

NOTICE IS HEREBY GIVEN in accordance with order of the Office of the Governor issued March 16, 2020, the City Council of the City of Benbrook will conduct its Regular Meeting scheduled for **7:30 p.m.** on **Thursday February 18, 2021**, in the City Council Chambers, 911 Winscott Road, Benbrook, Texas by telephone conference in order to advance the public health goal of limiting face-to-face meetings (also called "social distancing") to slow the spread of the Coronavirus (COVID-19). While this meeting is open to the public, social distancing will be enforced. *For this meeting, the presiding officer will be physically present at the location described above. However, one or all other members of the City Council may participate in this meeting remotely through telephone conference providing for two-way audio communication for each member of the City Council.*

This Notice and Meeting Agenda, and the Agenda Packet, are posted online at <http://www.benbrook-tx.gov/AgendaCenter>.

The public toll-free dial-in number to participate in the telephonic meeting is: **1-866-894-9011** or local number **817-443-6248**.

The public will be permitted to offer public comments telephonically as provided by the agenda and as permitted by the presiding officer during the meeting. This meeting will be recorded, and the recording will be available to the public in accordance with the Open Meetings Act upon written request.

AGENDA
BENBROOK CITY COUNCIL
THURSDAY, FEBRUARY 18, 2021
911 WINSOTT ROAD, BENBROOK, TEXAS
PRE-COUNCIL WORKSESSION 7:15 P.M.
Review and discuss agenda items for regular meeting.
REGULAR MEETING 7:30 P.M.
COUNCIL CHAMBERS
ALL AGENDA ITEMS ARE SUBJECT TO FINAL ACTION

- I. CALL TO ORDER
- II. CITIZEN COMMENTS ON ANY AGENDA ITEM
- III. MINUTES
 - 1. Approve Minutes Of The Regular Meeting Held February 4, 2021

Documents:

[CC MINUTES-02-04-21.PDF](#)

IV. REPORTS FROM CITY MANAGER

A. CONTRACT

C-338 Approve Contract With Tarrant Regional Water District To Purchase Raw Water To Irrigate Dutch Branch Park

Documents:

[C-338 TWRD CONTRACT FOR RAW WATER.PDF](#)
[C-338 CONTRACT TRWD RAW WATER.PDF](#)

V. INFORMAL CITIZEN COMMENTS

State Law prohibits any deliberation of or decisions regarding items presented in informal citizen comments. City Council may only make a statement of specific information given in response to the inquiry; recite an existing policy; or request staff place the item on an agenda for a subsequent meeting. The exception to informal comments is that once an election date has been set by City Council comments relative to elections will not be broadcast on the City's cable channel. However, a copy of the tape containing citizens' comments will be available at city hall for review or purchase by interested citizens

VI. COUNCIL MEMBER AND STAFF COMMENTS

Announcements from City Councilmembers and City Staff may be made for items to include: expression of thanks; congratulations; condolence; recognition of public officials, employees or citizens; information regarding holiday schedules; reminders of community events or announcements involving an imminent threat to the public health and safety of the municipality that has arisen after the posing of the agenda. No discussion or formal action may be taken on these items at this meeting.

VII. ADJOURNMENT



**MINUTES
OF THE
MEETING OF THE
BENBROOK CITY COUNCIL
THURSDAY, FEBRUARY 4, 2021**

The regular meeting of the Benbrook City Council was held on February 4, 2021 at 7:30 p.m. in the Council Chambers with the following Council members present:

Jerry Dittrich, Mayor
Renee Franklin-via Telephone Conference
Larry Marshall- via Telephone Conference
Dustin Phillips-via Telephone Conference
Alfredo Valverde-via Telephone Conference
Laura Mackey-via Telephone Conference
Jason Ward-via Telephone Conference

Also Present:

Andy Wayman, City Manager
Jim Hinderaker, Assistant City Manager
Joanna King, City Secretary
Beth Fischer, Deputy City Secretary
Wes Cooper, Assistant IT Director

I. CALL TO ORDER

Meeting called to order at 7:30 p. m. by Mayor Jerry Dittrich.

II. CITIZEN COMMENTS ON ANY AGENDA ITEM

Mayor Dittrich paused the meeting for citizen comments on any agenda item via telephone call. There were no callers.

III. MINUTES

1. Minutes of the regular meeting held January 21, 2021

Motion by Dr. Marshall, seconded by Ms. Mackey to approve the minutes of the regular meeting held January 21, 2021.

Vote on the Motion by Roll Call:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Dittrich, Mr. Valverde, Ms. Mackey, Mr. Ward

Noes: None

Motion carried unanimously.

IV. PRESENTATION BY MAYOR AND MEMBERS OF CITY COUNCIL

CC-2021-02 Adopt Resolution calling Bond Election for May 1, 2021 (Adoptar resolución que llama a la elección de bonos para el 1 de mayo de 2021) (Thông qua Nghị quyết kêu gọi bầu cử trái phiếu cho ngày 1 tháng 5 năm 2021)

Mayor Dittrich introduced the Resolution to City Council. Motion by Ms. Franklin, seconded by Mr. Phillips to adopt Resolution 2021-01 calling a bond election for May 1, 2021.

There was no discussion on the item.

Vote on the Motion

Ayes: Dr. Marshall, Mr. Phillips, Mayor Dittrich, Mr. Valverde, Ms. Mackey, Mr. Ward, Ms. Franklin

Noes: None

Motion carried unanimously.

El alcalde Dittrich presentó la Resolución al Ayuntamiento. Moción de la Sra. Franklin, secundada por el Sr. Phillips para adoptar la Resolución 2021-01 que llama a una elección de fianza para el 1 de mayo de 2021.

No se discutió sobre el tema.

Votación sobre la moción

Ayes: Dr. Marshall, Sr. Phillips, Alcalde Dittrich, Sr. Valverde, Sra. Mackey, Sr. Ward, Sra. Franklin

Noes: Ninguno

La moción se llevó a cabo por unanimidad.

Thị trưởng Dittrich đã giới thiệu Nghị quyết lên Hội đồng thành phố. Đề nghị của bà Franklin, được ông Phillips chấp nhận thông qua Nghị quyết 2021-01 kêu gọi một cuộc bầu cử trái phiếu vào ngày 1 tháng 5 năm 2021.

Không có cuộc thảo luận nào về mục này.

Bỏ phiếu cho chuyển động

Ayes: Tiến sĩ Marshall, Ông Phillips, Thị trưởng Dittrich, Ông Valverde, Bà Mackey, Ông Ward, Bà Franklin

Noes: Không có

Chuyển động được thực hiện nhất trí.

CC-2021-03 Accept Resignation from Hunter Brauer, Place 7 Planning and Zoning Commission and determine method to fill vacancy

Joanna King gave the following report: On January 21, 2021, staff received the resignation from Hunter Brauer, Place 7 on the Planning and Zoning Commission. Mr. Brauer was appointed to Place 7 in February 2020 to fill a vacancy in a term expiring December 30, 2021.

The normal process for advertising and receiving applications for the various City Boards and Commissions begins in September of each year with appointments made in December.

Because the resignation will leave a vacancy of ten months, staff believes the vacancy should be filled prior to the normal process.

Staff is requesting City Council to determine a method to fill the vacancy.

Following discussion, motion by Mr. Ward, seconded by Mr. Valverde to:

- Accept the resignation from Hunter Brauer from the Planning and Zoning Commission and thank him for his service;
- Move Beth Bodine-Jones from Place 4 on the Zoning Board/Appeals Commission to Place 7 on the Planning and Zoning Commission for a term to expire December 30, 2021; and
- Move Tiffany Ryan from Alternate D to Place 4 on the Zoning Board/Appeals Commission; and

Vote on the Motion

Ayes: Mr. Phillips, Mayor Dittrich, Mr. Valverde, Ms. Mackey, Mr. Ward, Ms. Franklin, Dr. Marshall

Noes: None

Motion carried unanimously.

V. REPORTS FROM CITY MANAGER

A. GENERAL

G-2501 Adopt Ordinance amending Title 16-Subdivisions of the Benbrook Municipal Code (1985), as amended, by amending Section 16.28.010.E-Exemptions by adding "city incentivized development activities" to the list of items exempt from the requirements of Section 16.28.010-Preservation of Trees and Native Vegetation

Jim Hinderaker gave the following report: Section 16.28.010 – Preservation of Trees and Native Vegetation of the Benbrook Municipal Code, initially codified in June 2002 and as amended over the years, provides for the preservation and mitigation of trees, tree stands and existing tree canopies. While this section exempts a number of municipal related development activities (e.g. removal of trees within rights-of-way, utility and drainage easements, capital improvement projects, or situations deemed hazardous), the exemption provisions do not extend to City incentivized development.

Under current tree mitigation regulations, the City, via the Benbrook Economic Development Corporation, is essentially required to pay itself for the removal of any protected tree. The proposed amendment will eliminate this constraint but require approval from both the Benbrook Economic Development Corporation and City Council via an approved development agreement that may incorporate tree preservation/mitigation criteria specific to the proposed development.

Staff recommends that the following underlined language be added to Section 16.28.010.E. No language is proposed to be removed.

E. Exemptions. The following activities are exempt from the regulations of this chapter.

16. Incentivized development activities pursuant to a Benbrook Economic Development Corporation and City Council approved development agreement.

Motion by Dr. Marshall, seconded by Ms. Franklin to adopt Ordinance No. 1464 amending the Subdivision Ordinance.

Vote on the Motion

Ayes: Mayor Dittrich, Mr. Valverde, Ms. Mackey, Mr. Ward, Ms. Franklin, Dr. Marshall, Mr. Phillips

Noes: None

Motion carried unanimously.

Ordinance No. 1464 being “**AN ORDINANCE OF THE CITY OF BENBROOK, TEXAS, AMENDING SECTION 16.28.010.E – EXEMPTIONS, SECTION 16.28.010 - PRESERVATION OF TREES AND NATIVE VEGETATION, CHAPTER 16.28 - DESIGN STANDARDS AND REQUIREMENTS, TITLE 16 - SUBDIVISIONS OF THE BENBROOK MUNICIPAL CODE, BY EXEMPTING CITY APPROVED INCENTIVIZED DEVELOPMENT ACTIVITIES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**”

**SECTION 5
PENALTY CLAUSE**

Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety, or public health and sanitation, including dumping of refuse, and shall be fined not more than Five Hundred Dollars (\$500.00) for all other violations of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense. Nothing herein shall affect any minimum fine prescribed by any ordinance of the city and any such minimum fine shall remain unchanged.

**SECTION 10
EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication as required by law.

VI. INFORMAL CITIZEN COMMENTS

Mayor Dittrich paused the meeting for any informal citizen comments via telephone conference. There were no callers.

VII. COUNCIL MEMBER AND STAFF COMMENTS

Councilmember Renee Franklin thanked everyone involved in providing feedback, planning, guidance, and inspiration in getting to the adopting of the resolution calling for the bond election. Ms. Franklin advised citizens inquiries regarding the Bond Election should be made to Assistant City Manager, Jim Hinderaker and to look to the City’s website for additional information.

Jim Hinderaker gave report on COVID-19.

VIII. ADJOURNMENT

Meeting adjourned at 7:50 p.m.

APPROVED:

Jerry B. Dittrich, Mayor

ATTEST:

Joanna King, City Secretary



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE:	REFERENC E NUMBER:	SUBJECT:	PAGE:
02/18/2021	C-338	Approve Contract with Tarrant Regional Water District to purchase raw water to irrigate Dutch Branch Park	1 of 2

BACKGROUND

In February 2009, the City of Benbrook (City) entered into a ten (10) year contractual agreement with the Tarrant Regional Water District (TRWD) to purchase untreated lake water (raw water) to irrigate portions of Dutch Branch Park. Previously, the City purchased treated water from the Benbrook Water Authority (BWA) at a much higher rate. The contract expired February 2019, but TRWD has continued to honor the terms of the agreement. TRWD now seeks to renew the agreement.



Figure 1

PROPOSED CONTRACT

The proposed contract is substantially unchanged from the previous agreement and again allows the City to open an existing metered water tap and fill the irrigation “duck” pond (see Figure 1) to meet the City’s irrigation needs.

The proposed FY 2021 water payment rate is \$1.25448 per 1,000 gallons, subject to annual changes. This is the same rate TRWD charges the City of Fort Worth for its out-of-district water sales. As before, the City’s purchase of raw water from TRWD rather than treated water from the BWA results in significant yearly cost savings. Last year, the City purchased approximately 1.87 million gallons of water from TRWD at a total cost of \$2,358.25. Purchasing the same quantity of water from BWA is estimated to have cost the City \$11,005, based on its Commercial Service Rates.

No changes to existing infrastructure and metering equipment are necessary. The term of the proposed contract is for ten years. The effective date will begin when the contract is signed by TRWD’s authorized representative.

SUBMITTED BY:	DISPOSITION BY COUNCIL:	PROCESSED BY:
	Y APPROVED Y OTHER (DESCRIBE)	CITY SECRETARY
CITY MANAGER		DATE:

DATE: 02/18/2021	REFERENCE NUMBER: C-338	SUBJECT: Approve Contract with Tarrant Regional Water District to purchase raw water to irrigate Dutch Branch Park	PAGE: 2 of 2
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RECOMMENDATION

Staff recommends that City Council approve the contract with Tarrant Regional Water District to purchase raw water to irrigate Dutch Branch Park.

**Tarrant Regional Water District
Irrigation Contract**

**City of Benbrook
Eagle Mountain Connection Pipeline**

TARRANT REGIONAL WATER DISTRICT
IRRIGATION CONTRACT

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THE STATE OF TEXAS
COUNTY OF TARRANT

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§

IRRIGATION
CONTRACT

This Irrigation Contract ("Agreement") is made and entered into by and between **TARRANT REGIONAL WATER DISTRICT**, a Water Control and Improvement District ("District"), a conservation and reclamation district and political subdivision of the State of Texas, and **CITY OF BENBROOK** ("Purchaser").

RECITALS

1. District owns or has the right to use water from Richland-Chambers Reservoir, Cedar Creek Reservoir, Benbrook Reservoir, Eagle Mountain Lake, Lake Worth, Lake Arlington, and Lake Bridgeport (collectively defined as the "System") and may sell water from the System subject to the contract between District and the City of Fort Worth, City of Arlington, City of Mansfield, and Trinity River Authority of Texas, dated September 1, 1982 ("Amendatory Contract"). For purposes of this Agreement, the "Project" is defined as Eagle Mountain Connection Pipeline and the sale of water to Purchaser, in addition to being subject to the Amendatory Contract, is also subject to the provisions of Certificate of Adjudication Number(s) 08-4976 and 08-5035 and Permit 5157.
2. Purchaser wants to purchase, and District is willing to sell, raw water from the Project for purposes of irrigation of the athletic fields in Dutch Branch Park subject to the terms and conditions of this Agreement.
3. Purchaser will divert water from the Project, subject to all applicable rules and regulations of District and state and federal agencies.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, District and Purchaser agree as follows:

SECTION 1. AMENDATORY CONTRACT

This Agreement is entered into pursuant to Section 3(B) (a) of the Amendatory Contract, and the rights and obligations of District and Purchaser under this Agreement shall be subject to, and be interpreted consistent with, the terms and conditions of the Amendatory Contract. The Amendatory Contract is incorporated into this Agreement by reference as if quoted verbatim in this section. The Initial Contracting Parties (as identified in the Amendatory Contract) shall, within the limits permitted by law, have absolute priority over Purchaser's right to purchase water from District in accordance with this Agreement.

SECTION 2. PERMITS FOR CONSTRUCTION

Purchaser specifically recognizes that it will have to apply for and be granted a permit or easement to construct and maintain access to the District's Eagle Mountain Pipeline on land adjoining and adjacent to a pipeline tap to access water owned and controlled by District. When granted by District, this permit or easement shall be incorporated into this Agreement by reference as if quoted verbatim in this section.

SECTION 3. CONSTRUCTION & MAINTENANCE OF TAPS

One (1) tap has been installed on the District's Eagle Mountain Connection Pipeline in accordance with the District's specifications and located as identified in Exhibit 1. Purchaser shall perform all work and bear all costs associated with the design and construction of the tap and related appurtenances. District shall perform and maintain the grouting of the tapping saddle.

This tap will be used only for the delivery of water for irrigation of athletic fields described in Exhibit 2. Purchaser agrees to reimburse District for all costs incurred in supporting Purchaser's design, construction and maintenance of tap and appurtenances not directly billed to Purchaser within sixty (60) days after receipt of notice of completion of construction or maintenance of the tap and related appurtenances.

Any materials required to maintain the tap and appurtenances shall be provided by Purchaser. Excavation of the tap shall be performed by Purchaser under the direction of the District. District will temporarily relieve pipeline pressure to the extent mutually agreed to as needed to facilitate construction or maintenance of the tap and appurtenances.

Purchaser shall furnish, install and maintain all pipes, footings for the tapping valve and valve vaults constructed in place and all appurtenances downstream of the tapping valve including but not limited to throttling valves, pressure reducing valves, altitude valves and flow meters. Purchaser shall only backfill excavation under the direct supervision of the District. The District will furnish and install any required cathodic protection anodes.

Purchaser shall construct a cast in place vault below ground level for the flow meter and required valves. Purchaser is responsible for maintaining acceptable pressure downstream of the tap. Purchaser shall specify pressure reduction valves for establishing and maintaining acceptable pressure for its water transmission downstream of the tap. Purchaser shall operate its transmission facilities in a manner that will not generate surges or pressure changes that would impact District's pipeline or disrupt the District's transmission system.

SECTION 4. TERM.

This Agreement shall be effective on the date it is signed by District's authorized representative ("Effective Date"), as shown on the signature page of this Agreement, and shall

continue in effect for a period of ten (10) years from the effective date unless this Agreement is terminated sooner because the Amendatory Contract is terminated, District and Purchaser both agree to terminate this Agreement, or this Agreement is terminated pursuant to its terms. Purchaser acknowledges that the Project's primary purpose is to provide water for municipal water supply, that this Agreement is a surplus water contract, and that this Agreement shall be of no effect and that Purchases shall have no entitlement to water after the expiration or termination of this Agreement.

SECTION 5. VOLUME.

Subject to the limitations and conditions described in this Agreement, the Amendatory Contract, Certificate of Adjudication Number(s) 08-4976 and 08-5035 and Permit 5157, District agrees to sell Purchaser up to 76.6 acre-feet per annum of raw water from the Project at the Point(s) of Delivery described in this Agreement. Purchaser may not divert more than 76.6 acre-feet in an Annual Payment Period, as defined in Section 14, without prior written approval of District.

SECTION 6. POINT(S) OF DELIVERY.

Purchasers's raw water will be delivered from the District's Eagle Mountain Pipeline at the Point of Delivery herein established. A vicinity map showing the Point of Delivery is attached as Exhibit 1 to this Agreement. Purchaser shall provide the location of the Point of Delivery in Digital Format, which for purposes of this Agreement means in digital AutoCAD R-14 or ArcView 3.2x Shapefile format, projected to the following Tarrant Regional Water District data standards: Projection: Lambert Conformal Conic, Coordinate System: Texas State Plane, Zone 5351, Units: Feet, Datum: NAD83. The diversion shall be accomplished by facilities with a maximum combined diversion rate of 200 gallons per minute. Purchaser shall provide, at Purchaser's expense, the facilities required to divert and transport raw water to Purchaser's place

of use. If Purchaser adds or changes location of a Point of Delivery, Purchaser shall deliver to District the location of the additional or relocated Point of Delivery in Digital Format and on a reproducible vicinity map with a narrative and graphic description of the location of the additional or relocated Point of Delivery which shall be attached to this Agreement, and, subject to District's written approval, this Agreement will be modified by attaching the map to this Agreement as an exhibit. Upon filing this Agreement, as modified, with the Texas Commission on Environmental Quality or its successor agency (Commission), the modification shall become effective upon regulatory approval of the location of the additional or relocated Point of Delivery.

SECTION 7. FACILITIES FOR DIVERTING WATER.

The detailed plans and specifications for such facilities shall be submitted to District and approved by District in writing before such facilities are installed, and any changes thereafter made in the nature, type, or location of such facilities shall be made only after District's prior written approval. In addition, Purchaser shall provide plans and specifications to District in Digital Format.

All facilities and property of Purchaser used by Purchaser or relating to the use or diversion of the water contemplated by this Agreement are subject to water damage by reason of their location near a raw water transmission system owned or used by District. Purchaser acknowledges the possibility of water damage and assumes the risk of such an occurrence. Purchaser will hold District harmless for any claims asserted by Purchaser or by others growing out of the operation by Purchaser of the facilities used and employed by it in connection with this Agreement.

Purchaser agrees that its use of the facilities to be constructed under this Agreement, if any, and its operations under this Agreement shall not cause or in any way result in the pollution

of reservoirs and other water bodies within District Watersheds. District Watersheds are defined as areas that drain, either directly or indirectly, into a reservoir owned, controlled, or used by District, or watercourses that are used by District in providing water to its customers. Purchaser agrees to correct any practice of Purchaser which District deems likely to result in such pollution within thirty (30) days from the receipt by Purchaser of written notice from District to do so.

SECTION 8. PURPOSE AND PLACE OF USE.

Purchaser shall provide a map and narrative description of the land to be irrigated for attachment to this Agreement as Exhibit 2. In addition, the information in Exhibit 2 shall be provided to District in Digital Format. Purchaser shall use raw water purchased from District under this Agreement for athletic field irrigation only and only within the area described in Exhibit 2.

SECTION 9. LOSSES.

If Purchaser's diversion, now or in the future, requires a release of water from a District reservoir or pipeline, District agrees to bear the cost of transportation and evapotranspiration losses incident to the downstream sale of water from the reservoir or pipeline to Purchaser's point of diversion of water.

SECTION 10. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES.

The effectiveness of this Agreement is dependent upon District and Purchaser complying with the rules of the Commission, specifically including the rules codified as Texas Administrative Code, Title 30, §§ 295.101 and 297.101-.108 as of the effective date of this Agreement. District will file a signed copy of this Agreement with the Executive Director of the Commission as required by the rules of the Commission. Purchaser may continue diverting raw water from the Project unless District notifies Purchaser that District has received written

notification from the Commission that a copy of this Agreement has been received by the Commission but not accepted for filing. Purchaser shall submit written reports annually to the Commission, with a copy to District, on forms provided by the Commission, indicating the total amount of water taken under this Agreement each week and each month. Purchaser also shall submit to District written reports each month indicating the total amount of water diverted under this Agreement each week and each month.

SECTION 11. REGULATORY REQUIREMENTS.

This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation in any forum having jurisdiction, and District and Purchaser each agree to make a good faith effort to support proposed laws and regulations which would be consistent with the performance of this Agreement in accordance with its terms.

SECTION 12. WATER CONSERVATION PLANS.

Purchaser shall cooperate with and assist District in its efforts to develop and implement plans, programs, and rules to develop water resources and to promote practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in use of water, or increase the recycling and reuse of water. District's obligations under this Agreement shall be subject to Purchaser preparing and implementing a water conservation plan or water conservation measures, as well as implementing any water conservation plans and drought contingency plans adopted by District and required or approved by the Commission, the Texas Water Development Board, or any other federal, state, or local regulatory authority with power to require or approve water conservation and drought

contingency plans. Upon execution of this Agreement, Purchaser shall submit its water conservation plan or water conservation measures to District for its review and approval.

If District authorizes Purchaser to resell District water, Purchaser shall require through a contract condition that any successive user of District water must implement water conservation measures that comply with the State's, District's, and Purchaser's water conservation plans, programs, and rules.

SECTION 13. WATER QUALITY.

Purchaser shall cooperate with and assist District in its efforts to develop and implement plans, programs, and rules to maintain and improve the quality of the water flowing into or impounded within reservoirs owned or used by District; to maintain the existing uses of the water impounded in reservoirs owned or used by District for public water supply, contact recreation, and high quality aquatic habitat; and to decrease the effects of eutrophication and siltation upon the storage capacity and uses of reservoirs owned or used by District. Such plans, programs, and rules may include, but are not limited to, matters involving water conservation; water quality; construction, operation, and regulation of wastewater collection, treatment, and disposal facilities; siting and operation of solid waste transfer and disposal facilities; non-point source pollution control; generation, storage, transportation, and disposal of hazardous substances; sedimentation due to construction activities; improper farming practices; and highly erodible soil.

SECTION 14. PAYMENTS BY PURCHASER.

As consideration for the water supply to be provided to Purchaser under this Agreement, Purchaser agrees that beginning with the Annual Payment Period commencing on October 1, 2020, Purchaser's Annual Payment shall be calculated as follows:

A. Determination of Annual Payment.

The term "Annual Payment" means the amount of money to be paid to District by Purchaser during each Annual Payment Period as defined in the Amendatory Contract. An Annual Payment Period is from October 1 until September 30 of the following year. Purchaser shall make monthly payments based on actual raw water usage multiplied by the District's Standard Rate as defined in Section 14 herein, in effect on the first (1st) day of the applicable Annual Payment Period. Payment and a report of the amount of water used are due by the tenth (10th) day of the following month.

B. Determination of Adjusted Annual Payment.

The term "Adjusted Annual Payment" means the Annual Payment, as adjusted during or after each Annual Payment Period, as provided by this Agreement. At the close of each Annual Payment Period, District shall determine, with the cooperation of Purchaser, the actual amount of water diverted and used by Purchaser during the Annual Payment Period. District shall calculate Purchaser's Adjusted Annual Payment by multiplying District's audited Standard Rate applicable to the Annual Payment Period in accordance with this Agreement times the actual amount of water diverted and used from the Project expressed in thousands of gallons; or

The difference, if any, between the Annual Payment paid by Purchaser during the Annual Payment Period and the Adjusted Annual Payment, when determined, shall be applied as a credit or debit to Purchaser's account with District and shall be credited or debited in one-twelfth (1/12th) increments to Purchaser's next twelve (12) monthly payments, or as otherwise agreed upon between District and Purchaser, provided that the total amount of the credit or debit shall be made within the next twelve (12) months.

C. Dispute.

If Purchaser at any time disputes the amount to be paid by it to District, Purchaser shall nevertheless promptly make the disputed payment or payments, but if it is subsequently determined by agreement or court decision that the disputed amount paid by Purchaser should have been less or more, District shall promptly revise and reallocate Purchaser's Annual Payment in a manner that Purchaser or District will recover the amount due.

If a court, the Commission, or any federal or state regulatory authority finds that District's rates or policies for delivering water to Purchaser under this Agreement are unreasonable or otherwise unenforceable, District has the option to terminate this Agreement without liability to Purchaser. By signing this Agreement, Purchaser stipulates and agrees that District and its other customers will be prejudiced if Purchaser avoids the obligation to pay the rates for water specified in this Agreement while accepting the benefits of obtaining water from District. Nothing in this Agreement shall be construed as constituting an undertaking by District to furnish water to Purchaser except pursuant to the terms of this Agreement. If Purchaser initiates or participates in any proceeding regarding District's rates and policies under this Agreement and advocates a position that is adverse to District and District prevails, Purchaser shall pay District for its expenses, including attorneys' fees, in the proceeding within fifteen (15) days after District's demand for payment. Purchaser stipulates and agrees that the rates and policies specified in this Agreement are just, reasonable, and without discrimination.

SECTION 15. RATE.

Pursuant to the Amendatory Contract and the discussion below, Purchaser specifically agrees to pay the rate per 1,000 gallons (U.S. Standard Liquid Measure) of water equal to District's Standard Rate, which for any given year shall be the rate charged by District to the City of Fort Worth for its out-of-district water sales in effect on the first (1st) day of such year

pursuant to Section 4 of the Amendatory Contract. As an example, for the Annual Payment Period that began October 1, 2019, and ends September 30, 2020, the budgeted Standard Rate, including premium and surcharge, is \$1.25539 per thousand gallons.

Failure to pay any payment due District shall be sufficient grounds for District to exercise any remedy available to District under this Agreement.

SECTION 16. MEASUREMENT.

Purchaser shall provide, operate, maintain, and read meters which shall record water taken by Purchaser from District at Purchaser's Diversion Point(s). Water shall be measured through conventional types of approved meter(s). Purchaser shall keep accurate records of all measurements of water required under this Agreement, and the measuring device(s) and such records shall be open for District inspection at all times. District shall have access to Purchaser's metering equipment at all reasonable times. This access shall include authorization for District to install, inspect, adjust, or test measuring and recording equipment. Upon written request of District, Purchaser will give District copies of such records or permit District to have access to the same in Purchaser's office during reasonable business hours. If requested in writing by District and not more than once in each calendar month, on a date as near the end of such calendar month as practical, Purchaser shall calibrate its raw water meter(s) in the presence of a District representative, and District and Purchaser shall jointly observe any adjustments that shall be necessary. If District shall in writing request Purchaser to calibrate its raw water meter(s), Purchaser shall give District notice of the time when any such calibration is to be made and, if a representative of District is not present at the time set, Purchaser may proceed with the calibration and adjustment in the absence of any representative of District.

If, upon any test of the raw water meter(s), the percentage of inaccuracy of such metering equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for

a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then registration thereof shall be corrected for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If any meter(s) are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meter(s) are out of service or out of repair shall be estimated and agreed upon by District and Purchaser upon the basis of the best data available, and, upon written request by District, Purchaser shall install new meter(s) or repair existing meter(s) within a reasonable time not to exceed one hundred eighty (180) days. Upon Purchaser's refusal to install new meter(s) or repair existing meter(s) or after one hundred eighty (180) days following District's request to do so, District, at its option, may install new meters or repair existing meters at Purchaser's cost. District shall recover its cost of labor and materials by billing Purchaser in twelve (12) equal monthly installments on or before the tenth (10th) day of each month. If District and Purchaser fail to agree on the amount of water delivered during such period, the amount of water delivered may be estimated by:

(a) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or

(b) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

All books and records pertaining to this Agreement shall be open and available for copying, inspection, and audit by District.

SECTION 17. SOURCE AND ADEQUACY OF SUPPLY.

Water supplied by District to Purchaser under this Agreement shall be water stored by District in the Project and from no other source, unless District, at its sole discretion, decides to supply water from another source available to District. It is the intention of the parties hereto that District shall be the sole and exclusive source of all raw water supply for Purchaser. District will use its best efforts to remain in a position to furnish raw water sufficient for the reasonable demands of Purchaser. District's agreement to provide water to Purchaser shall not be deemed a guarantee on District's part that any particular quantity of water will be available, and the quantity of water taken shall at all times be subject to the right of District to reduce said quantity of water as District, in its sole judgment, may deem necessary in order to meet District's commitments under the Amendatory Contract, comply with any order of any court or administrative body having appropriate jurisdiction, reduce flooding, or prevent injury.

District has adopted a Water Conservation and Emergency Demand Management Plan. With respect to water provided to Purchaser under this agreement, if Purchaser fails to implement District's and its own emergency demand management plans when trigger conditions occur, District's General Manager is authorized to institute rationing pursuant to the Amendatory Contract and any other applicable wholesale water contracts, including this Agreement, as well as to enforce any contractual, statutory, or common law remedies available to District necessary to protect the public welfare. District water made available to Purchaser when Purchaser is not in compliance with District's Water Conservation and Emergency Demand Management Plan will be reduced to the amount of water that District's General Manager estimates would be necessary to satisfy Purchaser's demand if Purchaser was operating in compliance with both District's and Purchaser's emergency demand management plans.

District's rights to maintain and operate the reservoirs owned or used by District and its water transportation facilities and at any and all times in the future to impound and release waters thereby in any lawful manner and to any lawful extent District may see fit is recognized by Purchaser, and, except as otherwise provided herein, there shall be no obligation hereunder upon District to release or not to release any impounded waters at any time or to maintain any waters at any specified level.

SECTION 18. RAW WATER QUALITY.

THE WATER WHICH DISTRICT OFFERS TO SELL TO PURCHASER IS NON-POTABLE, RAW, AND UNTREATED. PURCHASER HAS SATISFIED ITSELF THAT SUCH WATER IS SUITABLE FOR ITS NEEDS. DISTRICT EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE QUALITY OF THE RAW WATER OR SUITABILITY OF THE RAW WATER FOR ITS INTENDED PURPOSE. DISTRICT EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS. PURCHASER AGREES THAT ANY VARIATION IN THE QUALITY OR CHARACTERISTICS OF THE RAW WATER OFFERED FOR SALE AS PROVIDED BY THIS AGREEMENT SHALL NOT ENTITLE PURCHASER TO AVOID OR LIMIT ITS OBLIGATION TO MAKE PAYMENTS PROVIDED FOR BY THIS AGREEMENT. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED IN THIS AGREEMENT.

SECTION 19. RETURN FLOWS.

Purchaser acknowledges that some of the water supplied to it by District may be returned to watercourses in the Trinity River Basin as return flows, which for purposes of this Agreement, are termed System Return Flows. District and Purchaser believe that the most economical means for meeting some of the future demands of District's customers may involve the use of return flows to extend or enhance the yield of the System. In this regard, District will, with Purchaser's

cooperation, study the potential benefits to the System that can be realized through the use of return flows. In anticipation that District will determine that use of return flows is both feasible and economical, Purchaser agrees that, other than for purposes of liability, title to all system water remains in District. Purchaser agrees that District has the right, subsequent to Purchaser's use of System water, to make whatever reuse of the water District deems desirable. Purchaser will receive no compensation, credit, or offset for making System Return Flows available to District.

To the extent that Purchaser resells Project water to others, Purchaser shall include language in any contract for resale of Project water assigning System Return Flows to the District and requiring cooperation with the District in making System Return Flows available to District. Similarly, to the extent that Purchaser does not treat its wastewater, Purchaser shall include language in any wastewater treatment contract assigning System Return Flows to District and requiring cooperation with District in making System Return Flows available to District. Neither Purchaser nor its customers will be entitled to consideration or credit of any type, either in exchange of water, money, or other consideration, for the System Return Flow assigned back to the District.

SECTION 20. TITLE.

Title for liability purposes to all water supplied hereunder to Purchaser shall be in District up to the Point(s) of Delivery, at which point title for liability purposes shall pass to Purchaser. While title for liability purposes remains in a party, that party hereby agrees to save and hold the other party harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation and delivery of said water.

SECTION 21. OTHER CHARGES.

In the event that any sales or use taxes, or taxes, assessments, or charges of any similar nature, are imposed on diverting, storing, delivering, gathering, impounding, taking, selling, using, or consuming the water received by Purchaser from the Project, the amount of the tax, assessment, or charge shall be borne by Purchaser, in addition to all other charges, and whenever District shall be required to pay, collect, or remit any tax, assessment, or charge on water received by Purchaser, then Purchaser shall promptly pay or reimburse District for the tax, assessment, or charge in the manner directed by District.

SECTION 22. DEFAULT IN PAYMENTS.

All amounts due and owing to District by Purchaser shall, if not paid when due, bear interest at the Texas post-judgment interest rate set out in TEX. FIN. CODE ANN. § 304.003 (Vernon Supp. 2002), or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate permitted by law. If any amount due and owing by Purchaser to District is placed with an attorney for collection, Purchaser shall pay to District, in addition to all other payments provided for by this Agreement, including interest, District's collection expenses, including court costs and attorneys' fees. District shall, to the extent permitted by law, suspend delivery of water from the Project to Purchaser if Purchaser remains delinquent in any payments due hereunder for a period of sixty (60) days and shall not resume delivery of water while Purchaser is so delinquent and may, at its option, terminate this Agreement without further liability to Purchaser. District shall pursue all legal remedies against Purchaser to enforce and protect the rights of District, District customers, and the holders of District's bonds. It is understood that the foregoing provisions are for the benefit of the holders of District's bonds.

SECTION 23. TERMINATION.

If District decides to terminate this Agreement, as provided by this Agreement, District shall deliver written notice of the decision to Purchaser. Purchaser shall discontinue taking water from District or its facilities and physically seal Purchaser's diversion facilities within one hundred eighty (180) days after District delivers written notice to Purchaser.

SECTION 24. WAIVER AND AMENMENT.

Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by District or Purchaser shall not be deemed a waiver by Purchaser or District of the right in the future to demand strict compliance and performance of any provision of this Agreement. Regardless of any provision contained in this Agreement to the contrary, any right or remedy or any default under this Agreement, except the right of District to receive the Annual Payment which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day after the occurrence of the default.

No officer or agent of District or Purchaser is authorized to waive or modify any provision of this Agreement. No modifications to or rescission of this Agreement may be made except by a written document signed by District's and Purchaser's authorized representatives.

SECTION 25. REMEDIES.

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by any party hereto and shall be cumulative. Recognizing, however, that failure in the performance of any party's obligations hereunder could not be adequately compensated in money damages alone, each party agrees in

the event of any default on its part that each party shall have available to it the equitable remedy of mandamus and specific performance, in addition to any other legal or equitable remedies (other than termination) which also may be available to District.

SECTION 26. INDEMNITY.

By signing this Agreement, Purchaser agrees, on behalf of itself and its successors and assigns, that it relinquishes and discharges and will, to the fullest extent permitted by law, defend, protect, indemnify, and hold harmless District and District's officers, directors, employees, agents, and consultants from and against all claims, losses, expenses, costs, damages, demands, judgments, causes of action, suits, and liability in tort, contract or any other basis and of every kind and character whatsoever (including but not limited to all costs of defense, such as fees and charges of attorneys, expert witnesses, and other professionals incurred by District and all court or arbitration or other dispute resolution costs) arising out of or incident to, directly or indirectly, this Agreement, including but not limited to any such claim for bodily injury, death, property damage, consequential damage, or economic loss and any claim that may arise in connection with the quality, quantity, use, misuse, impoundment, diversion, transportation, and measurement of Project water and any claim that may arise as a result of installation, inspection, adjusting, or testing of measuring and recording equipment involving Purchaser's diversion of District water, as well as any claim that may arise from any condition of Purchaser's facilities, separate operations being conducted on Purchaser's facilities, or the imperfection or defective condition, whether latent or patent, of any material or equipment sold, supplied, or furnished by District. This indemnification and release shall survive termination or expiration of the agreement.

SECTION 27. FORCE MAJEURE.

If, for any reason of force majeure, either District or Purchaser shall be rendered unable, wholly or in part, to carry out its obligation under this Agreement, other than the obligation of Purchaser to make the payments required under the terms of this Agreement, then if the party shall give notice of the reasons in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving the notice, so far as it is affected by the "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure," as used in this Agreement, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, land slides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply, including pollution (accidental or intentional), and any inability on the part of District to deliver water, or of Purchaser to receive water, on account of any other cause not reasonably within the control of the party claiming the inability.

SECTION 28. NON-ASSIGNABILITY.

Purchaser understands and agrees that any assignment of rights or delegation of duties under this Agreement is void without the prior written consent of District.

SECTION 29. NO THIRD-PARTY BENEFICIARIES.

This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Agreement. Each party hereto shall be solely responsible for the fulfillment of its customer

contracts or commitments, and District shall not be construed to be responsible for Purchaser's contracts or commitments by virtue of this Agreement or any provision contained herein.

SECTION 30. RELATIONSHIP OF THE PARTIES.

This Agreement is by and between District and Purchaser and is not intended, and shall not be construed to create, the relationship of agent, servant, employee, partnership, joint venture, or association as between District and Purchaser nor between District and any officer, employee, contractor, or representative of Purchaser. No joint employment is intended or created by this Agreement for any purpose. Purchaser agrees to so inform its employees, agents, contractors, and subcontractors who are involved in the implementation of or construction under this Agreement.

SECTION 31. SOLE AGREEMENT.

Except for the Amendatory Contract, this Agreement constitutes the sole and only agreement of Purchaser and District and supersedes any prior understanding or oral or written agreements between District and Purchaser respecting the subject matter of this Agreement, including any oral or written agreement with District that Purchaser obtained by assignment.

SECTION 32. SEVERABILITY.

The provisions of this Agreement are severable, and if, for any reason, any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

SECTION 33. NOTICES.

All notices, payments, and communications (collectively "notices") required or allowed by this Agreement shall be in writing and be given by hand-delivery or by depositing the notice in the United States mail, postage prepaid, registered or certified, with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) days after the notice is deposited in the mail. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the parties shall be shown above the signatures of the individuals who signed this Agreement on behalf of District and Purchaser. Either party may change its address by giving written notice of the change to the other party at least fifteen (15) days before the change becomes effective.

SECTION 34. PLACE OF PERFORMANCE.

All acts performable under the terms of this Agreement and all amounts due under this Agreement, including but not limited to payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due in Tarrant County, Texas, said Tarrant County, Texas, being the place of performance agreed to by the parties to this Agreement. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Tarrant County, Texas or the appropriate Federal District Court.

SECTION 35. DUPLICATE ORIGINALS.

Purchaser and District, acting under the authority of their respective governing bodies, shall authorize the execution of this Agreement in several counterparts, each of which shall be an original. Purchaser shall submit written evidence in the form of bylaws, charters, resolutions, or

other written documentation specifying the authority of Purchaser's representative to sign this Agreement, which evidence shall be attached to this Agreement as Exhibit 3.

EFFECTIVE as of the date signed by the authorized representative of District.

TARRANT REGIONAL WATER DISTRICT,
A Water Control and Improvement District
P.O. Box 4508
Fort Worth, TX 76164-0508
Attn.: General Manager

BY: _____

TITLE: _____

DATE: _____

ATTEST:

City of Benbrook
911 Winscott Rd.
Benbrook, Texas 76126
Attn: Bennet Howell

BY: _____

TITLE: _____

DATE: _____

ATTEST:

Exhibit 1 Location of Point(s) of Delivery

Exhibit 2 Location Map of Service Area

Exhibit 3 Authorization to Execute on Behalf of Purchaser