

KENNEDALE CITY COUNCIL
AGENDA
REGULAR MEETING
April 11, 2013
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE

WORK SESSION - 5:30 PM
REGULAR SESSION - 7:00 PM

I. CALL TO ORDER

II. WORK SESSION

***NOTE: Pursuant to Section 551.071, Texas Government Code, the 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.**

A. Tarrant County service and information discussion with Marcia Etie from County Commissioner Andy Nguyen's Office.

B. Presentation of Water & Sewer Rate Committee findings.

C. Update from the Youth Advisory Council.

III. REGULAR SESSION

IV. ROLL CALL

V. INVOCATION

VI. UNITED STATES PLEDGE

VII. TEXAS PLEDGE

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

VIII. VISITOR/CITIZENS FORUM

At this time, any person with business before the Council not scheduled on the agenda may speak to the Council. No formal action can be taken on these items at this meeting.

IX. REPORTS/ANNOUNCEMENTS

In addition to any specific matters listed below, the city council may receive a report about items of community interest, including but not limited to recognition of individual officials, citizens or departments, information regarding holiday schedules, upcoming or attended events, etc.

A. Updates and information from the Mayor.

B. Updates and information from Councilmembers.

C. Updates and information from the City Manager.

- Recent Art in the Park Festival
- 319 grant work group
- Upcoming events

X. CONSENT ITEMS

All matters listed under consent agenda have been previously discussed, require little or no deliberation, or are considered to be routine by the council. If discussion is desired, then an item will be removed from the consent agenda and considered separately.

A. Consider approval of minutes from March 13, 2013 special session and March 14, 2013 regular session.

B. Consider action regarding a notice from the Public Utility Commission (PUC) of Texas for a Consumer Price Index (CPI) adjustment to municipal telecommunications right-of-way access line rates.

C. Consider action to contract with Freese and Nichols Engineering to develop a Comprehensive Water and Wastewater Master Plan, and Phased Capital Improvement Plan.

D. Consider action to approve an interlocal agreement with Tarrant County to expand and modify the West Nile Virus surveillance and response program.

E. Consider action to approve a contract with Senior Citizen Services of Tarrant County, Inc for management of the senior center.

F. Consider approval of a funding agreement with the State of Texas to use funds held in the State Highway 161 Subaccount - Sustainable Development Infrastructure.

XI. REGULAR ITEMS

A. Consider action to approve Ordinance 518, providing for the annexation of 0.723 acres of land located in the E.R. Mingus Survey, Abstract No. 1114, Tarrant County, TX, at the site of the previous Bowman Springs bridge.

B. Review and consider policy papers from the Planning & Zoning Commission on the following issues:

1. Zoning and subdivision regulations
2. Zoning/rezoning in the Oak Crest area

C. Consider action to approve Progressive Waste Solutions residential and commercial garbage rate increase for 2013.

D. Consider action to appoint a Vice Chair to the Planning and Zoning Commission.

E. Consider authorizing the Mayor to execute an Agreement to Participate in Tax Increment Reinvestment Zone Number One, City of Kennedale, Texas (New Hope Road) between the City of Kennedale and Tarrant County.

F. Consider authorizing the Mayor to execute an Agreement to Participate in Tax Increment Reinvestment Zone Number One, City of Kennedale, Texas (New Hope Road) between the City of Kennedale and the Tarrant County Hospital District.

G. Consider authorizing the Mayor to execute an Agreement to Participate in Tax Increment Reinvestment Zone Number One, City of Kennedale, Texas (New Hope Road) between the City of Kennedale and Tarrant County Community College District.

XII. EXECUTIVE SESSION

A. The City Council will meet in closed 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 preparation of developer's agreements.

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

XIV. ADJOURNMENT

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

CERTIFICATION

I certify that a copy of the April 11, 2013, agenda was posted on the City Hall bulletin board next to the main entrance of the City Hall building, 405 Municipal Drive, of the City of Kennedale, Texas, in a place convenient and readily accessible to the general public at all times and said agenda was posted at least 72 hours preceding the schedule time of said meeting, in accordance with Chapter 551 of the Texas Government Code.



Amethyst G. Cirno, City Secretary

Date: April 11, 2013

Agenda Item No: WORK SESSION - A.

I. Subject:

Tarrant County service and information discussion with Marcia Etie from County Commissioner Andy Nguyen's Office.

II. Originated by:

Bob Hart, City Manager

III. Summary:

Marcia Etie will be present from the commissioner's office.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

Date: April 11, 2013

Agenda Item No: WORK SESSION - B.

I. Subject:

Presentation of Water & Sewer Rate Committee findings.

II. Originated by:

Sakura Moten-Dedrick, Director of Finance & IT

III. Summary:

On April 2012, Council approved the creation of a Water & Sewer Rate Committee to study and make recommendations with regards to the city's current rate structure. It met on three separate occasions (Nov 5, 2012; Feb 11, 2013; March 18, 2013) to review, analyze and consideration various philosophies. implementation

After careful consideration, the committee has made several recommendations to meet our revenue requirements in a fair and equitable fashion. Given Council discussion today, it is staff's intent to bring forth a revised water/sewer rate schedule for adoption during our May meeting.

The committee was comprised of the following residents and staff: Mark Biondi, Roy Boenig, Mitch Hanzik, Adrienne Kay, Hollis Matthews, LaCresha Sanders, Bob Hart, Larry Ledbetter, Sakura Moten-Dedrick, and Amy Owens. Carolyn Marshall served as our water/sewer rate study consultant. She has served as our interim finance director on several occasions in the past, as well as, assisted with the city's rate study since 2004.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: April 11, 2013

Agenda Item No: WORK SESSION - C.

I. Subject:

Update from the Youth Advisory Council.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

At this time the YAC will present information on past and upcoming activities.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

Date: April 11, 2013

Agenda Item No: REPORTS/ANNOUNCEMENTS - A.

I. Subject:

Updates and information from the Mayor.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Updates from Mayor Clark.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: April 11, 2013

Agenda Item No: REPORTS/ANNOUNCEMENTS - B.

I. Subject:

Updates and information from Councilmembers.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Updates from Council.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: April 11, 2013

Agenda Item No: REPORTS/ANNOUNCEMENTS - C.

I. Subject:

Updates and information from the City Manager.

- Recent Art in the Park Festival
- 319 grant work group
- Upcoming events

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Updates from the City Manager.

Report on recent Art in the Park event.

Report on the 319 group project.

April 19 & 20: Citywide Garage Sale

April 20: Bird Identification Workshop

April 27: Citywide Cleanup @ Landfill on Dick Price Rd.

April 27: Prescription Drug Takeback program @ KPD

May 18: Bark in the Park, KidFish, and National Kids to Parks Day in Sonora Park.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: April 11, 2013

Agenda Item No: CONSENT ITEMS - A.

I. Subject:

Consider approval of minutes from March 13, 2013 special session and March 14, 2013 regular session.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Please see the attached minutes for approval.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	Special Session	03.13.2013 CC Minutes - Special Session.doc
2.	minutes	03.14.2013 CC Minutes.doc

**KENNEDALE CITY COUNCIL
MINUTES
SPECIAL SESSION – PUBLIC HEARING
March 13, 2013
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE**

I. CALL TO ORDER

Mayor Clark called the meeting to order at 5:00PM.

II. ROLL CALL

Present: Mayor John Clark, Charles Overstreet, Kelly Turner, Brian Johnson, Liz Carrington, Frank Fernandez.

III. REGULAR ITEMS

A. Public Hearing to discuss the annexation of 0.723 acres of land located at the site of the previous Bowman Springs Bridge near the intersection with Winding Creek Drive.

1. Staff Presentation

Rachel Roberts presented information on the proposed annexation, noting it encompassed only the small area of the previous Bowman Springs Bridge and did not affect any services.

2. Public Hearing

Mayor Clark opened the public hearing. No one signed up to speak and the hearing was closed.

3. Staff Response and Summary

No staff response was necessary.

IV. ADJOURNMENT

Motion To adjourn . **Action** Adjourn, **Moved By** Brian Johnson, **Seconded By** Liz Carrington.
Motion Passed Unanimously

The meeting was adjourned at 5:10PM.

APPROVED:

Mayor John Clark

ATTEST:

City Secretary Amethyst G. Cirimo

**KENNEDALE CITY COUNCIL
MINUTES
REGULAR MEETING
March 14, 2013
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE**

I. CALL TO ORDER

Mayor Clark called the work session to order at 5:30 PM.

II. WORK SESSION

City Manager Bob Hart asked that Council consider entering executive session to discuss item II-C, a franchise agreement with ONCOR.

A. Online communication initiatives report.

Amethyst Cirno presented the 2012-2013 online communication initiatives report to Council, noting that the new website had provided the city with many new options to engage and inform residents.

B. Review Independent Auditor's Report for year ended September 30, 2012.

Sakura Moten-Dedrick briefly covered the recent audit, noting that the general fund came in at 13.6% for the year. Greg Shropshire from Patillo, Brown, and Hill presented the audit report.

C. Discuss ONCOR Franchise Agreement.

This item was discussed in executive session. No further information was necessary.

D. Discuss recommendation from the Parks and Recreation Advisory Board regarding joint park/playground development with Delaney Elementary.

Bob Hart presented information on this item, noting that the Parks and Recreation Board has recommended that Council send a letter of support for this project. The school currently owns a piece of land on which they would like to have a playground. Mayor Clark asked that more input from Delaney Elementary and the School Board before the project is pursued.

Council recessed into executive session to discuss item II-C at 6:42PM.

III. REGULAR SESSION

IV. ROLL CALL

Present: Mayor John Clark, Kelly Turner, Brian Johnson, Liz Carrington, Frank Fernandez.

Absent: Charles Overstreet

V. INVOCATION

VI. UNITED STATES PLEDGE

VII. TEXAS PLEDGE

VIII. VISITOR/CITIZENS FORUM

3 individuals signed up to speak during the forum.

1. Pat Doescher, Chair of the Kennedale Chamber of Commerce, approached the Council, thanking them for participating in the Texas Independence Day Parade.
 - The next Chamber luncheon will be held on March 20, 2013.
2. Jeff Nevarez of the Art in the Park Committee announced that preparations for the festival were going very well and that activities and live entertainment events were almost full.
3. LaCresha Sanders of the Keep Kennedale Beautiful Commission approached the council to announce several upcoming events:
 - March 30 Cleanup 9am-11am
 - April 13 spring planting in the butterfly garden

IX. REPORTS/ANNOUNCEMENTS

A. Information and updates from the Mayor, if any.

Mayor Clark noted that the City of Arlington & the Southeast Tarrant Transportation Partnership were able to secure an agreement to start a toll road project on 360 south. The City of Kennedale is a member of this partnership.

B. Information and updates from Councilmembers, if any.

Brian Johnson thanked City Planner Rachel Roberts for assisting him as the emcee for the parade. He also noted that his recent trip to the National League of Cities conference with Bob Hart and Charles Overstreet was very productive and that both Mr. Hart and Mr. Overstreet will be presenting at next year's conference.

C. Information and updates from the City Manager, if any.

- Meals on Wheels Mayor's Breakfast on March 21st.
- March 19, the participation agreement on Tax Increment Reinvestment Zone will be on the County Commissioner's Court agenda
- Kennedale was recently recognized as a Tree City for the second straight year.
- KKB submitted for the governor's achievement award and received an award of excellence.

X. CONSENT ITEMS

A. Consider authorizing the Mayor to execute Interlocal Agreement for Administrative Costs Funding for Section 5310 Program with Fort Worth Transportation Authority.

B. Consider authorizing the City Manager to sign a Gateway Monument Agreement with TXDOT.

C. Consider authorizing the City Manager to execute a City Pride Sign Agreement with TXDOT.

D. Consider approval of meeting minutes from February 14, 2013.

Motion To approve the consent agenda as presented. **Action** Approve, **Moved By** Frank Fernandez, **Seconded By** Liz Carrington
Motion Passed Unanimously

XI. REGULAR ITEMS

A. Discuss and consider action for approval of Independent Auditor's Report for year ended September 30, 2012.

Sakura Moten-Dedrick approached the Council and gave a brief overview of the audit report that was discussed in detail during the work session. Staff will be submitting the audit for the

Motion To approve the Independent Auditor's Report for year ended September 30, 2012. **Action** Approve, **Moved By** Kelly Turner, **Seconded By** Liz Carrington
Motion Passed Unanimously

B. Public Hearing to discuss the annexation of 0.723 acres of land located at the site of the previous Bowman Springs Bridge near the intersection with Winding Creek Drive.

1. Staff Presentation

Rachel Roberts approached the Council, noting that the annexation of the area will not affect city services.

2. Public Hearing

Mayor Clark opened the public hearing. No one signed up to speak and the public hearing was closed.

3. Staff Response and Summary

No response was necessary.

C. Case PZ # 13-01 to receive comments and consider action on an ordinance amending Chapter 17 "Planning and Land Development," Article VI "Zoning" of the Code of Ordinances of the City of Kennedale, Texas, by adding additional criteria for determining a reasonable amortization period for the purpose of discontinuing nonconforming uses by a date certain.

1. Staff Presentation

Rachel Roberts approached the Council, noting that this ordinance puts in place a process for the Board of Adjustment to follow with regard to any amortization process. This ordinance allows Council to instruct the Board of Adjustment to begin this process itself if necessary.

2. Public Hearing

Mayor Clark opened the public hearing. No one signed up to speak and the public hearing was closed.

3. Staff Response and Summary

No response was necessary.

4. Action by the City Council

Motion To approve Case PZ # 13-01 and Ordinance 516. **Action** Approve, **Moved By** Kelly Turner, **Seconded By** Frank Fernandez
Motion Passed Unanimously

D. Consider action to accept certification of unopposed candidates, and approve an Ordinance canceling the May 11th, 2013 election.

Motion To accept certification of unopposed candidates, and approve Ordinance 517 canceling the May 11th, 2013 election. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Kelly Turner.

Motion Passed Unanimously

E. Discuss and consider approval of an appointment to Place 3 of the Keep Kennedale Beautiful Commission

Board member NaMicha Boyd has resigned, and the board is recommending that Laurie Sanders be moved from here current position as an alternate from place 8 to Place 3.

Motion To approve the appointment of Laurie Sanders to Place 3 of the Keep Kennedale Beautiful Commission. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Liz Carrington
Motion Passed Unanimously

F. Discuss and consider supporting HB 626 regarding a change in the TMRS definition of part-time employment.

Bob Hart noted that House Bill 626 changes the definition of part-time employment to increase the number of hours that a part time employee can work without having to join the TMRS system from 1000 to 1500 hours.

Motion To approve supporting HB 626 regarding a change in the TMRS definition of part-time employment. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Liz Carrington
Motion Passed Unanimously

G. Consider sending a letter of opposition to HB 1496 to local representatives.

Bob Hart noted that House Bill 1496 would exempt oil and gas industries from city ordinances related to the regulation of the industry in city limits..

Motion To sending a letter of opposition to HB 1496 to local representatives. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Kelly Turner
Motion Passed Unanimously

H. Consider setting dates for upcoming governance meetings.

Bob Hart asked the Council to consider holding the next governance workshop meeting on March 19th at 5:30 PM, a governance meeting on April 25th at 5:00PM, and to set a full day meeting on May 21st.

Action Approve, **Moved By** Johnson, **Seconded By** Fernandez
Motion Passed Unanimously

The Council recessed into executive session at 7:50 PM.

XII. EXECUTIVE SESSION

A. The City Council will meet in closed session pursuant to Section 551.074 of the Texas Government Code to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.

1. City Manager's annual performance evaluation.

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

The Council reconvened into regular session at 8:36 PM.

XIV. ADJOURNMENT

Motion To adjourn. **Action** Adjourn, **Moved By** Johnson, **Seconded By** Fernandez

Motion Passed Unanimously

The meeting was adjourned at 8:38 PM.

APPROVED:

Mayor John Clark

ATTEST:

City Secretary Amethyst G. Cirimo

Date: April 11, 2013

Agenda Item No: CONSENT ITEMS - B.

I. Subject:

Consider action regarding a notice from the Public Utility Commission (PUC) of Texas for a Consumer Price Index (CPI) adjustment to municipal telecommunications right-of-way access line rates.

II. Originated by:

Sakura Moten-Dedrick, Director of Finance & IT

III. Summary:

HB 1777 went into effect on Sept 1, 1999. As of March 1, 2000, all telecommunications franchise fees in Texas are required to be based on a fee-per-access line method. The PUC, in October 1999, established three categories of access lines - residential, non-residential, and point-to-point. Each city was required to submit its 1998 base amount and allocation of the base amount to the PUC by Dec. 1, 1999. All CTPs were required to submit a city-by-city, December 31, 1998 access line count to the PUC by January 24, 2000. The PUC then calculated maximum access line rates for the three categories of access lines, for each city. The rate for each category, when multiplied by the number of lines in that category in a city, should equal that city's base amount.

In March, 2000, the PUC established maximum initial access line rates for 1106 cities. These cities were then allowed to 1) exempt life-line customers, 2) choose lower rates, and 3) update base amounts and allocation formulas. CTPs were allowed to update line counts and petition unreasonable initial allocations. In response to this input from cities and CTPs, the PUC established final access line rates in April, 2000. CTPs were allowed to begin implementing these rates for the 2nd quarter of 2000 (April, May, June), but were required to begin implementing the rates by the 3rd quarter 2000 (July, August, September).

State law allows a city to change its rates once a year given the Consumer Price Index, and its allocation once every 2 years. These changes must be initiated by the city each September and become effective the following January. CTPs may also petition the commission on unreasonable allocations in September of each year. The PUC will also annually adjust the access line rates by half of the increase in the Consumer Price Index starting in 2002.

Should Council wish to accept this upward adjustment, we are not required to respond. Council is only required to respond via attached memo no later than April 30, 2013 should it wish to actually keep the access line rates at current levels.

Access Line Type	2012 (Current)	2013 (Proposed)	(Difference)
Residential	\$1.63	\$1.65	\$0.03
Non-Residential	\$1.50	\$1.52	\$0.03

Point-To-Point	\$1.67	\$1.69	\$0.03
----------------	--------	--------	--------

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

Authorize upward adjustment as proposed by the PUC given approximately a 1.06% increase in Consumer Price Index and direct staff to take no action. CPI increase will automatically go into effect on April 30, 2012.

VIII. Attachments:

1.	2013 CPI Adjustment Memo	20130315150304880.pdf
----	--------------------------	-----------------------

Public Utility Commission of Texas

1701 N. Congress Ave., PO Box 13326, Austin, TX 78711-3326

2013 CONSUMER PRICE INDEX (CPI) ADJUSTMENT TO MUNICIPAL TELECOMMUNICATIONS RIGHT-OF-WAY ACCESS LINE RATES

March 15, 2013

PURPOSE

This letter is to notify you that your city's 2013 maximum access line rates have increased by 1.06% due to inflation, as measured by the CPI. This adjustment has been made pursuant to Chapter 283 of the Local Government Code (House Bill 1777)

DEFAULT RATES FOR 2013: INCREASE

Based on the choices made by your city in April 2012, your city's 2013 rate will either be adjusted for inflation, or will remain the same as your 2012 rate. According to our records, when similar CPI adjustments were made in April 2012, your city chose the MAXIMUM allowable CPI-adjusted rates. Therefore, your 2013 rates will reflect an increase of 1.06% from your 2012 rates. You have the option to decline this increase in rates by taking the action explained below.

ACTION BY CITY: TO REFUSE THE INCREASE

(1) You do not have to respond to accept the increased access line rates. (2) Respond ONLY if you want to DECLINE the increase in access line rates. (3) To decline, notify the PUC using page 2 of this letter no later than April 30, 2013. (4) The PUC does not require City council authorization; however, if your city charter requires it, please do so immediately. (5) Verify your contact information and highlight any changes. (6) Make a copy of this document.

WHAT HAPPENS IF A CITY DOES NOT RESPOND BY APRIL 30, 2013?

If a city does not respond by April 30, 2013, the rates for your city will increase from 2012 levels. The next opportunity to adjust your rates will be September 1, 2013.

WHAT HAPPENS NEXT?

The PUC will notify telephone companies of your desired rates and you will be compensated accordingly no later than July 1, 2013.

FUTURE REVISIONS TO CPI

The access line rates will be revised annually in March depending on whether the CPI changes for the previous year. If the CPI changes for the year 2013, you will receive a similar letter in March 2014.

See over...

<i>Residential</i>	<u>\$1.63</u>	<i>Non-Residential</i>	<u>\$1.50</u>	<i>Point-to-Point</i>	<u>\$1.67</u>
--------------------	---------------	------------------------	---------------	-----------------------	---------------

<i>Residential</i>	\$1.63	<i>Non-Residential</i>	\$1.50	<i>Point-to-Point</i>	\$1.67
--------------------	--------	------------------------	--------	-----------------------	--------

Residential \$1.65 *Non-Residential* \$1.52 *Point-to-Point* \$1.69

<i>Residential</i>	\$1.65	<i>Non-Residential</i>	\$1.52	<i>Point-to-Point</i>	\$1.69
--------------------	--------	------------------------	--------	-----------------------	--------

Date: _____ Signature: _____

Other Comments:

Mail: Stephen Mendoza
Public Utility Commission
P.O. Box 13326
Austin, Texas 78711-3326

Inquiries only. NOT for sending your response.
HB1777@puc.texas.gov
Phone No: 512-936-7394

CITY CONTACT INFORMATION

Phone No. 1 (817) 985-2110
Phone No. 2 _____
Fax No: (817) 483-0720
Email: sdedrick@cityofkennedale.com

SAKURA MOTEN-DEDRICK DIRECTOR OF FINANCE
or current city official responsible for right-of-way issues
CITY OF KENNEDALE
405 MUNICIPAL DRIVE
KENNEDEALE TX 76060

Date: April 11, 2013

Agenda Item No: CONSENT ITEMS - C.

I. Subject:

Consider action to contract with Freese and Nichols Engineering to develop a Comprehensive Water and Wastewater Master Plan, and Phased Capital Improvement Plan.

II. Originated by:

Larry Ledbetter, Director of Public Works

III. Summary:

The City's last Water System Master plan update was completed in 2002 by Cheatham and Associates. The Water System Master Plan was quite limited, at best, and included the addition of more wells and an elevated water tower. Soon after the plan was completed the City made a decision to purchase water from the City of Fort Worth. The TCEQ highly recommends that Municipal Water System Master plans be updated every 5-8 years.

Since the last Master Plan was updated many changes have taken place in the Water system including treated water purchase, addition of Chloramine and overall expansion and improvements of the system. The Comprehensive Plan to expand South of the railroad tracks (TIF/TIRZ) necessitates improvements to the water and wastewater system to facilitate these planned future developments.

Freese and Nichols is currently working on Water and Wastewater Master Plans for many cities in the Metro area including Fort Worth, Arlington, Mansfield and is considered a highly competent engineering firm.

Staff has reviewed the Freese and Nichols Engineering proposal and recommends awarding a contract to them in the amount of (\$99,748.00) for a Water/Wastewater Master Plan and a Phased Capital Improvement Plan.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

Consider authorizing the City Manager to execute a contract in the amount of \$99,748.00 with Freese and Nichols Engineering for a comprehensive Water and Wastewater Master Plan and Phased Capital improvement Plan.

VIII. Attachments:

1.	Kennedale Fee Schedule	Kennedale_Fee_Spreadsheet.pdf
----	------------------------	-------------------------------

2.	Kennedale W/WW Master Plan	Kennedale-W_WW_MasterPlanScope.pdf
3.	agreement	FNI_Agreement for Professional Services.pdf

City of Kennedale Water and Wastewater Master Plan 2/25/2013 Detailed Cost Breakdown							Project Fee Summary	
							FNI Effort	\$ 88,797
							Flow Monitoring	\$ 10,951
							Total Project	\$ 99,748

Basic Services												
Phase	Task	Labor Task Description	Thomas Haster	Jessica Brown	Mazen Kawasmi	Nelson Esquivel	Lisa Salazar	Total Hours	Total Labor Effort	Total Expense Effort	Total Subconsultant	Total Effort
Task A: Data Collection & Field Testing												
A	1	Project Kickoff Meeting and Data Collection	2	2	4	2		10	\$ 1,726	\$ 500	\$ -	\$ 2,226
A	2	Identify and Map Testing Locations to Conduct Summer Field Testing		2	2	2		6	\$ 890		\$ -	\$ 890
A	3	Install and Conduct Water Pressure Testing		2	6	2		10	\$ 1,504		\$ -	\$ 1,504
A	4	Review with CITY Wastewater Flow Monitoring Locations		2	2			4	\$ 683		\$ -	\$ 683
A	5	Install Temporary Wastewater Flow Meters		2	4			6	\$ 990	\$ 500	\$ 10,951	\$ 12,441
A	6	Conduct Wastewater Field Testing Data Analysis		6	12			18	\$ 2,969		\$ -	\$ 2,969
Total Task A Hours			2	16	30	6		54				
Total Task A Labor Effort			\$ 529	\$ 3,002	\$ 4,608	\$ 620	\$ -		\$ 8,762	\$ 1,000	\$ 10,951	\$ 20,713
Task B: Water & Wastewater Model Development and Model Calibration												
B	1	Develop Water System Model		4	16	8		28	\$ 4,036	\$ -	\$ -	\$ 4,036
B	2	Develop Wastewater Model		4	16	8		28	\$ 4,036	\$ -	\$ -	\$ 4,036
B	3	Utilize Water Field Testing Results to Develop Demand Data for Existing Water Model Input		2	8			10	\$ 1,605	\$ -	\$ -	\$ 1,605
B	4	Distribute Existing Water Demands throughout CITY and Conduct Model Calibration		4	8	2		14	\$ 2,187	\$ -	\$ -	\$ 2,187
B	5	Utilize Wastewater Field Testing Results to Develop Flow Data for Existing Wastewater Model Input		2	6			8	\$ 1,297	\$ -	\$ -	\$ 1,297
B	6	Distribute Existing Wastewater Flows throughout CITY and Conduct Model Calibration		4	8	2		14	\$ 2,187	\$ -	\$ -	\$ 2,187
B	7	Meet with CITY to Review Water and Wastewater Model Calibration Results	2	2	4			8	\$ 1,519	\$ 1,000	\$ -	\$ 2,519
Total Task B Hours			2	22	66	20		110				
Total Task B Labor Effort			\$ 529	\$ 4,128	\$ 10,137	\$ 2,068	\$ -		\$ 16,867	\$ 1,000	\$ -	\$ 17,867
Task C: Develop Land Use Assumptions & Water & Wastewater Load Projections for 10 year & Buildout conditions												
C	1	Meet with CITY to Discuss Proposed Land Uses throughout Future Service Area and Timing of Growth Expansion		2	2			4	\$ 683	\$ 500	\$ -	\$ 1,183
C	2	Develop Land Use Assumptions for 10-year & Buildout Conditions	2	4	8	4	2	20	\$ 3,076	\$ 300	\$ -	\$ 3,376
C	3	Develop Water Demand Projections		2	10		2	14	\$ 2,065	\$ -	\$ -	\$ 2,065
C	4	Distribute Future Water Demands throughout City		4	12	2		18	\$ 2,801	\$ 100	\$ -	\$ 2,901
C	5	Develop Wastewater Load Projections		4	8	2		14	\$ 2,187	\$ -	\$ -	\$ 2,187
C	6	Distribute Future Wastewater Flows throughout City		2	10	2		14	\$ 2,119	\$ 100	\$ -	\$ 2,219
Total Task C Hours			2	18	50	10	4	84				
Total Task C Labor Effort			\$ 529	\$ 3,377	\$ 7,680	\$ 1,034	\$ 306		\$ 12,931	\$ 1,000	\$ -	\$ 13,931

City of Kennedale Water and Wastewater Master Plan 2/25/2013 Detailed Cost Breakdown	Project Fee Summary	
	FNI Effort	\$ 88,797
	Flow Monitoring	\$ 10,951
	Total Project	\$ 99,748

Basic Services												
Phase	Task	Labor Task Description	Thomas Haster	Jessica Brown	Mazen Kawasmi	Nelson Esquivel	Lisa Salazar	Total Hours	Total Labor Effort	Total Expense Effort	Total Subconsultant	Total Effort
Task D: Conduct Water & Wastewater Analysis for Existing, 10 year & Buildout conditions and Develop Water and Wastewater CIP												
D	1	Perform Modeling of Existing Water & Wastewater Systems	2	8	16	2		28	\$ 4,695	\$ -	\$ -	\$ 4,695
D	2	Conduct Fire Flow Analysis		4	8			12	\$ 1,980	\$ -	\$ -	\$ 1,980
D	3	Develop Water System Improvement Alternatives for 10 year and Buildout Conditions	2	12	32		2	48	\$ 7,849	\$ -	\$ -	\$ 7,849
D	4	Develop Wastewater System Improvement Alternatives for 10 year and Buildout Conditions	2	16	24		2	44	\$ 7,371	\$ -	\$ -	\$ 7,371
D	5	Meet with the CITY to review Water and Wastewater System Improvement Alternatives	2	4	4			10	\$ 1,894	\$ 600	\$ -	\$ 2,494
Total Task D Hours			8	44	84	2	4	142				
Total Task D Labor Effort			\$ 2,116	\$ 8,256	\$ 12,902	\$ 207	\$ 306		\$ 23,789	\$ 600	\$ -	\$ 24,389
Task E: Water and Wastewater CIP and Master Plan Report												
E	1	Develop Draft Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping	2	16	36	12	4	70	\$ 10,608	\$ -	\$ -	\$ 10,608
E	2	Meet with the CITY to Discuss Phasing of Future Water and Wastewater Improvements	2	2	4			8	\$ 1,519	\$ -	\$ -	\$ 1,519
E	3	Revise CIP and Prepare Preliminary Water and Wastewater System Master Plan Report	2	12	24	2	2	42	\$ 6,827	\$ 1,000	\$ -	\$ 7,827
E	4	Finalize Water and Wastewater Master Plan Report and Present Water and Wastewater Master Plan Report and Capital Improvement Plan to CITY Council	2	4	4			10	\$ 1,894	\$ 1,000	\$ -	\$ 2,894
Total Task E Hours			8	34	68	14	6	130				
Total Task E Labor Effort			\$ 2,116	\$ 6,380	\$ 10,445	\$ 1,447	\$ 459		\$ 20,848	\$ 2,000	\$ -	\$ 22,848
Total									\$ 83,197	\$ 5,600	\$ 10,951	\$ 99,748

**SCOPE OF SERVICES
WATER & WASTEWATER MASTER PLAN
CITY OF KENNEDALE
2/25/2013**

PHASE 1: WATER & WASTEWATER MASTER PLAN

Task A. Data Collection & Field Testing

- A1. Project Kickoff Meeting: FNI will meet with the CITY to review scope and schedule of the project and critical project milestones and future service area. FNI will present a memorandum outlining data needed for the project. FNI will review the data request memorandum with the CITY to determine what data and data format is available from the CITY. FNI will obtain input on customer complaints to determine areas of pressure concerns during summer conditions.
- A2. Identify and Map Testing Locations to Conduct Summer Field Testing – FNI will meet with the CITY to review the current CAD mapping and identify any error in connectivity, pipe sizes or missing water lines and to obtain input on customer complaints to determine areas of pressure concerns during summer conditions. Identify locations for field testing based on model calibration needs and areas of concern from City. Up to 6 pressure testing locations will be utilized throughout the City. Prepare procedures for field testing showing proposed location of testing, duration of testing, required SCADA data during testing period, and assistance from Public Works. CITY will provide FNI with SCADA data from pressure testing period.
- A3. Install and Conduct Water Pressure Testing – Assist and coordinate with CITY in performing pressure testing. Testing will consist of recording pressure readings for a one week time period.
- A4. Review with CITY Wastewater Flow Monitoring Locations – Meet with CITY to review and recommend up to two wastewater flow monitoring locations.
- A5. Install Temporary Wastewater Flow Meters– FNI will review with CITY selected manholes in the field to verify flow meter locations and install two (2) flow meters for a period of 40 days to obtain both dry and wet weather flows.
- A6. Conduct Wastewater Field Testing Data Analysis: FNI will review flow monitoring results and develop dry and wet weather flow. FNI will incorporate flow monitoring data from 2010.

Task B. Water & Wastewater Model Development and Model Calibration

- B1. Develop Water System Model: FNI will utilize AutoCAD mapping of the water system and record drawings of recently constructed improvements to develop the water system model for all water lines and where size, pipe material is available. FNI will add pumping and storage facility data to the model to represent the 2013 water system conditions.
- B2. Develop Wastewater Model: FNI will utilize AutoCAD mapping of the wastewater system and record drawings of recently constructed improvements to develop the wastewater system model for all wastewater lines where size, and invert data is available. FNI will add pumping and storage facility data to the model to represent the 2013 wastewater system conditions.
- B3. Utilize Water Field Testing Results to Develop Demand Data for Existing Water Model Input: FNI will review historical records and use information to determine per capita water usage, commercial usage and peaking factors. FNI will estimate 2013 water demands for various operating conditions including average day, maximum day, peak hour and fire flow conditions.
- B4. Distribute Existing Water Demands throughout CITY and Conduct Model Calibration: FNI will distribute calculated water demands through system and conduct model calibration by adjusting peaking values and demand allocation distribution.
- B5. Utilize Wastewater Field Testing Results to Develop Flow Data for Existing Wastewater Model Input: FNI will utilize flow monitoring data and historical records to develop per capita wastewater flows. FNI will estimate 2013 wastewater flows for average day and peak flow conditions.
- B6. Distribute Existing Wastewater Flows throughout CITY and Conduct Model Calibration: FNI will distribute calculated wastewater flows through system and conduct model calibration by adjusting peaking values and wastewater flow distribution.
- B7. Meet with CITY to Review Water and Wastewater Model Calibration Results: FNI will prepare mapping showing comparison of water pressure results vs. model pressure results for water model calibration and of wastewater meter results vs. modeling results for wastewater model calibration.

Task C. Develop Land Use Assumptions & Water & Wastewater Load Projections for 10 year & Buildout conditions

- C1. Meet with CITY to Discuss Proposed Land Uses throughout Future Service Area and Timing of Growth Expansion: FNI will meet with the CITY to discuss the existing land uses and current and projected NCTCOG population projections and future land use from the comprehensive plan for use in determining land use assumptions for 10 year and Buildout conditions including the ETJ.
- C2. Develop Land Use Assumptions for 10-year & Buildout Conditions: FNI will utilize the City's Comprehensive Plan, NCTCOG population and employment projections and other resources to develop land use assumptions for 10 year and buildout conditions.
- C3. Develop Water Demand Projections: FNI will use land use maps, the NCTCOG's 2040 demographic projections by TSZ, the CITY's Comprehensive Plan, and input from the CITY's staff to develop future water demands for 10 year and Buildout projections for residential and commercial land uses.
- C4. Distribute Future Water Demands throughout City - Distribute water demands for each operating condition throughout City using TSZ or other planning boundary using land use assumptions. Large industrial and commercial demands will be distributed as point loads to the water system model.
- C5. Develop Wastewater Load Projections: FNI will use land use maps, NCTCOG's 2040 demographic projections by TSZ, the CITY's Comprehensive Plan, and input from the CITY's staff to estimate existing wastewater loads and to develop future wastewater loads for 10 year and Buildout projections for residential and commercial land uses. FNI will develop the wastewater loads utilizing per capita flow and peaking factors comparable to those used for modeling and planning in other cities in the region, and in accordance with TCEQ guidelines.
- C6. Distribute Future Wastewater Flows throughout City - Distribute future wastewater flows for each operating condition throughout each sewer basin using land use assumptions. Large industrial and commercial demands will be distributed as point loads to the wastewater system model.

Task D. Conduct Water & Wastewater Analysis for Existing, 10 year & Buildout conditions and Develop Water and Wastewater CIP

- D1. Perform Modeling of Existing Water & Wastewater Systems: FNI will utilize calibrated water model to perform steady state modeling of the existing water system for maximum day water demands and peak hour operating conditions to determine capacity and deficiencies within the existing water system. Conduct peak flow modeling of the wastewater system to determine capacity and deficiencies in the existing wastewater system.
- D2. Conduct Fire Flow Analysis: Utilize water model to conduct fire flow analysis to identify areas with less than 1,000 gpm fire flow capacity. Fire flow analysis will be shown using shaded mapping of available fire flows.
- D3. Develop Water System Improvement Alternatives for 10 year and Buildout Conditions: FNI will utilize water demand projections and calibrated model to develop a Buildout water system model. FNI will utilize Buildout model to simulate a number of system improvement alternatives to meet 10 year and Buildout future growth. Water system facilities and lines will be sized to meet maximum day demands, peak hour demands and to provide adequate fire flows of 1,000 gpm.
- D4. Develop Wastewater System Improvement Alternatives for 10 year and Buildout Conditions: FNI will utilize wastewater flow projections and the calibrated wastewater model to develop Buildout wastewater model. FNI will utilize Buildout model to simulate a number of system improvement alternatives to meet 10 year, and Buildout future growth. Wastewater facilities and lines will be sized to meet peak wet weather flows.
- D5. Meet with the CITY to review Water and Wastewater System Improvement Alternatives

Task E. Water and Wastewater CIP, Master Plan Report

- E1. Develop Draft Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping: Develop costs and phasing for each proposed project. Costs will be in Year 2013 dollars and will include engineering and contingencies. Develop draft CIP scheduling of projects based upon water and wastewater system modeling requirements and reliability needs and mapping showing project locations.
- E2. Meet with the CITY to Discuss Phasing of Future Water and Wastewater Improvements: FNI will meet with the CITY to discuss future water and Wastewater system improvements for 10 year and Buildout planning periods.
- E3. Revise CIP and Prepare Preliminary Water and Wastewater System Master Plan Report: FNI will revise modeling based upon CITY's comments and modifications and prepare a master plan report discussing field test results, assumptions, water demand and wastewater flow projections and recommended capital improvement plans including schedule and costs of improvements. The report will include colored maps showing proposed system improvements as well as GIS digital copies. FNI will provide the City with three (3) copies

of the draft report for review. FNI will finalize the Master Plan Report based on comments from the City.

- E4. Finalize Water and Wastewater Master Plan Report and Present Water and Wastewater Master Plan Report and Capital Improvement Plan to CITY Council: FNI will revise the report based on the City's comments and attend a CITY Council meeting to present report recommendations. FNI will provide the CITY with five (5) copies of the final comprehensive Water and Wastewater Master Plan Report along with digital copies in PDF format.

AGREEMENT FOR PROFESSIONAL SERVICES

STATE OF TEXAS §

COUNTY OF TARRANT §

This AGREEMENT is entered into by City of Kennedale, Texas, hereinafter called "Owner" and Freese and Nichols, Inc., hereinafter called "FNI." In consideration of the AGREEMENTS herein, the parties agree as follows:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this AGREEMENT: Owner agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; Owner agrees to pay to FNI compensation. The Project is described as follows: City of Kennedale Water and Wastewater Master Plan and Phased Capital Improvement Plan.
- II. **SCOPE OF SERVICES:** FNI shall provide professional services in connection with Project as set forth in Attachment SC - Scope of Services and Responsibilities of Owner which is attached to and made a part of this AGREEMENT.
- III. **COMPENSATION:** Owner agrees to pay FNI for all professional services rendered under this AGREEMENT in accordance with Attachment CO - Compensation which is attached hereto and made a part of this AGREEMENT. FNI shall perform professional services as outlined in the "Scope of Services" for a lump sum fee of \$99,748. Details concerning the fee are included in Attachment CO.

If FNI's services are delayed or suspended by Owner, or if FNI's services are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this AGREEMENT has been revised.
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement as set forth as Attachment TC shall govern the relationship between the Owner and FNI.

Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than Owner and FNI, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of Owner and FNI and not for the benefit of any other party.

This AGREEMENT constitutes the entire AGREEMENT between Owner and FNI and supersedes all prior written or oral understandings.

This contract is executed in two counterparts.

IN TESTIMONY HEREOF, they have executed this AGREEMENT, the _____ day of _____, 2013.

ATTEST:

City of Kennedale, Texas
(OWNER)

By: _____

Print or Type Name and Title

ATTEST:

Freese and Nichols, Inc.
(FNI)

By: Brian Coltharp

Brian Coltharp, P.E., Principal
Print or Type Name and Title

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

WATER & WASTEWATER MASTER PLAN

Task A. Data Collection & Field Testing

- A1. Project Kickoff Meeting: FNI will meet with the CITY to review scope and schedule of the project and critical project milestones and future service area. FNI will present a memorandum outlining data needed for the project. FNI will review the data request memorandum with the CITY to determine what data and data format is available from the CITY. FNI will obtain input on customer complaints to determine areas of pressure concerns during summer conditions.
- A2. Identify and Map Testing Locations to Conduct Summer Field Testing – FNI will meet with the CITY to review the current CAD mapping and identify any error in connectivity, pipe sizes or missing water lines and to obtain input on customer complaints to determine areas of pressure concerns during summer conditions. Identify locations for field testing based on model calibration needs and areas of concern from City. Up to 6 pressure testing locations will be utilized throughout the City. Prepare procedures for field testing showing proposed location of testing, duration of testing, required SCADA data during testing period, and assistance from Public Works. CITY will provide FNI with SCADA data from pressure testing period.
- A3. Install and Conduct Water Pressure Testing – Assist and coordinate with CITY in performing pressure testing. Testing will consist of recording pressure readings for a one week time period.
- A4. Review with CITY Wastewater Flow Monitoring Locations – Meet with CITY to review and recommend up to two wastewater flow monitoring locations.
- A5. Install Temporary Wastewater Flow Meters– FNI will review with CITY selected manholes in the field to verify flow meter locations and install two (2) flow meters for a period of 40 days to obtain both dry and wet weather flows.
- A6. Conduct Wastewater Field Testing Data Analysis: FNI will review flow monitoring results and develop dry and wet weather flow. FNI will incorporate flow monitoring data from 2010.

Task B. Water & Wastewater Model Development and Model Calibration

- B1. Develop Water System Model: FNI will utilize AutoCAD mapping of the water system and record drawings of recently constructed improvements to develop the water system model for all water lines and where size, pipe material is available. FNI will add pumping and storage facility data to the model to represent the 2013 water system conditions.
- B2. Develop Wastewater Model: FNI will utilize AutoCAD mapping of the wastewater system and record drawings of recently constructed improvements to develop the wastewater system model for all wastewater lines where size, and invert data is available. FNI will add pumping and storage facility data to the model to represent the 2013 wastewater system conditions.

- B3. Utilize Water Field Testing Results to Develop Demand Data for Existing Water Model Input: FNI will review historical records and use information to determine per capita water usage, commercial usage and peaking factors. FNI will estimate 2013 water demands for various operating conditions including average day, maximum day, peak hour and fire flow conditions.
- B4. Distribute Existing Water Demands throughout CITY and Conduct Model Calibration: FNI will distribute calculated water demands through system and conduct model calibration by adjusting peaking values and demand allocation distribution.
- B5. Utilize Wastewater Field Testing Results to Develop Flow Data for Existing Wastewater Model Input: FNI will utilize flow monitoring data and historical records to develop per capita wastewater flows. FNI will estimate 2013 wastewater flows for average day and peak flow conditions.
- B6. Distribute Existing Wastewater Flows throughout CITY and Conduct Model Calibration: FNI will distribute calculated wastewater flows through system and conduct model calibration by adjusting peaking values and wastewater flow distribution.
- B7. Meet with CITY to Review Water and Wastewater Model Calibration Results: FNI will prepare mapping showing comparison of water pressure results vs. model pressure results for water model calibration and of wastewater meter results vs. modeling results for wastewater model calibration.

Task C. Develop Land Use Assumptions & Water & Wastewater Load Projections for 10 year & Buildout conditions

- C1. Meet with CITY to Discuss Proposed Land Uses throughout Future Service Area and Timing of Growth Expansion: FNI will meet with the CITY to discuss the existing land uses and current and projected NCTCOG population projections and future land use from the comprehensive plan for use in determining land use assumptions for 10 year and Buildout conditions including the ETJ.
- C2. Develop Land Use Assumptions for 10-year & Buildout Conditions: FNI will utilize the City's Comprehensive Plan, NCTCOG population and employment projections and other resources to develop land use assumptions for 10 year and buildout conditions.
- C3. Develop Water Demand Projections: FNI will use land use maps, the NCTCOG's 2040 demographic projections by TSZ, the CITY's Comprehensive Plan, and input from the CITY's staff to develop future water demands for 10 year and Buildout projections for residential and commercial land uses.
- C4. Distribute Future Water Demands throughout City - Distribute water demands for each operating condition throughout City using TSZ or other planning boundary using land use assumptions. Large industrial and commercial demands will be distributed as point loads to the water system model.
- C5. Develop Wastewater Load Projections: FNI will use land use maps, NCTCOG's 2040 demographic projections by TSZ, the CITY's Comprehensive Plan, and input from the CITY's staff to estimate existing wastewater loads and to develop future wastewater loads for 10 year and Buildout projections for residential and commercial land uses. FNI will develop the wastewater loads utilizing per capita flow and peaking factors comparable to those used for modeling and planning in other cities in the region, and in accordance with TCEQ guidelines.
- C6. Distribute Future Wastewater Flows throughout City - Distribute future wastewater flows for each operating condition throughout each sewer basin using land use assumptions. Large industrial and commercial demands will be distributed as point loads to the wastewater system model.

Task D. Conduct Water & Wastewater Analysis for Existing, 10 year & Buildout conditions and Develop Water and Wastewater CIP

- D1. Perform Modeling of Existing Water & Wastewater Systems: FNI will utilize calibrated water model to perform steady state modeling of the existing water system for maximum day water demands and peak hour operating conditions to determine capacity and deficiencies within the existing water system. Conduct peak flow modeling of the wastewater system to determine capacity and deficiencies in the existing wastewater system.
- D2. Conduct Fire Flow Analysis: Utilize water model to conduct fire flow analysis to identify areas with less than 1,000 gpm fire flow capacity. Fire flow analysis will be shown using shaded mapping of available fire flows.
- D3. Develop Water System Improvement Alternatives for 10 year and Buildout Conditions: FNI will utilize water demand projections and calibrated model to develop a Buildout water system model. FNI will utilize Buildout model to simulate a number of system improvement alternatives to meet 10 year and Buildout future growth. Water system facilities and lines will be sized to meet maximum day demands, peak hour demands and to provide adequate fire flows of 1,000 gpm.
- D4. Develop Wastewater System Improvement Alternatives for 10 year and Buildout Conditions: FNI will utilize wastewater flow projections and the calibrated wastewater model to develop Buildout wastewater model. FNI will utilize Buildout model to simulate a number of system improvement alternatives to meet 10 year, and Buildout future growth. Wastewater facilities and lines will be sized to meet peak wet weather flows.
- D5. Meet with the CITY to review Water and Wastewater System Improvement Alternatives

Task E. Water and Wastewater CIP, Master Plan Report

- E1. Develop Draft Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping: Develop costs and phasing for each proposed project. Costs will be in Year 2013 dollars and will include engineering and contingencies. Develop draft CIP scheduling of projects based upon water and wastewater system modeling requirements and reliability needs and mapping showing project locations.
- E2. Meet with the CITY to Discuss Phasing of Future Water and Wastewater Improvements: FNI will meet with the CITY to discuss future water and Wastewater system improvements for 10 year and Buildout planning periods.
- E3. Revise CIP and Prepare Preliminary Water and Wastewater System Master Plan Report: FNI will revise modeling based upon CITY's comments and modifications and prepare a master plan report discussing field test results, assumptions, water demand and wastewater flow projections and recommended capital improvement plans including schedule and costs of improvements. The report will include colored maps showing proposed system improvements as well as GIS digital copies. FNI will provide the City with three (3) copies of the draft report for review. FNI will finalize the Master Plan Report based on comments from the City.
- E4. Finalize Water and Wastewater Master Plan Report and Present Water and Wastewater Master Plan Report and Capital Improvement Plan to CITY Council: FNI will revise the report based on the City's comments and attend a CITY Council meeting to present report recommendations. FNI will provide the CITY with five (5) copies of the final comprehensive Water and Wastewater Master Plan Report along with digital copies in PDF format.

ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by Owner, which are not included in the above described basic services, are described as follows:

NONE

ARTICLE III

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule: _____

All services to be completed fifteen (15) months from Notice to Proceed

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Owner or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT and in Attachment CO.

ARTICLE IV

RESPONSIBILITIES OF OWNER: Owner shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have contract authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this AGREEMENT.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Owner deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- F. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this AGREEMENT or other services as required.
- G. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and Owner designate the following representatives:

Owner's Designated Representative –

Larry Ledbetter, Project Manager
923 E Kennedale Pkwy
Kennedale, TX, Texas 76060
lledbetter@cityofkennedale.com
(817) 985-2171

FNI's Designated Representative –

Mazen Kawasmi, Project Manager
4055 International Plaza, Suite 200
Fort Worth, Texas 76109
MHK@freese.com
(817) 735-7432

FNI's Accounting Representative –

Jana Collier
4055 International Plaza, Suite 200
Fort Worth, Texas 76109
JVC@freese.com
(817) 735-7354

COMPENSATION

The total fee for Basic Services in Attachment SC shall be the lump sum fee of Ninety Nine Thousand Seven Hundred Forty-Eight Dollars (\$99,748). If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FN will notify Owner for Owner's approval before proceeding. Additional Services shall be negotiated at agreed upon rates.

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term Owner as used herein refers to the City of Kennedale, Texas. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents; also its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by Freese and Nichols pursuant to the AGREEMENT.
2. **CHANGES:** Owner, without invalidating the AGREEMENT, may order changes within the general scope of the WORK required by the AGREEMENT by altering, adding to and/or deducting from the WORK to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services under the AGREEMENT, an equitable adjustment will be made by mutual agreement and the AGREEMENT modified in writing accordingly.
3. **TERMINATION:** The obligation to provide services under this AGREEMENT may be terminated by either party upon ten days' written notice. In the event of termination, FNI will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
5. **INFORMATION FURNISHED BY OWNER:** Owner will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by Owner and Owner agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs and expenses arising therefrom. FNI shall disclose to Owner, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by Owner to FNI that FNI may reasonably discover in its review and inspection thereof.
6. **INSURANCE:** FNI shall provide to Owner certificates of insurance which shall contain the following minimum coverage (All limits in thousands):

Commercial General Liability General Aggregate \$2,000	Workers' Compensation Each Accident \$500
Automobile Liability (Any Auto) CSL \$1,000	Professional Liability \$3,000 Annual Aggregate
7. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, Owner determines that any subcontractor for FNI is incompetent or undesirable, Owner will notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the AGREEMENT shall create any contractual relation between any subcontractor and Owner.
8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports data and other project information developed in the execution of the Services provided under this AGREEMENT shall be the property of the Owner upon payment of FNI's fees for services. FNI may retain copies for record purposes. Owner agrees such documents are not intended or represented to be suitable for reuse by Owner or others. Any reuse by Owner or by those who obtained said documents from Owner without written verification or adaptation by FNI will be at Owner's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and Owner shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data and other project information in the execution of the Services provided under this AGREEMENT in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to Owner, and FNI shall indemnify and hold harmless Owner from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

9. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this AGREEMENT, FNI does not take possession or control of the subject site, but acts as an invitee in performing the services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
10. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices.
11. **CONSTRUCTION REPRESENTATION:** If required by the AGREEMENT, FNI will furnish Construction Representation according to the defined scope for these services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, FNI will endeavor to protect Owner against defects and deficiencies in the work of Contractors; FNI will report any observed deficiencies to Owner, however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor. FNI shall not be responsible for the acts or omissions of any person (except his own employees or agent) at the Project site or otherwise performing any of the work of the Project. If Owner designates a person to serve in the capacity of Resident Project Representative who is not a FNI's employee or FNI's agent, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in writing and made a part of this AGREEMENT before the Construction Phase of the Project begins.
12. **PAYMENT:** Progress payments may be requested by FNI based on the amount of services completed. Payment for the services of FNI shall be due and payable upon submission of a statement for services to OWNER and in acceptance of the services as satisfactory by the OWNER. Statements for services shall not be submitted more frequently than monthly. Any applicable new taxes imposed upon services, expenses, and charges by any governmental body after the execution of this AGREEMENT will be added to FNI's compensation.

If OWNER fails to make any payment due FNI for services and expenses within thirty (30) days after receipt of FNI's statement for services therefore, the amounts due FNI will be increased at the rate of one percent (1%) per month from said thirtieth (30th) day, and, in addition, FNI may, after giving seven (7) days' written notice to OWNER, suspend services under this AGREEMENT until FNI has been paid in full, all amounts due for services, expenses and charges.

13. **ARBITRATION:** No arbitration arising out of, or relating to, this AGREEMENT involving one party to this AGREEMENT may include the other party to this AGREEMENT without their approval.
14. **SUCCESSORS AND ASSIGNMENTS:** OWNER and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and FNI are hereby bound to the other party to this AGREEMENT and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this AGREEMENT.

Neither OWNER nor FNI shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of services hereunder.

15. **PURCHASE ORDERS:** If a Purchase Order is used to authorize FNI's Services, only the terms, conditions/instructions typed on the face of the Purchase Order shall apply to this AGREEMENT. Should there be any conflict between the Purchase Order and the terms of this AGREEMENT, then this AGREEMENT shall prevail and shall be determinative of the conflict.

Date: April 11, 2013

Agenda Item No: CONSENT ITEMS - D.

I. Subject:

Consider action to approve an interlocal agreement with Tarrant County to expand and modify the West Nile Virus surveillance and response program.

II. Originated by:

Bob Hart, City Manager

III. Summary:

Please see the attached information and agreement.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	agreement	virus.pdf
----	-----------	-----------

INTERLOCAL COOPERATION AGREEMENT

This INTERLOCAL COOPERATION AGREEMENT ("Agreement") is entered into by and between the CITY OF KENNEDALE ("City"), a home rule municipal corporation organized under the laws of the State of Texas, and the COUNTY OF TARRANT ("County"), a county organized under the laws of the State of Texas for the purpose of implementing a West Nile Virus Mosquito Surveillance and Response Program.

FINDINGS

The City and County make the following findings in support of entering into this Agreement:

A. The County has consulted with representatives from the Centers for Disease Control, Texas A&M University, Mosquito Control Districts, the State of Texas and local municipalities to create a West Nile Virus Mosquito Surveillance and Response Program;

B. West Nile Virus infections represent a serious public health threat to the citizens of the County and the City;

C. Mosquitoes spread disease without regard to city or county boundaries;

D. The performance of this Agreement by both the City and County will be in the common interest of both parties and will benefit the general public;

E. County and City are making payment, if applicable, from current revenues available to the paying party;

F. Any payment required by this Agreement is in an amount that fairly compensates the performing party for the services or functions performed under this Agreement; and

G. The governing bodies of County and City have each authorized this Agreement.

The City and the County agree as follows:

AGREEMENT

1. WEST NILE VIRUS MOSQUITO SURVEILLANCE AND RESPONSE PROGRAM.

County and City are teaming together to create a West Nile Virus Mosquito Surveillance and Response Program. This program will include the provision of numerous mosquito traps, monitoring the traps, and testing the mosquitoes trapped.

2. TERM.

The term of this Agreement commences on the date of complete execution of this Agreement (the "**Effective Date**") and will expire on September 30, 2013. However, this Agreement will automatically renew for successive terms of 1 year each commencing October 1 of a given year and expiring September 30 of the following year. Either party may terminate this Agreement on 60 days written notice prior to the beginning of any term of this Agreement.

3. DESCRIPTION OF PROGRAM.

3.1. Surveillance Equipment.

The County will provide the City with (i) 4 Gravid Mosquito Traps with electrical batteries, (ii) a battery charger, (iii) an aspirator and (iv) sufficient transport containers. Equipment will be returned to the County if the City no longer uses the equipment as part of this program.

3.2. Surveillance Services

The County will provide the City with (i) a schedule for sample submissions, (ii) processing and testing of the mosquitoes for the presence of West Nile Virus and St. Louis Encephalitis virus, (iii) reports of the test results, (iv) analysis of regional data, and (v) recommendations for response options.

3.3. Trap Operation

City will operate the provided traps in a manner and number in accordance with the plan specified by the county. Trapped mosquito samples will be submitted to the County according to the schedule issued by the County with the information required.

3.4. Education

The County will provide City with (i) education regarding the placement and operation of mosquito traps and (ii) education in Integrated Pest Management methods of mosquito control (iii) a response plan model and assist with adapting the response plan to the City's needs.

3.5. Communication

Each party will provide at least two points of contact for the exchange of information.

3.6. Cooperative Purchasing

Contracts initiated by the County for services related to the surveillance or control of disease carrying mosquitoes will include provision for cooperative purchasing.

3.7 Cost Sharing

A cost sharing model will be developed wherein the City would be responsible for the cost associated with response activities i.e., adulticiding, within their jurisdiction.

4. INDEPENDENT CONTRACTOR.

Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any party as an agent of any other party, for any purpose whatsoever.

5. LIABILITY.

Nothing in the performance of this Agreement may impose any liability for claims against the City or the County other than claims for which liability may be imposed by the Texas Tort Claims Act.

6. NOTICES.

All written notices called for or required by this Agreement must be addressed to the following, or other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

City:
Attn: _____

County:
Attn: County Administrator
Tarrant County Administration Building
100 E. Weatherford Street
Fort Worth, TX 76196

7. COMPLIANCE WITH LAWS. ORDINANCES. RULES AND REGULATIONS.

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter and ordinances, as amended.

8. NO WAIVER.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder will not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

9. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement venue for such action will lie in state district courts located in Tarrant County, Texas. This Agreement must be construed in accordance with the laws of the State of Texas.

10. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the City and County and are not intended to create any rights, contractual or otherwise, to any other person or entity.

11. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision, of this Agreement this Agreement will be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

12. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and may not be deemed a part of this Agreement.

13. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement

between the City and County as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

14. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which will be considered an original, but all of which will constitute one instrument.

EXECUTED as of the last date indicated below:

CITY OF KENNEDALE:

By: _____

City Manager

Date: _____

COUNTY OF TARRANT:

By: _____

**B. Glen Whitley
County Judge**

Date: _____

APPROVED AS TO FORM/LEGALITY:

APPROVED AS TO FORM:

By: _____

City Attorney

By: _____

Assistant District Attorney*

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our view of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval and should seek review and approval by their own respective attorney (s).

Date: April 11, 2013

Agenda Item No: CONSENT ITEMS - E.

I. Subject:

Consider action to approve a contract with Senior Citizen Services of Tarrant County, Inc for management of the senior center.

II. Originated by:

Bob Hart, City Manager

III. Summary:

This contract covers management of the senior center through April 30, 2015. The management fee has increased by 3% (an addition \$660.00 from last year's contract) to cover additional staffing costs for SCSTC.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	contract	senior.pdf
----	----------	------------

AGREEMENT

This agreement is made by and between the **CITY OF KENNEDALE**, whose principal address is located at 405 Municipal Drive, Kennedale, Tarrant County, Texas and **SENIOR CITIZEN SERVICES OF GREATER TARRANT COUNTY, INC.**, hereinafter referred to as **SCS**, whose principal place of business is 1400 Circle Drive Suite 300, Fort Worth, Tarrant County, Texas.

The purpose of this agreement is to provide a Congregate Meal Program for persons age 60 years or older and their spouse. This program will be considered a joint and cooperative program of the **CITY OF KENNEDALE**, and **SCS**. It is further agreed by the aforementioned parties that all parties will comply with Texas Department On Aging and Disability Services (**TXDADS**) and Administration on Aging (**AOA**) Title 111-C and Title III-B Service Standards for sub-contractors.

This agreement shall be for a period of two years, commencing on the **1 day of May 2013**, and shall continue through the **30 day of April 2015** or until it has been terminated by either party by giving thirty days written notice to the other party. Further, this agreement is entered into in the County of Tarrant, Texas.

SENIOR CITIZEN SERVICES OF GREATER TARRANT COUNTY INC:

In consideration for this agreement between the parties, IT IS AGREED that the **CITY OF KENNEDALE** will reimburse **SCS** at an annual rate of \$22,660 to be billed monthly at the rate of \$1,888.34 to provide management Services for the operation of a Multipurpose Center, daily operation as shown in **CITY OF KENNEDALE** section 1 (one) which includes holiday and closure for inclement weather or other emergencies. Management services shall include, but are not limited to, the following:

1. Provide noon lunches at the **Kennedale Senior Center** location Monday through Friday, with the exception of inclement weather/emergency closure days and the following holidays: **New Years Day, MLK Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day following Thanksgiving Day and Christmas Day.**
2. Provide a Center Director who is responsible for the operation of the Congregate Meal and Senior Center Program.
3. Require current First Aid and CPR training for the operation of the Congregate Meal and Senior Center Program.
4. Ensure upon hiring, that the Center Director attends **SCS Center Operations' Policy and Procedure Training** and **Texas Department on Aging and Disability Services (TXDADS) Senior Center and Congregate Meal State Standards Training.** Training to be provided by **SCS.**

5. Provide training for center staff and volunteers on food handling procedures as required by state and local health departments. Food Handlers Training Certificates shall be provided for posting in kitchen/dining area as required by the Tarrant County Health Department.
6. Comply with all applicable Federal and State Guidelines for Congregate Nutrition Services as funded by the Older Americans Act of Congress, Title 111-C1 and USDA with regard to meals served by **SCS**. Meals shall contain at least one-third of the current recommended dietary allowance established by the Food and Nutrition Board of the National Academy of Sciences, National Research Council.
7. Provide management, training and technical assistance relative to Congregate Meal Program operations. Provide copies of health inspection standards for food service sites, all health and safety codes, and other applicable regulations pertaining to the physical condition and maintenance of the facility relating to the congregate meal program.
8. Provide annual Operations and Food Service Sanitation Compliance site visits.
9. Provide a warming table and serving utensils and food service supplies as outlined in **SCS** Policy and Procedure Manual section 500.10-19.
10. Ensure all nutrition and health education information supplied by **SCS** is available to all participants at the Senior Center.
11. Use the established, in-place, envelope system (as outlined in the **SCS** Center Operations Policy and Procedures Manual) for eligible participants to make contributions if they so choose.
12. Require all non-eligible visitors and staff served to pay five (6.00) per meal.
13. Use the established, in-place, collection and release procedure (as outlined in the **SCS** Center Operations Policy and Procedures Manual) to ensure all contributions and funds collected for the Congregate Meal Program are forwarded to **SCS**.
14. Provide activity roster attendance sheets for meal reservations.
15. Prepare and provide all forms, reports, statements, and documentation required as stated in the **SCS** Center Operations Policy and Procedures Manual.
16. Solicit participant representation from the **Kennedale Senior Center** to serve on the area wide **SCS** Agency Advisory Council.

CITY OF KENNEDALE SECTION 1

In consideration of the agreement between the parties the **CITY OF KENNEDALE** agrees to provide the following resources and services related to the operation of a Senior Center and Congregate Meal Program.

CITY OF KENNEDALE will:

1. Provide, at no cost to **SCS**, space within the **Kennedale Senior Center** located at 420 Corry A. Edwards Drive Kennedale, Texas, Monday through Friday for the Congregate Meal Program. Delivery and serving times to be mutually agreed upon. **The Kennedale Senior Center** will be closed for the following additional holidays: **(Please list holidays below)**
2. Provide, at no cost to **SCS**, the following equipment to support the Congregate Meal Program, first aid kit, locking file cabinet, refrigerator, oven, tables, chairs, and secured storage for food service supplies.
3. Provide, at no cost to **SCS**, maintenance and utilities to support the Congregate Meal Program.
4. Comply with city/county/state health inspection standards for food service sites, all health and safety codes, and other applicable regulations pertaining to the physical condition and maintenance of the facility.
5. Complete an annual statement of In-kind contributions for facilities, and equipment.
6. Provide a copy of a Certificate of Insurance or letter of self-insurance and name of excess liability carrier to **SCS**, covering the facility and equipment.

It is further agreed between the parties that the designated representative of **SENIOR CITIZENS SERVICES** will meet with the designated representative of the **CITY OF KENNEDALE** to review current operations and any necessary amendments when called upon. Any amendment to this agreement must be agreed upon in writing between the parties.

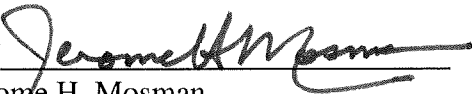
It is further agreed between the parties that in case any one or more provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable, in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement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

It is further agreed that the **CITY OF KENNEDALE** shall indemnify, and hold harmless **SENIOR CITIZEN SERVICES OF GREATER TARRANT COUNTY, Inc.**, its officers, agents and employees harmless from any and all liability, demands, claims, actions losses, interests, costs of defense and expenses, including reasonable attorney fees arising from and in connection with the performance of this agreement if such liability, demands, claims, actions, losses, interests, cost of defense and expenses, including reasonable attorney fees are founded in whole or in part upon the negligence of the **CITY OF KENNEDALE**, its employees, servants, or agents.

This Agreement shall be constructed in accordance with the laws of the State of Texas. Exclusive venue for any lawsuits or actions of law or in equity arising here under shall be in Tarrant County, Texas.

EXECUTED this ____ day of _____, 2013

**SENIOR CITIZEN SERVICES
OF GREATER TARRANT COUNTY, INC.**

BY 
Jerome H. Mosman

TITLE as EXECUTIVE DIRECTOR

DATE 4-3-13

CITY OF KENNEDALE

BY _____
Bob Hart

TITLE as CITY MANAGER

DATE _____

Date: April 11, 2013

Agenda Item No: CONSENT ITEMS - F.

I. Subject:

Consider approval of a funding agreement with the State of Texas to use funds held in the State Highway 161 Subaccount - Sustainable Development Infrastructure.

II. Originated by:

Bob Hart, City Manager

III. Summary:

This item deals with funding for a sidewalk on the western side of Kennedale parkway.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	contract	COG.pdf
----	----------	---------

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

STATE OF TEXAS §

COUNTY OF TRAVIS §

**FUNDING AGREEMENT
FOR PROJECTS USING FUNDS HELD IN THE
STATE HIGHWAY 161 SUBACCOUNT-
SUSTAINABLE DEVELOPMENT INFRASTRUCTURE
On-System Project**

This Funding Agreement, hereinafter referred to as the "Agreement", is made and entered into by and between the State of Texas, hereinafter referred to as the "STATE", the City of Kennedale, hereinafter referred to as the "LOCAL GOVERNMENT", and the North Central Texas Council of Governments, hereinafter referred to as "NCTCOG". The STATE, LOCAL GOVERNMENT, and NCTCOG may each be referred to as a "Party", and may be collectively referred to as "Parties" to this Agreement.

WITNESSETH

WHEREAS, the STATE has received money from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate, and maintain the SH 161 toll project from I-20 to SH 183 in Dallas County; and,

WHEREAS, pursuant to Transportation Code §228.006 the STATE shall authorize the use of surplus revenue of a toll project for a transportation project, highway project, or air quality project within the district of the Texas Department of Transportation in which any part of the toll project is located; pursuant to Transportation Code §228.012 the STATE has created a separate subaccount in the state highway fund to hold such money (SH 161 Subaccount), and the STATE shall hold such money in trust for the benefit of the region in which a project is located, and may assign the responsibility for allocating money in the subaccount to a metropolitan planning organization; and,

WHEREAS, in Minute Order 110727, dated October 26, 2006, the Texas Department of Transportation Commission (the "Commission") approved a memorandum of understanding (MOU) with the Regional Transportation Council ^(RTC) concerning in part the administration, sharing, and use of surplus toll revenue in the region; under the MOU the RTC shall select projects to be financed using surplus revenue from a toll project, subject to Commission concurrence; and,

WHEREAS, on June 3, 2010 the ~~Regional Transportation Council (RTC)~~ approved staff recommendations for selected projects for implementation of the Sustainable Development Program in the Dallas-Fort Worth Metropolitan Area for the implementation of transportation

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

improvements related to sustainable development projects and local sustainable development planning programs; and,

WHEREAS, in Minute Order 112603, dated February 24, 2011, the Commission concurred with RTC's selection of projects for the Sustainable Development Program; and,

WHEREAS, on April 12, 2012, through development of the 2013-2016 Transportation Improvement Program (TIP) the Connecting Kennedale: Revitalizing the City Center Sustainable Development project was changed from Surface Transportation Program – Metro Mobility (STP-MM) funds to Regional Toll Revenue (RTR) funds; and,

WHEREAS, on April 12, 2012, the ~~Regional Transportation Council~~ (RTC) approved the 2013-2016 TIP Development; and,

WHEREAS, the North Central Texas Council of Governments (NCTCOG) has been designated as the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area by the Governor of Texas in accordance with federal law and acts as RTC's fiduciary agent; and,

WHEREAS, the Government Code, Chapter 791, and Transportation Code §201.209 authorize the State to contract with municipalities and political subdivisions to perform governmental functions and services; and,

WHEREAS, the Local Government is a political subdivision and governmental entity by statutory definition; and,

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

Article 1.0 Purpose. The purpose of this Agreement is to set out the roles and responsibilities of the STATE, LOCAL GOVERNMENT, and NCTCOG to implement the Sustainable Development ~~PROJECT~~.

Program Project, hereinafter referred to as "the PROJECT".

- 1.1 The STATE agrees to provide funding for the PROJECT awarded by the RTC and concurred by the Commission; on the terms and conditions set forth herein.
- 1.2 The LOCAL GOVERNMENT agrees to implement the PROJECT and provide necessary local match, according to the terms and conditions set forth herein.
- 1.3 The NCTCOG agrees to coordinate with the STATE and ^{the} LOCAL GOVERNMENT on the implementation of the PROJECT, including reviewing eligible costs and recommending to the STATE payment of such costs, if consistent with the terms and conditions set forth herein.

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

Article 2.0 Definitions. For the purpose of this Agreement the following words and phrases shall be defined as follows:

CALL FOR PROJECTS: shall mean the request for Sustainable Development Project applications issued by the RTC on March 23, 2009.

OVERALL PROJECT: shall mean the entire project as applied for in the Call for Projects, including the funded portion of the PROJECT and any additional improvements funded by the City or a private sector through local sources. Evidence of significant progress toward completion of the OVERALL PROJECT shall be demonstrated by the LOCAL GOVERNMENT submitting a building permit for a mixed-use development.

PROJECT: shall mean the project as funded under this Agreement and as further defined by the map included as Attachment A, which is attached to and made a part of this agreement and the Scope of Work and Project Budget included as Attachment B, which is attached to and made a part of this agreement.

PROJECT BUDGET: shall mean the budget or cost identifying all costs associated with and for the implementation of the PROJECT included in Attachment B.

Article 3.0 Scope. The LOCAL GOVERNMENT shall implement the PROJECT as described in Attachment B and in the Supporting Documentation as provided for in Article 11.1. Failure to complete the PROJECT may require the LOCAL GOVERNMENT to return funds received from the STATE for any expenses previously reimbursed within thirty (30) days. Any cost overruns are the responsibility of the LOCAL GOVERNMENT. Any modifications to the scope of work must be agreed to in advance and in writing by NCTCOG.

Article 4.0 Project Award. The PROJECT award for this Agreement is \$921,964. The LOCAL GOVERNMENT agrees to return funds received under this Agreement for reimbursed activities where the LOCAL GOVERNMENT has failed to comply with the requirements set forth in this Agreement, including but not limited to: failure to complete the PROJECT as identified in Attachment B, failure to show significant progress toward completion of the OVERALL PROJECT, and/or failure to comply with reporting requirements prescribed in Article 11.

4.1 Match. The LOCAL GOVERNMENT shall be responsible for a local match of \$230,491. The LOCAL GOVERNMENT shall document local match contribution in its requests for reimbursement. The LOCAL GOVERNMENT's contribution must be considered eligible expenses under this Agreement in order to constitute local match.

Article 5.0 Notices. All notices to each party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

STATE:

Texas Department of Transportation
Attention: Director of Contract Services
General Services Division
125 East 11th Street
Austin, Texas 78701

LOCAL GOVERNMENT:

City of Kennedale
Attention: Bob Hart
City Manager
Kennedale, Texas 76060

NCTCOG:

North Central Texas Council of Governments
Attention: Director of Transportation
616 Six Flags Drive
P.O. Box 5888
Arlington, Texas 76005

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Each party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 6.0 Term.

6.1 Agreement Time. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

6.2 Time of Performance. The LOCAL GOVERNMENT shall not commence performance of any portion of the PROJECT, nor incur any costs or obligations associated with those services, until the LOCAL GOVERNMENT has received written authorization from NCTCOG, in the form of a pre-award authorization or a notice to proceed.

6.3 Pre-Award Authorization. The LOCAL GOVERNMENT may obtain a pre-award authorization for approved cost not to exceed the twenty (20) percent local match contribution for the PROJECT. The costs incurred by the LOCAL GOVERNMENT prior to the execution of this Agreement may count towards the twenty (20) percent local match contribution provided such costs are for eligible expenses. Documentation of such expenditures must be provided to NCTCOG.

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

Costs incurred prior to execution of an Agreement are at the risk of the LOCAL GOVERNMENT and is not the responsibility of NCTCOG or the STATE to reimburse in the event an Agreement is not executed and/or the PROJECT is not completed as defined in Article 3.0.

NCTCOG will provide a copy of all pre-award authorizations to the Dallas District Engineer.

6.4 Limited/Full Notice to Proceed. A limited or full Notice to Proceed will be issued upon completion of a design and/or project review meeting, final execution of the Agreement, and necessary Article 11.1 documentation. Any activities completed prior to the receipt of a Notice to Proceed will not be eligible for reimbursement, unless specifically approved in writing by the STATE or NCTCOG.

NCTCOG will provide copies of all limited/full Notices to Proceed to the Dallas District Engineer.

6.5 Project Schedule. NCTCOG may in its sole discretion terminate this Agreement if it concludes that the LOCAL GOVERNMENT has failed to begin the PROJECT by August 2013 or has not made significant progress towards the OVERALL PROJECT within the timeline identified in the Article 11.1 supporting documentation or by December 31, 2015, whichever occurs sooner. All changes to the schedule must be agreed to in writing by all three parties.

6.6 Agreement Term. This Agreement shall terminate at the completion of the OVERALL PROJECT. The PROJECT shall be considered complete upon NCTCOG's receipt of a Closeout Report as identified in Article 11.3.

6.7 Continuing Obligations. Termination of this Agreement does not invalidate any continuing obligations imposed by this Agreement.

6.8 Funding Availability. Any or all of the terms of this Agreement may be suspended or terminated in the event the STATE terminates funding for any reason.

6.9 Events of Default. In the event of a default of any terms or conditions set forth in this Agreement, The LOCAL GOVERNMENT shall repay any funds received from the STATE for implementation of this PROJECT within thirty (30) days. The LOCAL GOVERNMENT will be considered to be in default including but not limited to the following reasons: any material representation or warranty provided in reports or as part of this Agreement shall prove to be false; funds identified in the PROJECT BUDGET are used for purposes other than those stated in Attachment B; the LOCAL GOVERNMENT assigns or transfers the obligations set forth in this Agreement to a third party without prior written consent of the STATE and NCTCOG; the LOCAL GOVERNMENT fails to complete the PROJECT as required in Attachment B, or the LOCAL GOVERNMENT fails to cure a defect as outlined in Article 6.9.

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

6.10 Termination. Each party reserves the right to terminate this Agreement in whole or in part. Notice of termination must be provided in writing, shall set forth the reasons for termination, and shall provide for a minimum of forty-five (45) days to cure the defect. Termination is effective only in the event the party fails to cure the defect within the period stated in the termination notice including any written extensions. The Parties may terminate this Agreement at any time by mutual written concurrence.

Article 7.0 Amendments.

7.1 Sole Agreement. The Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

The LOCAL GOVERNMENT shall include all appropriate provisions of this Agreement in any subcontractor or developer awards to implement the Scope of work, including but not limited to Articles 9, 10, 11, and 12.

7.2 Severability. In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intent of the Parties.

7.3 Changed Circumstances. If future federal, State, or local statute, ordinance, regulation, rule, or action render this Agreement, in whole or in part, illegal, invalid, unenforceable, or impractical, the Parties agree to delete and/or to modify such portions of the Agreement as are necessary to render it valid, enforceable, and/or practical. Each section, paragraph, or provision of this Agreement shall be considered severable, and if, for any reason, any section, paragraph, or provision herein is determined to be invalid under current or future law, regulation, or rule, such invalidity shall not impair the operation of or otherwise affect the valid portions of this Agreement.

7.4 Amendments to Agreement. Modifications to this Agreement must be agreed to in writing.

Article 8.0 Rights.

8.1 Authority. The LOCAL GOVERNMENT shall have no authority to act for or on behalf of the STATE or NCTCOG. No other authority, power, use, or joint enterprise is granted or implied. The LOCAL GOVERNMENT may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the STATE or NCTCOG.

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

8.2 Assignment. Without the prior written consent of the STATE or NCTCOG, the LOCAL GOVERNMENT may not transfer or assign any rights or duties under or any interest in this Agreement.

8.3 Access. The LOCAL GOVERNMENT shall permit the STATE and/or NCTCOG, and their designee's access to the property at reasonable times during the time of performance. NCTCOG will notify the LOCAL GOVERNMENT of a desire to access the property and arrangements will be made as needed.

8.4 Right of Way. Except for right of way owned by the STATE or to be acquired by the STATE according to the plans of the project as approved by the STATE, the LOCAL GOVERNMENT shall acquire all necessary right of way needed for the PROJECT. Right of Way acquisition is an eligible cost for reimbursement provided such cost is approved as shown in Attachment B.

8.5 Maintenance. The LOCAL GOVERNMENT agrees to construct, own (or secure appropriate perpetual easement to protect the project from future activities of landowners), operate (as applicable), and maintain all facilities developed or improved pursuant to this Agreement. The STATE and NCTCOG shall in no way be responsible for the maintenance of the PROJECT.

Article 9.0 Audits or Evaluations.

9.1 The LOCAL GOVERNMENT shall provide to the STATE and NCTCOG, for its review, a copy of any audit received as a result of LOCAL GOVERNMENT policy or audits of federal and state governments relating to the expenditure of grant funds. Such audits shall include or be accompanied by any applicable audit management letter issued and applicable responses to the auditor's findings and recommendations. All audits shall be submitted to the STATE and NCTCOG within thirty (30) days of receipt of each issued report.

9.2 The STATE and NCTCOG reserves the right to conduct financial and program monitoring of all awards to the LOCAL GOVERNMENT and to perform an audit of all records, related to this Agreement including but not limited to: contractor, developer, and/or other consultant Agreements related to the PROJECT. An audit by NCTCOG may encompass an examination of all financial transactions, all accounts and reports, as well as an evaluation of compliance with the terms and conditions of this Agreement.

9.3 STATE Audit. Within one hundred and twenty (120) days of completion of the PROJECT, the LOCAL GOVERNMENT shall perform an audit on PROJECT costs. Any funds due to STATE will be promptly paid by the LOCAL GOVERNMENT.

the The state auditor may conduct an audit or investigation of any entity receiving funds from the STATE directly under the Agreement or indirectly through a subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state *is*

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article 10.0 Payments.

10.1 Conditions of Reimbursement. At regular milestones, but not more frequently than monthly, the STATE shall reimburse the LOCAL GOVERNMENT for eligible cost related to the PROJECT up to eighty (80) percent or **\$921,964** after review and recommendation from NCTCOG. The LOCAL GOVERNMENT shall provide reimbursement request to ~~the~~ NCTCOG for costs and expenses incurred in connection with the PROJECT. Each reimbursement request shall include:

- an invoice from the LOCAL GOVERNMENT detailing cost incurred
- progress reports
- copies of contractor and supplier invoices who support the PROJECT
- proof of payment to contractors and suppliers who support the PROJECT
- certification of activities as provided for in Article 10.2
- other documentation requested by NCTCOG

NCTCOG may deem a request for reimbursement incomplete if the data and/or documentation are incomplete or improper or if the LOCAL GOVERNMENT fails to submit necessary reports or provide other information requested by NCTCOG or the STATE under the terms of this Agreement. ~~The~~ NCTCOG may reject request for reimbursements which fail to demonstrate that costs are eligible for reimbursement and/or which fail to conform to the requirements of this Agreement.

Final reimbursement shall not be made until the LOCAL GOVERNMENT provides a Closeout report for PROJECT activities as defined in Article 11.3 of this Agreement.

10.2 Certifications. The LOCAL GOVERNMENT shall implement the PROJECT using the LOCAL GOVERNMENT's established design standards, construction specifications, procurement processes, and construction management and inspection procedures. As part of any reimbursement request, the LOCAL GOVERNMENT shall certify to the STATE and NCTCOG the ~~project~~ ^{PROJECT} has followed all standards and procedures previously established by the LOCAL GOVERNMENT's governing body. Upon request, the LOCAL GOVERNMENT shall make available documentation to support performance reports including but not limited to: insurance certificates, performance or payment bonds, required licenses and permits, and reports submitted by contractors and/or ~~the~~ Developer(s).

10.2.1 Architectural and Engineering Services. The engineering plans shall be developed in accordance with the applicable State's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges and the special specifications and special provisions related to it. For projects on the state highway system, the design shall, at a minimum conform to applicable State

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

manuals. In procuring professional services, the parties to this agreement must comply with federal requirements cited in 23 CFR Part 172 if the ~~project~~ ^{PROJECT} is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters.

10.2.2 Construction Responsibilities.

A. The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the ~~Project~~ ^{PROJECT}. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract.

B. The Local Government will use its approved contract letting and award procedures to let and award the construction contract.

C. Prior to their execution, the ~~State~~ ^{STATE} will be given the opportunity to review contract change orders that will result in an increase in cost to the ~~State~~ ^{STATE}.

D. Upon completion of the ~~Project~~ ^{PROJECT}, the party constructing the ~~Project~~ ^{PROJECT} will issue and sign a "Notification of Completion" acknowledging the ~~Project's~~ ^{PROJECT'S} construction completion.

10.3 Retainage. The LOCAL GOVERNMENT shall receive reimbursement from the STATE in the amount of costs claimed and certified on each invoice, subject to approval of claimed costs by NCTCOG less ten (10) percent retainage up to \$115,245.50.

10.4 Ineligible Expenses. Funds obligated under this Agreement shall only be used for construction aspects of the PROJECT. The LOCAL GOVERNMENT will not be reimbursed for ineligible expenses which include but are not limited to: construction or rehabilitation of private buildings, artwork, fountains, installation and/or rehabilitation and/or relocation of water and sewer lines, burying and/or relocating utilities, parking garages, local roads that provide no connection to the main transportation network, earthwork necessary to raise proposed buildings out of the floodplain, roadway reconstruction, and other items not directly related to mobility. Expenditures such as staffing, maintenance of improvements, design and/or construction management fees, legal fees, permitting, platting, travel, vehicles, lobbying, land acquisition unassociated with transportation improvements and/or land acquisition of condemned properties, advertising, billboards, consumables, and any other non-construction activities inconsistent with the intent of the Sustainable Development ~~Program~~ ^P are not eligible.

CSJ: 0902-48-926

Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project

District #02-Fort Worth

Code Chart 64# 22000 and 61920

Funding Category: RTR (SH 161 Subaccount)

10.5 Eligible Expenses. Costs must be determined to be the reasonable, necessary, actual, and eligible costs of conducting an approved activity in accordance with the PROJECT to be eligible for reimbursement as provided for in the approved in the Article 11.1 Supporting Documentation.

10.6 STATE Reimbursement. Reimbursement of expenditures related to this Agreement may begin no earlier than thirty (30) days after execution of this Agreement. The STATE will reimburse the LOCAL GOVERNMENT for expenditures in RTC approved cost categories, as detailed in Attachment B, upon review and recommendation by NCTCOG to the STATE that expenditures are eligible and necessary. The STATE shall pay the LOCAL GOVERNMENT within thirty (30) days of receiving NCTCOG's payment recommendation.

10.7 Cost Overruns. The LOCAL GOVERNMENT agrees to keep project cost within the approved PROJECT BUDGET and shall not be eligible for reimbursement of any cost overruns. Cost overruns are the sole responsibility of the LOCAL GOVERNMENT. The STATE and/or NCTCOG are not responsible for any costs other than as outlined herein.

10.8 Cost Underruns. Cost underruns may not be used for additional Scope activities without prior written consent of NCTCOG.

10.9 Availability of Funds. This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited to the receipt and availability of funding. If funding is not available due to a default, this Agreement shall terminate.

Article 11.0 Reporting Requirements. All reports identified in this section shall be provided to NCTCOG in a format approved by NCTCOG.

11.1 The LOCAL GOVERNMENT shall provide a list of Supporting Documentation for the PROJECT and OVERALL PROJECT at agreed upon Phases throughout the PROJECT. The Phases provided for and approved by NCTCOG in this document will determine the milestones at which the LOCAL GOVERNMENT will receive reimbursement and items eligible for reimbursement. This Supporting Documentation shall be received prior to issuance of a Pre-Award Authorization or a Notice to Proceed and at a minimum should include:

- supporting schedules
- project description
- project budget/reimbursable items
- site plans and parcel maps
- appraisal data
- infrastructure improvement illustrations
- details of right of way to be acquired, each with parcel information, photos, and maps (if applicable)
- project photos, each with directional notations

CSJ: 0902-48-926

Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project

District #02-Fort Worth

Code Chart 64# 22000 and 61920

Funding Category: RTR (SH 161.Subaccount)

- private development phasing, acreage, and units

11.2 Milestone and Invoice Reporting. The LOCAL GOVERNMENT shall provide written progress reports of its actions under this Agreement at milestones as agreed upon in the Supporting Documentation identified in Article 11.1. Each progress report shall at a minimum include:

- any actions relative to the PROJECT during the current phase
- percentage of work complete
- activities of work complete
- all approved project modifications
- updated photos, each with directional notations
- identification of work delays
- actions taken to mitigate delays
- status of the schedule and budget

Milestone reports shall be included with each invoice submittal and sent to NCTCOG.

11.3 Closeout Report. The LOCAL GOVERNMENT shall prepare a closeout report to document actual project costs, final program activities of the PROJECT, and documentation of significant progress towards OVERALL PROJECT completion by evidence of a building permit or other approved document, to NCTCOG. This report shall be provided to NCTCOG no later than sixty (60) days from the completion of the PROJECT. Payment of the retainage is contingent upon completion of the closeout report.

11.4 OVERALL PROJECT Closeout. The LOCAL GOVERNMENT shall prepare a status report to update activities on the OVERALL PROJECT no later than three (3) years after execution of this Agreement.

12.0 Assurances.

12.1 Interest of Public Officials. No member, officer, or employee of the public body or of a local public body during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

12.2 Noncollusion. The LOCAL GOVERNMENT warrants that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. If the LOCAL GOVERNMENT breaches or violates this warranty, the STATE and/or NCTCOG shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

12.3 Debarment/Suspension. The LOCAL GOVERNMENT is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. The LOCAL GOVERNMENT and its subcontractors shall include a statement of compliance with Federal and State Debarment and suspension regulations in all Third-party contracts.

The LOCAL GOVERNMENT shall notify NCTCOG if the LOCAL GOVERNMENT or any of the LOCAL GOVERNMENT's contractors becomes debarred or suspended during the performance of this Agreement. Debarment or suspension of the LOCAL GOVERNMENT or any of the LOCAL GOVERNMENT's contractors may result in immediate termination of this Agreement.

12.4 Restrictions on Lobbying. The LOCAL GOVERNMENT is prohibited from using funds awarded under this Agreement for lobbying purposes. The LOCAL GOVERNMENT shall include a statement of compliance with this provision in applicable procurement solicitations and Third-Party contracts.

12.5 Disadvantaged Business Enterprise. It is the policy of the STATE and NCTCOG to maximize opportunities for Disadvantaged Business Enterprises to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The LOCAL GOVERNMENT agrees to ensure that DBE's have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds under this Agreement. Upon request, the LOCAL GOVERNMENT shall report DBE participation.

12.6 Compliance with Regulations- Environmental Review and Public Involvement. Each party shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative bodies or tribunals affecting the performance of this Agreement as applicable to it. The LOCAL GOVERNMENT shall ensure that the PROJECT complies with all environmental review and public involvement requirements applicable to the LOCAL GOVERNMENT under state and federal law in connection with the PROJECT. The LOCAL GOVERNMENT shall obtain the opinion of legal counsel showing the LOCAL GOVERNMENT's environmental review and public involvement for the PROJECT complies with state law and regulations, and with local laws, regulations, rules, policies, and procedures applicable to the LOCAL GOVERNMENT. The LOCAL GOVERNMENT shall maintain a copy of the certification in the project files. When required, the LOCAL GOVERNMENT shall furnish the STATE and NCTCOG with satisfactory proof of compliance.

Article 13.0 Miscellaneous Provisions.

13.1 Responsibilities of Parties.

a. The STATE, LOCAL GOVERNMENT, and NCTCOG agree that no party is an agent, servant, or employee of the other parties and each party agrees it is responsible

CSJ: 0902-48-926

Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project

District #02-Fort Worth

Code Chart 64# 22000 and 61920

Funding Category: RTR (SH 161 Subaccount)

for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

b. To the extent permitted by law, the LOCAL GOVERNMENT agrees to indemnify and save harmless the STATE and NCTCOG, its agents and employees from all suits, actions or claims and from all liability and damages resulting from any and all injuries or damages sustained by any person or property in consequence of any neglect, error, or omission in the performance of the design, construction, maintenance or operation of the PROJECT by the LOCAL GOVERNMENT, its contract(s), subcontract(s), agents and employees, and from any claims or amounts arising or recovered under the "Worker's Compensation laws"; the Texas tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as from time to time may be amended.

c. The Parties expressly agree that the PROJECT is not a joint venture or enterprise. However, if a court should find that the Parties are engaged in a joint venture or enterprise, then the LOCAL GOVERNMENT, to the extent provided by law, agrees to pay any liability adjudicated against the STATE for acts and deeds of the LOCAL GOVERNMENT, its employees or agents during the performance of the PROJECT.

d. To the extent provided by law, the LOCAL GOVERNMENT shall also indemnify and save harmless the STATE and NCTCOG from any and all expenses, including, but not limited to, attorney's fees which may be incurred by the STATE in litigation or otherwise resisting said claim or liabilities which may be imposed on the STATE as a result of such activities by the LOCAL GOVERNMENT, its agents, or employees.

13.2 Force Majeure. It is expressly understood and agreed by the parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed. Each party must inform the other in writing within reasonable time of the existence of such force majeure.

13.3 Contractual Relationship. It is understood and agreed that the relationship described in this Agreement between the parties is contractual in nature and is not to be construed to create a partnership of joint venture or agency relationship between the parties. Nor shall any party be liable for any debts incurred by the other party in the conduct of such other party's business or functions.

13.4 Insurance. If this Agreement authorizes the LOCAL GOVERNMENT or its contractors to perform any work on State right of way, before beginning work the entity performing the work shall provide the STATE with a fully executed copy of the State's

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the ~~State~~ **STATE** may recover damages and all costs of completing the work.

13.5 Procurement and Contracting Process. The STATE and NCTCOG may review the LOCAL GOVERNMENT's procurement of professional services for ~~professional services for~~ engineering, surveying, right of way acquisition, letting of construction contracts, and construction management and inspection. The LOCAL GOVERNMENT shall certify compliance with state law and regulations, and with local laws, regulations, rules, policies, and procedures. Copies of these certifications must be maintained in the PROJECT files and made available upon request.

13.6 Utilities. The LOCAL GOVERNMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with State laws and regulations and local laws, regulations, rules, policies, and procedures application to the LOCAL GOVERNMENT. The LOCAL GOVERNMENT must obtain advance approval for any variance from established procedures. This Agreement may not cover cost associated with utility relocation, if any reimbursement is deemed eligible the utility must have a property right as shown in a recorded deed or easement.

13.7 Disputes and Remedies. The LOCAL GOVERNMENT and NCTCOG shall negotiate in good faith toward resolving any disputes that arise under this Agreement. The Agreement shall not be considered as specifying an exclusive remedy for a breach of the Agreement. All remedies existing at law or in equity are available to either ~~party~~ **P** and are cumulative.

13.8 Records and Project Documents. All records must be maintained for a minimum of four (4) years after PROJECT closeout. In the event that any litigation or claim is still pending before the expiration of the four-year period, these records shall be retained until resolution of the litigation or claim. This section shall not be interpreted to require maintenance of multiple exact duplicate copies of any record or document.

NCTCOG, STATE, and their duly authorized agents shall have reasonable access to all records that are directly applicable to this Agreement for the purpose of making audit(s) examinations.

Upon completion or termination of this Agreement, all documents prepared by the STATE shall remain the property of the STATE. All data prepared under this Agreement by the LOCAL GOVERNMENT shall be made available to the STATE and NCTCOG without restriction or limitation on their further use. All documents produced or approved or otherwise created by the LOCAL GOVERNMENT shall be transmitted to the STATE in the form of photocopy reproduction as required by the STATE. The originals shall remain the property of the LOCAL GOVERNMENT. At the request of the STATE or NCTCOG, the

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

LOCAL GOVERNMENT shall submit any information required by the STATE or NCTCOG in the format directed by the STATE or NCTCOG *to the extent it is reasonably available to the Local Government.*

13.9 Confidentiality. The LOCAL GOVERNMENT, NCTCOG, and the STATE shall ensure that all information, both written and verbal, deemed confidential by law that is obtained through implementation of the PROJECT will remain confidential, subject to the Texas Public Information Act.

13.10 Gratuities. Any person doing business with or who, reasonably speaking, may do business with NCTCOG under this Agreement, may not make any offer of benefits, gifts or favors to employees of NCTCOG. Failure on the part of the LOCAL GOVERNMENT to adhere to this policy may result in termination of this Agreement.

13.11 Equal Employment Opportunity. The LOCAL GOVERNMENT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The LOCAL GOVERNMENT shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

13.12 Nondiscrimination on the Basis of Disability. The LOCAL GOVERNMENT agrees that no otherwise qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the project. The LOCAL GOVERNMENT shall insure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations regarding Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, set forth in 49 CFR, Part 27 and any amendments thereto.

13.13 Title VI. The LOCAL GOVERNMENT shall work cooperatively with NCTCOG to implement appropriate PROJECT activities to address environmental justice in minority and low-income populations, and to address needs from persons with limited English proficiency.

13.14 Drug Free Workplace. The LOCAL GOVERNMENT shall establish a drug-free workplace in accordance with the Drug-Free Workplace Act.

13.15 Compliance with Texas Accessibility Standards and ADA. The LOCAL GOVERNMENT shall ensure the plans for and the construction of the PROJECT is in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes.

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

13.16 Signatory Warranty. The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party they represent.

Attachments

The following appendices are attached and made part of this Agreement.

- A. Project Location Map
- B. Scope of Work and Payment Provisions

CSJ: 0902-48-926
Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
Funding Category: RTR (SH 161 Subaccount)

IN WITNESS HEREOF, the parties have executed this Agreement in triplicate originals.

The LOCAL GOVERNMENT

City of Kennedale

By _____ Date _____
Bob Hart
City Manager

~~The~~ **NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS**

By _____ Date _____
Mike Eastland
Executive Director

The STATE

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
Janice Mullenix
Director of Contract Services
Texas Department of Transportation

CSJ: 0902-48-926

Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable Development Infrastructure Project

District #02-Fort Worth

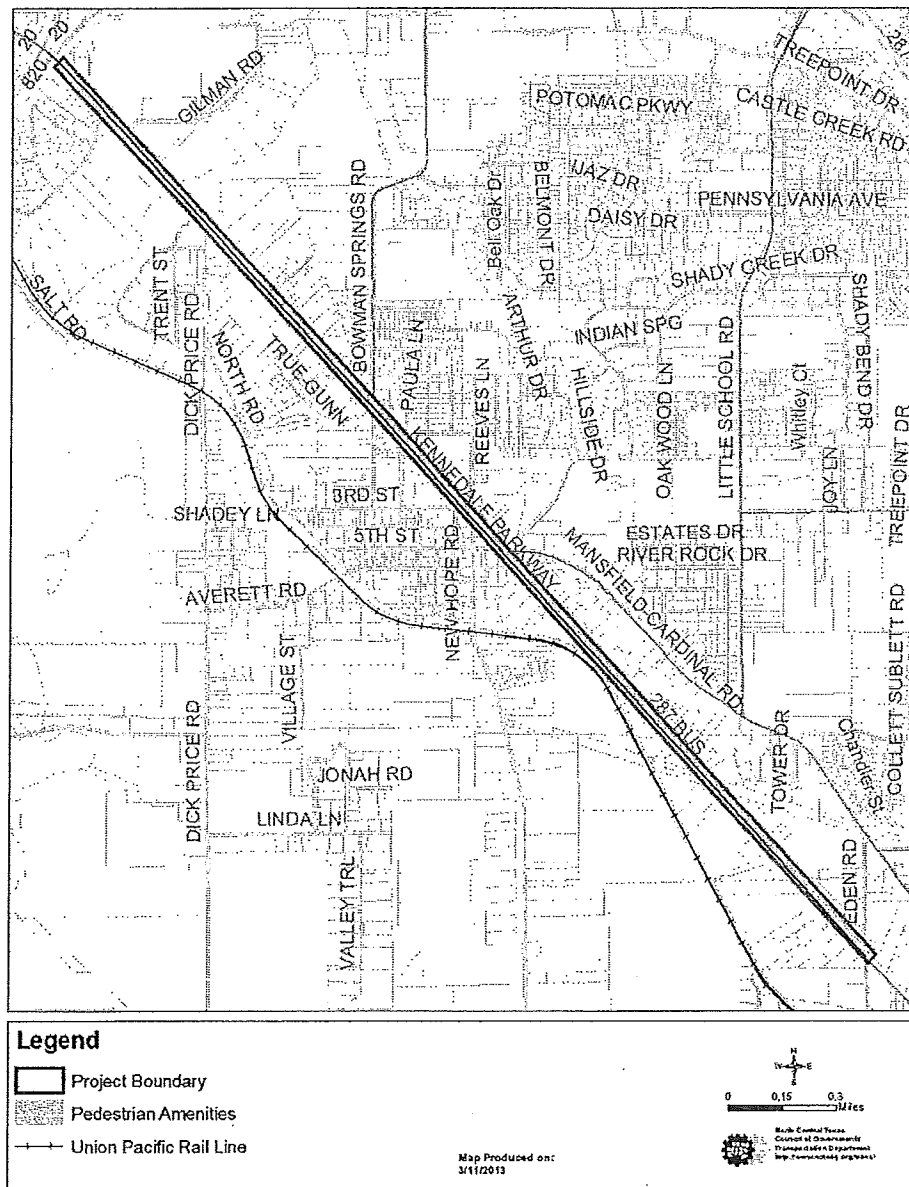
Code Chart 64# 22000 and 61920

Funding Category: RTR (SH 161 Subaccount)

Attachment A

Project Map

Connecting Kennedale: Revitalizing the City Center



CSJ: 0902-48-926
 Project Name: Connecting Kennedale: Revitalizing the City Center Sustainable
Development Infrastructure Project
District #02-Fort Worth
Code Chart 64# 22000 and 61920
 Funding Category: RTR (SH 161 Subaccount)

ATTACHMENT B

SCOPE OF WORK AND PROJECT BUDGET

The STATE will pay **\$921,964** from the SH 161 Subaccount for City of Kennedale Connecting Kennedale: Revitalizing the City Center Sustainable Development Infrastructure Project to construct pedestrian amenities and landscaping to support the Kennedale Mixed Use Development. The project is located on Kennedale Pkwy from the Interstate 20 Frontage Road to Eden Rd. The project deliverables include the construction of pedestrian amenities and landscaping.

~~In~~ accordance with the allocation of funds approved by the RTC, and concurred with by the Texas Transportation Commission, the State will make the payments for the following work within 30 days after recommendation from NCTCOG, but not prior to the Fiscal Years shown: ~~PROJECT.~~

RIGHT OF WAY AND CONSTRUCTION COSTS						
Description	Fiscal Year	Total Estimate Cost	Regional Toll Revenue (RTR) SH 161 Subaccount Funds Participation		Local Government Participation	
Right of Way	2013	\$0.00	0%	\$0.00	0%	\$0.00
Engineering (Design capped at 10%)	2013	\$115,246	0%	\$92,197	20%	\$23,049
Construction	2014	\$1,037,209	80%	\$829,767	20%	\$207,442
TOTAL		\$1,152,455	80%	\$921,964	20%	\$230,491

The LOCAL GOVERNMENT shall be responsible for a required local match of **\$230,491**.

Upon completion of the PROJECT, ~~the~~ NCTCOG will issue a signed "Notification of Completion" document to the STATE. The notice shall certify that the PROJECT has been completed, all necessary inspections have been conducted, and the PROJECT is open to traffic.

This is an estimate only; final participation amounts will be based on actual charges to the project.

~~PROJECT.~~

Date: April 11, 2013

Agenda Item No: REGULAR ITEMS - A.

I. Subject:

Consider action to approve Ordinance 518, providing for the annexation of 0.723 acres of land located in the E.R. Mingus Survey, Abstract No. 1114, Tarrant County, TX, at the site of the previous Bowman Springs bridge.

II. Originated by:

Bob Hart, City Manager

III. Summary:

Public hearings on this item were held on March 13 and 14. No one from the public chose to speak for or against this annexation. The city must annex this portion of land as a part of the agreement that was reached for Tarrant County to build the new bridge that is now complete.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	O518	O518 - Annexation.docx
2.	Exhibit B	annexation, Bowman Springs bridge.pdf
3.	Exhibit A	Service Plan-Bowman Springs Bridge.docx

ORDINANCE NO. 518

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF AN APPROXIMATE 0.723 ACRE TRACT OF LAND BEING A PORTION OF A TRACT OF LAND LOCATED IN THE E.R. MINGUS SURVEY, ABSTRACT NO. 1114, TARRANT COUNTY, TEXAS HEREINAFTER MORE SPECIFICALLY DESCRIBED, INTO THE CITY OF KENNEDALE, TEXAS FOR ALL MUNICIPAL PURPOSES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Kennedale is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, notice was published in a newspaper of general circulation on February 28, 2013 giving notice of public hearings to be held on March 13, 2013 and March 14, 2013, at which time such public hearings were held in accordance with the requirements of Chapter 43 of the Local Government Code; and

WHEREAS, at the time of consideration of this ordinance, not less than 20 nor more than 40 days have passed since the time of such public hearings; and

WHEREAS, all of the property described herein is adjacent to and within one mile of the present city limits of the City of Kennedale, Texas, and not within the extraterritorial jurisdiction of any other city; and

WHEREAS, a Service Plan has been prepared and present at the public hearings; and is attached to and adopted with this ordinance as Exhibit "A"; and

WHEREAS, all requirements of law have been met to require this annexation, including compliance with the provisions of Chapter 43 of the Local Government Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KENNEDALE, TEXAS:

SECTION 1.

ANNEXATION

That all portions of the following tract of land located in Tarrant County, Texas, described as: an approximate 0.723 portion of a tract of land located in the E.R. Mingus Survey, Abstract No. 1114, Tarrant County, Texas, and being more particularly described as follows:

BEGINNING at a point in the North line of said Mingus Survey, lying N88°47'52"E, a distance of 294.94 feet from the Northwest corner of said Mingus Survey, said point by City of Kennedale ordinance dated January 13, 1949, Lying East 100 yards from said Northwest corner of Mingus Survey;

THENCE N88°47'52"E, a distance of 403.23 feet along said North line of Mingus Survey to a point in the Northerly line of the 62.156 acre tract of land described in the deed to Riverview Development Corporation recorded in Volume 13850, Page 316, Deed Records, Tarrant County, Texas, as shown on exhibit in City of Kennedale Ordinance No. 176;

THENCE along said Northerly line of 62.156 acre tract as follows:

1. Southwesterly, 19.64 feet along a non-tangent curve to the right, having a radius of 229.63 feet, a central angle of 04°53'58" and a chord bearing S65°33'05"W, 19.63 feet to a point;
2. S67°55'20"W, passing the Northwest corner of said 62.156 acre tract, and the Northeast corner of a 12.691 acre tract described in said deed to Riverview Development, in all continuing along the Northerly line of said 12.691 acre tract a distance of 414.38 feet to an 1/2" iron rod found at the Northwest corner of said 12.691 acre tract, said iron rod being in the West line of said tract described in City of Kennedale ordinance dated January 13, 1949;

THENCE N00°28'11"W, a distance of 155.42 feet along said West line to the point of beginning, containing 0.723 acres of land.

The bearings recited hereon are oriented to NAD 83 North Central Texas zone.

,and more specifically described and depicted in Exhibit "B" attached hereto and incorporated herein for all purposes, is hereby annexed to the City of Kennedale as a part of the City for all municipal purposes, and the city limits are hereby extended to include such territory.

SECTION 2.

SERVICE PLAN

The Service Plan, attached hereto as Exhibit "A", and incorporated herein, is approved in all things and made a part of this ordinance for all purposes.

SECTION 3.

RIGHTS AND DUTIES OF OWNERS AND INHABITANTS IN NEWLY ANNEXED AREA

The owners and inhabitants of the area annexed are entitled to all of the rights and privileges of all other citizens and property owners of the City of Kennedale and are bound by all acts, ordinances, and all other legal action now in full force and effect and all those which may be subsequently adopted.

SECTION 4.

OFFICIAL MAP

The official map and boundaries of the City, previously adopted, are amended to include the newly annexed territory as a part of the City of Kennedale, Texas. The City Manager is

directed and authorized to perform or cause to be performed all acts necessary to correct the official map of the City of Kennedale to add the territory annexed as required by law. A copy of the map shall be kept in the offices of the City Secretary and the City Engineer.

SECTION 5.

FILING CERTIFIED COPY

The mayor is directed to file or cause to be filed a certified copy of this annexation ordinance, along with the map of the entire city highlighting the annexed area, with the following entities:

- a. The county clerk of Tarrant County within 30 days after the date of preclearance by the U.S. Department of Justice;
- b. The Secretary of State, Statutory Documents Division, PO Box 12887, Austin, Texas 78711; and
- c. Sales Tax Division, Comptroller of Public Accounts, Capital Station, Austin, Texas 78711.

SECTION 6.

CUMULATIVE CLAUSE

This ordinance shall be cumulative of all provisions of ordinances of the City of Kennedale, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 7.

SEVERABILITY CLAUSE

Should any section of part of this ordinance be held unconstitutional, illegal, or invalid, or the application thereof, the unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair, or invalidate the remaining portion of portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect.

SECTION 8.

AREAS EXCEPTED FROM ANNEXATION

Should this ordinance for any reason be ineffective as to any part of the area hereby annexed into the City of Kennedale, such ineffectiveness of this ordinance as to any such part of parts of any such area shall not affect the effectiveness of this ordinance as to the remainder of such area. The City Council hereby declares it to be its purpose to annex to the City of Kennedale every part of the area described in Section 1 of this ordinance, regardless of whether

any part of such described area is hereby not effectively annexed into the City. Provided, further, that if there is included within the general description of territory set out in Section 1 of this ordinance to be hereby annexed to the City of Kennedale any lands or area which area presently part of the included within the limits of the City of Kennedale, or which are presently part of and included within the limits of any other City, Town, or Village, or which are not within the City of Kennedale's jurisdiction to annex, the same is hereby excluded and excepted from the territory to be annexed hereby as fully as if such excluded and excepted area were expressly described herein.

SECTION 9.

EFFECTIVE CLAUSE

This ordinance shall be in full force and effect from and after its passage and it is so ordained.

PASSED AND APPROVED ON THIS 11TH DAY OF APRIL, 2013.

John Clark, Mayor

ATTEST:

Amethyst G. Cirimo, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Wayne K. Olson, City Attorney

Approximate location of area to be annexed
(outlined in red)



1 in = 167 feet

MUNICIPAL SERVICE PLAN

Annexation of the site of the previous Bowman Springs Bridge, being approximately 0.723 acres of land, which is currently maintained by Tarrant County.

Services to be Provided upon the Effective Date of Annexation

FIRE AND AMBULANCE SERVICE

The City of Kennedale, Texas will provide, or cause to be provided, fire protection and ambulance service to the newly annexed tract at the same or similar level of service now being provided to other areas of the City of Kennedale, Texas, with similar topography, land use, and population.

POLICE AND ANIMAL CONTROL

The City of Kennedale, Texas will provide, or cause to be provided, police protection and animal control service to the newly annexed tract at the same or similar level of service now being provided to other areas of the City of Kennedale, Texas, with similar topography, land use, and population.

WATER AND WASTEWATER AND MAINTENANCE OF SAME

The City of Kennedale will provide, or cause to be provided, water and wastewater service to the newly annexed tract at the same or similar level of service now being provided to other areas of the City of Kennedale, Texas, with similar topography, land use, and population. Any and all water or wastewater facilities owned or maintained by the City of Kennedale, Texas at the time of the proposed annexation shall continue to be maintained by the City of Kennedale, Texas. Any and all water and wastewater facilities, which may be acquired subsequent to the annexation of the proposed area, shall be maintained by the City of Kennedale, Texas, to the extent of its ownership.

ROADS AND STREETS AND MAINTENANCE OF SAME

Any and all roads, streets, or alleyways that have been dedicated to the City of Kennedale, Texas, or which are owned by the City of Kennedale, Texas shall be maintained to the same degree and extent that other roads, streets, and alleyways are maintained in areas with similar topography, land use, population, and density. Any and all lighting of roads, streets, and alleyways that may be positioned in a right-of-way, roadway, or utility company easement shall be maintained by the applicable utility company servicing the City of Kennedale, Texas pursuant to the current rules, regulations, and fees of the City of Kennedale, Texas.

SOLID WASTE

The City of Kennedale will provide, or cause to be provided, solid waste service to the newly annexed tract at the same or similar level of service now being provided to other areas of the City of Kennedale, Texas, with similar topography, land use, and population, to the extent that the City has access to the area to be serviced.

MAINTENANCE OF LIBRARIES, PARKS, PLAYGROUNDS, AND SWIMMING POOLS

No libraries, parks, playgrounds, or swimming pools are now located in the area proposed for annexation. In the event any park, playground, or swimming pool is created and is a public facility, the City of Kennedale, Texas, will maintain such areas to the same extent and degree that it maintains parks, playgrounds, and swimming pools and other similar areas of the City now incorporated in the City of Kennedale, Texas.

STORM WATER

The City of Kennedale will provide, or cause to be provided, storm water maintenance to the newly annexed tract at the same or similar level of service now being provided to other areas of the City of Kennedale, Texas, with similar topography, land use, and population.

MAINTENANCE OF PUBLIC OWNED FACILITY, BUILDING, OR MUNICIPAL SERVICE

The City Council of the City of Kennedale, Texas is not aware of the existence of any publicly owned facilities, buildings, or other municipal service now located in the area proposed for annexation. In the event any such publicly owned municipal facility, building, or municipal service does exist and are public facilities, the City of Kennedale, will maintain such areas to the same extent and degree that it maintains publicly owned facilities, buildings, or municipal services of the City now incorporated in the City of Kennedale, Texas.

CAPITAL IMPROVEMENTS

GENERAL

The City policy for extending water and wastewater service is to extend service on an as required basis when development applications or subdivision plans are submitted to the City in accordance with the City's subdivision and development ordinances.

Landowners may be required to fund capital improvements necessary to provide service in a manner consistent with law. Nothing in this plan shall be interpreted to require a landowner within the newly annexed area to fund capital improvements necessary to provide municipal services in a manner inconsistent with Chapter 395 of the Local Government Code, unless otherwise agreed to by the landowner.

POLICE PROTECTION, FIRE PROTECTION, AND EMERGENCY MEDICAL SERVICES

The City Council of the City of Kennedale, Texas finds and determined it to be unnecessary to acquire or construct any capital improvements for the purposes of providing police protection, fire protection, or emergency medical service. The City Council finds and determines that it has at the present time adequate facilities to provide the same type, kind, and level of protection and service which is presently being administered to other areas already incorporated in the City of Kennedale, Texas, with the same or similar topography, land use, and population density, without reducing by more than the negligible amount of the level of fire, police, and without reducing by more than the negligible amount of the level of fire, police, and emergency medical services provided within the corporate limits of the City.

WATER FACILITIES AND SERVICES

The City Council of the City of Kennedale, Texas, has determined it to be unnecessary to acquire or construct any capital improvements for the purposes of providing water service. The City Council finds and determines that it has at the present time adequate facilities to provide the same type, kind, and level of water service which is presently being administered to other areas already incorporated in the City of Kennedale, Texas, with the same or similar topography, land use, and population density, without reducing by more than the negligible amount of the level of water service provided within the corporate limits of the City.

SEWER SERVICE

The City Council of the City of Kennedale, Texas, has determined it to be unnecessary to acquire or construct any capital improvements for the purposes of providing sewer service. The City Council finds and determines that it has at the present time adequate facilities to provide the same type, kind, and level of sewer service which is presently being administered to other areas already incorporated in the City of Kennedale, Texas, with the same or similar topography, land use, and population density, without reducing by more than the negligible amount of the level of sewer service provided within the corporate limits of the City.

ROADS AND STREETS

The City Council of the City of Kennedale, Texas, has determined it to be unnecessary to acquire or construct any capital improvements for the purposes of providing roads and streets. The area to be annexed has no structures, will not have structures built upon it, and is already accessible by existing roads and streets at the same level of service presently being administered to areas already within the corporate limits of the City.

SPECIFIC FINDINGS

The City Council of the City of Kennedale, Texas finds and determines that this proposed Service Plan will not provide any fewer services, and it will not provide a lower level of service in the area proposed to be annexed than were in existence in the proposed area at the time immediately preceding the annexation process.

Because of the differing characteristics of topography, land utilization and population density, the service levels which may ultimately be provided in the newly annexed area may differ somewhat from the services provided in other areas of the City of Kennedale, Texas. These differences are specifically dictated because of differing characteristics of the property and the City of Kennedale, Texas will undertake, consistent with this Plan, to provide the newly annexed area with the same type, kind and quality of service presently enjoyed by the citizens of the City of Kennedale, Texas who reside in areas of similar topography, land utilization and population.



Date: April 11, 2013

Agenda Item No: REGULAR ITEMS - B.

I. Subject:

Review and consider policy papers from the Planning & Zoning Commission on the following issues:

1. Zoning and subdivision regulations
2. Zoning/rezoning in the Oak Crest area

II. Originated by:

III. Summary:

The Planning & Zoning Commission has drafted two policy papers for the Council's consideration. The papers describe issues facing the city and provides recommendations for how to address the issues. The papers focus on two areas of concern: (1) zoning and subdivision regulations for the city as a whole as the City determines how to implement the comprehensive land use plan; and (2) zoning or rezoning in the Oak Crest area as the City determines how to implement the Oak Crest concept plan and the comprehensive land use plan.

If approved by the Council, the papers will provide direction to the Planning & Zoning Commission for how it should prioritize its work.

IV. Notification:

V. Fiscal Impact Summary:

VI. Legal Impact:

VII. Recommendation:

VIII. Alternative Actions:

IX. Attachments:

1.	Policy paper -- zoning and subdivision regulations	Position Paper, Rezoning for city_PZ.doc
2.	Policy Paper -- Oak Crest	Position Paper Oak Crest rezoning_edh_rr_PZ.docx

Zoning & Subdivision Regulations

Background.

Kennedale has undergone many changes in recent years. Population increase, infrastructure improvements, and redevelopment have led the city to question standard ways of looking at land use and how it should be regulated. The Dallas/Fort Worth region has also experienced population increases and is expecting much more in the next 20-30 years. To cope with expected growth—both in population and in building—many of the local governments and stakeholders in the area came together to create Vision North Texas. Vision North Texas is a private, public and academic partnership created to serve as a forum for dialogue and action on important issues facing the sixteen county North Texas region. After a five-year process, VNT published a report in 2010 that outlines a vision for the region and provides tools for action. Participation in VNT is voluntary, but many cities are following through with adopting plans that support VNT's goals even without a legal requirement to do so. Cities participate because the issues the report addresses affect the entire region, not just the big cities. In addition, the tools in the report were developed through input from respected professionals in the development community, city leaders and staff, and concerned members of the public, so cities looking to use the tools have good reason to believe they are feasible.

While work on the Vision North Texas report was drawing to a close, the City of Kennedale was also working on a project to establish a vision and goals for the city. After a process involved residents, city leaders, and other stakeholders, the city published a strategic plan, *Imagine Kennedale 2015*. Like the Vision North Texas report, *Imagine Kennedale 2015* addresses issues related to recent and expected growth and looks to solve long-standing problems. The strategic plan was adopted in 2009.

In 2011, the city was due to update its comprehensive plan. Rather than re-using the existing comprehensive plan, with updates to account for population growth and road improvements, the city decided to go in a different direction. The old plan had not helped Kennedale achieve community goals; the new plan would expound on the 2009 strategic plan and draw from the 2010 Vision North Texas report. Kennedale's updated comprehensive land use plan, adopted March 2012, represents a shift in the city's approach to how land use decisions should be made. The plan reflects the city's new vision and goals, and

its Future Land Use map was updated in order to reflect the desire of the community, to meet the demands of the changing market, and to build a dynamic community. Unfortunately, currently zoning categories do not provide the tools needed to implement the comprehensive plan. The zoning code and subdivision regulations should be revised to allow for plan implementation. The city has a pressing need to create several new zoning categories quickly in order to take advantage of upcoming redevelopment opportunities.

Issues.

1. Revising the zoning code and subdivision regulations at the scale needed to implement the comprehensive plan will take some time, but the city needs to act quickly for certain areas.
2. The comprehensive plan cannot be implemented as needed using a one-size-fits-all approach to zoning that sees all commercial areas as the same, all residential areas the same, etc. Current zoning regulations see type of use and intensity/density as the only real distinguishing factors among zoning districts, when in reality, many elements can distinguish one area from another. These different areas will need different approaches to zoning. For example, some of the uses and building standards for the Urban Corridor are not likely to be suitable for the Neighborhood Corridor, just as uses and buildings suitable for the Urban Village are unlikely to be entirely suitable for the Neighborhood Village. And the standards that will permit and encourage infill development or construction near trails may be vastly different than those that would be suitable for a large, undeveloped tract with no natural features or public amenities to protect.
3. While a form-based code may be the right tool for a number of locations, the city is unlikely to adopt a form-based code for the entire city. A variety of planning & zoning tools will be required.
4. The public works department is considering adopting the North Central Texas Council of Government's ISWM manual (all or in part) to update its public works design manual. The city is also considering adopting low impact development standards, at least for development in certain areas. Changes proposed by the Planning & Zoning Commission will need to be coordinated with the public works department to avoid adopting conflicting standards.
5. Revising the zoning and subdivision regulations is a complex process due to the number of factors that must be addressed, including:
 - population growth and density of the region (in terms of where and how we will make room for new residents, residents' choices/preferences);
 - demographic changes (will we have services, housing, etc. for a growing senior population; are we providing housing, services, etc., needed to attract and retain younger residents? How are community preferences expected to change over the next 20-30 years?);

- community character (how is it defined, and how can the city's regulations be structured to retain character?);
 - water (supply and demand, drought preparedness, etc.) and how development and development standards affect water supply and quality;
 - site design in terms of energy conservation and safety, e.g., street orientation to limit drivers' being blinded by the sun during certain times of day, building orientation to reduce need for air conditioning, central heating;
 - agriculture (how and where should existing agricultural uses be preserved, and should we accommodate urban farming?);
 - transportation and mobility (including multiple modes of transportation and how the infrastructure needed will be accommodated); possible connection center (Vision North Texas)
 - parking;
 - connections: inter-city, neighboring cities, region (Vision North Texas 2050);
 - connections: intra-city, connection neighborhoods, and connecting neighborhoods to other destinations such as schools. Recreation, or shopping ;
 - how the regulations may affect parks, open spaces, and natural areas;
 - floodplain development (does the city need to make changes to the current floodplain-related regulations in order to implement the comprehensive plan?);
 - mixed-use development – at a small city/neighborhood scale;
 - traffic – how will we accommodate and plan for increases in traffic from expected population growth?
 - commerce -- what will effect will zoning standards have on economic development and potential job retention and creation?
6. Vision North Texas is advocating the creation of codes at the city level that sustain the compact, walkable, mixed-used areas in communities. The codes should be consistent with the region but reflect local identity, and will most likely require changes in development regulations for some cities within the region, including Kennedale. Models for smaller cities like Kennedale are still being developed.
 7. The comprehensive plan calls for forms of development that may be unfamiliar to many residents or developers, who may resist our setting standards that will allow for anything other than business as usual.

Policy Recommendations.

1. Zoning categories and development standards should be tailored to meet the developmental needs of different parts of the city. The analysis should consider the positive aspects of the place-based

zoning categories that take into account a specific location, the needs of the community and the features and constraints of the location, as was as the kind of development that would be feasible.

2. Perform analysis to understand the full extent and feasibility of developing and adopting the needed zoning categories and development standards in support of the Comprehensive Land Use Plan.
3. Study each character district type in the comprehensive plan and analyze how each type could be implemented based on existing zoning (Euclidian), cumulative, form-based, traditional neighborhood development (TND), composite zoning, or other zoning types, to determine which tools are best suited for each district.
4. To develop standards for high priority cases as quickly as possible, based on guidance from the city council and the city manager to identify areas of highest priority and to develop zoning categories that are specific to those areas, if needed. These standards could also be used as models for zoning standards to be applied to other similar areas. Form-based codes or traditional neighborhood development standards might be considered as the basis for zoning standards. These high priority changes must be developed with a thought as to how they fit into the broader scope of changes to be made later.
5. Seek input from the public works department early, and keep the department heads involved throughout the process of updating the subdivision regulations.
6. Seek input from the Kennedale Economic Development Corporation, ensuring an economic development perspective is considered as the regulations are developed and/or updated.
7. Council should provide direction to staff on priorities for their research and the issues that will affect (or be affected by) zoning standards and draft recommendations about how the issues can be addressed through revisions to city codes and policies. Council should direct the Planning & Zoning Commission to provide guidance to council and to staff on the recommendations. Issues may include:

- a. In the face of long-term water shortages, how can the city reduce water consumption in a manner that is acceptable to the community, for example, by reducing lot sizes;
 - b. Considering the need to provide a range of housing options, and considering the possibility of reducing lot sizes, how can the city use zoning, subdivision regulations, or other planning and land development tools to maintain property values and sense of place while allowing zero lot/executive homes, townhomes, or other desired types of development;
 - c. The city would like to allow traditional styles of building without lowering standards for durability of structures. What is the best approach for the city to permit fiber cement or vinyl siding that mimics the look of older wood siding but is attractive and durable? Other than those that regulate building materials, are there other standards that should be considered?
 - d. Should building and street orientation be regulated, and if so, what standards allow developers flexibility in design while meeting city goals?
 - e. What energy conservation codes may be appropriate for Kennedale?
8. Leverage the model(s) being brought forth by the North Central Texas Council of Governments that will apply concepts of form-based codes, green design, and New Urbanism, along with the strategies of the Kennedale Comprehensive Land Use Plan, to develop regulations that are complementary to the region.
9. Develop informational materials and/or hold an open house (or other public input/awareness forums) for the public. This will allow residents, etc. to be familiar with the new ideas so they can have an open conversation with the city about what would be acceptable.
 - a. Provide open forums for community (e.g., residents, city staff, business owners, neighboring cities, developers/builders/and other involved entities) input and dialogue throughout the process. This will allow for buy-in and community participation in the adaptation and adoption of these innovative approaches.
10. Create other tools for builders/developers to raise awareness of alternative forms of development and the advantages and disadvantages of these forms.
11. Pursuant to adoption of this policy paper by the City Council, the Planning & Zoning Commission should prepare a final recommendation to the City Council, which will contain:

- a. An Action Plan for adopting and implementing the options recommended to Council;
- b. Prioritized objectives
- c. Defined targets, measuring the success of the progress of adoption and implementation

Oak Crest Rezoning

Background.

The city has performed an extensive study of the area. An Economic Analysis and Planning Study and an Economic Redevelopment Option Study for the Oak Crest Area have been completed, and, most recently, the city adopted a Oak Crest Concept plan. All indicators suggest a change is desired and required in this area to support the vision of the city of Kennedale. Kennedale's updated comprehensive land use plan, adopted in March 2012, which represents a shift in the city's approach to how land use decisions should be made, further supports a need for zoning change and planning for the Oak Crest area. These studies and plans suggest the need for sidewalks and trails, green spaces, environmental cleanup, creation of larger lots, mixed-use development, a transition from current businesses to other industries (e.g, removal of sexually-oriented businesses, salvage yards, etc.), and improving the strength of the transportation corridor access, to mention a few concerns.

This area exhibits many positive traits that the city should take advantage of: proximity to the highway system and rail systems provide a strong mobility strategy; North Texas regional growth; growth in residents supporting the transition of businesses to professional and service industries. A number of actions currently are underway in this area to transform Oak Crest, business transition of the exiting of the SOB's to the opening of Quick Trip – QT; the Green Ribbon Grant creating a green belt along the parkway; the sustainable infrastructure grant through the Council of Governments funding construction of sidewalks along the west side of the parkway; a grant request submission for sidewalks construction along the east side of the parkway; the Village Creek study; and the Trinity Trail connection project, to mention a few.

With such great movement to improve the conditions of this area for both residents and commercial business, we find the currently-adopted zoning categories do not provide the tools needed to implement the comprehensive plan; in addition Kennedale recently adopted a concept plan for Oak Crest. The city will need to consider making changes to the zoning code and subdivision regulations as reflected in the plans, and the strong possibility of rezoning properties. These Zoning/Rezoning considerations should be pursued, taking into account the issues and policies discussed below.

Issues.

1. Properties in Oak Crest are not zoned for the kind of development called for in the Kennedale Comprehensive Land Use plan and Oak Crest concept plan, hindering implementation of these plans.
2. None of the city's zoning categories allow the comprehensive plan and Oak Crest concept plan to be implemented, so even with rezoning, the properties could not be developed as called for in the plans. For example, adopted zoning districts are Euclidean and do not permit the mix of uses suggested in the comprehensive land use plan (e.g., mixed-use buildings with street-level retail and offices above). They also do not permit site and building design suggested by the comprehensive plan. For example, the maximum heights allowed in the current zoning code is 3 stories for C-2 and 1 and 2 stories for C-0 and C-1, but the comprehensive plan suggests allowable building heights of 4 to 8 stories for this area.
3. Property owners may be resistant to rezoning plans that focus primarily on commercial uses, as residents may be concerned they will be forced out of their homes.
4. Current subdivision regulations and public works design guidelines may not permit the Oak Crest area to be developed in compliance with the comprehensive land use plan or the Oak Crest concept plan. Example: The city is exploring the use of low-impact development in its public infrastructure design due to this area's proximity to Village Creek and the area's location within the floodplain--as well as water quality efforts such as the Village Creek Master Plan--but the current recommended public works design standards fail to permit much in the way of low-impact development.
5. The speed at which conditions can improve in Oak Crest is hindered by the conditions in adjacent Fort Worth and Forest Hill.
6. The major entrance into the city (Kennedale Parkway) and the roads providing entry points into Oak Crest (Kennedale Parkway and the I-20 frontage road) belong to TxDOT, and the city must factor TxDOT right-of-way requirements into decisions about land use and design along these roadways.
7. Oak Crest is bordered on one side by a rail line, which restricts access to the neighborhood and limits what uses are feasible on that edge of the neighborhood. In addition, the Union Pacific

Railroad may have some control over how close land uses may encroach, depending on how much right-of-way they control in the area.

8. Extensive environmental cleanup of blighted lands may be required due to salvage yards' storage of vehicles and other industrial usages.

Policy Recommendations.

1. Update the zoning code (and subdivision regulations, as needed) to allow implementation of the Oak Crest concept plan and the comprehensive land use plan. Because the Oak Crest area is a high priority for redevelopment, standards for this area may need to be completed in advance of revisions to the entire code.
2. Perform analysis to understand the full extent and feasibility of developing and adopting the needed zoning regulations and development standards for this area in support of the Comprehensive Plan.
3. Hold an open house (or more than one, as needed) or other public participation forum for property owners and residents to learn about the comprehensive plan and the Oak Crest plan and how implementing these plans may affect their property. Allow property owners to provide input on how to achieve the plans' goals/concepts, and take their input into consideration when drafting proposed changes to the zoning code or subdivision regulations.
 - a. Open forums for community (e.g. residents, city staff, businesses owners, neighboring cities, developer/builders, and other involved entities) **input and dialog** throughout the process. This will allow for buy-in and community participation in the adaptation of these innovative approaches.
4. Seek input from Kennedale Economic Development Corporation, ensuring an economic development perspective is considered as the regulations are developed and/or updated.
5. Rezone properties as needed. Meet with property owners and residents who have not been part of the public participation process whenever possible (that is, whenever property owners or residents

are willing to meet with city representatives) so that they will be fully aware of the steps and timing of the rezoning process.

6. Create other tools for builders/developers to raise awareness of alternative forms of development and the pros and cons of these forms.
7. Collaborate with other government entities to ensure the alignment of zoning regulation with appropriate economic development strategies to revitalize and improve this area (e.g. Forest Hill, Fort Worth Planning, and Arlington Planning).
 - a. Gain insight into neighboring cities regulations / projects /acquisitions that affect the Oak Crest area; consider and incorporate those quality characteristics into the planning and design of the area where beneficial.
8. Continue to work with the cities of Fort Worth and Forest Hill to develop plans for the Business 287 corridor.
9. Pursuant to adoption of this policy paper by the City Council, the Planning & Zoning Commission should prepare a final recommendation to the City Council, which will contain:
 - a. An Action Plan for adopting and implementing the options recommended to Council;
 - b. Prioritized objectives
 - c. Defined targets, measuring the success of the progress of adoption and implementation In light of the new concept plan and Village Creek Master Plan, revise the market analysis done previously done by UTA students.

Date: April 11, 2013

Agenda Item No: REGULAR ITEMS - C.

I. Subject:

Consider action to approve Progressive Waste Solutions residential and commercial garbage rate increase for 2013.

II. Originated by:

Sakura Moten-Dedrick, Director of Finance & IT

III. Summary:

Per our initial contract (Feb 2007 - Jan 2013), and then renewal contract (Feb 2012 - Jan 2018) with Progressive Waste Solutions, our trash vendor has formally requested an annual Consumer Price Index (CPI) rate adjustment of \$.18 per home or 2.15%. As mentioned in their memo dated March 8, this increase will apply to both residential and commercial accounts. Furthermore, if approved, the new rates would become effective May 2013. Reference attached for current and revised rate schedules.

Please note the following section from the original contract in terms of applicable rate adjustments...

"Rate Adjustments: No rate adjustment will be made in the first year of the contract (February 1, 2008 - January 31, 2009). Beginning February 1, 2009 rates may be adjusted annually to reflect changes in the cost of operations, as reflected by percentage change in the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (all items) for the Dallas-Fort Worth Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics. The measured increase will span a twelve month period (beginning August 1 and ending July 31) immediately preceding the Rate Adjustment Date. If the CONTRACTOR desires a review of the existing rates, CONTRACTOR shall submit, in writing, its adjustments to the rate and supporting data for the same period, on or before January 15th of the numbered year, beginning January 15, 2009."

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

Staff recommends that the City Council approve Progressive Waste Solutions annual request for a CPI adjustment.

VIII. Attachments:

1.	2013 Increase Memo (Progressive Waste Solutions)	2013 Progressive Waste Solutions.pdf
2.	2012 Amended Contract (Progressive Waste Solutions)	20121003 Progressive Waste Solutions (IESI) Contract Amendment.pdf



March 8, 2013

Honorable Mayor and Members of Council
City of Kennedale
405 Municipal Drive
Kennedale, Texas 76060

Re: Price Increase Request:

Dear Honorable Mayor and Members of Council:

Progressive Waste Solutions would like to take this opportunity to express our appreciation for your business. Per our contract we would like to present to you a request for the 2013 rate adjustment. The amount is based on the published Bureau of Labor Standard Consumer Price Index / Urban Consumers (CPI-U DFW)-all items- Jan. 2013, (see attached). The amount of the request for 2013 is equal to \$.18 per home or 2.15%. This rate increase will be both for residential and commercial accounts. The increase would be effective May, 2013 if approved. We respectfully ask for your support in order to maintain our operations and continue to meet our financial obligations.

If you have any questions or need additional information, please feel free to contact me at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Norm Bulaich", written in a cursive style.

Norm Bulaich,
Municipal Manager
Progressive Waste Solutions
817-547-9012-office
817-999-2584-cell

Consumer Price Index - All Urban Consumers DFW

Jan. 2012 209.20

Jan. 2013 213.70

Change in CPI 2.15%

Total Increase	<u>2.15%</u>
-----------------------	---------------------

Current Rate Per Home	\$8.60
------------------------------	---------------

Proposed Rate Per Home	\$8.78
-------------------------------	---------------

Increase Per Home	<u>\$0.18</u>
--------------------------	----------------------

[A to Z Index](#) | [FAQs](#) | [About BLS](#) | [Contact Us](#) | [Subscribe to E-mail Updates](#)

[Follow Us](#) | [What's New](#) | [Release Calendar](#) | [Site Map](#)
[Search BLS.gov](#)

[Home](#)
[Subject Areas](#)
[Databases & Tools](#)
[Publications](#)
[Economic Releases](#)
[Beta](#)

Databases, Tables & Calculators by Subject

FONT SIZE:

 Change Output Options: From: To:
☐ include graphs

[More Formatting Options](#) ➔

Data extracted on: March 11, 2013 (9:55:50 AM)

Consumer Price Index - All Urban Consumers

Series Id: CUURA316SA0, CUUSA316SA0

Not Seasonally Adjusted

Area: Dallas-Fort Worth, TX

Item: All items

Base Period: 1982-84=100

Download: .xls

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2003	174.0		176.8		176.9		176.5		177.0		175.9		176.2	176.1	176.4
2004	175.7		177.7		179.1		179.1		179.7		179.9		178.7	177.8	179.6
2005	180.0		181.3		183.5		184.3		188.9		187.8		184.7	182.0	187.4
2006	188.6		188.4		191.2		191.7		192.0		188.4		190.1	189.7	190.5
2007	188.890		190.156		192.779		194.286		194.847		196.465		193.245	191.057	195.433
2008	197.079		198.596		202.357		206.413		205.883		200.051		201.791	200.118	203.463
2009	198.623		200.039		199.311		200.663		201.802		201.958		200.544	199.494	201.595
2010	202.106		201.982		202.108		200.227		201.882		201.168		201.624	201.908	201.339
2011	203.199		206.967		208.794		208.602		209.255		209.283		207.933	206.768	209.097
2012	209.203		212.618		212.226		211.267		214.033		212.901		212.227	211.520	212.935
2013	213.696														

TOOLS

[Areas at a Glance](#)
[Industries at a Glance](#)
[Economic Releases](#)
[Databases & Tables](#)
[Maps](#)

CALCULATORS

[Inflation](#)
[Location Quotient](#)
[Injury And Illness](#)

HELP

[Help & Tutorials](#)
[FAQs](#)
[Glossary](#)
[About BLS](#)
[Contact Us](#)

INFO

[What's New](#)
[Careers @ BLS](#)
[Find It! DOL](#)
[Join our Mailing Lists](#)
[Linking & Copyright Info](#)

RESOURCES

[Inspector General \(OIG\)](#)
[Budget and Performance](#)
[No Fear Act](#)
[USA.gov](#)
[Benefits.gov](#)
[Disability.gov](#)

[Freedom of Information Act](#) | [Privacy & Security Statement](#) | [Disclaimers](#) | [Customer Survey](#) | [Important Web Site Notices](#)

U.S. Bureau of Labor Statistics | Postal Square Building, 2 Massachusetts Avenue, NE Washington, DC 20212-0001

www.bls.gov | Telephone: 1-202-691-5200 | TDD: 1-800-877-8339 | [Contact Us](#)



Progressive Waste Solutions of TX, Inc.

4001 Old Denton Rd, Haltom City, Texas 76117

Contact: Paul Hansen; District Manager

Phone: (817) 222-2221

City of KENNEDALE RATE SHEET

Effective: May 2013 BILLING

RESIDENTIAL CURBSIDE COLLECTION: \$8.78 per month, per Single-Family Residential Unit

CURBSIDE RECYCLING: - per month, per Single-Family Residential Unit

COMMERCIAL HAND COLLECT: \$19.55 per month, per Commercial Hand Collect Unit

\$27.17 per month, per Commercial Hand Collect Unit

COMMERCIAL RATE SCHEDULE

CONTAINER SIZE	Lifts Per Week						Extra-Lifts
	1	2	3	4	5	6	
2 Cubic Yd	71.74	108.22	147.42	204.37	294.10	393.62	26.59
3 Cubic Yd	76.42	122.35	163.50	207.27	303.09	410.80	36.57
4 Cubic Yd	100.88	150.33	228.67	299.87	372.63	436.19	46.54
6 Cubic Yd	127.95	203.06	273.59	358.99	455.01	518.82	53.17
8 Cubic Yd	152.49	254.16	352.69	458.71	520.10	566.00	59.82

FRONT LOAD COMPACTOR RATES* (Negotiable)

6 Cubic Yd							
8 Cubic Yd							

Containers w/ Casters \$ 38.03 per month

Containers w/ Locks or Gates \$ 8.69 per month

ROLL OFF RATE SCHEDULE

CONTAINER SIZE	ROLL OFF OPEN TOPS						DRY-RUNS
	HAUL	DELIVERY	DAILY RENT	TONNAGE			
20 Cubic Yd	255.94	92.36	4.62	27.16			76.06
30 Cubic Yd	255.94	92.36	4.62	27.16			76.06
40 Cubic Yd	255.91	92.36	4.62	27.16			76.06

Franchise and Billing Fees:

Residential: 10.0%

Commercial: 10.0%

* All rates are inclusive of all franchise and billing fees

AMENDMENT AND RENEWAL AGREEMENT

This Amendment and Renewal Agreement (the "Amendment") is entered into this 3 day of OCTOBER, 2012 by and between Progressive Waste Solutions of TX, Inc. (the "Contractor") and the City of Kennedale, Texas (the "City").

RECITALS:

WHEREAS, the City and IESI TX Corporation entered into a Consolidated Contract for Residential and Commercial Solid Waste & Recycle Collection dated as of November 1, 2007 (the "Contract");

WHEREAS, on June 20, 2012 IESI TX Corporation changed its name to Progressive Waste Solutions of TX, Inc.;

WHEREAS, the Contract between the Contractor and the City is to terminate as of January 31, 2013; and

WHEREAS, the Contractor and the City mutually desire to amend and renew the Contract as further described herein.

AGREEMENT:

NOW, THEREFORE, and in consideration of the premises and such other lawful consideration, the receipt and sufficiency of which each of the parties hereto acknowledge, the parties agree as follows:

1. Term. Pursuant to Section 2 of the Contract, the term of the Contract is hereby extended for an additional five (5) year period beginning on February 1, 2013 thereby extending the termination date of the Contract to January 31, 2018.

2. Definitions. The following definition is hereby added to Section 3 of the Contract:

"Contract Year: A one year period beginning on February 1 and ending on January 31."

3. Annual Donation. The following is hereby added to the Contract as Section 4.B.(13):

"Keep Kennedale Beautiful: During each Contract Year of the Contract, beginning February 1, 2013, the Contractor shall donate \$2,000.00 to the City to assist the City in keeping Kennedale beautiful."

4. Attachment A. Attachment A of the contract is hereby deleted in its entirety and replaced with the attached Attachment A.
5. Reaffirmation. The parties hereby reaffirm their agreement with all the terms and provisions of the Contract, as amended by this Amendment.
6. Entire Agreement. The Contract together with this Amendment represents the entire agreement among the parties with respect to the matters that are the subject hereof.
7. Counterparts: Facsimile Signatures. The Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall collectively constitute one and the same instrument representing this Amendment between the parties hereto, and it shall not be necessary for the proof of this Amendment that any party produce or account for more than one such counterpart. Facsimile signatures shall be given the same force and effect as original signatures and shall be treated for all purposes and intents as original signatures.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

CITY OF KENNEDALE, TEXAS
405 Municipal Drive
Kennedale, TX 76060

By: Bob Hart
Name: Bob Hart
Title: City Manager

**PROGRESSIVE WASTE
SOLUTIONS OF TX, INC.**
2301 Eagle Pkwy, Ste. 200
Fort Worth, TX 76177

By: John Gustafson
John Gustafson, Vice President



ATTACHMENT "A"

PROGRESSIVE WASTE SOLUTIONS OF TX, INC.

4001 Old Denton Rd, Haltom City, Texas 76117

Contact: Bob Kneis; District Manager

Phone: (817) 222-2221

City of Kennedale RATE SHEET

Effective: 4/1/2010

RESIDENTIAL CURBSIDE COLLECTION: \$8.60 per month, per Single-Family Residential Unit

COMMERCIAL HAND COLLECT: \$19.14 1X per week (includes 96 gallon cart),
per month, per commercial premise

\$26.60 2X per week (includes 96 gallon cart),
per month, per commercial premise

MONTHLY COMMERCIAL RATE SCHEDULE

CONTAINER SIZE	Lifts Per Week						(Charge Per Additional Lift)
	1	2	3	4	5	6	
2 Cubic Yd	\$70.23	\$105.94	\$144.32	\$200.07	\$287.91	\$385.34	\$26.03
3 Cubic Yd	\$74.81	\$119.77	\$160.06	\$202.91	\$296.71	\$402.15	\$35.80
4 Cubic Yd	\$98.76	\$147.17	\$223.86	\$293.56	\$364.79	\$427.01	\$45.56
6 Cubic Yd	\$125.26	\$198.79	\$267.83	\$351.43	\$445.43	\$507.90	\$52.05
8 Cubic Yd	\$149.28	\$248.81	\$345.27	\$449.06	\$509.15	\$554.09	\$58.56

MONTHLY FRONT LOAD COMPACTOR RATES (Negotiable)

(Charge Per Additional Lift)

6 Cubic Yd							
8 Cubic Yd							

Containers w/ Casters \$37.23 per month

Containers w/ Locks or Gates \$8.51 per month

ROLL OFF RATE SCHEDULE

CONTAINER SIZE	ROLL OFF OPEN TOPS				
	HAUL	DELIVERY	DAILY RENT	DISPOSAL	DRY RUNS
20 Cubic Yd	\$250.55	\$90.42	\$4.52	\$26.59 per ton	\$74.46
30 Cubic Yd	\$250.55	\$90.42	\$4.52	\$26.59 per ton	\$74.46
40 Cubic Yd	\$250.55	\$90.42	\$4.52	\$26.59 per ton	\$74.46

Franchise and Billing Fees:

Residential: 10.0%

Commercial: 10.0%

* All rates are inclusive of all franchise and billing fees



Date: April 11, 2013

Agenda Item No: REGULAR ITEMS - D.

I. Subject:

Consider action to appoint a Vice Chair to the Planning and Zoning Commission.

II. Originated by:

III. Summary:

The Commission has been without a vice-chair since its previous vice-chair became a member of the City Council. During its March 21st meeting, the Commission agreed to forward a recommendation to Council that Thomas Pirtle be appointed vice-chair of the Planning & Zoning Commission.

IV. Notification:

V. Fiscal Impact Summary:

VI. Legal Impact:

VII. Recommendation:

VIII. Alternative Actions:

IX. Attachments:

Date: April 11, 2013

Agenda Item No: REGULAR ITEMS - E.

I. Subject:

Consider authorizing the Mayor to execute an Agreement to Participate in Tax Increment Reinvestment Zone Number One, City of Kennedale, Texas (New Hope Road) between the City of Kennedale and Tarrant County.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Bob Hart will present information on the subject.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

1.	TIRZ - Tarrant County	tirz tc.pdf
----	-----------------------	-------------

**AGREEMENT TO PARTICIPATE IN
TAX INCREMENT REINVESTMENT ZONE NUMBER ONE,
CITY OF KENNEDALE, TEXAS
(NEW HOPE ROAD)**

This **AGREEMENT TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF KENNEDALE, TEXAS** ("Agreement") is entered into by and between the **CITY OF KENNEDALE, TEXAS** (the "City") and **TARRANT COUNTY, TEXAS** (the "County").

The City and the County hereby agree that the following statements are true and correct and constitute the basis upon which the City and the County have entered into this Agreement:

- A. On July 12, 2012, the City Council of the City of Kennedale, Texas (the "Council") adopted City Ordinance No. 506 designating certain real property generally located along New Hope Road and Bloxom Road as Tax Increment Reinvestment Zone Number One, City of Kennedale, Texas (the "Zone"). The Zone is informally known as "New Hope Road". City Ordinance No. 506 is hereby incorporated by reference for all purposes and collectively attached hereto as **Exhibit "A"**.
- B. Designation of the Zone will cause development of property in and around the Zone to occur that would not occur otherwise in the foreseeable future. It is anticipated that other complementary development in the Zone will follow. This overall development will result in increased tax revenues and other public benefits for both the City and the County.
- C. Pursuant to Section 311.013(f) of the Texas Tax Code, the County is not required to pay any tax increment into the tax increment fund of the Zone unless it enters into an agreement to do so with the City. The County wishes to enter into such an agreement with the City.

NOW, THEREFORE, for and in consideration of the conditions set forth herein, the sufficiency of which is hereby acknowledged, the City and the County do hereby contract, covenant and agree as follows:

1. **INCORPORATION OF RECITALS.**

The parties hereby agree that the recitals set forth above are true and correct and form the basis upon which they have entered into this Agreement.

2. **DEFINITIONS.**

In addition to any terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

Act means the Tax Increment Financing Act, as amended and as codified in Chapter 311 of the Texas Tax Code.

Captured Appraised Value in a given year means the total appraised value of all real property taxable by the County and located in the Zone for that year less the Tax Increment Base.

Project Plan means the project plan for the development and/or redevelopment of the Zone, as adopted by the TIF Board and approved by the City Council of the City and attached hereto as **Exhibit "B"**.

TIF Board means the governing board of directors of the Zone appointed in accordance with Section 311.009 of the Act and pursuant to Section 4.4 of this Agreement.

Tax Increment in a given year means the amount of property taxes levied and collected by the County for that year on the Captured Appraised Value of real property taxable by the County and located in the Zone.

Tax Increment Base means the total appraised value as of January 1, 2012 of all real property taxable by the County and located in the Zone.

Tax Increment Fund means that fund created by the City pursuant to Section 311.014 of the Act and Section 6 of City Ordinance No. 506, which will be maintained by the City as a separate and individual account into which all revenues of the Zone will be deposited, including (i) deposits of Tax Increment by the City and by other taxing units with jurisdiction over real property in the Zone, including the County, and (ii) all accrued interest earned on the cash balance of the fund.

TIF Ordinance means City Ordinance No. 506 adopted on July 12, 2012, attached hereto as **Exhibit "A"**.

Zone means the certain real properties and boundaries as described in City Ordinance No. 506.

3. **DEPOSIT OF TAX INCREMENT.**

Pursuant to a Resolution duly adopted by the governing body of the County, which Resolution is attached hereto as **Exhibit "C"** and is hereby made a part of this Agreement for all purposes, and specifically subject to Section 4 of this Agreement, the County hereby agrees to deposit each year during the twenty-five (25) year of the term of the Zone,

beginning with the 2013 tax year, seventy-five (75%) of the County's Tax Increment into the Tax Increment Fund. The calculation to determine the dollar amount of the County's Tax Increment to be deposited shall be made in accordance with the County's Tax Increment Financing Policy and such deposits shall be made in accordance with the City's standard administrative procedures, but only following receipt of a bill from the City that outlines the City's calculation of the amount of the deposit that is required for that year. The County's deposits to the Tax Increment Fund shall be limited to a maximum cumulative contribution of \$2,481,849.00 (the "**Maximum County Contribution**").

The County is not obligated to pay the County Tax Increment from any source other than taxes collected on the Captured Appraised Value. Furthermore, the County has no duty or obligation to pay the County Tax Increment from any other County taxes or revenues, or until the County Tax Increment in the Zone is actually collected. Any portion of the taxes representing the County Tax Increment that are paid to the County and subsequently refunded pursuant to the provision of the Texas Tax Code shall be offset against future payments to the Tax Increment Fund.

4. LIMITATIONS ON TAX INCREMENT DEPOSITS AND USE OF FUNDS.

This Agreement is based on the following conditions, and the City agrees and acknowledges the County's right to enforce the conditions contained herein by injunction or any other lawful means in the event one or more of such conditions are not satisfied.

4.1 Amendments to TIF Ordinance.

The TIF Ordinance designates the boundaries, the eligible real properties for the calculation of Tax Increment for the Zone and the specific participation level of the City. If the TIF Ordinance is amended, the County may suspend payment into the TIF Fund as described in Section 3 until the amendment is approved by the governing body of the County as an amendment to this Agreement.

4.2. Certain Zone Project Costs Excluded.

The Tax Increment deposited into the Tax Increment Fund by the County shall be used to pay project costs for purposes as set forth and identified in the Project Plan. All TIF Fund allocations, including but not limited to any management and administrative costs, must be approved by the TIF Board in accordance with the Project Plan. If the Project Plan, attached hereto as Exhibit "B", is amended to substantially change the scope and nature of the projects included in the Project Plan or to include additional projects and associated costs that will increase the Total Public Improvement Costs of the Project Plan, the County may suspend payment into the TIF Fund as described in Section 3 until the amended Project Plan is approved by the governing body of the County as an amendment to this Agreement.

4.3. Zone Expansion.

As defined, the Zone shall include real properties located within the boundaries as described in the TIF Ordinance. If the Zone is expanded, the County is not required to deposit into the Tax Increment Fund any Tax Increment generated from properties in the expanded area unless participation in the expanded boundary area is approved by the governing body of the County as an amendment to this Agreement. Additionally, the Tax Increment deposited into the Tax Increment Fund by the County may not be used for any permissible project costs in any portion of the expanded area of the Zone unless approved by the governing body of the County as an amendment to this Agreement.

4.4| TIF Board Membership.

Pursuant to Section 3 of City Ordinance No. 506 creating the Zone, during the term of the Zone, the TIF Board shall consist of seven (7) members comprised of at least one (1) County representative and one (1) Tarrant County Hospital District representative, and the remaining members of the Board shall be designated by the City Council or other participating taxing entity(s). The governing body of the County and Tarrant County Hospital District shall provide the names and addresses of their designated representative(s) to the City Council of the City for appointment to the TIF Board. The City Council of the City shall appoint the designated representative(s) to the TIF Board. If the designated representatives are not appointed to the TIF Board, the County shall suspend payment into the TIF Fund as described in Section 3 until such time that the requirements above are satisfied. The County may also appoint and maintain as many non-voting ex-officio members on the Board of Directors of the Zone as the County may desire.

5. TERM.

This Agreement shall take effect on the date as of which both parties have executed it and shall expire upon the earlier of (i) December 31, 2037 or an earlier termination date designated by ordinance subsequently adopted by the City Council of the City or, (ii) the date on which all project costs of the Zone, including, but not limited to, tax increment bonds and interest on those bonds, have been paid or otherwise satisfied in full or, (iii.) the date on which the Maximum County Contribution is reached.

Nothing in this Agreement limits the authority of the Tarrant County Commissioners Court to extend the term of the Agreement. Upon termination of the Agreement, the obligation of the County to contribute to the Tax Increment Fund for the Zone shall end; however, any refund obligations of the City or the Zone shall survive such termination.

6. TIF FUND ACCOUNTING.

Throughout the term of the Zone, no later than 90th day following the end of each fiscal year of the City, the City shall provide the County with an annual report on the Zone and an accounting of the funds deposited to and disbursed from the Tax Increment Fund, including accrued interest. After all project costs, obligations and/or bonded indebtedness of the Zone have been paid or at the time of the expiration of this Agreement, any funds remaining in the Tax Increment Fund following the final annual accounting by the City shall be paid to those taxing units participating in the Zone in proportion to each taxing unit's share of the total amount of Tax Increment deposited into the Tax Increment Fund.

Furthermore, if the projects to be undertaken pursuant to the Project Plan are not undertaken, are discontinued, or are terminated, all monies remaining in the Tax Increment Fund after satisfaction of lawful claims, shall be paid to the participating taxing entities in proportion to their respective share of the total amount of Tax Increment deposited into the Tax Increment Fund derived from taxable real property in the Zone that were deposited in the Tax Increment.

7. RESPONSIBILITY FOR ACTS.

The City and the County shall each be responsible for the sole negligent acts of their officers, agents, employees or separate contractors. In the event of joint and concurrent negligence of both the City and the County, responsibility, if any, shall be apportioned comparatively with the laws of the State of Texas, with the understanding that neither party waives any governmental powers or immunities or any other defenses available to each individually.

8. NOTICES.

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party may subsequently designate in writing, by certified mail, postage prepaid, or by hand delivery:

City:

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

County:

Administrator's Office
Tarrant County
100 East Weatherford, Suite 404
Fort Worth, Texas 76196

9. NO WAIVER.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver

of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

10. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

11. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the City and the County and are not intended to create any rights, contractual or otherwise, to any other person or entity.

12. FORCE MAJEURE.

The parties shall exercise every reasonable effort to meet their respective obligations as set forth in this Agreement, but shall not be held liable for any delay in or omission of performance due to *force majeure* or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems and/or any other cause beyond the reasonable control of either party.

13. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

14. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

15. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and the County as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both

CITY OF KENNEDALE, TEXAS

By: _____
JOHN CLARK, Mayor

Date: _____

ATTEST:

City Secretary

APPROVED AS/TO FORM:

BY _____
City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

TARRANT COUNTY, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **B. GLEN WHITLEY**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **TARRANT COUNTY, TEXAS**, and as the **County Judge** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2013.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

CITY OF KENNEDALE, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JOHN CLARK** known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF KENNEDALE**, a municipal corporation of Tarrant County, Texas, and as the **Mayor** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2013.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

Date: April 11, 2013

Agenda Item No: REGULAR ITEMS - F.

I. Subject:

Consider authorizing the Mayor to execute an Agreement to Participate in Tax Increment Reinvestment Zone Number One, City of Kennedale, Texas (New Hope Road) between the City of Kennedale and the Tarrant County Hospital District.

II. Originated by:

Amethyst G. Cirmo, City Secretary and Communications Coordinator

III. Summary:

Bob Hart will present information on the subject.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

1.	TIRZ - TCHD	tirz tchd.pdf
----	-------------	---------------

**AGREEMENT TO PARTICIPATE IN
TAX INCREMENT REINVESTMENT ZONE NUMBER ONE,
CITY OF KENNEDALE, TEXAS
(NEW HOPE ROAD)**

This **AGREEMENT TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF KENNEDALE, TEXAS** ("**Agreement**") is entered into by and between the **CITY OF KENNEDALE, TEXAS** (the "**City**") and **TARRANT COUNTY HOSPITAL DISTRICT** (the "**Hospital District**").

The City and the Hospital District hereby agree that the following statements are true and correct and constitute the basis upon which the City and the Hospital District have entered into this Agreement:

- A. On July 12, 2012, the City Council of the City of Kennedale, Texas (the "**Council**") adopted City Ordinance No. 506 designating certain real property generally located along New Hope Road and Bloxom Road as Tax Increment Reinvestment Zone Number One, City of Kennedale, Texas (the "**Zone**"). The Zone is informally known as "New Hope Road". City Ordinance No. 506 is hereby incorporated by reference for all purposes and collectively attached hereto as **Exhibit "A"**.
- B. Designation of the Zone will cause development of property in and around the Zone to occur that would not occur otherwise in the foreseeable future. It is anticipated that other complementary development in the Zone will follow. This overall development will result in increased tax revenues and other public benefits for both the City and the Hospital District.
- C. In accordance with Section 311.0125(f-1) of the Texas Tax Code, the governing body of Tarrant County may act on and enter into an agreement to participate in funding of a Tax Increment Reinvestment Zone on behalf of the Tarrant County Hospital District.
- D. Pursuant to Section 311.013(f) of the Texas Tax Code, the Hospital District is not required to pay any tax increment into the tax increment fund of the Zone unless it enters into an agreement to do so with the City. The governing body of Tarrant County, acting on behalf of the Hospital District, wishes to enter into such an agreement with the City.

NOW, THEREFORE, for and in consideration of the conditions set forth herein, the sufficiency of which is hereby acknowledged, the City and the Hospital District do hereby contract, covenant and agree as follows:

1. **INCORPORATION OF RECITALS.**

The parties hereby agree that the recitals set forth above are true and correct and form the basis upon which they have entered into this Agreement.

2. **DEFINITIONS.**

In addition to any terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

Act means the Tax Increment Financing Act, as amended and as codified in Chapter 311 of the Texas Tax Code.

Captured Appraised Value in a given year means the total appraised value of all real property taxable by the Hospital District and located in the Zone for that year less the Tax Increment Base.

Project Plan means the project plan for the development and/or redevelopment of the Zone, as adopted by the TIF Board and approved by the City Council of the City and attached hereto as **Exhibit "B"**.

TIF Board means the governing board of directors of the Zone appointed in accordance with Section 311.009 of the Act and pursuant to Section 4.4 of this Agreement.

Tax Increment in a given year means the amount of property taxes levied and collected by the Hospital District for that year on the Captured Appraised Value of real property taxable by the Hospital District and located in the Zone.

Tax Increment Base means the total appraised value as of January 1, 2012 of all real property taxable by the Hospital District and located in the Zone.

Tax Increment Fund means that fund created by the City pursuant to Section 311.014 of the Act and Section 6 of City Ordinance No. 506, which will be maintained by the City as a separate and individual account into which all revenues of the Zone will be deposited, including (i) deposits of Tax Increment by the City and by other taxing units with jurisdiction over real property in the Zone, including the Hospital District, and (ii) all accrued interest earned on the cash balance of the fund.

TIF Ordinance means City Ordinance No. 506 adopted on July 12, 2012, attached hereto as **Exhibit "A"**.

Zone means the certain real properties and boundaries as described in City Ordinance No. 506.

3. **DEPOSIT OF TAX INCREMENT.**

Pursuant to a Resolution duly adopted by the governing body of Tarrant County, which Resolution is attached hereto as **Exhibit "C"** and is hereby made a part of this Agreement for all purposes, and specifically subject to Section 4 of this Agreement, the Hospital District hereby agrees to deposit each year during the twenty-five (25) year of the term of the Zone, beginning with the 2013 tax year, fifty percent (50%) of the Hospital District's Tax Increment into the Tax Increment Fund. The calculation to determine the dollar amount of the Hospital District's Tax Increment to be deposited shall be made in accordance with the Hospital District's Tax Increment Financing Policy and such deposits shall be made in accordance with the City's standard administrative procedures, but only following receipt of a bill from the City that outlines the City's calculation of the amount of the deposit that is required for that year. The Hospital District's deposits to the Tax Increment Fund shall be limited to a maximum cumulative contribution of \$1,427,690.00 (the "**Maximum Hospital District Contribution**").

The Hospital District is not obligated to pay the Hospital District Tax Increment from any source other than taxes collected on the Captured Appraised Value. Furthermore, the Hospital District has no duty or obligation to pay the Hospital District Tax Increment from any other Hospital District taxes or revenues, or until the Hospital District Tax Increment in the Zone is actually collected. Any portion of the taxes representing the Hospital District Tax Increment that are paid to the Hospital District and subsequently refunded pursuant to the provision of the Texas Tax Code shall be offset against future payments to the Tax Increment Fund.

4. LIMITATIONS ON TAX INCREMENT DEPOSITS AND USE OF FUNDS.

This Agreement is based on the following conditions, and the City agrees and acknowledges the Hospital District's right to enforce the conditions contained herein by injunction or any other lawful means in the event one or more of such conditions are not satisfied.

4.1 Amendments to TIF Ordinance.

The TIF Ordinance designates the boundaries, the eligible real properties for the calculation of Tax Increment for the Zone and the specific participation level of the City. If the TIF Ordinance is amended, the Hospital District may suspend payment into the TIF Fund as described in Section 3 until the amendment is approved by the governing body of Tarrant County as an amendment to this Agreement.

4.2 Certain Zone Project Costs Excluded.

The Tax Increment deposited into the Tax Increment Fund by the Hospital District shall be used to pay project costs for purposes as set forth and identified in the Project Plan. All TIF Fund allocations, including but not limited to any management and administrative costs, must be approved by the TIF Board in accordance with the Project Plan. If the Project Plan, attached hereto as Exhibit

"B", is amended to substantially change the scope and nature of the projects included in the Project Plan or to include additional projects and associated costs that will increase the Total Public Improvement Costs of the Project Plan, the Hospital District may suspend payment into the TIF Fund as described in Section 3 until the amended Project Plan is approved by the governing body of Tarrant County as an amendment to this Agreement.

4.3. Zone Expansion.

As defined, the Zone shall include real properties located within the boundaries as described in the TIF Ordinance. If the Zone is expanded, the Hospital District is not required to deposit into the Tax Increment Fund any Tax Increment generated from properties in the expanded area unless participation in the expanded boundary area is approved by the governing body of Tarrant County as an amendment to this Agreement. Additionally, the Tax Increment deposited into the Tax Increment Fund by the Hospital District may not be used for any permissible project costs in any portion of the expanded area of the Zone unless approved by the governing body of Tarrant County as an amendment to this Agreement.

4.4 TIF Board Membership.

Pursuant to Section 3 of City Ordinance No. 506 creating the Zone, during the term of the Zone, the TIF Board shall consist of seven (7) members comprised of at least one (1) Tarrant County representative and one (1) Tarrant County Hospital District representative, and the remaining members of the Board shall be designated by the City Council or other participating taxing entity(s). The governing body of Tarrant County and Tarrant County Hospital District shall provide the names and addresses of their designated representative(s) to the City Council of the City for appointment to the TIF Board. The City Council of the City shall appoint the designated representative(s) to the TIF Board. If the designated representatives are not appointed to the TIF Board, the Hospital District shall suspend payment into the TIF Fund as described in Section 3 until such time that the requirements above are satisfied. The Hospital District may also appoint and maintain as many non-voting ex-officio members on the Board of Directors of the Zone as the Hospital District may desire.

5. TERM.

This Agreement shall take effect on the date as of which parties have executed it and shall expire upon the earlier of (i) December 31, 2037 or an earlier termination date designated by ordinance subsequently adopted by the City Council of the City or, (ii) the date on which all project costs of the Zone, including, but not limited to, tax increment bonds and interest on those bonds, have been paid or otherwise satisfied in full or, (iii) the date on which the Maximum Hospital District Contribution is reached.

Nothing in this Agreement limits the authority of the Tarrant County Commissioners Court to extend the term of the Agreement. Upon termination of the Agreement, the obligation of the Hospital District to contribute to the Tax Increment Fund for the Zone shall end; however, any refund obligations of the City or the Zone shall survive such termination.

6. TIF FUND ACCOUNTING.

Throughout the term of the Zone, no later than 90th day following the end of each fiscal year of the City, the City shall provide the Hospital District with an annual report on the Zone and an accounting of the funds deposited to and disbursed from the Tax Increment Fund, including accrued interest. After all project costs, obligations and/or bonded indebtedness of the Zone have been paid or at the time of the expiration of this Agreement, any funds remaining in the Tax Increment Fund following the final annual accounting by the City shall be paid to those taxing units participating in the Zone in proportion to each taxing unit's share of the total amount of Tax Increment deposited into the Tax Increment Fund.

Furthermore, if the projects to be undertaken pursuant to the Project Plan are not undertaken, are discontinued, or are terminated, all monies remaining in the Tax Increment Fund after satisfaction of lawful claims, shall be paid to the participating taxing entities in proportion to their respective share of the total amount of Tax Increment deposited into the Tax Increment Fund derived from taxable real property in the Zone that were deposited in the Tax Increment.

7. RESPONSIBILITY FOR ACTS.

The City and the Hospital District shall each be responsible for the sole negligent acts of their officers, agents, employees or separate contractors. In the event of joint and concurrent negligence of both the City and the Hospital District, responsibility, if any, shall be apportioned comparatively with the laws of the State of Texas, with the understanding that neither party waives any governmental powers or immunities or any other defenses available to each individually.

8. NOTICES.

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party may subsequently designate in writing, by certified mail, postage prepaid, or by hand delivery:

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

Tarrant County:
Administrator's Office
Tarrant County
100 East Weatherford, Suite 404
Fort Worth, Texas 76196

Tarrant County Hospital District:

JPS Health Network
Attn: President/CEO
1500 S. Main Street
Fort Worth, TX 76104

9. NO WAIVER.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

10. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

11. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the City and the Hospital District and are not intended to create any rights, contractual or otherwise, to any other person or entity.

12. FORCE MAJEURE.

The parties shall exercise every reasonable effort to meet their respective obligations as set forth in this Agreement, but shall not be held liable for any delay in or omission of performance due to *force majeure* or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems and/or any other cause beyond the reasonable control of either party.

13. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

14. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

15. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and the Hospital District as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

16. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED as of the later date below:

TARRANT COUNTY, TEXAS
on behalf of the
TARRANT COUNTY HOSPITAL
DISTRICT:

By: _____
B. GLEN WHITLEY, County Judge

Date: _____

ATTEST:

By: _____
Deputy County Clerk

APPROVED AS TO FORM*:

By: _____
Assistant District Attorney

** By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our view of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval and should seek review and approval by their own respective attorney (s).*

CITY OF KENNEDALE, TEXAS

By: _____
JOHN CLARK, Mayor

Date: _____

ATTEST:

City Secretary

APPROVED AS TO FORM:

BY _____
City Attorney

THE STATE OF TEXAS § **TARRANT COUNTY, TEXAS, on behalf of the**
 § **TARRANT COUNTY HOSPITAL DISTRICT**
COUNTY OF TARRANT §| **Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **B. GLEN WHITLEY**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **TARRANT COUNTY, TEXAS on behalf of the TARRANT COUNTY HOSPITAL DISTRICT**, and as the **County Judge** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2013.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

THE|STATE OF TEXAS §| **CITY OF KENNEDALE, TEXAS**
 §| **Acknowledgment**
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JOHN CLARK** known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF KENNEDALE**, a municipal corporation of Tarrant County, Texas, and as the **Mayor** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2013.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

Date: April 11, 2013

Agenda Item No: REGULAR ITEMS - G.

I. Subject:

Consider authorizing the Mayor to execute an Agreement to Participate in Tax Increment Reinvestment Zone Number One, City of Kennedale, Texas (New Hope Road) between the City of Kennedale and Tarrant County Community College District.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Bob Hart will present information on the subject.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

1.	TIRZ - TCCD	AGREEMENT TO PARTICIPATE IN TIRZ - TCC.docx
----	-------------	---

**AGREEMENT TO PARTICIPATE IN
TAX INCREMENT REINVESTMENT ZONE NUMBER ONE,
CITY OF KENNEDALE, TEXAS
(NEW HOPE ROAD)**

This **AGREEMENT TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF KENNEDALE, TEXAS (“Agreement”)** is entered into by and between the **CITY OF KENNEDALE, TEXAS (the “City”)** and **TARRANT COUNTY COLLEGE DISTRICT, TEXAS (the “TCCD”)**.

The City and TCCD hereby agree that the following statements are true and correct and constitute the basis upon which the City and the County have entered into this Agreement:

- A. On July 12, 2012, the City Council of the City of Kennedale, Texas (the “**Council**”) adopted City Ordinance No. 506 designating certain real property generally located along New Hope Road and Bloxom Road as Tax Increment Reinvestment Zone Number One, City of Kennedale, Texas (the “**Zone**”). The Zone is informally known as “New Hope Road”. City Ordinance No. 506 is hereby incorporated by reference for all purposes and collectively attached hereto as **Exhibit “A”**.
- B. Designation of the Zone will cause development of property in and around the Zone to occur that would not occur otherwise in the foreseeable future. It is anticipated that other complementary development in the Zone will follow. This overall development will result in increased tax revenues and other public benefits for both the City and the TCCD.
- C. Pursuant to Section 311.013(f) of the Texas Tax Code, the TCCD is not required to pay any tax increment into the tax increment fund of the Zone unless it enters into an agreement to do so with the City. The TCCD wishes to enter into such an agreement with the City.

NOW THEREFORE, for and in consideration of the conditions set forth herein, the sufficiency of which is hereby acknowledged, the City and the TCCD do hereby contract, covenant and agree as follows:

1. INCORPORATION OF RECITALS.

The parties hereby agree that the recitals set forth above are true and correct and form the basis upon which they have entered into this Agreement.

2. DEFINITIONS.

In addition to any terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

Act means the Tax Increment Financing Act, as amended and as codified in Chapter 311 of the Texas Tax Code.

Captured Appraised Value in a given year means the total appraised value of all real property taxable by TCCD and located in the Zone for that year less the Tax Increment Base.

Project Plan means the project plan for the development and/or redevelopment of the Zone, as adopted by the TIF Board and approved by the City Council of the City and attached hereto as Exhibit “B”.

TIF Board means the governing board of directors of the Zone appointed in accordance with Section 311.009 of the Act and pursuant to Section 4.4 of this Agreement.

Tax Increment in a given year means the amount of property taxes levied and collected by TCCD for that year on the Captured Appraised Value of real property taxable by TCCD and located in the Zone.

Tax Increment Base means the total appraised value as of January 1, 2012 of all real property taxable by TCCD and located in the Zone.

Tax Increment Fund means that fund created by the City pursuant to Section 311.014 of the Act and Section 6 of City Ordinance No. 506, which will be maintained by the City as a separate and individual account into which all revenues of the Zone will be deposited, including (i) deposits of Tax Increment by the City and by other taxing units with jurisdiction over real property in the Zone, including TCCD and (ii) all accrued interest earned on the cash balance of the fund.

TIF Ordinance means City Ordinance No. 506 adopted on July 12, 2012, attached hereto as Exhibit “A”.

Zone means the certain real properties and boundaries as described in City Ordinance No. 506.

3. DEPOSIT OF TAX INCREMENT

Pursuant to a Resolution duly adopted by the governing body of TCCD, which Resolution is attached hereto as Exhibit “C” and is hereby made a part of this Agreement for all purposes, and specifically subject to Section 4 of this Agreement, TCCD hereby agrees to deposit each year during the twenty-five (25) years of the term of the Zone, beginning with the 2013 tax year, fifty (50%) of TCCD’s Tax Increment into the Tax Increment Fund. The calculation to determine the dollar amount of the County’s Tax Increment to be deposited shall be made in accordance with the City’s standard administrative procedures, but only following receipt of a bill from the City that outlines the City’s calculation of the amount of the deposit that is required for that year. TCCD’s deposits to the Tax Increment Fund shall be limited to a maximum cumulative contribution of \$1,939,000.00 (the “Maximum TCCD Contribution”).

The TCCD is not obligated to pay the TCCD Tax Increment from any source other than taxes collected on the Captured Appraised Value. Furthermore, TCCD has no duty or obligation to pay the TCCD Tax Increment from any other TCCD taxes or revenues, or until the TCCD Tax Increment in the Zone is actually collected. Any portion of the taxes representing the TCCD Tax Increment that are paid to the TCCD and subsequently refunded pursuant to the provision of the Texas Tax Code shall be offset against future payments to the Tax Increment Fund.

4. LIMITATIONS ON TAX INCREMENT DEPOSITS AND USE OF FUNDS.

This Agreement is based on the following conditions, and the City agrees and acknowledges TCCD’s right to enforce the conditions contained herein by injunction or any other lawful means in the event one or more of such conditions are not satisfied.

4.1 Amendments to TIF Ordinance.

The TIF Ordinance designates the boundaries, the eligible real properties for the calculation of Tax Increment for the Zone and the specific participation level of the City. If the TIF Ordinance is amended, TCCD may suspend payment into the TIF Fund as described in Section 3 until the amendment is approved by the governing body of TCCD as an amendment to this Agreement.

4.2 Certain Zone Project Costs Excluded.

The Tax Increment deposited into the Tax Increment Fund by TCCD shall be used to pay project costs for purposes as set forth and identified in the Project Plan. All TIF Fund Allocations, including but not limited to any management and administrative costs, must be approved by the TIF Board in accordance with the Project Plan. If the Project Plan, attached hereto as Exhibit "B", is amended to substantially change the scope and nature of the projects included in the Project Plan or to include additional projects and associated costs that will increase the Total Public Improvement Costs of the Project Plan, the TCCD may suspend payment into the TIF Fund as described in Section 3 until the amended Project Plan is approved by the governing body of TCCD as an amendment to this Agreement.

4.3 Zone Expansion.

As defined, the Zone shall include real properties located within the boundaries as described in the TIF Ordinance. If the Zone is expanded, the TCCD is not required to deposit into the Tax Increment Fund any Tax Increment generated from properties in the expanded area unless participation in the expanded boundary area is approved by the governing of the TCCD as an amendment to this Agreement.

4.4 TIF Board Membership.

Pursuant to Section 3 of City Ordinance No. 506 creating the Zone, during the term of the Zone, the TIF Board shall consist of seven (7) members comprised of at least one (1) TCCD representative, and the remaining members of the Board shall be designated by the City Council or other participating taxing entity(s). The governing body of the TCCD shall provide the name and address of its designated representative to the City Council of the City for appointment to the TIF Board. The City Council of the City shall appoint the designated representative to the TIF Board. If the designated representative is not appointed to the TIF Board, TCCD shall suspend payment into the TIF Fund as described in Section 3 until such time that the requirements above are satisfied. The TCCD may also appoint and maintain as many as TCCD desire.

5. TERM.

This Agreement shall take effect on the date as of which both parties have executed it and shall expire upon the earlier of (i) December 31, 2037 or an earlier termination date designated by ordinance subsequently adopted by the City Council of the City or, (ii) the date on which all project costs of the Zone, including, but not limited to, tax increment bonds and interest on those bonds, have been paid or otherwise satisfied in full or, (iii) the date on which the Maximum County Contribution is reached.

Nothing in this Agreement limits the authority of the Tarrant County College District to extend the term of the Agreement. Upon termination of the Agreement, the obligation of TCCD to contribute to the Tax Increment Fund for the Zone shall end; however, any refund obligations of the City or the Zone shall survive such termination.

6. TIF FUNDING ACCOUNTING.

Throughout the term of the Zone, no later than 90th day following the end of each fiscal year of the City, the City shall provide TCCD with an annual report on the Zone and an accounting of the funds deposited to and disbursed from the Tax Increment Fund, including accrued interest. After all project costs, obligations and/or bonded indebtedness of the Zone have been paid or at the time of the expiration of this Agreement, any funds remaining in the Tax Increment Fund following the final annual accounting by the City shall be paid to those taxing units participating in the Zone in proportion to each taxing unit's share of the total amount of Tax Increment deposited into the Tax Increment Fund.

Furthermore, if the projects to be undertaken pursuant to the Project Plan are not undertaken, are discontinued, or are terminated, all monies remaining in the Tax Increment Fund after satisfaction of lawful claims, shall be paid to the participating taxing entities in proportion to their respective share of the total amount of Tax Increment deposited into the Tax Increment Fund derived from taxable real property in the Zone that were deposited in the Tax Increment.

7. RESPONSIBILITY FOR ACTS.

The City and TCCD shall each be responsible for the sole negligent acts of their officers, agents, employees or separate contractors. In the event of joint and concurrent negligence of both the City and TCCD, responsibility, if any, shall be apportioned comparatively with the laws of the State of Texas, with the understanding that neither party waives any governmental powers or immunities or any other defenses available to each individually.

8. NOTICES.

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party may subsequently designate in writing, by certified mail, postage prepaid, or by hand delivery:

City:

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

County:

Chancellor's Office
Tarrant County College District
1500 Houston Street
Fort Worth, TX 76102-6524

9. NO WAIVER.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

10. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District for the Northern District of Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

11. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the City and TCCD and are not intended to create any rights, contractual or otherwise, to any other person or entity.

12. FORCE MAJEURE.

The parties shall exercise every reasonable effort to meet their respective obligations as set forth in this Agreement, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems and/or any other cause beyond the reasonable control of either party.

13. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

14. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

15. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and TCCD as to the matters contained herein. Any Prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

16. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

Executed as of the later date below:

Tarrant County College District:

By: _____
Erma Johnson Hadley, Chancellor

Date: _____

Attest:

By: _____

APPROVED AS TO FORM:

By: _____
Attorney

CITY OF KENNEDALE, TEXAS

By: _____
John Clark, Mayor

Date: _____

ATTEST:

City Secretary

APPROVED AS TO FORM:

By: _____

CITY ATTORNEY

THE STATE OF TEXAS

TARRANT COUNTY, TEXAS

Acknowledgement

COUNTY OF TARRANT

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **Tarrant County, Texas**, and as the _____ thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE ____ day of _____, 2013.

Notary Public in and for the State of Texas

My Commission Expires

Notary's Printed Name

THE STATE OF TEXAS

CITY OF KENNEDALE, TEXAS

Acknowledgement

COUNTY OF TARRANT

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of THE City of Kennedale, a municipal corporation of Tarrant County, Texas, and as Mayor thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE ____ day of _____, 2013.

Notary Public in and for the State of Texas

My Commission Expires

Notary's Printed Name

EXHIBIT “A”

Date: April 11, 2013

Agenda Item No: EXECUTIVE SESSION - A.

I. Subject:

The City Council will meet in closed 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 preparation of developer's agreements.

II. Originated by:

Bob Hart, City Manager

III. Summary:

At this time the city council will meet in executive session.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments: