

**AGENDA
BENBROOK CITY COUNCIL
THURSDAY, AUGUST 16, 2018
911 WINSOTT ROAD, BENBROOK, TEXAS
PRE-COUNCIL WORKSESSION 7:00 P.M.
CENTRAL CONFERENCE ROOM
1. 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. INVOCATION/PLEDGE OF ALLEGIANCE

Invocation To Be Given By Pastor Todd Pylant Of First Baptist Church Of Benbrook

III. MINUTES

1. Approve Minutes Of The Regular Meeting Held August 2, 2018

Documents:

[CC MINUTES-08-02-18.PDF](#)

IV. PROCLAMATIONS/AWARDS/RECOGNITION

1. Receive Community Rating System Plaque From FEMA

2. Proclamation - Hunger Action Month

V. REPORTS FROM CITY MANAGER

A. GENERAL

G-2363 Conduct 1st Public Hearing To Consider Adoption Of An Ordinance Continuing Curfew For Minors

Documents:

[G-2363 FIRST PUBLIC HEARING CONTINUE MINOR CURFEW.PDF](#)
[G-2363 ORDINANCE MINOR CURFEW.PDF](#)

G-2364 Approve Agreement For County-Wide Fire And EMS Mutual Aid

Documents:

[G-2364 APPROVE MUTUAL AID TCFCA.PDF](#)
[G-2364 AGREEMENT TARRANT COUNTY MUTUAL AID.PDF](#)

G-2365 Approve Agreement For EMS Protection Services With MedStar Ambulance Service

Documents:

[G-2365 APPROVE MEDSTAR MUTUAL AID AGREEMENT.PDF](#)

B. CONTRACT

Award Construction Contract For Vista Way Extension Project

Documents:

[C-317 AWARD VISTA WAY EXTENSION CONTRACT.PDF](#)

[C-317 CONTRACT VISTA WAY.PDF](#)

VI. OTHER MATTERS OF BUSINESS

1. Conduct 1st Public Hearing On 2018 Property Tax Rate
2. Conduct 1st Public Hearing On 2018-2019 Proposed Budget

VII. 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.

VIII. 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.

IX. ADJOURNMENT



**MINUTES
OF THE
MEETING OF THE
BENBROOK CITY COUNCIL
THURSDAY, AUGUST 2, 2018**

The regular meeting of the Benbrook City Council was held on Thursday August 2, 2018 at 7:30 p. m. in the Council Chambers at 911 Winscott Road with the following Council members present:

Jerry Dittrich, Mayor
Larry Marshall
Rickie Allison
Mark Washburn

Also Present:

Andy Wayman, City Manager
Jim Hinderaker, Assistant City Manager
Joanna King, City Secretary
Sherri Newhouse, Finance Director
Chelsea Nelson, City Planner

Others Present:

Rick Overgaard, Finance Director
Bennett Howell, Public Services Director
Bill Smith
Marilyn Ackman
Darwin Winfield

I. CALL TO ORDER

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

II. INVOCATION/PLEDGE OF ALLEGIANCE

Invocation given by Councilmember Mark Washburn.
The Pledge of Allegiance was recited.

III. MINUTES

1. Minutes of the regular meeting held July 19, 2018

Motion by Mr. Allison, seconded by Dr. Marshall to approve the minutes of the regular meeting held July 19, 2018.

Vote on the Motion:

Ayes: Dr. Marshall, Mr. Allison, Mayor Dittrich, Mr. Washburn

Noes: None

Motion carries unanimously.

IV. REPORTS FROM CITY MANAGER

A. GENERAL

G-2362 Accept 2018 Certified Appraisal Roll, set Anticipated Collection Rate, and appoint an officer to calculate the Effective Tax Rate and Roll Back Tax Rate

Sherri Newhouse gave the following report: Staff received the 2018 Certified Appraisal Roll from the Tarrant Appraisal District (TAD) on Friday, July 20, 2018. The report "Information on the 2018 Appraisal Roll" contains the State-mandated information on appraised value, adjustments, exemptions, and the taxable value of property.

To comply with "Truth-in-Taxation" (TNT) requirements of Texas law, the City Council must accept the Certified Appraisal Roll as presented by TAD, set the anticipated collection rate for 2018-19, and appoint an officer to calculate and publish the Effective Tax Rate (ETR) and the Rollback Tax Rate (RTR).

The "Information on the 2018 Certified Appraisal Roll" indicates that the City of Benbrook will realize an overall increase in property tax revenues of 9.50 percent or approximately \$1,159,523.

This year, for the second time since 2015, the Benbrook City Council will be required to take a roll call vote to increase property tax revenue and set the anticipated property tax rate. The vote is mandatory because the City's Effective Tax Rate of \$0.619189 falls below the current property tax rate of \$0.640000. As a reminder, Texas law requires municipalities to conduct a vote "to raise taxes" even if the City Council leaves the tax rate at the same (current year's) rate.

Texas law focuses only on property taxes and does not take into consideration any other significant revenue sources.

In addition, State law does not recognize the intricacies of the property tax roll. The 2018 Appraisal Roll Information Valuation Summary includes \$49,979,876 for properties under protest. Section 25.01 (c) of the State Property Tax Code directs the Chief Appraiser to prepare a list of all properties under protest with the Appraisal Review Board and pending disposition at the time of value roll

certification. The estimated minimum taxable value for these properties is \$49,254,502.

State law does not take into consideration the cumulative impact of taxable values over multiple years and instead only compares the current year to the past year.

The current property tax rate of \$0.640000 is below the Roll-Back-Tax-Rate (RTR) of \$0.702608; no additional action will be required by the Benbrook City Council.

It is recommended that City Council set the property tax rate at the current rate of \$0.6400 for the 2018-19 fiscal year; this rate is the current property tax rate. The public vote, as well as the additional advertisements and notices, does not mean that the City of Benbrook will increase the property tax rate. As mandated by the City Charter, the final property tax rate will be approved by the City Council during the budget process and adopted by an ordinance. The adopted property tax rate may be lower than the preliminary property tax rate approved on August 2, 2018.

Motion by Dr. Marshall, seconded by Mr. Allison to:

1. Accept the 2018 Certified Appraisal Roll as presented;
2. Set 100.00 percent as the anticipated property tax collection rate for 2018-19;
3. Appoint the Finance Director to calculate and to publish the Effective Tax Rate (ETR) and the Rollback Tax Rate (RTR);
4. Set the preliminary property tax rate for the 2018-19 fiscal year at the current rate of \$0.6400.

Vote on the Motion:

Ayes: Dr. Marshall, Mr. Allison, Mayor Dittrich, Mr. Washburn

Noes: None

Motion carries unanimously.

V. INFORMAL CITIZEN COMMENTS

Marilyn Ackman, Manager of Public Affairs with Atmos Energy announced that she would be retiring in September 2018. She expressed appreciation to City Council and City Staff for the working relationship she has enjoyed for the past nineteen years. Ms. Ackman introduced her replacement, Darwin Winfield.

VI. COUNCIL MEMBER AND STAFF COMMENTS

VII. ADJOURNMENT

Meeting adjourned at 7:42 p.m. followed by worksession:

1. Discuss Erosion Control Ordinance
2. Discuss Whitestone Heights Preliminary Plat
3. Discuss FY 2018-2019 Budget

APPROVED:

Jerry B. Dittrich, Mayor

ATTEST:

Joanna King, City Secretary



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 08/16/18	REFERENCE NUMBER: G-2363	SUBJECT: Conduct first public hearing and review of continuance of Minor Curfew	PAGE: 1 of 2
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In July 1994, the City of Benbrook enacted a curfew ordinance to restrict the hours an individual under the age of seventeen can be in a public place. The restricted hours are from 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day and 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday. State law requires a review of municipal curfew ordinances every three years to determine if the ordinance should be abolished, continued, or modified. State Law further requires a review of the ordinance's effects on the community and on problems the ordinance was intended to remedy. The Local Government Code stipulates that the City Council shall conduct public hearings on the need to continue the ordinance.

Consideration of the curfew ordinance is two phased and includes (1) the August 16, 2018, public hearing and (2) an additional public hearing followed by formal City Council consideration (at the September 6, 2018, City Council meeting).

COMMUNITY IMPACT

The Benbrook Police Department believes that the curfew ordinance has assisted the department in late night crime prevention.

Benbrook police officers have issued the following citations for curfew violations in the past three years:

2016 45
2017 56
2018 50

During the same period of time, minors have been arrested for committing the following number of crimes during the hours of curfew:

2016 18
2017 16
2018 19

Bedford, Burleson, Crowley, Euless, Everman, Forest Hill, Fort Worth, Hurst, Kennedale, North Richland Hills, Saginaw, Southlake, Watauga, and White Settlement have enacted curfew ordinances. These Tarrant County Cities are either in close proximity to or are similar in size to the City of Benbrook.

SUBMITTED BY:	DISPOSITION BY COUNCIL: <input type="checkbox"/> APPROVED <input type="checkbox"/> OTHER (DESCRIBE)	PROCESSED BY: CITY SECRETARY
CITY MANAGER		DATE:

DATE: 08/16/18	REFERENCE NUMBER: G-2363	SUBJECT: Conduct first public hearing and review of continuance of Minor Curfew	PAGE: 2 of 2
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Arlington, Grapevine, Keller, and Mansfield are also in close proximity or similar in size to the City of Benbrook. These cities have not enacted a curfew ordinance.

RECOMMENDATION

Staff recommends that City Council conduct a public hearing to receive public input on the curfew ordinance.

ORDINANCE NO. 1428

AN ORDINANCE ESTABLISHING A CURFEW FOR MINORS; SETTING FORTH DEFINITIONS, CREATING OFFENSES FOR MINORS, PARENTS, AND GUARDIANS OF MINORS, AND BUSINESS ESTABLISHMENTS VIOLATING CURFEW REGULATIONS; PROVIDING DEFENSES; PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING FOR WAIVER BY THE MUNICIPAL COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING A PUBLICATION CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, persons under the age of 17 are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang-related activities and to be victims of older perpetrators of crime; and

WHEREAS, the City of Benbrook has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control over and responsibility for children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and

WHEREAS, a curfew for those under the age of 17 will be in the interest of the public health, safety, and general welfare and will help to attain the foregoing objectives and to diminish the undesirable impact of such conduct on the citizens of the City of Benbrook.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS;

SECTION 1 Definitions

1. CURFEW HOURS means:
 - (a) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
 - (b) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday
2. EMERGENCY means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
3. ESTABLISHMENT means any privately owned place of business operated for a profit to which the public is invited. Including but not limited to any place of amusement or entertainment.

4. GUARDIAN means:
 - (a) a person who, under court order, is the guardian of the person of a minor;
or
 - (b) a public or private agency with whom a minor has been placed by the court.
5. MINOR means any person under 17 years of age.
6. OFFICER means a police officer.
7. OPERATOR means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.
8. PARENT means a person who is:
 - (a) a natural parent, adoptive parent, or step-parent of another person; or
 - (b) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.
9. PUBLIC PLACE means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
10. REMAIN means to:
 - (a) linger or stay; or
 - (b) fail to leave premises when requested to do so by an officer or the owner, operator, or other person in control of the premises.
11. SERIOUS BODILY INJURY means bodily injury that creates substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member of origin.

SECTION 2

Offenses

1. A minor commits an offense if he remains in any public place or on the premises of any establishment within the City during curfew hours.
2. A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows the minor to remain in any public place or on the premises of an establishment within the City during curfew hours.
3. The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

SECTION 3 Defenses

It is a defense to prosecution under Subsection 2 that the minor was:

- (a) accompanied by the minor's parent or guardian;
- (b) on an errand at the direction of the minor's parent or guardian, without any detour or stop;
- (c) in a motor vehicle involved in interstate travel;
- (d) engaged in an employment activity, or going to or returning from an employment activity, without any detour or stop;
- (e) involved in an emergency;
- (f) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
- (g) attending an official school, religious, or another recreational activity supervised by adults and sponsored by the City of Benbrook, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home without any detour or stop, an official school, religious, or another recreational activity supervised by adults and sponsored by the City of Benbrook, a civic organization, or another similar entity that take responsibility for the minor;
- (h) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right to assembly; or
- (i) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

SECTION 4 Enforcement

Before taking any official action under this Section, an officer shall ask the apparent offender's age and reason for being in a public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection 3 is present.

SECTION 5 Penalty Clause

1. A person who violates a provision of this section is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.00.

2. When required by Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates Subsection 2 (1) of this ordinance and shall refer the minor to the juvenile court.

SECTION 6 Cumulative Clause

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Benbrook, Texas (1985), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 7 Severability Clause

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by a valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 8 Savings Clause

All rights and remedies of the City of Benbrook are expressly saved as to any and all violations of the provisions of the Benbrook Municipal Code (1985), as amended, or any ordinances affecting the issuance of permits and the payment of fees which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 9 Publication in Pamphlet Form

The city secretary of the City of Benbrook is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the productive thereof, as provided in Section 3.10 of the Charter of the City of Benbrook.

SECTION 10
Engrossment and Enrollment

The city secretary of the City of Benbrook is hereby directed to engross and enroll this ordinance by copying the caption, penalty clause, and effective date clause of this ordinance in the minutes of the City Council and by filing the ordinance in the ordinance records of the City.

SECTION 11
Publication in Official Newspaper

The city secretary of the City of Benbrook is hereby directed to publish the caption, penalty clause, publication clause and effective date clause of this ordinance for two (2) days in the official newspaper of the City of Benbrook, as authorized by Section 52.013 of the Local Government Code.

SECTION 12
Effective Date

This ordinance shall take effect at midnight on September 20, 2018 after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED THIS _____ **day of September, 2018.**

Jerry B. Dittrich, Mayor

ATTEST

Joanna King, City Secretary



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 08/16/18	REFERENCE NUMBER: G-2364	SUBJECT: Approve Agreement for County-Wide Fire and EMS Mutual Aid	PAGE: 1 of 1
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In 2004, Benbrook entered into an interlocal agreement for fire and EMS mutual aid with other Tarrant County municipalities. Recently, the Tarrant County Fire Chiefs Association reviewed the agreement and made several minor updates.

The three primary changes are as follows:

1. Each entity has the option to leave an incident scene if there is a conflict related to a requested task.
2. The agreement is for up to 12 hours of mutual aid assistance. After that, the requesting entity is liable for reimbursement of resources.
3. Renamed "Local Governments" to "Local Entities". The change allows rural volunteer fire departments to join the interlocal agreement.

Numerous City Attorneys have reviewed and approved the amended agreement.

Jurisdictions that have formally approved the amended agreement are as follows:

Blue Mound	Grapevine	Keller	Richland Hills	Samson Park
Saginaw	Lake Worth	Watauga	Westlake	Lockheed Martin

Numerous other Tarrant County municipalities are in the formal approval process.

RECOMMENDATION

Staff recommends that City Council approve the Tarrant County Fire Chiefs Association proposed Interlocal Agreement for Mutual Aid for Fire Protection and Emergency Medical Services.

SUBMITTED BY:	DISPOSITION BY COUNCIL: <input type="checkbox"/> APPROVED <input type="checkbox"/> OTHER (DESCRIBE)	PROCESSED BY:
		CITY SECRETARY
CITY MANAGER		DATE:

The State Of Texas

County of Tarrant

**Agreement for Mutual Aid in Fire Protection
And
Emergency Medical Services**

This Agreement is entered into by and between the agencies signatory to this agreement, hereinafter referred to as “Member Local Entity,” “Parties,” or “Party.”

W I T N E S S E T H

WHEREAS, the governing body of the Member Local Entities, organized under the general laws of the State of Texas, desire to secure for each Member Local Entity the benefits of mutual aid in the protection of life and property from fire and in firefighting and emergency medical services; and

WHEREAS, this Agreement is entered into pursuant to Chapter 791 of the Texas Government Code;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1.

The following terms shall have the following meanings when used in this Agreement:

- (A) For purposes of this contract, “Member Local Entity” means a:
 - (1) county, municipality, special district, or other political subdivision of this state or a state that borders this state; or
 - (2) volunteer fire department constituted under state law.

- (B) For purposes of this contract, “mutual aid” refers to reciprocal assistance by emergency services under a prearranged plan.

2.

That upon request by the Fire Chief or his/her designee or by the fire alarm operator of one Member Local Entity to the fire department of the other Member Local entity, available fire department equipment and personnel will be dispatched in aid of the requesting Member Local Entity to any point within a reasonable distance of the

jurisdictional limits of the responding Local Entity, subject to the conditions hereinafter stated.

The Fire Chief of each Member Local Entity shall designate what constitutes a reasonable travel distance outside the jurisdictional limits of the Local Entity.

It is hereby declared and agreed that an emergency condition shall exist within the corporate limits of a requesting Member Local Entity when one or more emergencies are in progress. When such an emergency exists, upon request of the Fire Chief, or his/her designee, or by the fire alarm operator of a Member Local Entity in which the emergency condition exists (the "requesting Local Entity") to the fire department of another Member Local Entity (the "responding Local Entity"), the Fire Chief or designee of the responding Local Entity will dispatch such fire department equipment and personnel to the aid of the requesting Local Entity as he/she deems advisable subject to the conditions hereinafter set out.

3.

Any dispatch of fire department equipment and personnel pursuant to this Agreement is subject to the following conditions:

- A. It is expressly understood and agreed that before responding in accordance with this Agreement that each Member Local Entity will have an ordinance, resolution, rule, or order adopted before the effective date of this Agreement which sets out the standard of care for emergency action which substantially states the following: "Every officer, agent or employee of the Member Local Entity and every officer, agent or employee of an authorized provider of emergency services, including, but not limited to every unit of government or subdivision thereof, while responding to emergency calls or reacting to emergency situations, regardless of whether any declaration of emergency has been declared or proclaimed by a unit of government or subdivision thereof, is hereby authorized to act or not to act in such a manner to effectively deal with the emergency. An action or inaction is 'effective' if it in any way contributes or can reasonably be thought by the provider of such emergency service to contribute to preserving any lives or property. This Section shall prevail over every other ordinance, resolution, rule, or order of the Member Local Entity and, to the extent to which the Member Local Entity has the authority to so authorize, over any other law establishing a standard of care in conflict with this section. Neither the Member Local Entity nor the employee, agent or officer thereof, or other unit of government or subdivision thereof or its employees, agents or officers shall be liable for failure to use ordinary care in such emergency. It is the intent of the Member Local Entity, by passing this ordinance, resolution, rule, or order to assure effective action in emergency situations by those entrusted with the responsibility of saving lives and property by protecting such government units from liability, and their employees, agents and offices from nonintentional tort liability to the fullest extent permitted by statutory and constitutional law, this ordinance, resolution,

rule or order shall be liberally construed to carry out the intent of the Member Local Entity.”

- B. Any request for assistance under this Agreement shall specify the amount and type(s) of fire department equipment needed, the MAPSCO location, and the street address to which the equipment and personnel are to be dispatched.

Upon a request for mutual aid assistance by a Member Local Entity, under the terms of this agreement, the typical response set for personnel and equipment would be as follows: one unit of firefighting apparatus, pumper (engine) or aerial (ladder), with a minimum of three personnel, or a brush truck or water supply vehicle with a minimum of two personnel, or an ambulance with a minimum of two personnel. However, variances to the typical response set for personnel may be agreed upon at the time of the mutual aid request. The Fire Chief of the responding Local Entity or his/her designee may dispatch additional equipment and personnel.

Responding personnel must meet the minimum firefighting standards as established by their jurisdiction or by the Texas Commission on Fire Protection whichever is applicable.

Texas Department of Health certified personnel (Emergency Care Attendant, Emergency Medical Technician, and Paramedic) may provide emergency medical services to the degree allowed by their certification and Medical Control.

Supervisory personnel, support equipment and personnel, or additional fire department equipment and personnel may also be dispatched to the Member Local Entity by direction of the Fire Chief of the responding Local Entity or his/her designee.

- C. The requesting Local Entity must have a command system in place and an incident commander in charge of the incident.
- D. The senior fire representative from the responding Local Entity shall report to and be under the direction of the requesting Local Entity Incident Commander, and will direct the utilization of his/her resources to assist in mitigating the emergency in accordance with accepted procedures.

However, if a member of a responding Local Entity is requested to perform a task that is in conflict with the responding Local Entity’s internal policies, the responding Local Entity retains the right to advise the officer in charge that the task cannot be completed. If agreement cannot be reached on the issue, the responding Local Entity has the option of leaving the scene. Each Party to this Agreement shall at all times be and remain legally responsible for the conduct of their respective fire department employees regardless of whether such employees were performing duties under this Agreement at the request of the requesting

Local Entity and regardless of whether such employees were acting under the authority, direction, suggestion or orders of an officer of the requesting Local Entity. This assignment of civil liability is specifically permitted by section 791.006(a-1) of the Texas Government Code (“Code”) and is intended to be different than the liability otherwise assigned under section 791.1006 (a) of the Code. Each Party hereby waives all claims against the other Party for compensation for any loss, damage, personal injury or death occurring as a consequence of the performance of the Agreement.

- E. Fire department equipment and personnel from the responding Local Entity shall be released by the Incident Commander as soon as they are no longer needed or when their services are needed within their normal fire protection area.
- F. In areas where common Member Local Entity jurisdictional lines exist, accurate determination of jurisdiction may not be possible upon receipt of an alarm. In these cases, the Local Entity receiving the alarm will dispatch its fire department equipment and personnel and notify the other affected Local Entity of the alarm. If the emergency is not within the jurisdictional limits of the responding Local Entity, it is agreed that the services provided will be considered to have been provided pursuant to this Agreement.

4.

Each Local Entity waives all claims against the other Local Entity for compensation for any loss, property damage, personal injury or death occurring as a consequence of the performance of this Agreement.

Neither Member Local Entity shall be reimbursed by the other for costs incurred pursuant to this Agreement, with the exception of supplies and consumable items.

5.

All equipment used by the responding fire department in carrying out this agreement will, at the time of action hereunder, be owned by it; and personnel who perform duties pursuant to this agreement shall receive the same payment, salary, pension, injury or death benefits, workers’ compensation benefits, payment of expenses, and all other compensation and rights for the performance of those duties, as they would have received for their regular duties in the service of the Member Local Entity which they serve. Each Member Local Entity shall be solely responsible for the payment of its costs associated with providing fire department equipment and personnel under this Agreement for up to twelve (12) consecutive hours of a Mutual Aid.

Thereafter, upon receipt of an invoice, all costs associated with the provision of Mutual Aid lasting more than twelve consecutive hours shall be paid by the responding Local Entity and reimbursed by the requesting Local Entity, to the extent permitted by

law. Such costs include, but are not limited to: compensation for personnel; operation and maintenance of equipment; damage to equipment; and food, lodging and transportation expenses. Formulary to assist cost determination will be based on the most current FEMA reimbursement schedules set by the Stafford Act and chapter 418 of the Texas Government Code.

- (1) Requests for reimbursement must be submitted as soon as practicable but no later than sixty days after the return of all personnel deployed under this Agreement. Failure to submit a request for reimbursement within the specified time frame will result in the responding Local Entity not being reimbursed for the Mutual Aid provided unless the requesting Local Entity extends the deadline for filing requests for reimbursement or the Federal or State Government extends the deadline for filing request for reimbursement. Such requests shall specifically identify all personnel, equipment, and resources provided; dates of issuance or duration of deployment, and the unit cost and total costs associated with each.
- (2) The responding Local Entity shall be responsible for creating and maintaining a record of all costs incurred, both reimbursed and unreimbursed costs, in providing Mutual Aid under this Agreement. The record shall be kept for a period of three years from the date the incident is closed.
- (3) In the event federal or state funds are available for costs associated with the provision of Mutual Aid, the Parties agree that the requesting Local Entity shall make the claim for the eligible costs of the responding Local Entity on its subgrant application and will disburse the federal or state share of funds to the responding Local Entity.
- (4) Reimbursement under this Section will be made by the requesting Local Entity no later than: (1) one-hundred eighty days after receipt of the request for reimbursement; or (2) ninety days after the requesting Local Entity receives reimbursement from the federal or state government, whichever is sooner.

6.

It is expressly understood that when an employee or volunteer of the responding Local Entity is performing duties under the terms of this agreement, that person is considered to be acting in the line of duty for the purposes of 42 U.S.C.A., Section 3796; is considered to be in performance of duties within the provisions of Article 6228f, V.T.C.S., and Chapter 142, Texas Local Government Code; and shall be entitled to any other benefits which accrue under law as a result of injury, death, or loss which occurs while in the line of duty.

7.

It is further understood and agreed that, in the execution of this Agreement and contract, neither Member Local Entity waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

8.

This Agreement shall be interpreted under the laws of the State of Texas. The venue for any lawsuit arising out of this Agreement will be the Fort Worth Division of the Northern District of Texas if the lawsuit arises in Federal Court or Tarrant County, Texas if the matter arises in State Court.

9.

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of Texas.

10.

Each Member Local Entity may terminate this Agreement upon thirty (30) days' written notice to the other Member Local Entity.

11.

In case 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, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained in the Agreement.

12.

This Agreement contains all commitments and agreements of the Member Local Entities regarding mutual fire protection and emergency medical service assistance, and no other prior oral or written commitments shall have any force or effect.

13.

This Agreement shall become effective between the Parties hereto on the day after it is fully executed and shall continue in effect for twelve (12) months from the effective date. This Agreement shall renew automatically for a period of one year upon the completion of the initial term and each subsequent term thereafter unless and until such time as the governing body of a Party terminates its participation prior to the date of automatic renewal or as prescribed in Section 10 of this Agreement.

14.

This Agreement may be amended or modified by the mutual agreement of the Parties hereto, in writing, to be attached to and incorporated into this Agreement.

15.

The undersigned Member Local Entities agree and certify they have complied with one of the following provisions of this section based on if they are a Governmental Entity or Volunteer Fire Department:

1. The Parties claiming to be exempt from the Form 1295 requirement acknowledge that they are governmental entities and not business entities as those terms are defined in Tex. Gov't Code 2252.908, and therefore, no disclosure of interested parties pursuant to Tex. Gov't Code Section 2252.908 are required.
2. The Volunteer Fire Department acknowledges and agrees that it has fully, accurately, and completely disclosed all interested parties in the attached Form 1295, and has acknowledged the completeness of this disclosure by filing the Form 1295, attached as Exhibit A, with the Texas Ethics Commission as required by law.

16.

This Agreement shall be executed by the duly authorized official(s) of the Party as expressed in the approving ordinance, resolution, rule or order of the governing body of such Party, a copy of which is attached hereto.

Executed this _____ day of _____, 2018.

Name of Local Entity

Name of Local Entity

Name

Name

Title

Title

Approved as to form:

Approved as to form:

Title

Title

Attest:

Attest:



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 08/16/18	REFERENCE NUMBER: G-2365	SUBJECT: Approve Mutual Aid Agreement for EMS protection services with MedStar Ambulance Service	PAGE: 1 of 1
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Due to population growth in Benbrook and Southwest Tarrant County, emergency medical services (EMS) response call volumes continue to increase. In addition, bariatric patient transports have become more common due to the national rise in obesity. Finally, general population growth heightens the possibility of a large scale incident requiring multiple simultaneous EMS transports.

The proposed mutual aid agreement between MedStar and the City of Benbrook helps address these emerging issues by leveraging the response capabilities of both participating entities. The proposed agreement allows Benbrook to utilize MedStar’s bariatric unit for large patients that pose a loading problem for Benbrook’s ambulances. In addition, the agreement provides access to the MedStar Ambus in the event of large scale incident. The Ambus can provide patient care and transport up to 22 patients at a time. The agreement also ensures a MedStar EMS response should all four Benbrook ambulances be unavailable due to other Benbrook EMS responses. Finally, MedStar can utilize Benbrook EMS should an incident occur that requires a multiagency response. Unifying local participation is particularly important during a natural disaster or other major catastrophe.

PROPOSED AGREEMENT

The term of the agreement is for one year, with automatic annual contract renewal with the mutual consent of both parties. There is no cost to participate. Each entity is responsible for all matters of loss, property damage, personal injury, or death related to its services.

RECOMMENDATION

Staff recommends that City Council approve the mutual aid agreement for EMS protection services with MedStar Ambulance Service.

SUBMITTED BY:	DISPOSITION BY COUNCIL: <input type="checkbox"/> APPROVED <input type="checkbox"/> OTHER (DESCRIBE)	PROCESSED BY:
		CITY SECRETARY
CITY MANAGER		DATE:

Medical Services Mutual Aid Agreement

THIS AGREEMENT is made between City of Benbrook Fire and EMS and Metropolitan Area EMS Authority d/b/a MedStar ("MedStar"). The parties may be mutually referred to as the "Contracting Agencies" or singularly as "Agency".

WHEREAS, the Contracting Agencies maintain paid and/or volunteer emergency medical services, together with personnel and equipment used to provide such services;

WHEREAS, more than one medical emergency may arise contemporaneously in one or the other of the jurisdictions of the Contracting Agencies resulting in greater demands than the manpower and/or equipment of that Agency can handle or an emergency may arise that is of such intensity that it cannot be handled solely by the equipment and manpower of the Agency in whose jurisdiction the emergency occurs or an emergency may arise which transcends jurisdictional boundaries;

WHEREAS, non-emergency or scheduled requests for medical transportation may arise that cannot be performed with the manpower of the Agency in whose jurisdiction the non-emergency occurs or a non-emergency may arise which transcends jurisdictional boundaries;

NOW, THEREFORE, in consideration of the mutual covenants, performances and agreements hereafter set forth, it is mutually understood and agreed between the Contracting Agencies as follows:

1. **Definitions.** The "Answering Agency" is the Agency that responds to the request for emergency medical services or non-emergency medical services. The "Requesting Agency" is the Agency requesting medical transportation services assistance under this Agreement.
2. **Mutual Assistance and Aid.** Subject to the exceptions stated below, the Contracting Agencies agree to respond when possible to requests for medical transportation services assistance. These requests by the Requesting Agency may or may not originate within jurisdictional boundaries of the Answering Agency. The extent of any response to a request, including the choice of personnel and equipment, shall be entirely within the discretion of the Answering Agency, subject, however, to the terms of this Agreement. Included in such Answering Agency's discretion shall be a determination of whether or not such a request for assistance may be answered without jeopardizing the safety and protection of the citizens and property of the Answering Agency. Any decision not to respond to a request for aid shall be promptly communicated to the Requesting Agency.
3. **Requests for Assistance and Aid.** An authorized official representing a Requesting Agency shall make all

requests for aid. Each request for aid is subject to approval by an official of the Answering Agency, without charge to the Requesting Agency, and with the understanding that personnel and equipment of the Answering Agency shall be subject only to the liability, workers' compensation, and/or other insurance of that Answering Agency. Any request for assistance hereunder should include a statement of the amount and type of equipment and personnel requested, and shall specify the location to which the equipment and response personnel are to be dispatched. However, an official of the Answering Agency shall determine the type and quantity of equipment and personnel to be furnished. The equipment and personnel of the Answering Agency shall at all times be under the supervision and control of the official(s) of that Answering Agency. If the Answering Agency accepts a request for aid hereunder, the Answering Agency agrees to respond promptly and shall assume full responsibility for the medical transportation service from that point forward.

4. **Emergency Medical Services.** When emergency medical services are requested, the Answering Agency shall have its personnel report to the Incident Commander ("IC") or other scene commander at the location to which the equipment and personnel are dispatched. All activities shall be coordinated with the IC. Though coordination of activities occurs by the IC, the equipment and personnel of the Answering Agency shall be under the ultimate supervision of the designated personnel of the Answering Agency. The personnel of the Answering Agency shall coordinate the Answering Agency's efforts with the IC. At no time shall the Answering Agency be expected to operate contrary to standing orders or protocols of its physician advisor, agency policies, operating licenses, or federal or state regulations, except as specifically provided for in writing by local, state or federal authority and/or except when destination policies are otherwise modified as necessary.

If at any time the Answering Agency responds to a mutual aid call for emergency medical services where the Requesting Agency is not at the scene, the Answering Agency will follow the treatment protocols and procedures of its physician advisor or other medical control, pursuant to the applicable Incident Command System. Response personnel shall contact the medical base of their own Agency for further orders and designation sites.

It is agreed that the Answering Agency shall not be responsible for any response time compliance or penalties under this Agreement.

Medical Services Mutual Aid Agreement

5. **Release of Answering Agency.** For emergency medical services, an Answering Agency shall be released from service by the Requesting Agency/Incident Commander when the services of the Answering Agency are no longer required, or when the Answering Agency determines, in its discretion, that its services are needed in another jurisdiction.

For non-emergency medical services, an Answering Agency shall be released from service when the services are complete or the Requesting Agency notifies the Answering Agency that the services are no longer required or when the Answering Agency determines, in its discretion, that its services are needed in another jurisdiction.

6. **Rights and Privileges Retained.** The personnel of each Agency, while engaged in performing any mutual aid service, activity, or undertaking under provisions of this Agreement, shall have and retain all rights and privileges notwithstanding that mutual aid service is being performed in or for the other Agency. Additionally, the Answering Agency's physician advisor and appropriate medical protocols shall govern the Answering Agency's actions.
7. **Compensation and Billing.** The Answering Agency shall be responsible for all Patient and third-party billing, and agrees that the rates to be billed shall comply with applicable laws, provided, however, that the Answering Agency agrees to honor the terms of any membership or subscription programs in force in the Requesting Agency's jurisdiction with regards to any service performed for a member subscriber pursuant to this Agreement.
8. **Indemnification.** Each party will indemnify and hold the other party harmless from and against liability claims resulting from or alleged to result from any negligence or willful misconduct of the indemnifying party related to the performance of this Agreement. Such indemnification for acts occurring or alleged to have occurred during the Term of this Agreement shall survive the termination of the Agreement for any reason.
9. **Insurance.** Each party represents that it has and will maintain comprehensive automobile insurance, comprehensive general liability insurance, and professional liability insurance all in minimum amounts that are customary and usual within the emergency medical services industry and workers' compensation insurance in the statutory required amounts. The coverage shall extend to each party hereto, including its officers, agents, and employees. Each party shall provide a certificate of insurance to the other which will

provide that the policy or coverage thereunder cannot be altered or terminated without thirty (30) days written notice by the insurance carrier to the other parties to this Agreement.

10. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the following addresses:

If to MedStar:

**Douglas Hooten, Executive Director
MedStar Mobile Healthcare
2900 Alta Mere Drive
Fort Worth, TX 76116**

If to Agency:

Legal Department

11. **Term.** The initial term of this Agreement shall be one year, commencing on the commencement date hereof, and this Agreement shall automatically renew for subsequent one-year periods thereafter, subject to the termination rights herein. The initial term and all renewal periods shall be cumulatively referred to as the "Term".
12. **Termination.** Each party may terminate this Agreement: (a) at any time without cause and at its sole discretion upon thirty (30) days written notice to the other party; or (b) immediately upon the material breach of this Agreement by the other party.
13. **Referrals.** It is not the intent of either party that any remuneration, benefit or privilege provided for under this Agreement shall influence or in any way be based on the referral or recommended referral by either party of patients to the other party or its affiliated providers, if any, or the purchasing, leasing or ordering of any services other than the specific services described in this Agreement. Any payments specified herein are consistent with what the parties reasonably believe to be a fair market value for the services provided.
14. **Relationship.** In the performance of this Agreement, each party hereto shall be, as to the other, an independent contractor and neither party shall have the right or authority, express or implied, to bind or

Medical Services Mutual Aid Agreement

otherwise legally obligate the other. Nothing contained in this Agreement shall be construed to constitute either party assuming or undertaking control or direction of the operations, activities or medical care rendered by the other. The parties' administrative staff shall meet on a regular basis to address issues of mutual concern related to the provision of aid and the parties' respective rights and obligations hereunder. It is agreed that the parties shall not be liable for payment of any salary, wages, or other compensation for any of the other Agency's personnel performing services under this Agreement.

15. **Force Majeure.** Neither party shall be responsible for any delay in or failure of performance resulting from acts of God, riot, war, civil unrest, natural disaster, labor dispute or other circumstances not reasonably within its control.
16. **Compliance.** The parties will comply in all material respects with all applicable federal, state and local laws and regulations, including the federal Anti-Kickback Statute. Each party's ambulances will conform to applicable state and local regulations for medical equipment for ambulances and be duly licensed for the transportation of patients. All personnel staffing vehicles that provide the Services will be licensed or certified as required by applicable law.
17. **Medically Equivalent Services.** Agency agrees that the level of services provided pursuant to this Agreement shall be substantially medically equivalent to the level of services provided by MedStar. In this regard, this Agreement is expressly conditioned upon prior certification of Agency as "substantially medically equivalent" by the Emergency Physicians Advisory Board ("EPAB") created pursuant to the Uniform EMS ordinance adopted by all MedStar member cities, as may be amended from time to time. Provided, however, that EPAB shall, in its sole discretion, determine whether Agency's level of service shall be deemed to be "substantially medically equivalent". The same determination can be made by Agency towards MedStar's medical equivalence. Provided further, that "substantial medical equivalence" shall not necessarily require on-board equipment, training requirements, or medical protocols identical to those employed by EPAB. Notwithstanding any other provisions regarding termination of this Agreement, EPAB, at any time and in its sole discretion may revoke its certification of "substantial medical equivalence" by notice to Agency, upon which event this Agreement shall immediately terminate.
18. **Medical Oversight.** The parties agree that they will cooperate fully with and participate in any medical audit requested or conducted by either party's medical control authority, or either party's medical director or designee, involving ambulance runs provided under this Agreement with which Contracting Agencies were medically involved.
19. The parties hereto agree that the dispatch center for the Answering Agency shall accurately document the response times for any calls referred and shall report those times to the Requesting Agency for the purpose of monitoring overall response time performance.
20. **Non-Exclusion.** Each party represents and certifies that neither it nor any practitioner who orders or provide Services on its behalf hereunder has been convicted of any conduct that constitutes grounds for mandatory exclusion as identified in 42 U.S.C. § 1320a-7(a). Each party further represents and certifies that it is not ineligible to participate in Federal health care programs or in any other state or federal government payment program. Each party agrees that if DHHS/OIG excludes it, or any of its practitioners or employees who order or provide Services, from participation in Federal health care programs, the party must notify the other party within five (5) days of knowledge of such fact, and the other party may immediately terminate this Agreement, unless the excluded party is a practitioner or employee who immediately discontinues ordering or providing Services hereunder.
21. **Miscellaneous.** This Agreement (including the Schedules hereto): (a) constitutes the entire agreement between the parties with respect to the subject matter hereof, superseding all prior oral or written agreements with respect thereto; (b) may be amended only by written instrument executed by both parties; (c) may not be assigned by either party without the written consent of the other party, such consent not to be unreasonably withheld; (d) shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns; (e) shall be interpreted and enforced in accordance with the laws of the state where the Services are performed, without regard to the conflict of laws provisions thereof, and the federal laws of the United States applicable therein; (f) may be executed in several counterparts (including by facsimile), each of which shall constitute an original and all of which, when taken together, shall constitute one agreement; and (g) shall not be effective until executed by both parties. In the event of a conflict between this Agreement and any Schedule hereto, the terms of this Agreement shall govern.

Medical Services Mutual Aid Agreement

22. **Indemnification.** To the extent allowed by the Texas Constitution and the laws of the State of Texas, MedStar shall defend, indemnify, and hold harmless the Agency and its officers, directors, shareholders, partners, employees, agents from any and all threatened or actual claims, proceedings, losses, damages, fines, penalties, liabilities, costs and expenses of any nature, including attorneys' fees and court costs sustained or incurred by or asserted against MedStar arising from a breach of this Agreement in any material respect by the Agency, or (ii) any conduct on the part of the Agency in connection with the performance of this Agreement that constitutes gross negligence, fraud, willful misconduct or a knowing violation of law.

To the extent allowed by the Texas Constitution and the laws of the State of Texas, the Agency shall defend, indemnify, and hold harmless MedStar and its officers,

directors, shareholders, partners, employees, agents from any and all threatened or actual claims, proceedings, losses, damages, fines, penalties, liabilities, costs and expenses of any nature, including attorneys' fees and court costs sustained or incurred by or asserted against the Agency arising from a breach of this Agreement in any material respect by MedStar, or (ii) any conduct on the part of MedStar in connection with the performance of this Agreement that constitutes gross negligence, fraud, willful misconduct or a knowing violation of law.

[Signature page to follow]

Medical Services Mutual Aid Agreement

IN WITNESS WHEREOF, the parties have hereto executed this Agreement as of this ____ day of _____ 2018
("Commencement Date").

City of Benbrook:

By: _____

Print Name: _____

Print Title: _____

Metropolitan Area EMS Authority d/b/a MedStar

By: _____

Print Name: Douglas R. Hooten, MBA

Print Title: Chief Executive Officer



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 08/16/18	REFERENCE NUMBER: C-317	SUBJECT: Award Construction Contract for Vista Way Extension Project	PAGE: 1 of 2
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The design of the extension of Vista Way from Mercedes Street to the IH-20 Service Road began in April, 2016. The project includes extending the roadway, sidewalks, water, sanitary sewer and storm drains. The City is coordinating with the adjacent developer to ensure the street design and utilities accommodate the developer's future projects.

BIDS RECEIVED

Bids were received and opened on July 13, 2018, with the following results:

	Bidder	Bid (\$)
1	Jackson Construction	2,334,233.00
2	Conatser Construction	2,475,108.00
3	DDM Construction	2,647,094.00
4	JBL Contracting	2,821,551.91
5	McClendon Construction	2,941,563.40
6	Tiseo Paving	3,097,947.10
7	Reyes Group	3,140,821.55
8	Joe Funk Construction	3,338,808.80

Jackson Construction submitted the low bid of \$2,334,233. Staff has previously utilized Jackson Construction with positive results. In addition, all references gave Jackson Construction a good recommendation.

SUBMITTED BY:	DISPOSITION BY COUNCIL: <input type="checkbox"/> APPROVED <input type="checkbox"/> OTHER (DESCRIBE)	PROCESSED BY:
		CITY SECRETARY
CITY MANAGER		DATE:

DATE: 08/16/18	REFERENCE NUMBER: C-317	SUBJECT: Award Construction Contract for Vista Way Extension Project	PAGE: 2 of 2
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FINANCING

The Tax Increment Finance District will fund the project.

RECOMMENDATION

Staff recommends that the City Council award the construction contract to Jackson Construction for the Vista Way Extension Project in the amount of \$2,334,233 to be funded from the Tax Increment Finance District.

STANDARD FORM CONSTRUCTION AGREEMENT

THE STATE OF TEXAS

COUNTY OF TARRANT

THIS AGREEMENT is entered into by and between the CITY OF BENBROOK, a municipal corporation, hereinafter called "OWNER," and _____, hereinafter called "Contractor."

Owner and Contractor in consideration of the mutual covenants contained in this Agreement, agree as follows:

ARTICLE 1. WORK.

Contractor covenants and agrees to perform the Work in every detail as specified and indicated in the Contract Documents. All of which are incorporated in this Agreement in their entirety as though written word for word. The Work is described as follows:

Construction of VISTA WAY PAVING AND UTILITIES as outlined in the Specifications including other incidentals as necessary to complete the project in accordance with these Contract Documents.

ARTICLE 2. CONTRACT PRICE.

Owner agrees to pay Contractor for completion of the Work, in accordance with the Contract Documents, for the following amounts:

TOTAL \$ _____

ARTICLE 3. STATE AND LOCAL SALES AND USE TAXES

The Owner qualifies for exemption from the state and local sales and use taxes pursuant to the provisions of Section 151.309, Texas Tax Code. Therefore, the Contractor shall not pay these taxes which would otherwise be payable in connection with the performance of this Work. The Contractor shall issue an exemption certificate in lieu of the tax on the purchase of:

- (a) all materials, supplies, equipment and other tangible personal property incorporated into the real property being improved;
- (b) all materials, supplies, equipment and other tangible personal property used or consumed by the Contractor in performing the Work.

“Materials and supplies used in the performance of the Work” includes only those materials actually incorporated into the property being improved and those supplies directly used to incorporate such materials into the property being improved. Overhead supplies and supplies used indirectly or only incidental to the performance of the Work are not included in the exemption. Under “reasons said purchaser is claiming this exemption” in the exemption certificate, the Contractor must name the Owner and the project for which the equipment, material, and supplies are being purchased.

ARTICLE 4. PAYMENT PROCEDURES.

The Owner agrees that upon receipt of the Contractor's invoice, the City will verify the value of the work done during the month under the Agreement, based upon the prices furnished in Contractor's bid proposal and the actual quantities of work performed, as measured or verified by the City in accordance with the Contract Documents. Lump sum units shall be estimated and paid on a percentage-of-completion basis. The Contractor shall furnish the City information as may be requested to aid the City as a guide in the verification of Contractor's estimates. The City shall verify and confirm the monthly invoice submitted by the Contractor, subject to the rules set forth in Item 109.5.1 Monthly Estimate of the NCTCOG Standard Specifications. If the confirmed value of the work done since the last previous estimate exceeds \$100.00 in amount, a percentage of such confirmed sum will be paid to the Contractor about fifteen (15) days after receipt of Contractor's invoice. Owner shall not be liable for interest on any delayed, disputed or delinquent payment, pursuant to Item 109.5.1 Monthly Estimate of the NCTCOG Standard Specifications; this sentence and Item 109.5.1 Monthly Estimate of the NCTCOG Standard Specifications shall constitute the sole, controlling contract terms with respect to interest owed on delayed, disputed or delinquent payments in lieu of Article 601f, Vernon's Texas Civil Statutes. Payment may include amounts for acceptable, non-perishable materials delivered to the job site, based on the net invoice value as presented in the Contractor's invoice, and confirmed by the City. The percentage retained by the Owner shall be as provided in Item 109.5.2 of the Standard Specifications and General Conditions, as amended, hereinafter called “Standard Specifications.” In no event shall payment for any bid item of work exceed the unit price for the item stated in Contractor's Bid Proposal, nor shall payment be made in excess of quantities of work constructed or supplied.

ARTICLE 5. CONTRACT TIME.

Contractor agrees to commence work under this Agreement on a date to be specified in a work order of the City Engineer, and to complete fully all the Work within 365 Calendar Days thereafter. The Contractor agrees to pay as liquidated damages the sum of two hundred forty dollars no cents (\$ 240.00) DOLLARS for each calendar day thereafter, as provided in Item 108.8.1 of the Standard Specifications.

ARTICLE 6. SURETY.

It is agreed by Owner and Contractor that should it appear to the Owner, that at any time during the existence of this Agreement, the surety on the Contractor's bond has become

insolvent, bankrupt or otherwise financially unable to protect Owner under the terms of this Agreement, Owner may demand the Contractor to furnish additional security in some approved surety company satisfactory to Owner; the act of Owner with reference to demanding new or additional security shall never be construed to relieve the original surety or the Contractor of its obligation under this Agreement. Owner may stop the Work under the Agreement until additional security has been furnished by the Contractor, and Owner shall in no case be liable to the Contractor on account of the work stoppage.

ARTICLE 7. CONTRACT DOCUMENTS.

(a) **Documents Listed.** The Contract Documents which comprise the entire Agreement between Owner and Contractor for the performance of and payment for the Work consist of the following:

- (1) Notice & Special Instructions to Bidders;
- (2) Proposal & Addendum;
- (3) This Agreement;
- (4) Performance, Payment, and other bonds;
- (5) Attachments to this Agreement including the Certificate of Insurance;
- (6) Special Specifications including Prevailing Wage Rates;
- (7) North Central Texas Council of Governments Standard Specification for Public Works Construction, latest edition with revisions (hereinafter referred to as the Standard Specifications, and available separately);
- (8) Work order issued by Owner in accordance with Item 103.2 and Item 103.6 of the Standard Specifications;

(b) **Amendments.** The documents listed in Items 1 through 8 above are attached to this Agreement except as expressly noted above. There are no Contract Documents except those listed in Items 1 through 8 above. The Contract Documents may be amended to provide for additions, deletions, or revisions to the Work or to modify the terms of the Contract Documents in one or more of the following ways:

- (1) a formal written amendment;
- (2) a Change Order (pursuant to Item 104.2 of the Standard Specifications); or
- (3) a work change directive, the price of which is negotiated in a later change order.

(c) **Minor Variations.** In addition, the requirements of the Contract Documents may be supplemented and minor variations or deviations in the Work which do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design

concept of the completed Contract Work as a functioning whole, may be authorized in one or more of the following ways:

- (1) a field order by the City Engineer;
- (2) the City Engineer's approval of shop drawings in accordance with Item 105.3 of the Standard Specifications,
- (3) the City Engineer's written interpretation or clarification.

IN TESTIMONY WHEREOF, the CITY OF BENBROOK has caused this instrument to be signed in its corporate name, and on its behalf by the Mayor, duly authorized to execute this instrument by M&C _____, passed by the City Council on _____ and _____, a corporation acting by and through its duly authorized officials, thereby binding themselves, their heirs, successors, assigns and representatives for the faithful and full performance of the terms and provisions of this Agreement, individually, jointly and severally.

EXECUTED this the _____ day of _____ 201_.

City of Benbrook _____

Mayor

Contractor

ATTEST:

ATTEST:
