8,002	6,700	-	1,139	20.6%	17.0%	5,561
5545-02-00	INSURANCE-PROPERTY	8,341	8,341	8,500	-	11,139	100.0%	131.0%	(2,639)
5570-02-00	SPECIAL SERVICES	2,141	24,691	6,000	-	1,000	8.7%	16.7%	5,000
	SUNDRY	\$ 12,127	\$ 41,033	\$ 21,200	\$ -	\$ 13,278	29.6%	62.6%	\$ 7,922
	TOTAL EXPENDITURES	\$ 95,744	\$ 168,331	\$ 51,120	\$ -	\$ 30,005	56.9%	58.7%	\$ 21,115

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15: EDC4B FUND

03: TOWN CENTER REDEVELOPMENT

ACCOUNT	ACCOUNT NAME	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
5847-03-00	CONSTRUCTION	-	177,712	-	-	-	0.0%		-
	CAPITAL	\$ -	\$ 177,712	\$ -	\$ -	\$ -	0.0%		\$ -
	TOTAL EXPENDITURES	\$ -	\$ 177,712	\$ -	\$ -	\$ -	0.0%		\$ -

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15: EDC4B FUND

04: TEXAS LEVERAGE PROGRAM

ACCOUNT	ACCOUNT NAME	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
5800-04-00	LAND	-	-	-	-	-		0.0%	-
	CAPITAL	\$ -	\$ -	\$ -	\$ -	\$ -		0.0%	\$ -
	TOTAL EXPENDITURES	\$ -	\$ -	\$ -	\$ -	\$ -		0.0%	\$ -

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19: EDC4B CAPITAL BOND FUND

CATEGORY	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
BEGINNING FUND BALANCE	\$ 29,444	\$ 29,444	\$ 29,719		\$ 29,904			
INVESTMENT EARNINGS	114	460	-	-	-	24.9%		-
TOTAL REVENUES	\$ 114	\$ 460	\$ -	\$ -	\$ -	24.9%		\$ -
TRANSFERS	-	-	29,719	-	-	0.0%	0.0%	-
CAPITAL	-	-	-	-	-	0.0%	0.0%	-
TOTAL EXPENDITURES	\$ -	\$ -	\$ 29,719	\$ -	\$ -	0.0%	0.0%	\$ -
REVENUES OVER EXPENDITURES	\$ 114	\$ 460	\$ (29,719)	\$ -	\$ -			
ENDING FUND BALANCE	\$ 29,558	\$ 29,904	\$ 0		\$ 29,904			
FUND BALANCE AS % OF EXP	N/A	N/A	N/A	N/A	N/A			
RESERVE (NO REQUIREMENT)	\$ -	\$ -	\$ -	\$ -	\$ -			
RESERVE SURPLUS/(SHORTFALL)	\$ 29,558	\$ 29,904	\$ 0	\$ -	\$ 29,904			

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19: EDC4B CAPITAL BOND FUND

ACCOUNT	ACCOUNT NAME	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
4401-00-00	INVESTMENT INCOME	114	460	-	-	-	24.9%		-
	INVESTMENT EARNINGS	\$ 114	\$ 460	\$ -	\$ -	\$ -	24.9%		\$ -
	TOTAL REVENUES	\$ 114	\$ 460	\$ -	\$ -	\$ -	24.9%		\$ -

19: EDC4B CAPITAL BOND FUND**01: TOWN CENTER REDEVELOPMENT**

ACCOUNT	ACCOUNT NAME	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
5580-01-00	TRANSFER OUT	-	-	-	-	-	0.0%	0.0%	-
	TRANSFERS	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	0.0%	\$ -
5800-01-00	LAND	-	-	-	-	-	0.0%	0.0%	-
5847-01-00	CONSTRUCTION	-	-	-	-	-	0.0%	0.0%	-
	CAPITAL	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	0.0%	\$ -
	TOTAL EXPENDITURES	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	0.0%	\$ -

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95: EDC4B RESERVE FUND

CATEGORY	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY ACTUAL USED	% OF CY BUDGET USED	BUDGET REMAINING
BEGINNING FUND BALANCE	\$ 119,962	\$ 119,962	\$ 120,582		\$ 121,327			
INVESTMENT EARNINGS	308	1,365	-	77	653	22.5%		(653)
TOTAL REVENUES	\$ 308	\$ 1,365	\$ -	\$ 77	\$ 653	22.5%		\$ (653)
TOTAL EXPENDITURES	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	0.0%	\$ -
REVENUES OVER EXPENDITURES	\$ 308	\$ 1,365	\$ -	\$ 77	\$ 653			
ENDING FUND BALANCE	\$ 120,270	\$ 121,327	\$ 120,582		\$ 121,980			
FUND BALANCE AS % OF EXP	N/A	N/A	N/A	N/A	N/A			
RESERVE (\$112,606 REQUIREMENT)	\$ 112,606	\$ 112,606	\$ 112,606	\$ 112,606	\$ 112,606			
RESERVE SURPLUS/(SHORTFALL)	\$ 7,664	\$ 8,721	\$ 7,976	\$ (112,606)	\$ 9,374			

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95: EDC4B RESERVE FUND

ACCOUNT	ACCOUNT NAME	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY BUDGET USED	% OF CY BUDGET USED	BUDGET REMAINING
4401-00-00	INVESTMENT INCOME	308	1,365	-	77	653	22.5%		(653)
	INVESTMENT EARNINGS	\$ 308	\$ 1,365	\$ -	\$ 77	\$ 653	22.5%		\$ (653)
	TOTAL REVENUES	\$ 308	\$ 1,365	\$ -	\$ 77	\$ 653	22.5%		\$ (653)

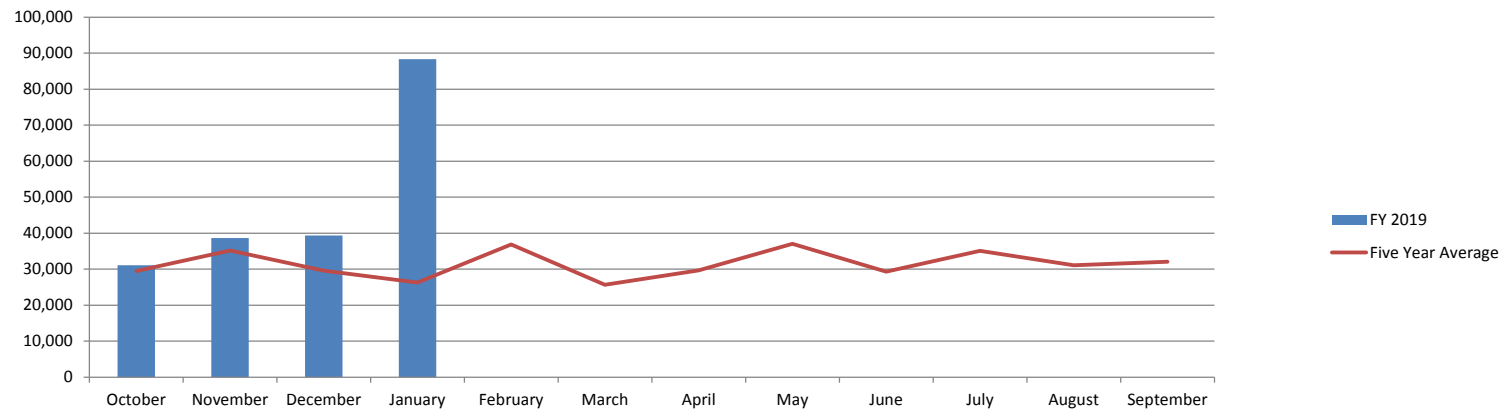
95: EDC4B RESERVE FUND

ACCOUNT	ACCOUNT NAME	FY17-18 YTD	FY17-18 ACTUAL	FY18-19 ADOPTED	CURRENT MONTH	FY18-19 YTD	% OF PY BUDGET USED	% OF CY BUDGET USED	BUDGET REMAINING
	TRANSFERS	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	0.0%	\$ -
	TOTAL EXPENDITURES	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	0.0%	\$ -

Sales Tax By Month

Year	October	November	December	January	February	March	April	May	June	July	August	September	Total
FY2019	\$ 31,048	\$ 38,680	\$ 39,362	\$ 88,360	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 65,816
FY2018	\$ 34,607	\$ 38,169	\$ 28,985	\$ 31,808	\$ 54,501	\$ 31,672	\$ 41,253	\$ 43,121	\$ 36,295	\$ 41,089	\$ 39,590	\$ 29,697	\$ 150,262
FY2017	\$ 29,583	\$ 38,719	\$ 27,285	\$ 29,652	\$ 35,265	\$ 26,215	\$ 29,043	\$ 33,374	\$ 26,747	\$ 33,648	\$ 16,530	\$ 28,850	\$ 118,303
FY2016	\$ 31,046	\$ 39,712	\$ 32,662	\$ 25,293	\$ 38,669	\$ 29,196	\$ 26,505	\$ 38,181	\$ 27,906	\$ 28,195	\$ 29,231	\$ 30,459	\$ 125,685
FY2015	\$ 23,985	\$ 31,479	\$ 27,515	\$ 24,594	\$ 35,857	\$ 24,104	\$ 27,064	\$ 39,783	\$ 42,821	\$ 55,252	\$ 48,766	\$ 59,232	\$ 146,818
FY2014	\$ 21,990	\$ 29,867	\$ 31,661	\$ 22,458	\$ 32,594	\$ 23,228	\$ 26,412	\$ 31,319	\$ 25,832	\$ 23,976	\$ 28,866	\$ 22,659	\$ 106,954
FY2013	\$ 33,617	\$ 31,297	\$ 23,446	\$ 20,135	\$ 30,003	\$ 20,791	\$ 20,318	\$ 32,020	\$ 21,136	\$ 22,435	\$ 27,973	\$ 26,025	\$ 103,066
*Net payment after correcting an audit error.													\$ -

Sales Tax vs Expectation



Industry	Amount	% Change	Adjusted Chang	YTD	FYTD
Agricultural	\$54,416.70	57719.37%	0.00%	\$54,416.70	\$46,676.01
Retail	\$8,650.83	0.90%	9.08%	\$8,650.83	\$32,308.78
Manufacturing	\$7,900.43	273.84%	129.48%	\$7,900.43	\$29,970.72
Wholesale	\$6,136.61	-12.40%	94.65%	\$6,136.61	\$23,008.97
General Services	\$5,658.33	-13.59%	-0.72%	\$5,658.33	\$32,264.96
Professional Services	\$5,124.92	-0.28%	45.23%	\$5,124.92	\$23,443.14
Food	\$3,004.73	4.19%	-6.78%	\$3,004.73	\$11,809.05
Miscellaneous	\$50.84	7.46%	69.15%	\$50.84	\$1,244.87
Accommodation	\$0.00	0.00%	0.00%	\$0.00	\$0.00



Date: March 19, 2019

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

I. Subject:

Consider approval of the minutes from the February 19, 2019 Regular Meeting

II. Originated by:

Leslie Galloway, City Secretary & Communications Coordinator

III. Summary:

Please see the attached minutes for your approval.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

1.	2019_02.19_Minutes_City Council Regular Meeting_DRAFT_WM	2019_02.19_Minutes_City Council Regular Meeting_DRAFT_WM.pdf
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KENNEDALE CITY COUNCIL MINUTES
REGULAR MEETING | FEBRUARY 19, 2019
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE
WORK SESSION - 5:30 PM | REGULAR SESSION - 7:00 PM

I. CALL TO ORDER

Mayor Brian Johnson called the meeting to order at 5:31 p.m.

II. WORK SESSION

- A. Presentation of the Parks and Recreation Board's program, budget, and funding goals and objectives – *Requested by Joplin/Lee*

Interim Public Works Director Larry Hoover introduced Parks and Recreation Board Chair David Deaver who offered a presentation of the projects the board would recommend to Council for consideration of funding, most of which centered around the ballfields at Sonora, including additional security measures, a secure storage building, field refurbishment, and an additional staff member or annual contract for ongoing sports field maintenance.

There was some discussion of the desire to offer a dedicated football practice field, acquisition of land, and potential funding sources, including the Park Dedication Fund, the potential of a bond issuance, or – in future year – Hotel Occupancy Tax (HOT) revenue.

Park Board Chair Deaver noted that the Board attempted to minimize costs on this proposal, but could complete a proposal for a bond. He noted that security items, field refurbishment, and the additional staff member were the immediate priorities. Mayor Johnson noted the economic development value of parks, and asked that the Parks Board determine what they would like to see included in a potential bond package.

City Manager George Campbell stated that staff could draft an Informal Staff Report detailing what could likely be accomplished with the funds currently available and would then move forward with those projects barring any objection from the Council.

- B. Receive a report and hold a discussion regarding recommendations of the Utility & Infrastructure Board (UIB) regarding the Winding Creek Erosion Study and other similar issues within the City– *Requested by Gilley/Joplin*

City Manager George Campbell noted that, following a report from Ben Pylant of Halff and Associates on December 11, 2018, that the Council requested the Utility & Infrastructure Board (UIB) consider erosion issues throughout the City and formulate a recommendation to Council. At the February 5, 2019 UIB meeting, the board discussed many factors including funding, construction, development policies, and the formulation of a process to prioritize erosion issues; and came to a consensus that additional discussions would be necessary before submitting any formal recommendations to the City Council

City Manager George Campbell noted the complexity of this issue and the extensive time necessary to consider all factors; and stated that staff and engineers were formulating plans to prevent future issues, which he hoped could be presented to the UIB for their consideration within the next 90 days. He added that if the City were to decide to attempt to mitigate identified erosion issues, including those along Winding Creek, that the sooner those efforts could begin, the better.

C. Continued discussion of top ten streets in need of repair and rebuild

City Manager George Campbell noted that this was a continued discussion that includes the top ten streets, which were presented at the January 15, 2019 Regular Meeting, but now adds a cost estimate, which in total is more than \$500,000 in maintenance and repair. He added that this will clearly be a consideration when formulating the FY19-20 Budget.

There was some discussion of the ensuring that the budget did not focus solely on these streets to the detriment of others, which – without proper maintenance (such as crack sealing) – would deteriorate much more quickly.

D. Discussion regarding landscaping and maintenance of right-of-way on Kennedale Parkway – Requested by Joplin/Lee

City Manager George Campbell noted that this issue was addressed in an Informal Staff Report sent to the City Council on Monday, January 28; and that Interim Public Works Director Larry Hoover was available to answer and questions Council might have.

There was some discussion of potentially removing additional bushes at the Cloverlane Drive intersection for sightline improvement. The Council requested traffic accident data from this and all intersections along the Parkway (particularly those that indicated sightline issues as factors) from Police Chief Tommy Williams.

Interim Public Works Director Larry Hoover noted that it was the responsibility of property owners all along the Parkway to maintain the area between the curb and the property line – other than the plants and sprinklers installed through the Green Ribbon Project Grant, which were the responsibility of City staff to maintain.

Mayor Johnson announced that the remaining Work Session items would be discussed following the Regular Session. He then adjourned to Executive Session at 6:52 p.m.

Following this first Executive Session and the entirety of the Regular Session Mayor Johnson reconvened the Work Session at 9:06 p.m.

E. Receive a report and hold a discussion regarding right-of-way acquisitions for New Hope Road – Requested by Joplin/Lee

THIS ITEM WAS TAKEN OUT OF ORDER. DISCUSSION HELD FOLLOWING THE CONCLUSION OF THE REGULAR SESSION.

City Manager George Campbell stated that there are four properties that must be purchased by August 2020 for the bridge project – two of which had been acquired and two that remain to be purchased. He added that the design of the widening of New Hope Road would need to be completed before staff would know what parcels might be necessary. Councilmember Joplin requested a report of the attorney fees associated with the land acquisitions.

- F. Discuss and provide staff direction regarding the creation of a Council Audit Committee and the establishment of a fraud hotline – *Requested by Joplin/Lee*

Finance Director Brady Olsen stated that staff recommended a Fraud Hotline, but would not recommend an Audit Committee. There was some discussion of a need for subcommittees on larger governing bodies, but that it would be somewhat less useful (or practical, considering a quorum of three) for a Council of just six members. Councilmember Gilley noted the possibility of including at least one citizen representative.

There was a consensus among the Council to move forward with establishing a fraud hotline, but not an Audit Committee as it would require more research into the logistics.

- G. Discussion regarding goals and objectives the City Council may recommend for the Economic Development Corporation Board's consideration and implementation – *Requested by Joplin/Lee*

City Manager George Campbell noted that this item had been placed on the agenda, pursuant to the joint work session of the EDC Board and the City Council on Monday, January 14; and that he was available to answer Council's questions.

Councilmember Gilley stated a desire for the EDC to create a "use case" for each property. Councilmember Joplin stated a desire to also see uses determined for land owned; for the EDC to reimburse the Water Fund \$171,000.00 for the land that is deeded to the EDC, but was funded by the Water Fund; and for the money billed to the City for EDC attorney fees to also be correctly coded and reimbursed to the General Fund.

City Manager George Campbell stated that the EDC Board was also interested in assessing the land owned and determining best uses, adding that a developer had expressed interest in the 13 acres (purchased for \$171,000.00). He noted that the EDC Board is interested in more aggressively pursuing projects in several areas including Kennedale Parkway.

- H. Discussion of items on the Regular Agenda

There was no discussion at this time.

Following the conclusion of second portion of the Work Session (which began at 9:06 p.m.), Mayor Johnson offered a brief recess at 9:27 p.m. before the second Executive Session.

III. REGULAR SESSION

Mayor Johnson convened the Regular Session at 7:30 p.m.

IV. ROLL CALL

Present: Mayor Brian Johnson; Mayor Pro Tem Sandra Lee, Place 3; Rockie Gilley, Place 1; Chris Pugh, Place 2; Linda Rhodes, Place 4; Jan Joplin, Place 5; **Absent:** NONE

Staff: City Manager George Campbell, City Secretary Leslie Galloway, Finance Director Brady Olsen, Police Chief Tommy Williams, Fire Chief James Brown; Director of Planning and Economic Development Melissa Dailey; Library Director Amanda King; Human Resources Director Danielle Clarke; Interim Public Works Director Larry Hoover; Permit Clerk Melinda Middleton

V. INVOCATION

Pastor Greg Adams of Covenant Life Baptist Church offered the invocation.

VI. UNITED STATES PLEDGE AND TEXAS PLEDGE

VII. VISITOR/CITIZENS FORUM

There were no requests to speak at this time.

VIII. REPORTS/ANNOUNCEMENTS

A. Updates from the City Council

- **JAN JOPLIN, PLACE 5**, announced that she had visited with several citizens.
- **LINDA RHODES, PLACE 4**, did not have any updates at this time.
- **MAYOR PRO TEM SANDRA LEE, PLACE 3**, stated that she met with the Director of the Women's Center regarding a program for Senior Citizens, met with State Representative Bill Zedler regarding her desire for a Recreational Center, and volunteered with Nature's Kitchen at First United Methodist Church of Kennedale.
- **CHRIS PUGH, PLACE 2**, announced he attended an event honoring Corporal Garrett Hull at Red's Road House, a fundraiser for his widow and their children; and hoped it would be repeated annually.
- **ROCKIE GILLEY, PLACE 1**, announced that he spoke in favor of Senate Bill 2 (which would put a more stringent cap on property taxes) at a recent State Senate Hearing.

B. Updates from the City Manager

THIS ITEM WAS TAKEN OUT OF ORDER. FOLLOWED ITEM VIII.C. UPDATES FROM THE MAYOR.

City Manager George Campbell stated that discussions with the City of Arlington regarding the two water contracts were ongoing, and that staff hoped to present final versions – along with recommendations from the Utility & Infrastructure Board (UIB) – to the City Council at their next Regular Meeting on March 19. He noted that if all deadlines were met, the contracts would have an effective date of Friday, March 29, 2019.

He then asked for Council direction regarding a Work Session scheduled for March 4 to discuss updates to the Comprehensive Plan. The consensus among Council was to delay that meeting until after the election, when there would be at least two new Councilmembers.

C. Updates from the Mayor

THIS ITEM WAS TAKEN OUT OF ORDER. FOLLOWED ITEM VIII.A. UPDATES FROM THE CITY COUNCIL.

Mayor Johnson announced that he attended a joint meeting of TRTC (Tarrant Regional Transportation Coalition) and DRMC (Dallas Regional Mobility Coalition) that included an update on the 287/820/I-20 project, which is now estimated at \$1.7 billion; that he attended a Southeast Tarrant Transportation (SETT) meeting – now chaired by newly-elected County Commissioner Devan Allen – including discussions regarding Debbie Lane in Mansfield and the widening of Highway 287 south of Kennedale; he noted that surveying had begun on the widening of Sublett Road (between the city limits and the intersection of Highway 287) including the bridge, noting former Tarrant County Commissioner Andy Nguyen's approval of \$2 Million towards the funding of that project; that he also spoke at the State Senate Hearing in favor of Senate Bill 2 specifically regarding the transparency of appraisals and the easier appeals process, noting that his primary concern was the timeframe of a City's budget process in relation to a potential "rollback" election; and announced that Kennedale Community Theater in the Park would be presenting "Seussical" in April.

IX. MONITORING INFORMATION

A. Monthly Financials – January 2019

THIS ITEM WAS TAKEN OUT OF ORDER. DISCUSSION FOLLOWED ITEM XII.B.

In response to Councilmember Joplin's question regarding the increased sales tax revenue for January, Finance Director Brady Olsen stated that it was a correction made by the State Comptroller. Councilmember Joplin noted that, even accounting for that one-time payment, that sales tax revenue was up about \$5,000.00 compared to January 2018.

In response to Councilmember Joplin's question regarding the General Fund balance increasing from 1.2 Million in November to 2.9 Million in December Olsen stated that it was a result of receipt of property taxes, noting City revenues spike at certain times of the year.

B. Monthly EDC Financials and Activity Report

There was no discussion at this time.

C. Schedule of Investment Activity for quarter ending December 31, 2018

There was no discussion at this time.

X. INCIDENTAL ITEMS

XI. REQUIRED APPROVAL ITEMS (CONSENT)

- A. Consider approval of the minutes from the January 15, 2019 Regular Meeting
- B. Consider approval of the minutes from the February 11, 2019 Special Meeting
- C. Consider authorizing the City Manager to sign an Agreement for Mutual Aid in Fire Protection and Emergency Medical Services with Tarrant County
- D. Receive the 2018 Racial Profiling Report from the Police Department

Police Chief Tommy Williams noted that the Racial Profiling Report (Consent Item D) that was included in the packet had an error in Table 1. (Motor Vehicle Contacts Including Tickets, Citations and Warnings). The number of Hispanic or Latino motor vehicle contacts should have been 489, but was entered incorrectly as 789. Chief Williams stated that a corrected version would be distributed to the Council via email and that Council could, if they desired, accept the report, contingent upon that correction.

Motion To Approve Consent Agenda. **Action** Approve, **Moved By** Mayor Pro Tem Lee.

Before a second was made, Councilmember Linda Rhodes asked that Consent Item A (minutes from the January 15, 2019 Regular Meeting) be removed.

Motion To Approve Consent Agenda, except Item A. **Action** Approve, **Moved By** Mayor Pro Tem Lee. **Seconded By** Rhodes. **Motion passes Unanimously.**

Regarding Consent Item A, Councilmember Rhodes requested that the January 15, 2019 minutes be edited to reflect that, on Decision Item B., there was a seconded motion to approve the item, but that it was amended to instead table that item.

Motion To Approve Consent Agenda Item A (Minutes from the January 15, 2019 Regular Meeting), with the correction as noted by Councilmember Rhodes. **Action** Approve, **Moved By** Rhodes. **Seconded By** Pugh. **Motion passes Unanimously.**

XII. DECISION ITEMS

- A. Consider authorizing the Mayor to sign an Interlocal Agreement with the Fort Worth Transportation Authority ("Trinity Metro") for Administrative Cost Funding for Section 5310 Program

City Manager George Campbell stated that this is a recurring annual agreement with minimal changes, and that staff would recommend approval.

City Secretary and Communications Coordinator Leslie Galloway stated that this was an agreement that allows for transportation of older adults and other qualified persons for a fare of \$2.50 per trip (one-way), at a total annual cost of \$1,288.00.

Motion To Approve authorizing the Mayor to sign an Interlocal Agreement with the Fort Worth Transportation Authority ("Trinity Metro") for Administrative Cost Funding for Section 5310 Program. **Action** Approve, **Moved By** Rhodes. **Seconded By** Pugh. **Motion passes Unanimously.**

- B. Consider approval of a change order submitted by Circle C Construction at an additional cost of \$37,330.00 for additional repairs related to the replacement of a sanitary sewer line in the 300-400 blocks of Dick Price Road

Interim Public Works Director Larry Hoover gave a brief overview of the history of the project and the additional repairs required. He asked for the City Council to confirm the decision made by staff to fund these newly-identified repairs. City Manager George Campbell noted

that, these additional items were at a cost of \$37,330.00, but that, overall, the project was over budget by just \$21,410.00

Motion To Approve the change order submitted by Circle C Construction at an additional cost of \$37,330.00 for additional repairs related to the replacement of a sanitary sewer line in the 300-400 blocks of Dick Price Road. **Action** Approve, **Moved By** Pugh. **Seconded By** Rhodes. **Motion passes Unanimously.**

- C. Discuss and consider Resolution 543, a Resolution of Support for an application to the Texas Department of Housing and Community Affairs (TDHCA) 2019 Housing Credit Program by OM Housing, LLC to partially finance the mixed-use development of The Village at Hammack Creek, located at the northeast corner of East Kennedale Parkway and Kennedale Sublett Road

City Manager George Campbell noted that this item was postponed during the February 11 Special Meeting, and that staff and the developer were available to answer questions. Mayor Johnson noted that all submitted Speaker Request Forms from that meeting had been retained and those people would be given a chance to speak at this time. He added that all speakers would be allotted a maximum of three minutes.

Requests to speak that were submitted during the February 11, 2019 Special Meeting:

- **Eric Elam**, 349 Kennedale Sublett Road, declined to speak at this time.
- **Bob Gruenhagen**, 913 Shady Vale Drive, was not present to speak at this time and did not indicate support or opposition on the Speaker Form.
- **Sara Johnson Cotton**, 700 Crestview Drive, spoke in opposition of Resolution 543.
- **Mike Johnson**, 1006 Colonial Court, was not present to speak at this time and did not indicate support or opposition on the Speaker Form.
- **Martha Dibella**, 509 Pennsylvania Avenue, spoke in support of Resolution 543.
- **Ngan Nguyen**, 900 Sunrise Drive, was not present to speak at this time but registered in support of Resolution 543 on the Speaker Form.
- **Josh Altom**, 1033 Estates Drive, was not present to speak at this time but registered in support of Resolution 543 on the Speaker Form.
- **Adlai Pennington**, 1375 Gilman Road, Fort Worth, was not present to speak at this time but registered in support of Resolution 543 on the Speaker Form.
- **Jeff Nevarez**, 338 Spring Branch Lane, spoke in favor of Resolution 543.
- **Luke Mullen**, 5440 Harvest Hill, Dallas, was not present to speak at this time and did not indicate support or opposition on the Speaker Form.
- **Mr. and Mrs. Toby Davis**, 906 Shady Creek Drive, was not present to speak at this time but registered in opposition of Resolution 543 on the Speaker Form.
- **Austin Degenhart**, 304 W. Mistletoe Drive, was not present to speak at this time but registered in opposition of Resolution 543 on the Speaker Form.
- A speaker form was submitted **anonymously** in opposition of Resolution 543.
- **Cheryl Pond**, 606 Hilltop Court, spoke in opposition of Resolution 543.
- **Cathy Brown**, 808 Shady Bend, spoke in opposition of Resolution 543.
- **Phillip Elam**, 349 Kennedale Sublett Road, did not speak, but registered in favor of Resolution 543.

- **Jason Lain**, 409 Yacht Club, Rockwall, did not speak at this time, but is part of the development team and was available to answer questions.
- **Deepak Sulakhe**, 5033 Brookview Drive, Dallas, did not speak at this time, but is part of the development team and was available to answer questions.

Requests to speak that were submitted during the February 19, 2019 Special Meeting:

- **John Hivale**, 418 Coker Valley Drive, spoke regarding Resolution 543.
- **Jeff Brand**, 4941 Nashwood Lane, Dallas, is part of the development team and thanked the Council for considering this development and addressed some concerns that had been stated by previous speakers.

At this time, Councilmember Gilley noted that the vote tonight was on a Resolution of support, neutrality, or opposition on an application for low-income tax credits for a housing development, and asked – because of the wording of the agenda caption – if the financing was for the mixed-use or for the apartments.

- **Deepak Sulakhe**, 5033 Brookview Drive, Dallas, is part of the development team; he thanked the Council for their consideration and noted that while the financing is only applicable to the apartments, they are an integral part of the overall development.

Mayor Johnson closed the Public Hearing at 8:36 p.m.

City Attorney Drew Larkin reminded the City Council that any decision regarding this item should ignore any public input or personal opinion that might violate the Fair Housing Act.

Motion To Postpone consideration of Resolution 543, a Resolution of Support for an application to the Texas Department of Housing and Community Affairs (TDHCA) 2019 Housing Credit Program by OM Housing, LLC to partially finance the mixed-use development of The Village at Hammack Creek. **Action** Postpone, **Moved By** Gilley. **Seconded By** Joplin.

In response to Mayor Johnson's question, City Attorney Drew Larkin stated that it is each individual Councilmember's duty to determine whether they might have a conflict of interest; and if they conclude that they do, they should not in any way participate in the debate or vote regarding that item and should complete a "Conflict of Interest Affidavit".

Motion To Move the Question. **Action** Move the Question, **Moved By** Pugh. **There was no Second. Motion dies.**

Councilmember Joplin stated that her goal was to represent the citizens, but that there had been threat made against both her and the City, adding that her family was her first priority.

Mayor Johnson noted that any private party could protect their own rights and express their opinions, even if that means taking legal action. He then called for a vote.

Motion To Postpone consideration of Resolution 543, a Resolution of Support for an application to the Texas Department of Housing and Community Affairs (TDHCA) 2019

Housing Credit Program by OM Housing, LLC to partially finance the mixed-use development of The Village at Hammack Creek. **Action** Postpone, **Moved By** Gilley. **Seconded By** Joplin. **Motion fails 2-3**, with Mayor Pro Tem Lee, Pugh, and Rhodes voting against postponement.

Motion To Approve Resolution 543, a Resolution of Support for an application to the Texas Department of Housing and Community Affairs (TDHCA) 2019 Housing Credit Program by OM Housing, LLC to partially finance the mixed-use development of The Village at Hammack Creek. **Action** Approve, **Moved By** Pugh. **Seconded By** Mayor Pro Tem Lee.

Mayor Johnson reminds the Council that this is a Resolution of Support, not an approval of the development as presented.

Councilmember Joplin added that her safest course of action personally was to recuse herself from this vote. She then filled out a "Conflict of Interest Affidavit".

Mayor Pro Tem Lee stated that Councilmember Joplin should feel at liberty to vote.

Motion passes with a vote of 3-2-1, with Mayor Pro Tem Lee and Pugh voting in favor, Gilley and Rhodes voting against, Joplin abstaining, and Mayor Johnson breaking the tie with a vote in favor.

- D. Discuss and consider Resolution 547, a Resolution of Support for an application to the Texas Department of Housing and Community Affairs (TDHCA) 2019 Housing Credit Program by CSH Cardinal Court Seniors, Ltd. to partially finance the senior residential development of Cardinal Court Seniors, located at 439 Mansfield Cardinal Road

Director of Planning and Economic Development Melissa Dailey gave a brief overview of the proposed development, for seniors 55 and older, noting that only either this or the Village at Hammack Creek would be approved by the State since they are within a two-mile radius of one another. As staff recommended approval of the last item, we did not recommend approval of this development during this application cycle for this program.

Matt Higgins, 4203 Brookhollow, Colleyville, part of the development team noted that CSH Cardinal Court Seniors was proposing an age-restricted housing project on Mansfield Cardinal. He acknowledged that two projects within two miles of one another would not, in fact, both move forward, but this project could serve as a back-up to get development on the ground during this round of applications.

Councilmember Pugh stated his concern with the fact that this was the first formal presentation of the property to Council.

Mayor Johnson opened the floor for a motion. No motion was put forward. No action was taken on Resolution 547.

Mayor Johnson recessed to the Work Session at 9:06 p.m., beginning with item E.

XIII. EXECUTIVE SESSION

Following the second portion of the Work Session, Mayor Johnson recessed at 9:27 p.m., noting that the Council would take a short break before recessing into a second Executive Session.

- A. Discussion of pending legal matters regarding Ron Sturgeon vs. City of Kennedale
- B. Discussion with the City Attorney regarding proposed contracts to purchase potable water from the City of Arlington and to transfer the operation and maintenance of the Kennedale water and sewer systems to the City of Arlington
- C. Discussion with the City Attorney regarding Resolutions of Support for applications to the Texas Department of Housing and Community Affairs (TDHCA) Housing Credit Program

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

Mayor Johnson reconvened the meeting at 9:59 p.m.

There was no discussion or action at this time.

XV. ADJOURNMENT

Motion To Adjourn. Action Adjourn, Moved By Lee Seconded By Joplin. Motion passed unanimously.

Mayor Johnson adjourned the meeting at 10:00 p.m.

APPROVED:

ATTEST:

BRIAN JOHNSON, MAYOR

LESLIE GALLOWAY, CITY SECRETARY



Date: March 19, 2019

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

I. Subject:

Discuss and consider acceptance of independent auditor's draft report (Comprehensive Annual Financial Report (CAFR)) for the fiscal year ended September 30, 2018

II. Originated by:

Brady Olsen, Finance Director

III. Summary:

All relevant information and/or attachments are provided on related Work Session Item A.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

Date: March 19, 2019

Agenda Item No: DECISION ITEMS - A.

I. Subject:

Hold a Public Hearing and consider authorizing the City Manager to enter into a contract to transfer the operation and maintenance of the Kennedale water and sewer systems to the City of Arlington

II. Originated by:

Brady Olsen, Finance Director

III. Summary:

The Utility & Infrastructure Board (UIB) met on Tuesday, March 12, and voted unanimously* to recommend to Council approval of this contract for the purchase of water from the City of Arlington. As Council knows from previous staff reports, the expectation is that the Kennedale City Council would approve each of these agreements before the Arlington Council has a second reading, which is expected to occur on Tuesday, March 26, 2019.

In addition to the current version of this contract, the staff presentation outlining highlights and pertinent changes is also attached. There have been substantive changes to this contract since the last version was presented to Council. These changes will be presented by Finance Director Brady Olsen. Olsen and City Manager George Campbell will then be available to answer questions from the Council regarding either of these two contracts.

In an effort to alert the public to Council's consideration of these contracts and the related public hearings, staff published copies of the contracts and the presentation at www.cityofkennedale.com/collaboration, noting the opportunity for public input. This page was linked via a banner on the homepage, shared on all social media channels maintained by the City (Facebook, Twitter, and Nextdoor), and distributed to the e-newsletter subscriber list.

** During the March 12, 2019 Meeting of the UIB, the following members were present: Vice Chair Johnny Trevino (served as Chair for this meeting); Kenneth Michels, Place 2; Jeff Gregory, Place 4; Mark Perkins, Place 7; and Amy Cates, Alternate Place 8; and the following were absent: Chair Idin Deljavan, Place 6; Harry Browne, Place 1; Tom Newsom, Place 5.*

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

Staff and the UIB would recommend approval.

VIII. Attachments:

1.	Arlington Contract Presentation- 3-12 FINAL	Arlington Contract Presentation- 3-12 FINAL.pdf
2.	Operations & Maintenance (O&M) Agreement	OperationsMaintenance.Arlington.clean-006.pdf

Kennedale/ Arlington COLLABORATION

Water Purchase and O&M Agreements

MARCH 12, 2019 UIB MEETING



Changes Since November



- Set specific fee schedule for first 2 years
- Defined fee structure for years 3 and beyond
- Developed formula for customer service costs
- Added assurance that neither City would subsidize the other
- Established effective date of Friday, March 29, 2019

UPDATED INFORMATION WILL APPEAR IN RED THROUGHOUT

Successful Negotiations



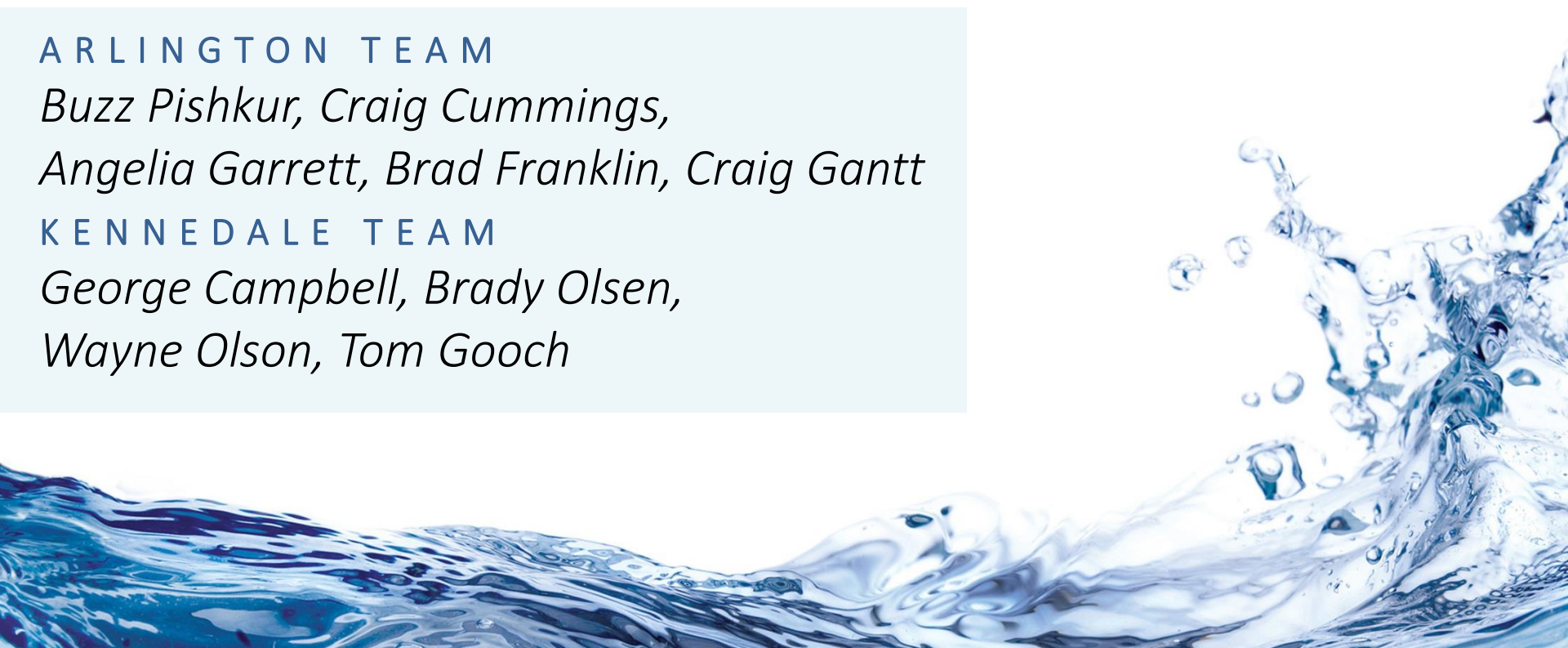
- Arlington was open and up-front throughout
- Staff genuinely believes this will prove beneficial for both Kennedale and Arlington residents

ARLINGTON TEAM

*Buzz Pishkur, Craig Cummings,
Angelia Garrett, Brad Franklin, Craig Gantt*

KENNEDALE TEAM

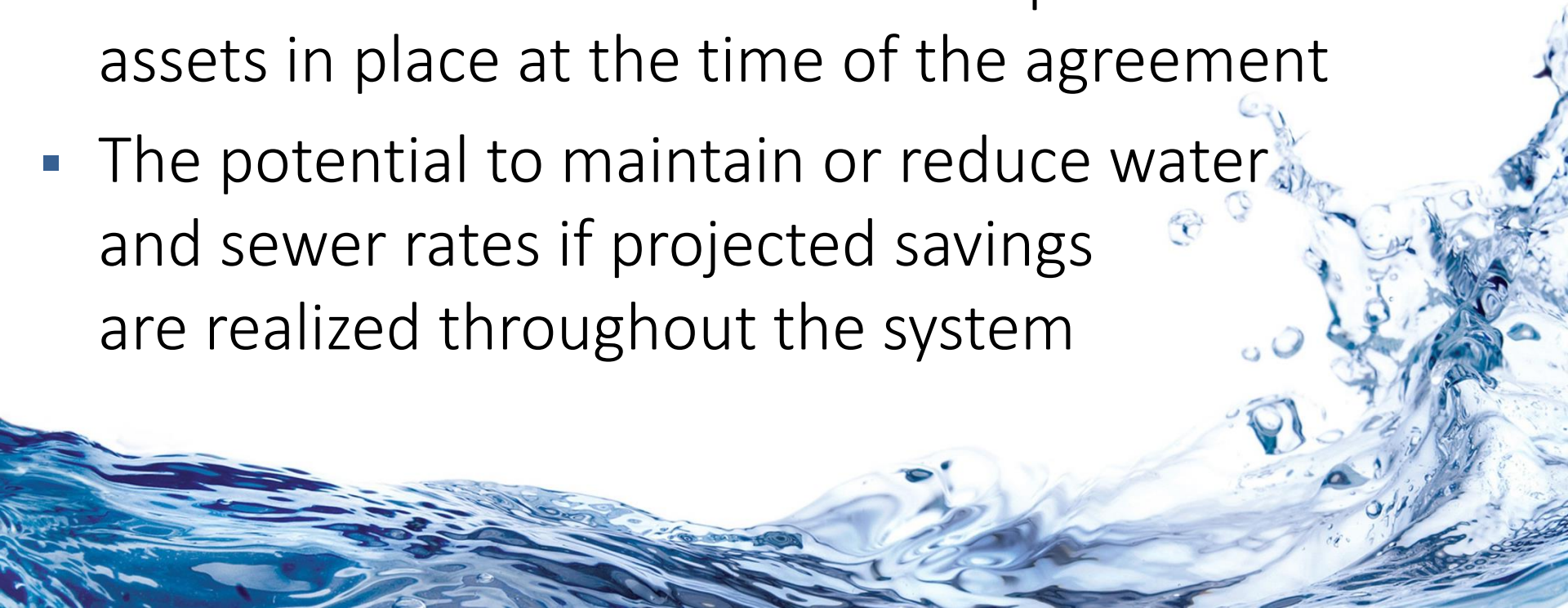
*George Campbell, Brady Olsen,
Wayne Olson, Tom Gooch*



Cooperation Goals



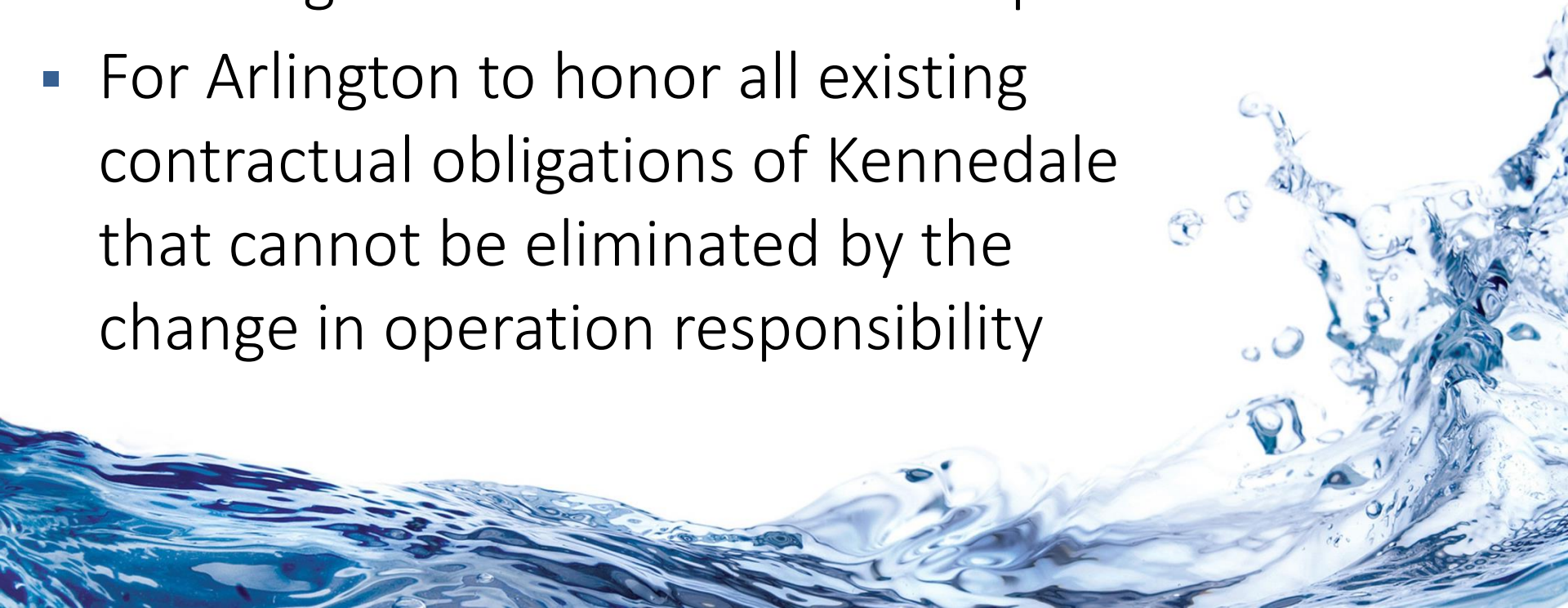
- For the City of Arlington to assume responsibility for the operation and maintenance of the City of Kennedale Water and Wastewater Utility System
- For Kennedale to retain ownership of all related assets in place at the time of the agreement
- The potential to maintain or reduce water and sewer rates if projected savings are realized throughout the system



Cooperation Goals



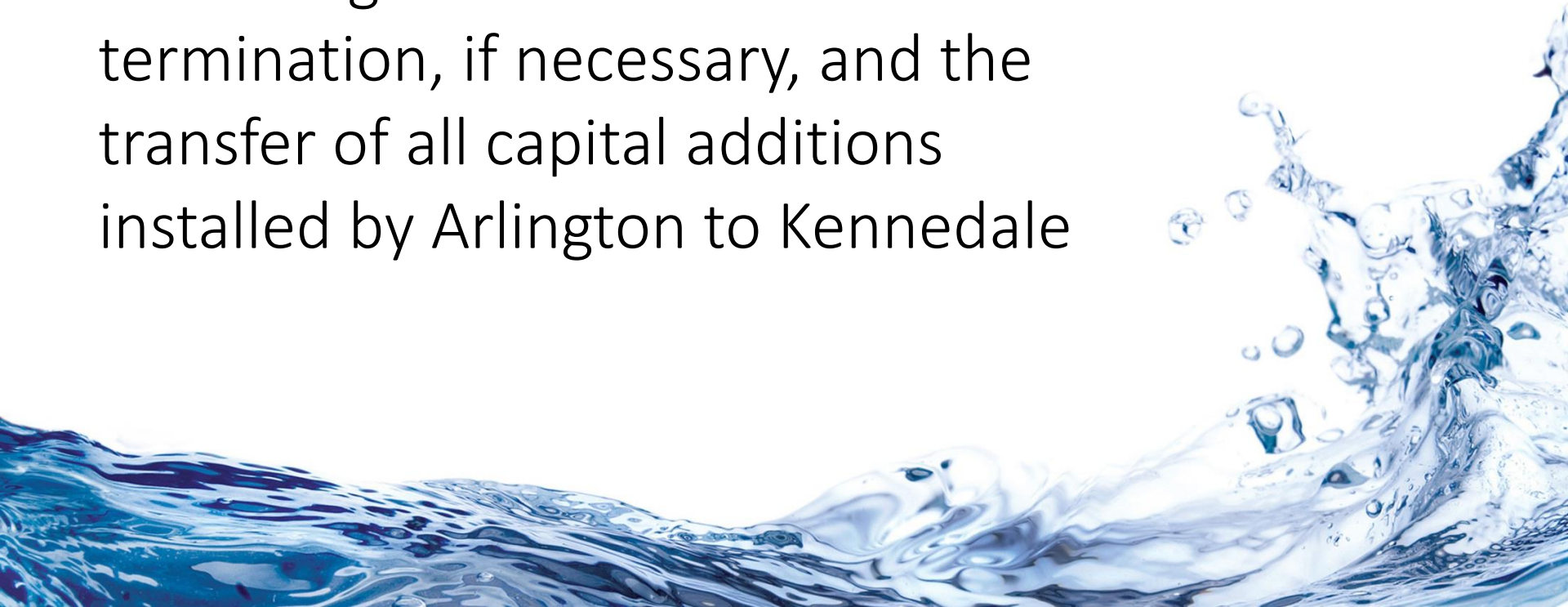
- For Arlington to hire eligible Kennedale employees and offer access to comparable wages and benefits
- For Kennedale to transition its water supply to Arlington to the fullest extent possible
- For Arlington to honor all existing contractual obligations of Kennedale that cannot be eliminated by the change in operation responsibility



Cooperation Goals



- For the agreement to have terms that allow each City to evaluate the viability of the collaboration
- For the agreement to allow for termination, if necessary, and the transfer of all capital additions installed by Arlington to Kennedale



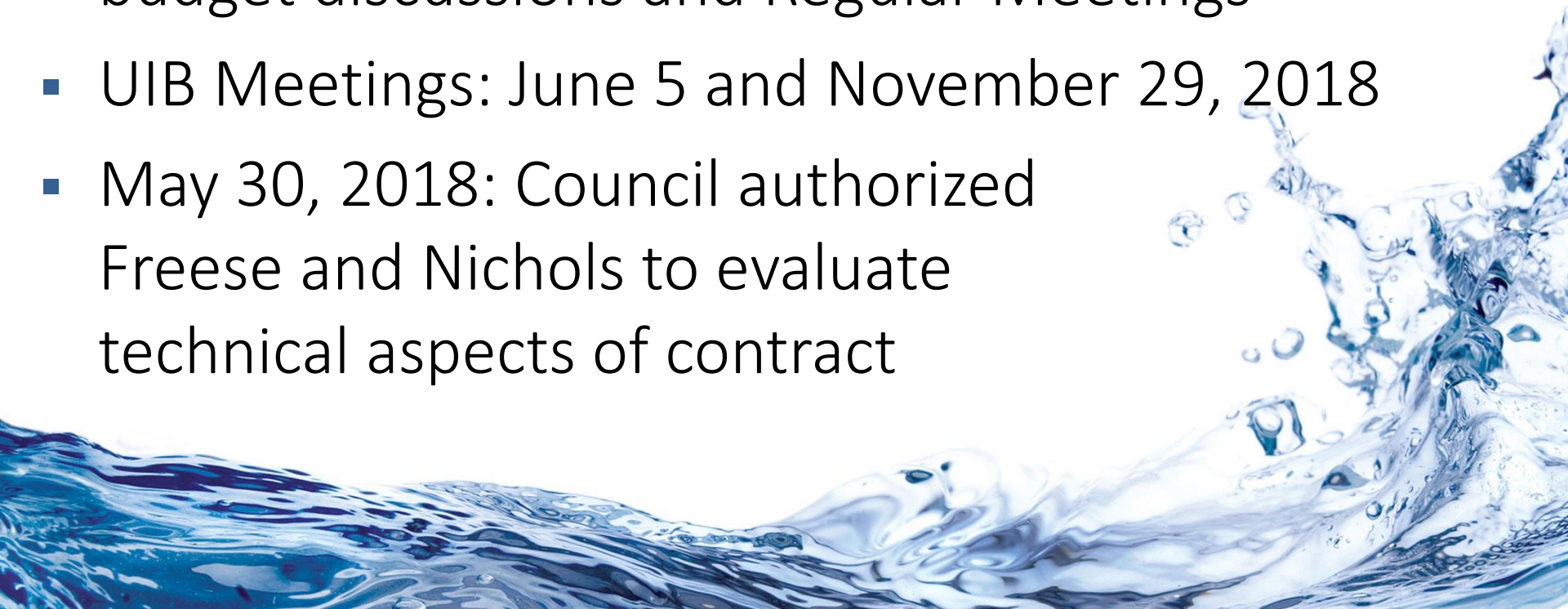
Timeline



- 2017: Initial discussions with Arlington

STAFF MEETINGS WITH ARLINGTON: November 2, 2017; February 2, March 9, April 27, May 16, May 23, July 9, August 24, October 31, November 7, November 30, December 3, 2018; and February 11 and 12, 2019

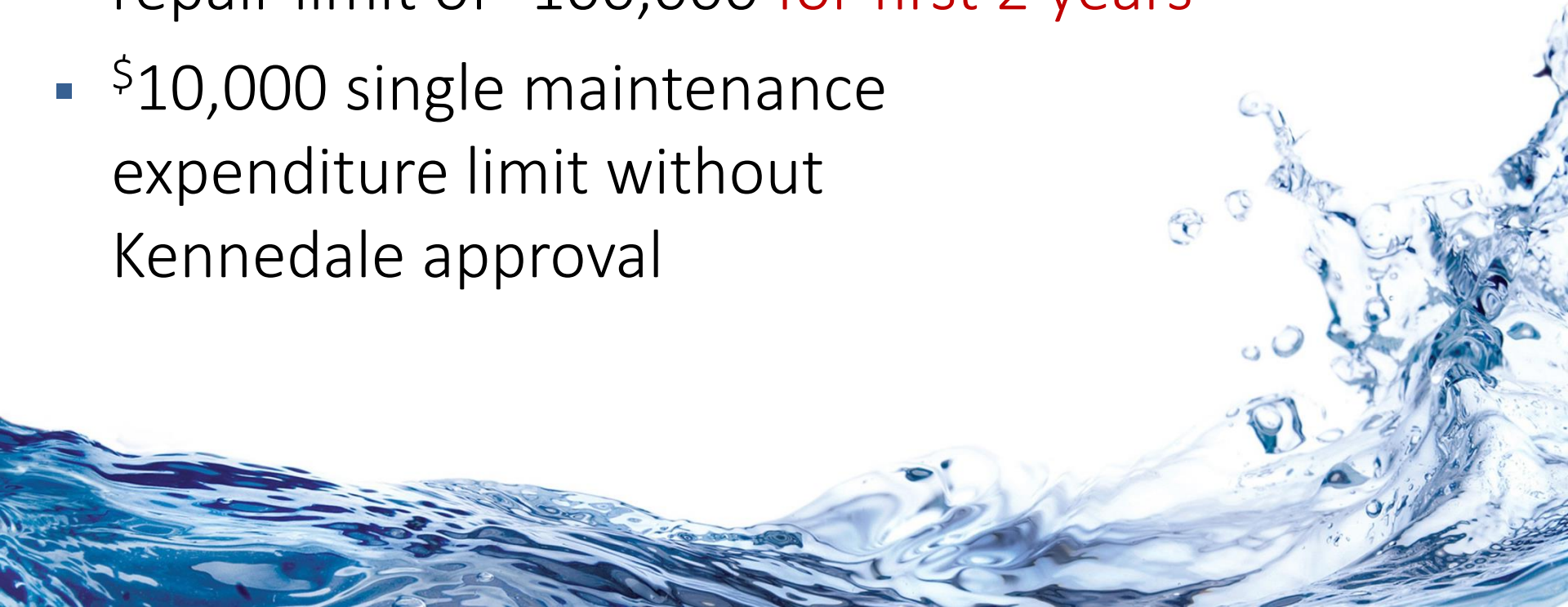
- Staff updated Council throughout 2018 and 2019 budget discussions and Regular Meetings
- UIB Meetings: June 5 and November 29, 2018
- May 30, 2018: Council authorized Freese and Nichols to evaluate technical aspects of contract



Contract Highlights



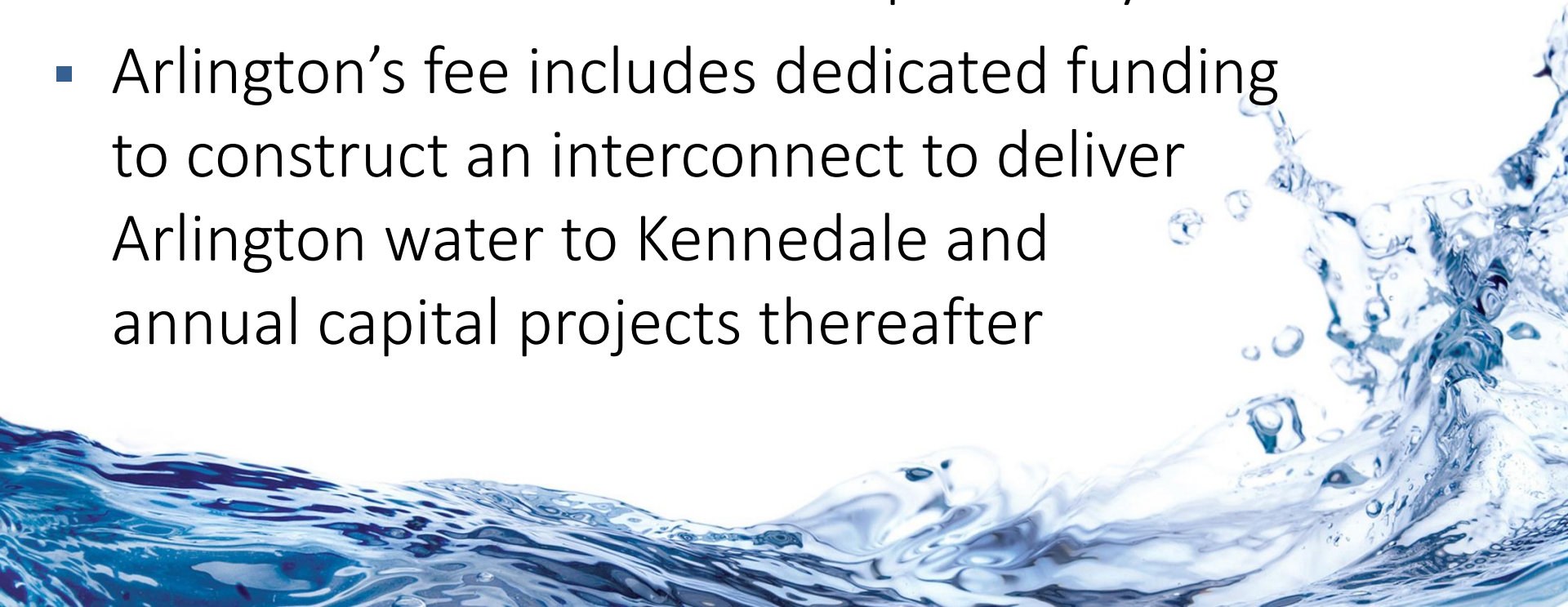
- Term: 5 years; Renewable in 5-year increments
- After 2 years, renegotiate costs based on actuals
- Annual non-routine maintenance and repair limit of \$100,000 for first 2 years
- \$10,000 single maintenance expenditure limit without Kennedale approval



Contract Highlights



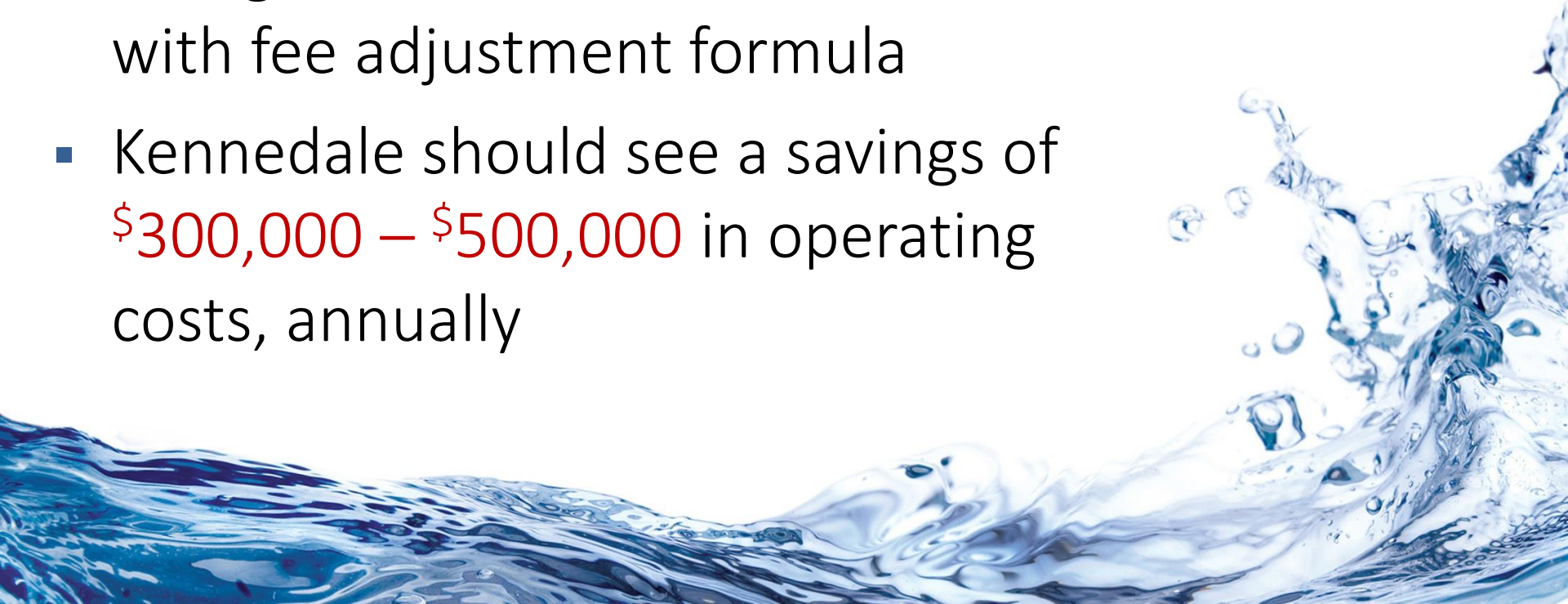
- Eligible Kennedale employees offered employment in same or similar positions, subject to screenings
- Kennedale retains ownership of all system assets
- Arlington's fee includes dedicated funding to construct an interconnect to deliver Arlington water to Kennedale and annual capital projects thereafter



Contract Highlights



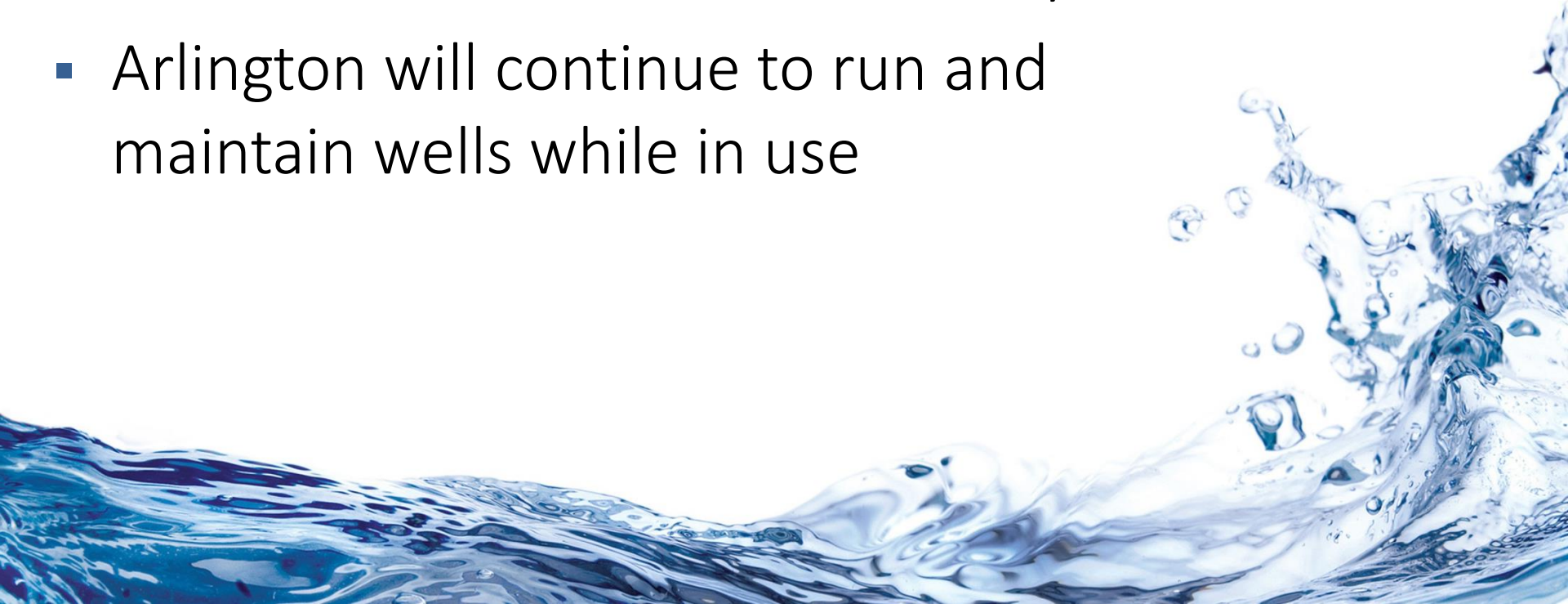
- Arlington will propose an annual CIP (Capital Improvement Plan) to Kennedale
- Kennedale grants transmission rights to Arlington for water distribution at set fee with fee adjustment formula
- Kennedale should see a savings of **\$300,000 – \$500,000** in operating costs, annually



Services Included



- Arlington will maintain the Kennedale utility system at the same standards as its own
- Arlington will implement existing technology to the betterment of Kennedale system
- Arlington will continue to run and maintain wells while in use



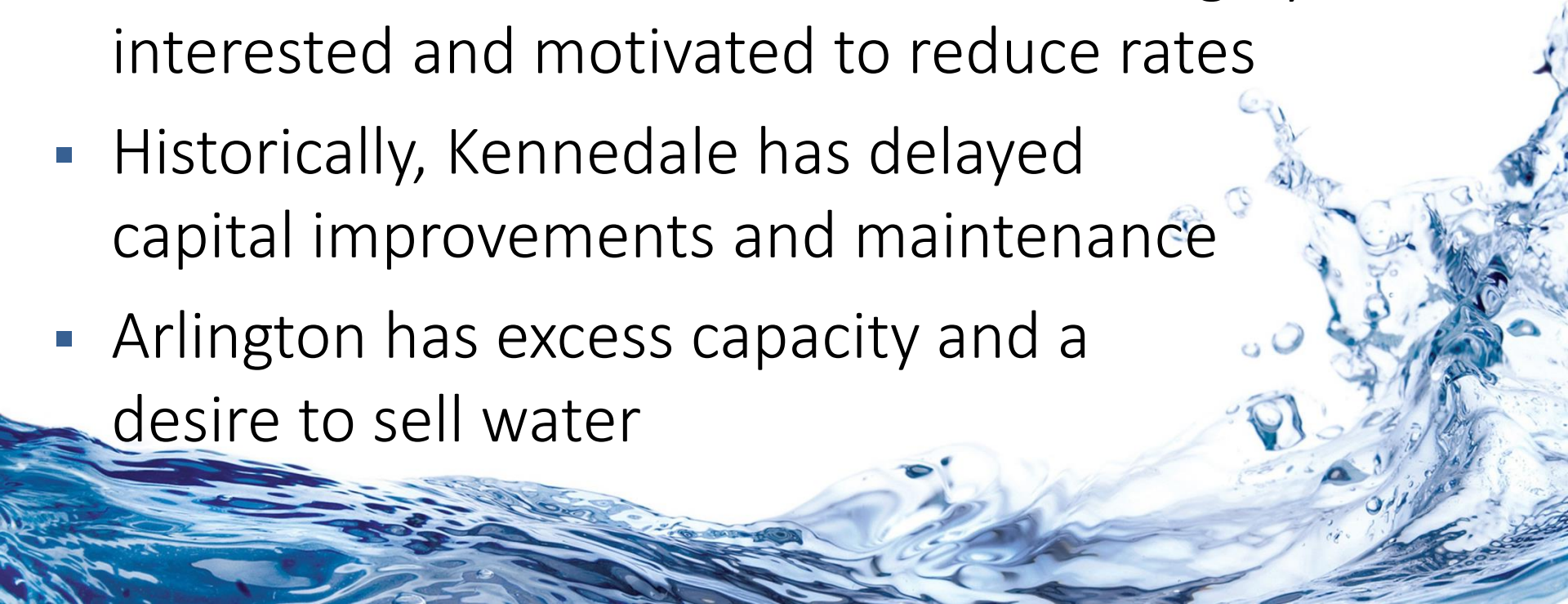
Impact on the City of Kennedale



How We Got Here



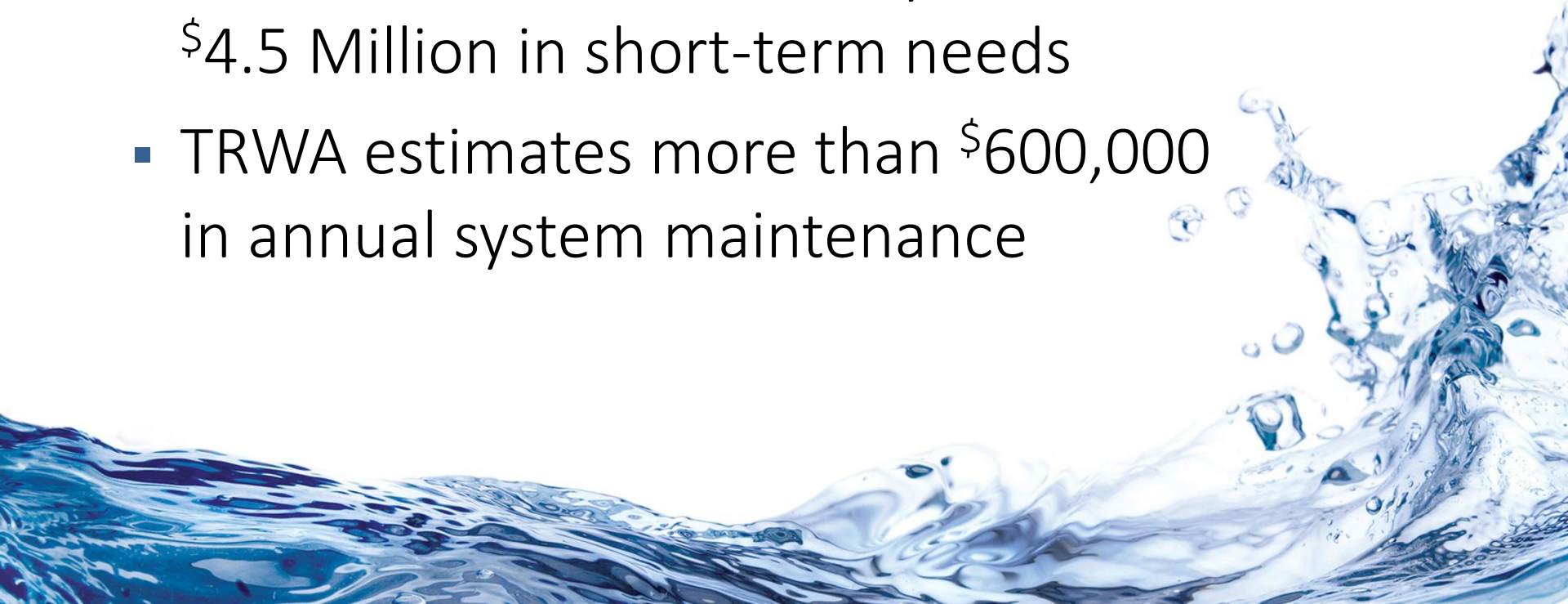
- Both Cities committed to regional solutions to common issues and challenges in a dynamic, densely populated metropolitan area
- Kennedale citizens and Council were highly interested and motivated to reduce rates
- Historically, Kennedale has delayed capital improvements and maintenance
- Arlington has excess capacity and a desire to sell water



Outside Studies



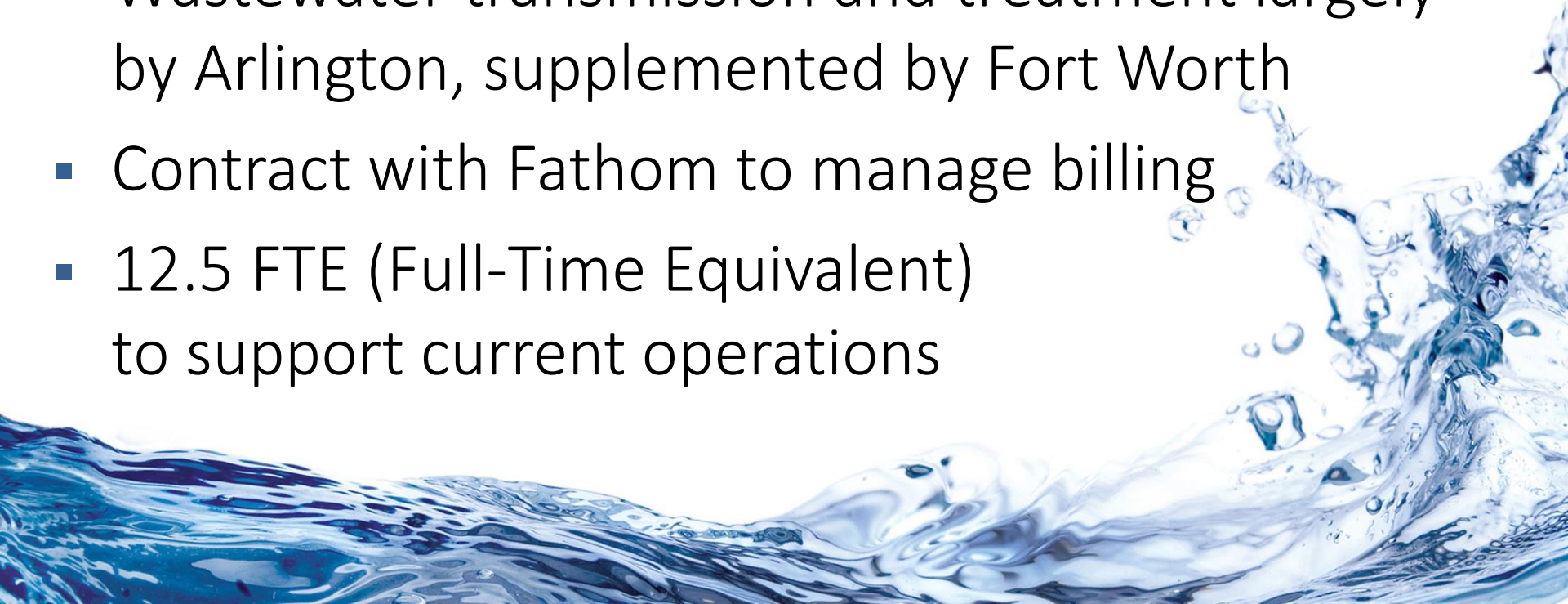
- Kennedale has historically underfunded capital and maintenance projects for the Water and Wastewater Utility System
 - A Freese and Nichols study identified \$4.5 Million in short-term needs
 - TRWA estimates more than \$600,000 in annual system maintenance



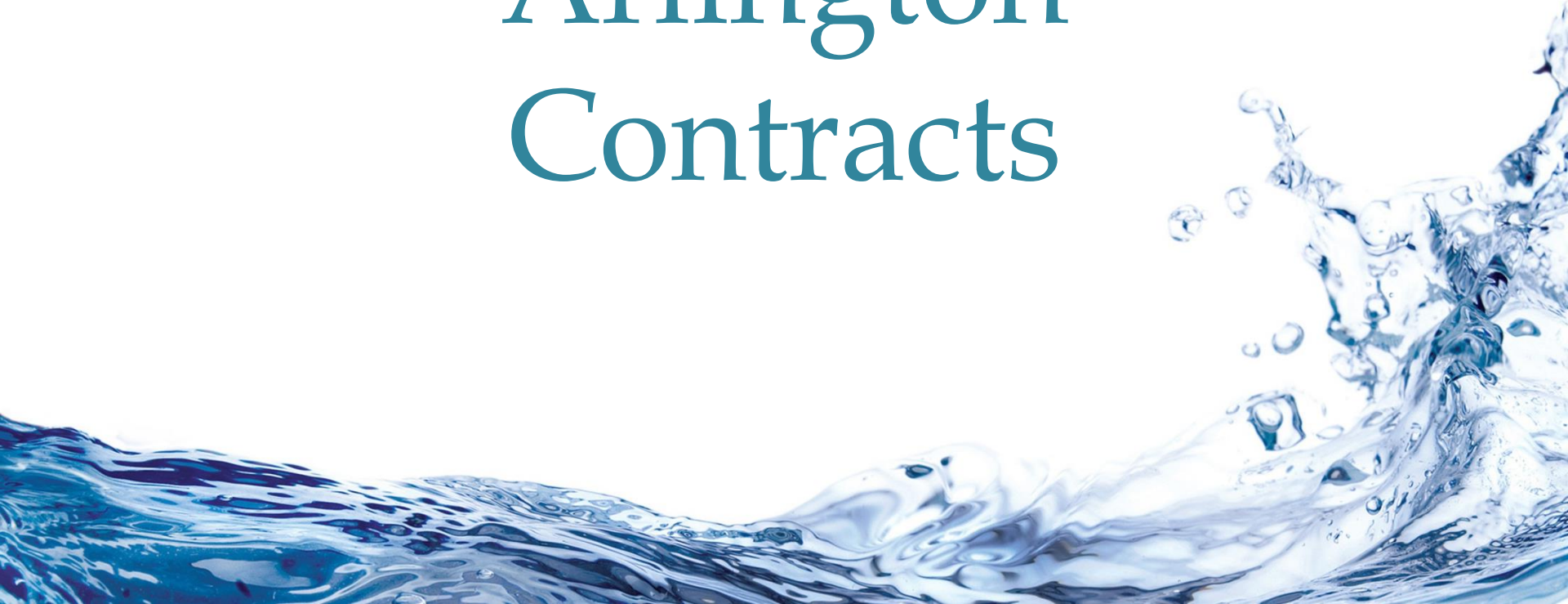
Current System



- As a cost-saving measure, the majority of water supply comes from existing wells
- The remainder is purchased from Fort Worth
- Wastewater transmission and treatment largely by Arlington, supplemented by Fort Worth
- Contract with Fathom to manage billing
- 12.5 FTE (Full-Time Equivalent) to support current operations

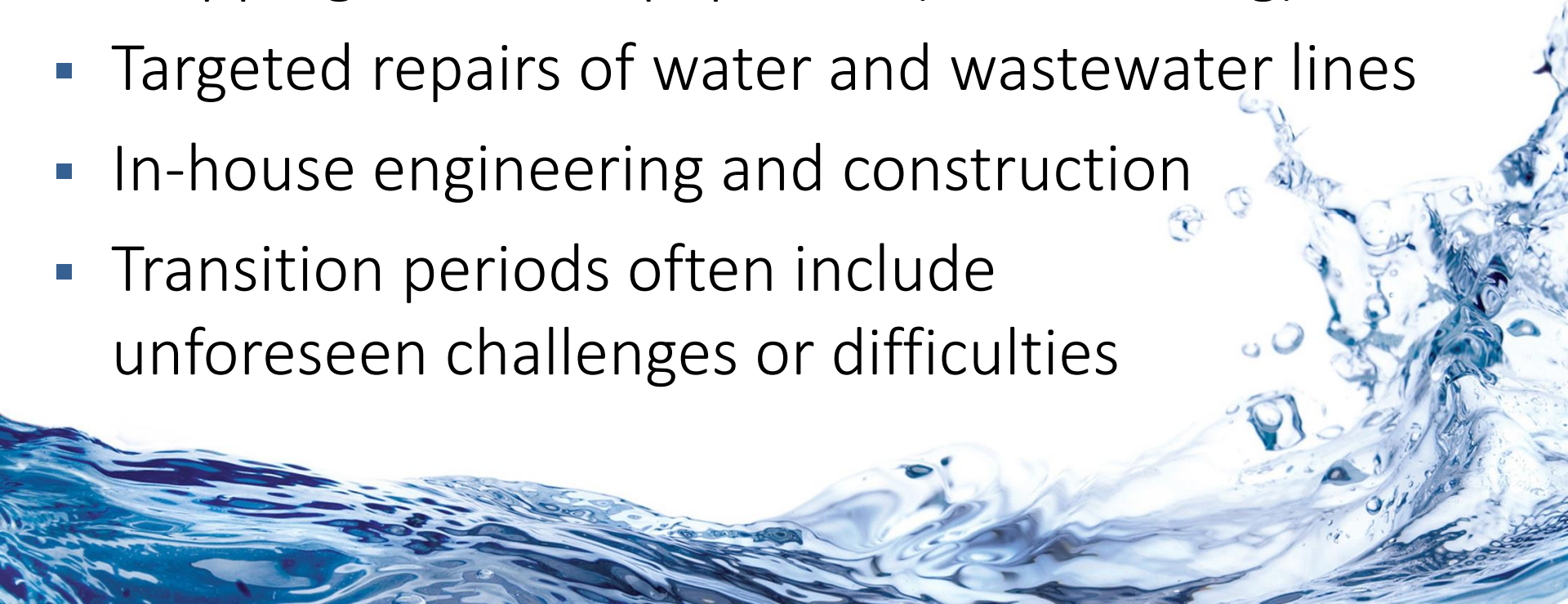


Impact of Arlington Contracts



Operational Impact

- Moving away from well water has the potential to provide improved taste and pressure
- Improved technological resources: line robots, mapping, Vactor equipment (line cleaning)
- Targeted repairs of water and wastewater lines
- In-house engineering and construction
- Transition periods often include unforeseen challenges or difficulties



Direct Citizen Impact



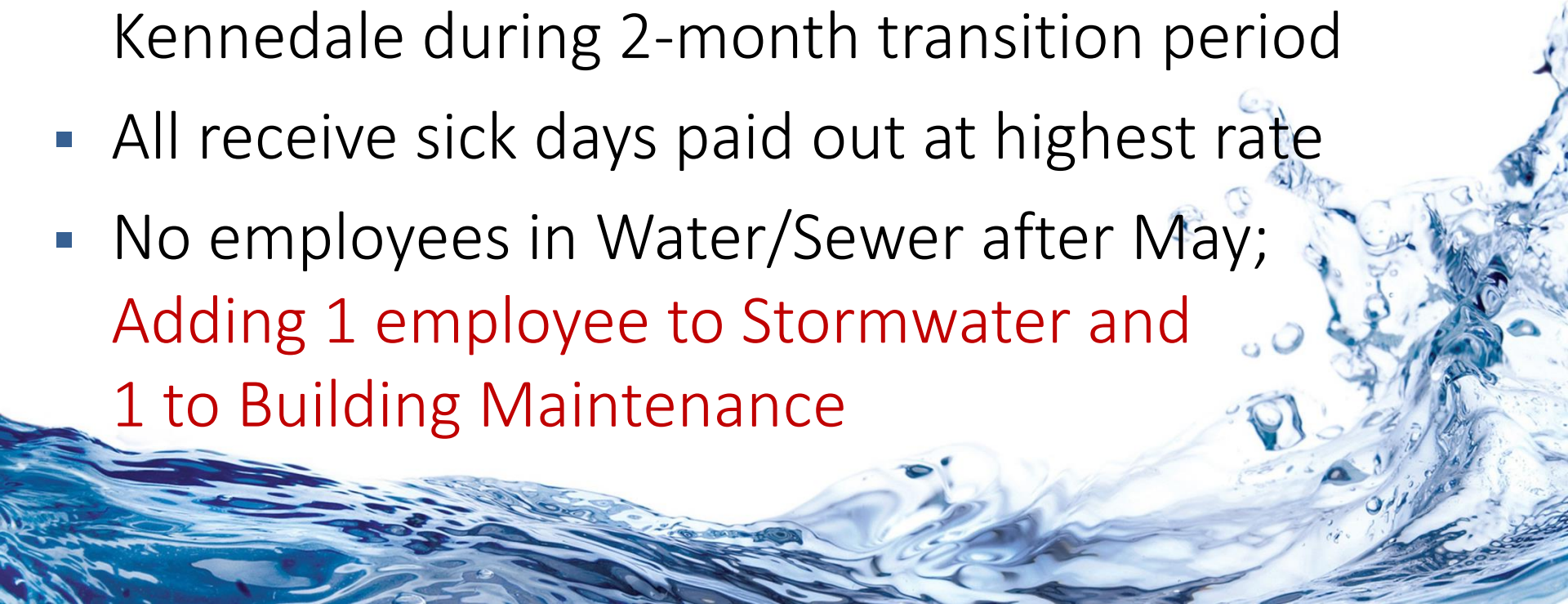
- Arlington and Kennedale citizens will be able to pay bills at multiple locations in either City
 - Still a presence in Kennedale City Hall
 - May not happen immediately
- Customers report service issues directly to Arlington



Employee Impact



- All eligible employees (5) offered positions at Arlington with at least equal pay and benefits and retain retirement benefits through TMRS
- Ineligible employees (2) offered to stay with Kennedale during 2-month transition period
- All receive sick days paid out at highest rate
- No employees in Water/Sewer after May;
Adding 1 employee to Stormwater and
1 to Building Maintenance



Infrastructure



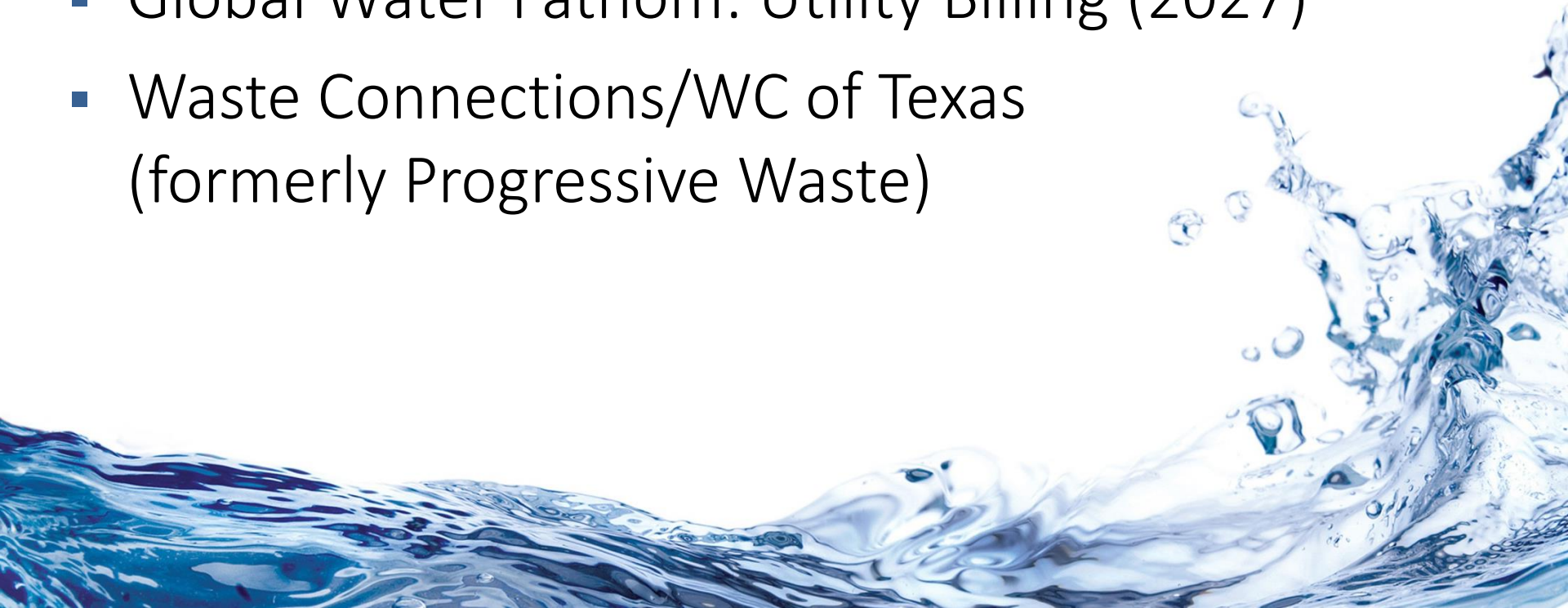
- Kennedale will own all infrastructure
- Following transition, a full inventory will occur and Arlington will offer fair market value for tools and equipment
- Current fleet vehicles moved to other departments per replacement schedule



Existing Contracts



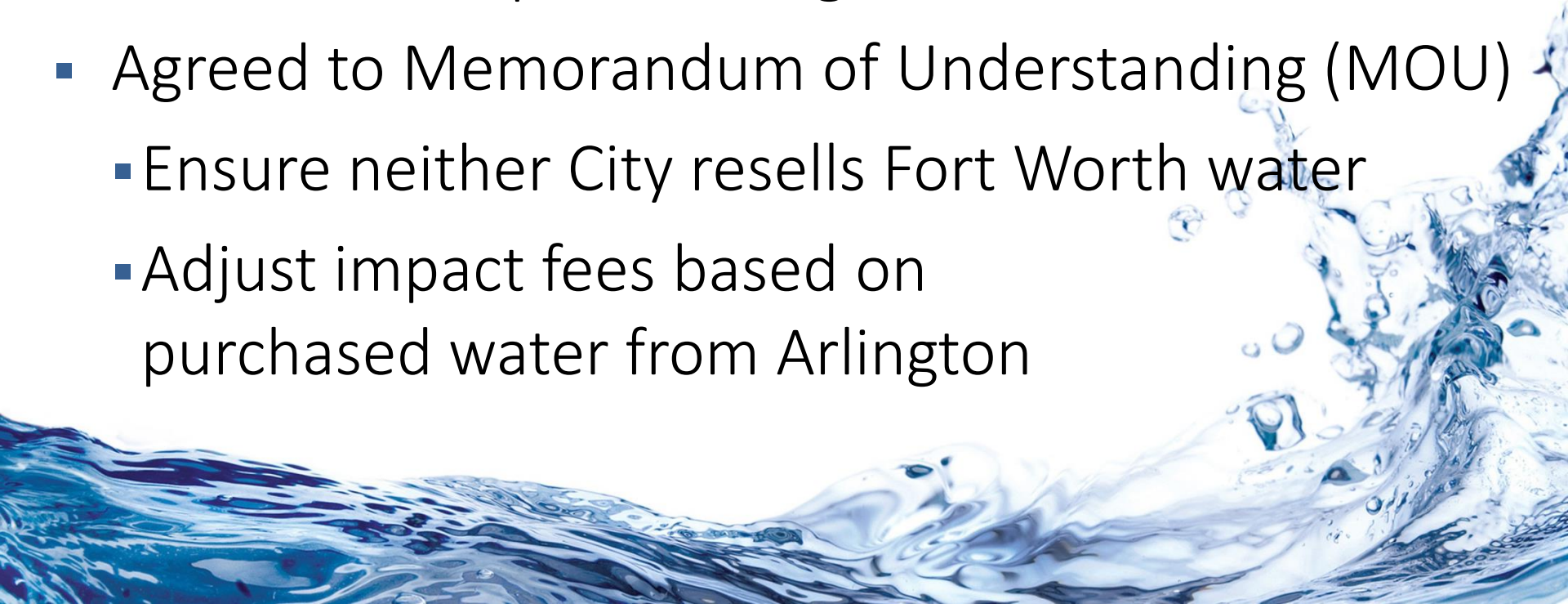
- City of Fort Worth: Purchase of Water (2031); and Wastewater Services (2048)
- City of Arlington: Wastewater Services
- Global Water Fathom: Utility Billing (2027)
- Waste Connections/WC of Texas (formerly Progressive Waste)



Fort Worth Contract

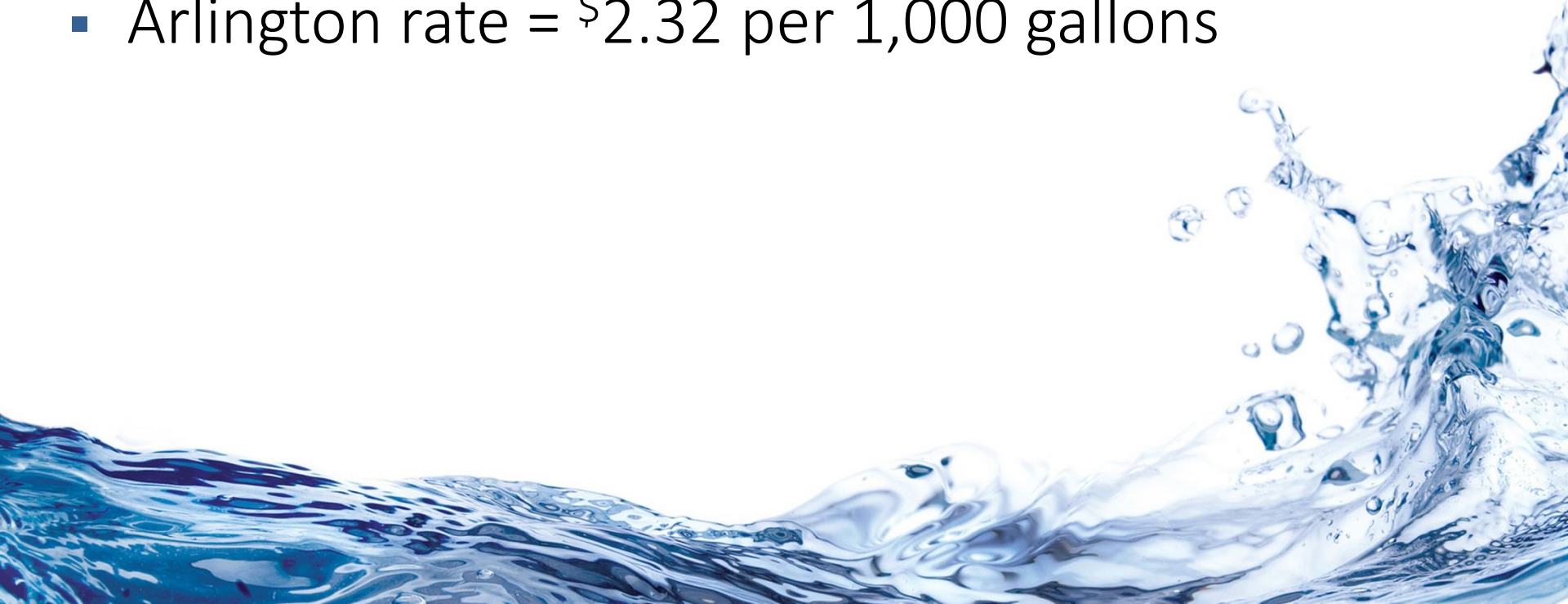


- City of Fort Worth was an excellent partner regarding this process
- Agreed to review contract in case of conflict with current water purchase agreement
- Agreed to Memorandum of Understanding (MOU)
 - Ensure neither City resells Fort Worth water
 - Adjust impact fees based on purchased water from Arlington



Fort Worth Water vs. Arlington Water

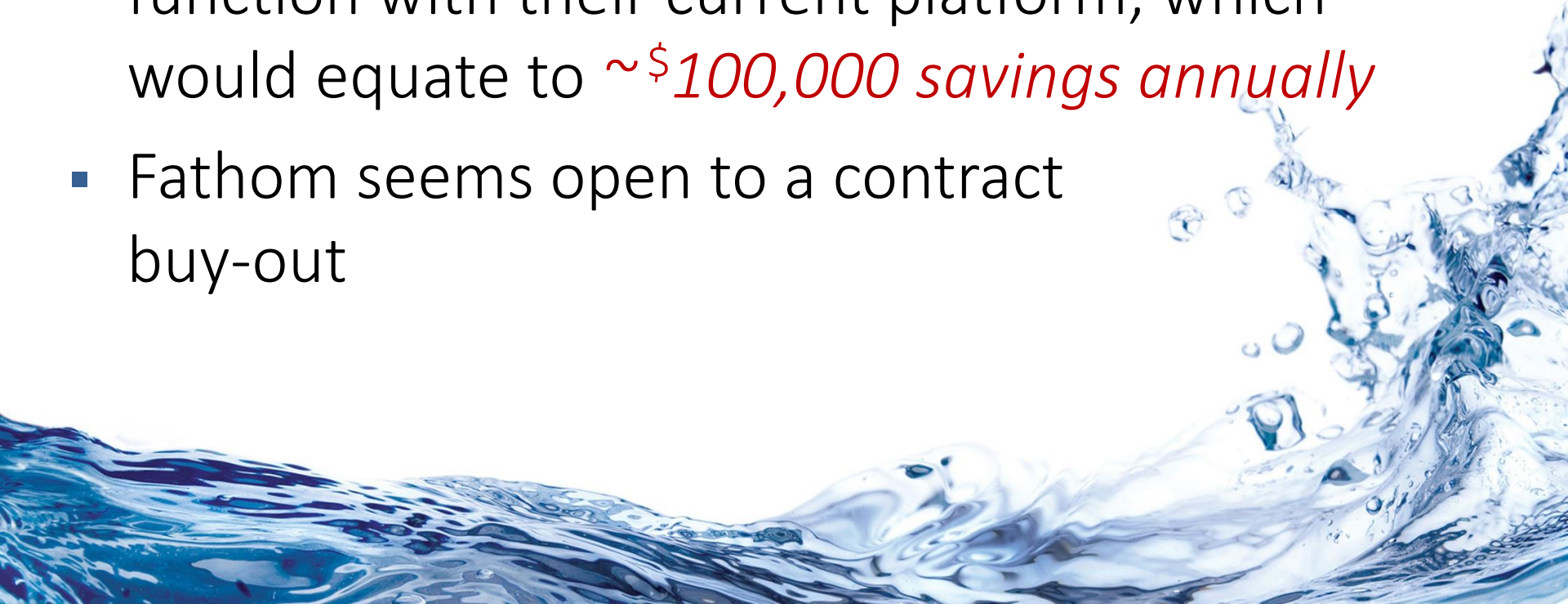
- Fort Worth formula based on rolling averages of maximum daily use, maximum hourly use, and total volume = ~ \$2.62 per 1,000 gallons
- Arlington rate = \$2.32 per 1,000 gallons



Global Water Fathom



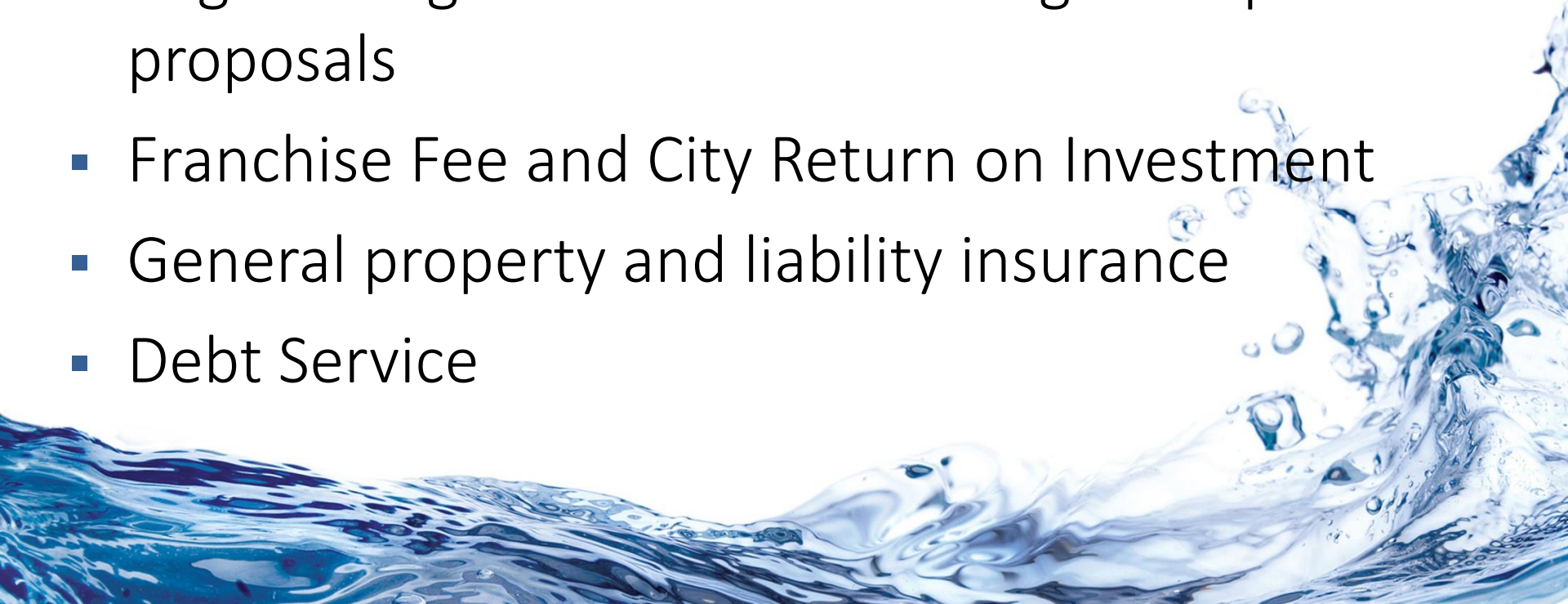
- Currently budgeted at ~\$220,000 per year
- Contract ends in 2027
- Arlington believes it can absorb billing function with their current platform, which would equate to *~\$100,000 savings annually*
- Fathom seems open to a contract buy-out



Costs Retained by Kennedale



- Kennedale retains ownership of existing infrastructure and responsibility of maintenance of existing service building
- Engineering costs to review Arlington capital proposals
- Franchise Fee and City Return on Investment
- General property and liability insurance
- Debt Service



Cost of Operations

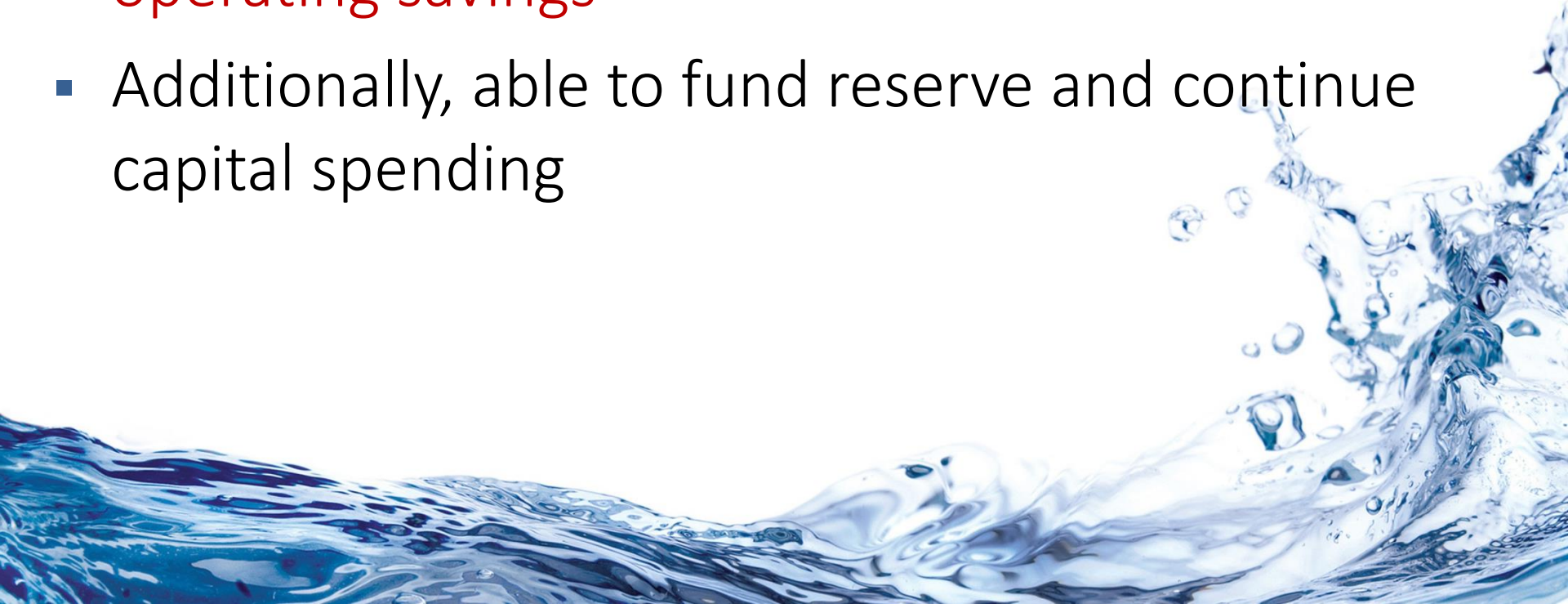


Item	Current Budget	Arlington Year 1*	Arlington Year 2	Arlington Year 3	Arlington Year 4
Fathom Contract	\$223,856	\$223,856			
Fort Worth Water	\$226,300	\$115,000	\$115,000	\$120,750	\$126,788
Arlington Sewer	\$696,000	\$696,000	\$730,800	\$767,340	\$805,707
Fort Worth Sewer	\$21,900	\$21,900	\$22,995	\$24,145	\$25,352
Return of Investment	\$355,518	\$355,518	\$355,518	\$355,518	\$355,518
Franchise Fee	\$190,658	\$190,658	\$190,658	\$190,658	\$190,658
Debt	\$509,680	\$509,680	\$507,318	\$511,370	\$448,028
Insurance	\$16,473	\$16,473	\$17,297	\$18,161	\$19,070
Building Maintenance/Other	\$49,181	\$49,181	\$50,165	\$51,168	\$52,192
Engineering	\$80,000	\$50,000	\$52,500	\$52,500	\$52,500
Arlington Customer Service			\$115,000	\$120,750	\$126,788
Emergency Exp/Reserve		\$150,000	\$150,000	\$150,000	\$150,000
Annual Cash Funded Capital		\$250,000	\$250,000	\$300,000	\$300,000
Purchase Water Arlington		\$100,000	\$600,000	\$630,000	\$661,500
One-Time Capital	\$635,000				
Other Kennedale Operating Costs	\$1,654,953				
Arlington O&M Agreement		\$1,200,000	\$900,000	\$550,000	\$577,500
Total	\$4,659,519	\$3,928,266	\$4,057,250	\$3,842,360	\$3,891,598

Financial Impact



- Some operating savings in year one and two
 - *Lessened due to various start up costs*
- Year three and beyond could see \$500,000 in operating savings
- Additionally, able to fund reserve and continue capital spending



New Costs



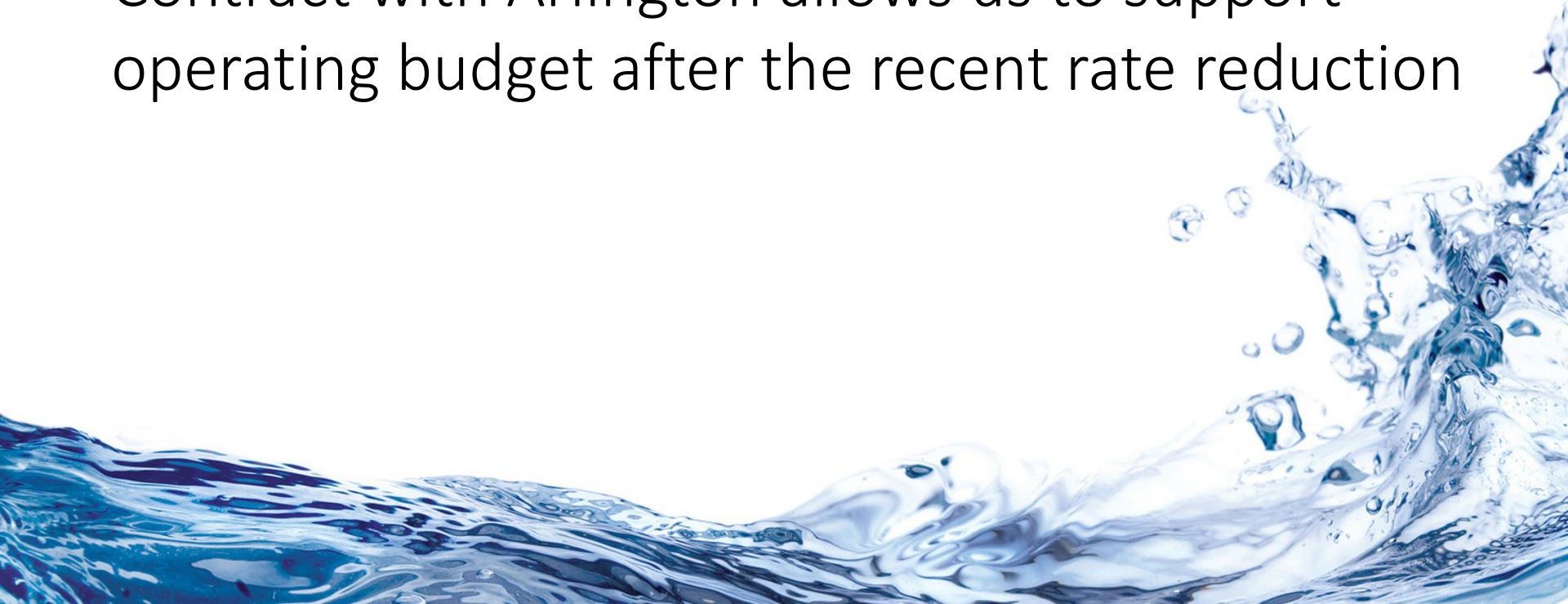
- Purchased water from Arlington
- ~\$150,000 annual to fund emergency maintenance and fund reserve
- ~\$250,000 annually in additional capital costs



Effect on Rates



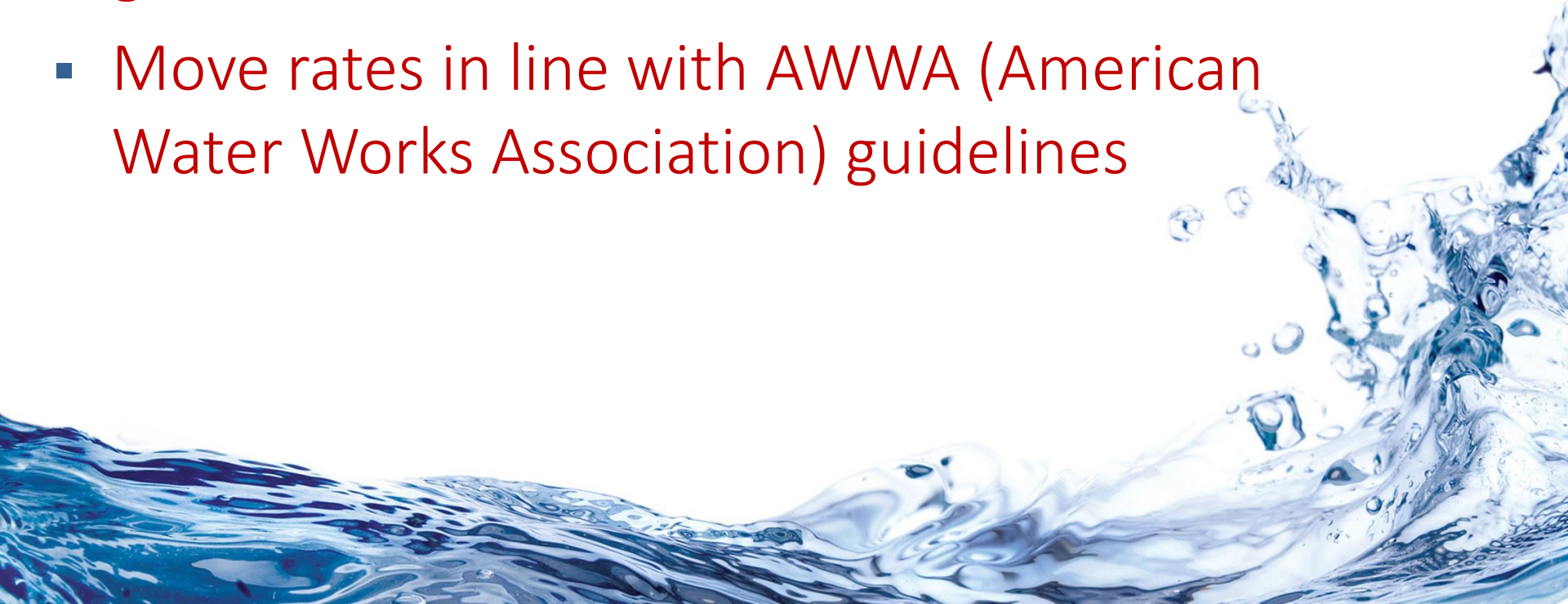
- Need ~\$4.05 million in revenue to support ongoing expenditures
- Current rates budgeted to bring in \$4.01 million
- Contract with Arlington allows us to support operating budget after the recent rate reduction



Rate Recommendation



- Maintain current rate until next budget cycle
- At that time, there will be 2-3 months of data on Arlington operations and associated costs to guide a decision
- Move rates in line with AWWA (American Water Works Association) guidelines



Rate Recommendation



City of Kennedale Water & Sewer Rates

(ADOPTED SEPTEMBER 17, 2018)

Water Rates

Service Within The City Limits

Meter Size	Residential Base	Senior/Disabled Base*	Commercial Base	Industrial Base	Multiple Res/Comm Base
3/4"	\$20.00	\$20.00	\$26.00	\$26.00	\$26.00 Per Unit
1"	\$43.34	\$43.34	\$43.34	\$43.34	\$26.00 Per Unit
1.5"	\$86.58	\$86.58	\$86.58	\$86.58	\$26.00 Per Unit
2"	\$138.58	\$138.58	\$138.58	\$138.58	\$26.00 Per Unit
3"	\$260.00	\$260.00	\$260.00	\$260.00	\$26.00 Per Unit
4"	\$433.42	\$433.42	\$433.42	\$433.42	\$26.00 Per Unit
Volume	Residential Rate	Senior/Disabled Rate	Commercial Rate	Commercial Rate	Multiple Res/Comm Rate**
0-5000 Gallons	\$2.75 Per 1000 Gallons	\$2.75 Per 1000 Gallons	\$2.75 Per 1000 Gallons	\$2.75 Per 1000 Gallons	N/A
5001-20000	\$5.36 Per 1000 Gallons	\$5.36 Per 1000 Gallons	\$5.36 Per 1000 Gallons	\$5.36 Per 1000 Gallons	N/A
20001-50000	\$6.70 Per 1000 Gallons	\$6.70 Per 1000 Gallons	\$6.70 Per 1000 Gallons	\$6.70 Per 1000 Gallons	N/A
50001+	\$6.70 Per 1000 Gallons	\$6.70 Per 1000 Gallons	\$8.38 Per 1000 Gallons	\$8.38 Per 1000 Gallons	N/A

*For senior/disabled rate, a credit of \$7.50 per month/billing cycle will apply towards the applicable meter size for water service.

**For multiple residential units on a single meter, the volume charge shall be calculated on a per unit basis by dividing the total volume of water used by the number

Sewer Rates

Service Within The City Limits

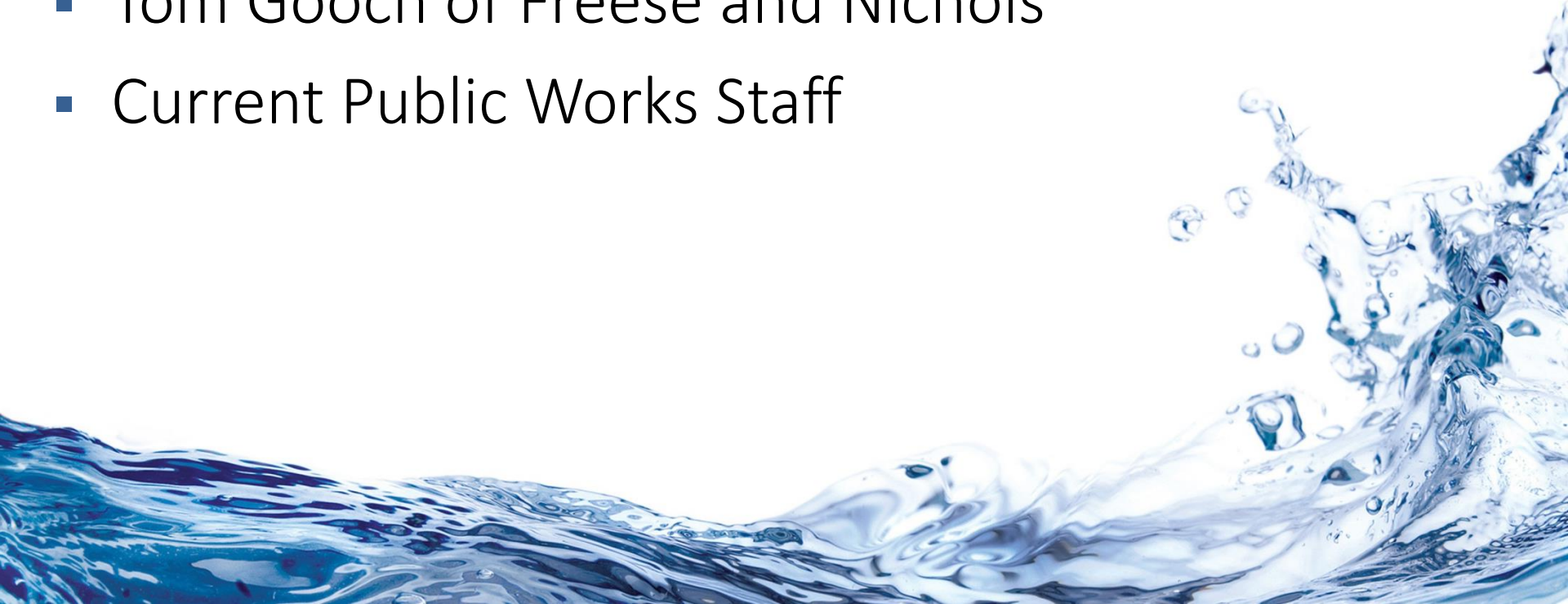
	Residential	Senior/Disabled	Commercial	Industrial Base	Multiple Res/Comm
Base	\$30.00	\$30.00*	\$55.00	\$55.00	N/A
Per 1000 Gallons	\$2.90	\$2.90	\$6.72	\$4.50	N/A

*For senior/disabled rate, a credit of \$7.50 per month/billing cycle will apply towards the applicable base for sewer service.

Special Thanks



- Buzz Pishkur and the City of Arlington
- Chris Harder with City of Fort Worth
- Wayne Olson, TOASE
- Tom Gooch of Freese and Nichols
- Current Public Works Staff



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

Between

CITY OF ARLINGTON, TX

and

CITY OF KENNEDALE, TX

(March 29, 2019)

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EXHIBITS

Exhibit A	Examples of Non Routine Maintenance or Repair Cost Escalators
Exhibit B	Description of Facilities
Exhibit C	Municipality’s Environmental Permits
Exhibit D	Meter Reading and Billing Cost Calculation

INTERLOCAL AGREEMENT FOR WATER AND WASTEWATER OPERATION AND MAINTENANCE

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

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

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

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

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

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

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

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

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

Article 1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“*Services*” is defined in Section 4.1.

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

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

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

Article 2 PURPOSE

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

Article 3 REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 3.1 Representations and Warranties of Municipality

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

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

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

Section 3.2 Representations and Warranties of Operator

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

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

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

Section 3.3 Disclosure of Information

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

Article 4 SCOPE OF SERVICES AND OPERATOR'S RESPONSIBILITIES

Section 4.1 General

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

Section 4.2 Standard of Care

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

Section 4.3 Process Control

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

Section 4.4 Routine Maintenance of the Facilities and Equipment

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

Section 4.5 Repairs and Replacement

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

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

Section 4.6 Staffing

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

Section 4.7 Testing and Laboratory Analysis

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

Section 4.8 Communications

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

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

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

Section 4.9 Reports

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

Section 4.10 Emergency Response

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

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

Section 4.11 Accounting Records

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

Section 4.12 Manufacturers' Warranties

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

Section 4.13 Water Distribution System

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

Section 4.14 Wastewater Collection System

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

Section 4.15 Meter Reading Billing and Meter Repair Duties

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

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

Section 4.16 Water and Wastewater Line Warranty

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

Section 4.17 Capital Improvements Plan

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

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

Article 5 MUNICIPALITY'S RESPONSIBILITIES

Section 5.1 Permits

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

Section 5.2 Utilities

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

Section 5.3 Compliance with Laws

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

Section 5.4 License to Use the Facilities

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

Section 5.5 Notice of Litigation

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

Section 5.6 Access

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

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

Section 5.7 Sanitary Sewer Overflow and Infiltration and Inflow

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

Section 5.8 Approval or Disapproval of Proposed Costs

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

Section 5.9 Capital Improvements

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

Section 5.10 General Authority

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

Section 5.11 Authority for Water Supply

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

Article 6 COMPENSATION

Section 6.1 Base Compensation

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

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

Section 6.2 Annual Repair and Maintenance Limit

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

Section 6.3 Additional Services

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

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

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

Section 6.4 Change in Scope

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

Section 6.5 Taxes

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

Section 6.6 Accrual of Interest on Late Payments

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

Article 7 TERM AND TERMINATION

Section 7.1 Term

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

Section 7.2 Termination

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

Article 8 RISK MANAGEMENT

Section 8.1 Operator's Insurance

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

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

Section 8.2 Municipality Insurance

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

Section 8.3 Pending Claims against Municipality

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

Article 9 DISPUTE RESOLUTION

Section 9.1 Applicability

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

Section 9.2 Disputes

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

Section 9.3 Covenant to Continue Work

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

Article 10 MISCELLANEOUS

Section 10.1 Municipality's and Operator's Representatives

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

Section 10.2 Relationship

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

Section 10.3 Construction

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

Section 10.4 Entire Agreement; Amendments

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

Section 10.5 Waiver

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

Section 10.6 Assignment

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

Section 10.7 Force Majeure

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

Section 10.8 Governing Law and Venue

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

Section 10.9 Notices

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

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

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

With a copy to:

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

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

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

With a copy to:

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

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

arodriguez@txlocalgovlaw.com
gcampbell@cityofkennedale.com

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

Section 10.10 Severability

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

Section 10.11 Counterparts

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

Section 10.12 Modification of Agreement

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

Section 10.13 Survival

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

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

MUNICIPALITY:

By: _____

Title: _____

OPERATOR:

By: _____

Title: _____

Approved as to form and legal sufficiency this _____ day of _____, 2019

By: _____

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

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

EXHIBIT B

DESCRIPTION OF FACILITIES

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

EXHIBIT C
MUNICIPALITY'S ENVIRONMENTAL PERMITS

NONE

EXHIBIT D**METER READING AND BILLING COST CALCULATION**

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

Date: March 19, 2019

Agenda Item No: DECISION ITEMS - B.

I. Subject:

Hold a Public Hearing and consider authorizing the City Manager to enter into a contract to purchase potable water from the City of Arlington

II. Originated by:

Brady Olsen, Finance Director

III. Summary:

The Utility & Infrastructure Board (UIB) met on Tuesday, March 12, and voted unanimously* to recommend to Council approval of this contract for the purchase of water from the City of Arlington. As Council knows from previous staff reports, the expectation is that the Kennedale City Council would approve each of these agreements before the Arlington Council has a second reading, which is expected to occur on Tuesday, March 26, 2019.

In addition to the current version of this contract, the staff presentation outlining highlights is included in your packet (attached to Decision Item A). There have not been substantive changes to this contract for water purchase since the last version was presented to Council. Finance Director Brady Olsen and City Manager George Campbell will then be available to answer questions from the Council regarding either of these two contracts.

In an effort to alert the public to Council's consideration of these contracts and the related public hearings, staff published copies of the contracts and the presentation at www.cityofkennedale.com/collaboration, noting the opportunity for public input. This page was linked via a banner on the homepage, shared on all social media channels maintained by the City (Facebook, Twitter, and Nextdoor), and distributed to the e-newsletter subscriber list.

** During the March 12, 2019 Meeting of the UIB, the following members were present: Vice Chair Johnny Trevino (served as Chair for this meeting); Kenneth Michels, Place 2; Jeff Gregory, Place 4; Mark Perkins, Place 7; and Amy Cates, Alternate Place 8; and the following were absent: Chair Idin Deljavan, Place 6; Harry Browne, Place 1; Tom Newsom, Place 5.*

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

Staff and the UIB would recommend approval.

VIII. Attachments:

1.	Wholesale Water Agreement	Wholesale Water Contract with Kennedale-clean006.pdf
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Agreement for the Sale and
Delivery of Treated Water - Wholesale Customer –
City of Kennedale

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

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

Recitals

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

WHEREAS, Kennedale is a home rule municipal corporation operating under and governed by the laws and Constitution of the State of Texas, within Tarrant County, Texas; and

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

WHEREAS, the governing body of each Party finds that this Agreement is necessary for the benefit of the public and that each Party has the legal authority to provide the governmental functions which are the subject of this Agreement; and

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

WHEREAS, the covenants and promises constitutes adequate consideration to each Party; and

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

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

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

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

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

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

ARTICLE I

Findings and Purpose

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

ARTICLE 2

Definitions and Interpretation

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

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

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

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

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

AWWA means the American Water Works Association.

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

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

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

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

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

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

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

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

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

GPM or gpm means gallons per minute.

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

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

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

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

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

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

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

MGD means million gallons per day.

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

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

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

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

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

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

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

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

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

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

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

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

TRWD means the Tarrant Regional Water District.

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

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

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

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

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

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

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

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

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

ARTICLE 3

Water Provided Under Agreement

3.1 Treated Water.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4

Metering and Rate of Flow Control

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

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

4.3 Calibration of Meters.

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

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

4.4 Meter Reading.

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

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

ARTICLE 5 Fees, Billing, and Payment

5.1 Charges for Water.

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

5.2 Water Rates.

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

Volume Rate - \$2.32 per 1,000 gallons

The Maximum Day Demand is 2.0 MGD

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

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

Electrical Costs - \$0.11 per 1,000 gallons

Chemical Costs - \$0.12 per 1,000 gallons

Regulatory Costs - \$0.00

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

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

5.3 Billing and Payment.

(a) Volume Charge. Each month during the term of this Agreement, Arlington shall read the Meter(s) measuring Treated Water being provided to Kennedale. The number of gallons of Treated Water measured by the Meter(s) will be multiplied by the Volume Rate to determine the Volume Charge. Arlington shall prepare and deliver to Kennedale a statement showing the Volume Charge for all Treated Water delivered to Kennedale. Payment shall be made by the 30th day after receipt of the statement. A minimum volume charge for 0.10 MGD will be charged each month if Kennedale’s reading does not meet the minimum volume requirement of 0.10 MGD.

(b) Late Fees. If Kennedale is late in the payment of any charge or fee due and payable to Arlington under this Agreement, late payments shall bear per annum interest at a rate equal to the lesser of two percentage points (2%) above the Prime Interest Rate as published in the Wall Street Journal on the Day said statement becomes delinquent, or the maximum allowed by law to be charged to Kennedale. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, Kennedale shall be in default under

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

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

ARTICLE 6

Treated Water Transmission Line

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

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

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

ARTICLE 7

Restrictions and Conditions

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

- (b) **Demand Management.** If Arlington or TRWD shall manage Water demand through rationing the use of Water to its retail customers, Kennedale shall achieve or exceed the targeted water conservation goals mandated by Arlington. Kennedale may utilize any water conservation measure, policy, or practice in order to achieve said water conservation goals demanded by Arlington. Rationing does not relieve Kennedale from its obligation to pay the minimum monthly Volume Charge, unless such rationing extends for a continuous period exceeding 90 days. A failure to meet said water conservation measures by Kennedale shall be considered a breach of this Agreement.
 - (c) **Temporary Rationing.** Where an Emergency may dictate temporary conservation or rationing requirements for either Arlington or Kennedale, either Party may implement any measures considered appropriate by it to alleviate the Emergency. If Kennedale implements measures to alleviate an Emergency, Kennedale shall notify Arlington in writing within five (5) days of implementing such measures. Action taken under this subsection does not relieve Kennedale from its obligation to pay the minimum monthly Volume Charge.
- 7.4 **Federal and State Laws.** This Agreement is subject to all applicable federal and state laws and any applicable permits, amendments, orders, or regulations of any state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, order, rule or regulation in any forum having jurisdiction. Kennedale agrees to abide by any changes in this Agreement made necessary by any new, amended, or revised state or federal regulation.
- 7.5 **Support of Arlington on Permits and Governmental Agency Approvals.** Kennedale shall use commercially reasonable efforts to support and assist Arlington in obtaining permits and approvals from governmental agencies in order to protect, repair, maintain, replace, add to, supplement and/or enlarge the Arlington Raw Water System and/or the Arlington Treated Water System. Such support and assistance shall include, but is not limited to: providing information to Arlington when requested by Arlington in order to facilitate any permit or approval; providing written and oral statements of support and assistance or testimony, information, and evidence if appropriate and if requested by Arlington in order to obtain any permit or approval; and taking all such other action as may be appropriate to support and assist Arlington in obtaining any permit or approval.
- 7.6 **Other Contracts.** It is understood by the Parties that Kennedale also purchases treated water for the Kennedale Water System from the City of Fort Worth pursuant to a separate contract (the Fort Worth Contract). Nothing in this Agreement shall be interpreted to allow or require an action to be taken that would contravene or place Kennedale in breach of the Fort Worth Contract.

ARTICLE 8

Term of Agreement and Extension

- 8.1 Term of Agreement.** Unless terminated as provided in this Agreement, this Agreement shall commence upon the Effective Date and shall remain in effect for a term of twenty (20) years subject to renewal for two additional ten (10) year renewals as provided in Section 8.2.
- 8.2 Renewal of Agreement.**
- (a) Kennedale shall have the option to renew this Agreement for a quantity of water and at a rate as may be mutually agreed in writing by the Parties. In the absence of renewal, and except as specifically provided to the contrary, this Agreement and the obligations of this Agreement shall end on the Expiration Date. Kennedale expressly acknowledges that it has no right or entitlement to Raw Water or Treated Water from Arlington after the expiration of this Agreement except to the extent that this Agreement is renewed as provided herein.
 - (b) Kennedale is required to give notice of its intent to terminate this Agreement, at least three (3) years prior to the Expiration Date. Kennedale's failure to provide notice of intent to terminate on or before three (3) years prior to the Expiration Date of this Agreement shall constitute Kennedale's determination to renew, subject to mutually agreeable contract terms.
 - (c) If this Agreement is not renewed, Kennedale shall nonetheless pay Arlington for all Volume Charges for Treated Water delivered to Kennedale after the expiration of this Agreement, along with all applicable charges, including Late Fees, at the rate for Construction Block Structure approved by Arlington.

ARTICLE 9

Termination and Default

- 9.1 Termination by Mutual Consent.** This Agreement may be terminated at any time, in whole or in part, by the mutual written consent of Kennedale and Arlington. In the event of termination of this Agreement by such mutual consent, the Parties shall make no claim of any kind whatsoever against each other, their agents or representatives, by reason of such termination or any act incident thereto. If the Parties agree to terminate this Agreement, Kennedale shall nonetheless pay Arlington for all Volume Charges for Treated Water delivered prior to the termination of this Agreement, along with all penalties such as Late Fees under the terms of this Agreement. The provisions of this section survive termination of this Agreement.
- 9.2 Default.** The failure of either Party to comply with any of the material terms of this Agreement shall constitute a default. Upon default by one Party, the other Party shall send written Notice of Termination. Such notice shall clearly specify the nature of the default and provide the defaulting Party forty-five (45) days to cure the default. If the default is capable of being cured within forty-five (45) days but is not cured within forty-five (45) days, this Agreement shall terminate at midnight of the forty-fifth (45th) day following receipt of the Notice. In the case of default that cannot be cured

within forty-five (45) days, this Agreement shall not terminate so long as the defaulting Party has given written notice to the other Party of the anticipated reasonable time to cure and the defaulting Party has commenced and is diligently pursuing a cure. Evidence of such cure and its diligent pursuit shall be provided from the Party determined to be in default to the satisfaction of the other Party.

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

ARTICLE 10

Force Majeure

- 10.1 Definition.** The term *Force Majeure* as used herein shall mean a cause or causes beyond the reasonable control of the Party claiming *Force Majeure*, and shall include but not be limited to natural disasters, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States of America or the State of Texas or any civil or military authority, insurrections, riots, epidemics, lightning, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions and breakage or accidents to machinery, pipelines, or facilities; however, lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any *Force Majeure* shall be remedied with all dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party or Parties when such settlement is unfavorable in the judgment of the Party having the difficulty.
- 10.2 Notice; Suspension of Obligations.** By reason of Force Majeure, if any Party hereto shall be rendered partially or wholly unable to carry out its obligations under this Agreement, then such Party shall give notice in writing of such Force Majeure to the other Party within a reasonable time after occurrence of the event or cause relied on, so far as it is affected by such Force Majeure. Monthly Demand Charges for services actually received from Arlington hereunder, shall be suspended during the continuance of the inability then claimed, and such Party shall endeavor to remove or overcome such inability with all commercially reasonable dispatch; and until such inability has been removed, no Party shall be deemed to be in default of this Agreement. In any such event, the Party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the event or cause that excused performance hereunder.

ARTICLE 11

Ownership, Liability, Indemnification, and Insurance

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

ARTICLE 12

Dispute Resolution

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

ARTICLE 13

Notice

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

- 13.2 Notice to Arlington.**

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

- 13.3 Notice to Kennedale.**

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

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

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

ARTICLE 14

Miscellaneous Provisions

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

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

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

City of Arlington

By: _____

ATTEST:

APPROVED AS TO FORM:
City Attorney

By: _____
Mary W. Supino, City Secretary

By: _____

City of Kennedale

By: _____
George Campbell, City Manager

ATTEST:

By: _____
Leslie Galloway, City Secretary



Date: March 19, 2019

Agenda Item No: EXECUTIVE SESSION - A.

I. Subject:

Discussion of pending legal matters regarding Ron Sturgeon vs. City of Kennedale

II. Originated by:

III. Summary:

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:



Date: March 19, 2019

Agenda Item No: EXECUTIVE SESSION - B.

I. Subject:

Discussion with the City Attorney regarding proposed contracts to purchase potable water from the City of Arlington and to transfer the operation and maintenance of the Kennedale water and sewer systems to the City of Arlington

II. Originated by:

III. Summary:

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:



Date: March 19, 2019

Agenda Item No: EXECUTIVE SESSION - C.

I. Subject:

Pursuant to Section 551.074 deliberation of the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee:

Discussion of City Manager's Annual Evaluation

II. Originated by:

III. Summary:

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments: