

**AGENDA
BENBROOK CITY COUNCIL
THURSDAY, SEPTEMBER 6, 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 Seth Wigginton Of Restoration Family Church

III. MINUTES

1. Approve Minutes Of The Regular Meeting Held August 16, 2018

Documents:

[CC MINUTES-08-16-181.PDF](#)

IV. INTRODUCTION OF NEW EMPLOYEES

1. Introduction Of Amanda Valdez, Management Analyst

V. PRESENTATION BY ECONOMIC DEVELOPMENT CORPORATION

EDC-2018-04 Ratify Benbrook Economic Development Corporation Budget For Fiscal Year 2018-2019

Documents:

[EDC-2018-04 EDC BUDGET.PDF](#)

VI. REPORTS FROM CITY MANAGER

A. GENERAL

G-2366 Accept Finance Report For Period Ending July 31, 2018

Documents:

[G-2366 FINANCE REPORT JULY 2018.PDF](#)

[G-2366 REVENUE CHART.PDF](#)

[G-2366 EXPENDITURE CHART.PDF](#)

[G-2366 SALES TAX COMPARISON1.PDF](#)

G-2367 Conduct 2nd Public Hearing And Adopt Ordinance Continuing Curfew For Minors

Documents:

[G-2367 ADOPT MINOR CURFEW ORDINANCE.PDF](#)

[G-2367 ORDINANCE MINOR CURFEW.PDF](#)

G-2368 Adopt Ordinance Amending Chapter 2.12 Of The Benbrook Municipal Code By Establishing Jurisdiction Of The City Of Benbrook Emergency Medical Services

Documents:

[G-2368 AMEND CHAPTER 2.12 BENBROOK EMS.PDF](#)

[G-2368 ORDINANCE AMENDING 2.12.PDF](#)

G-2369 Approve Communications System Agreement With The City Of Fort Worth For The Use Of The Fort Worth Radio System

Documents:

[G-2369 COMMUNICATIONS AGREEMENT WITH FW RADIO SYSTEM.PDF](#)

[G-2369 AGREEMENT GOVERNMENT ENTITY.PDF](#)

VII. OTHER MATTERS OF BUSINESS

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

VIII. 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.

IX. 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.

X. EXECUTIVE SESSION

Pursuant To The Texas Government Code Section 551.087, Deliberation Regarding Economic Development Negotiations

XI. RECONVENE INTO REGULAR MEETING

Take Action From Executive Session

XII. ADJOURNMENT



**MINUTES
OF THE
MEETING OF THE BENBROOK
CITY COUNCIL THURSDAY,
AUGUST 16, 2018**

The regular meeting of the Benbrook City Council was held on Thursday August 16, 2018 at 7:30 p. m. in the Council Chambers at 911 Winscott Road with the following Council members present:

Jerry Dittrich, Mayor
Renee Franklin
Larry Marshall
Rickie Allison
Jim Wilson
Mark Washburn
Ron Sauma

Also Present:

Andy Wayman, City Manager
Jim Hinderaker, Assistant City Manager
Joanna King, City Secretary
Sherri Newhouse, Finance Director
Bennett Howell, Public Services Director
James Mills, Police Chief
Tommy Davis, Fire Chief
Chelsea Nelson, City Planner
Amanda Valdez, Management Analyst

Others Present:

Rick Overgaard, Finance Director
Patrick Marx, Police Commander
Bill Smith
Trey Rozelle
Charles Boswell
Barbara Higbee
and 2 other citizens

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 Pastor Todd Pylant of First Baptist Church of Benbrook.
The Pledge of Allegiance was recited.

III. MINUTES

1. Minutes of the regular meeting held August 2, 2018

Motion by Ms. Franklin, seconded by Dr. Marshall to approve the minutes of the regular meeting held August 2, 2018.

Vote on the Motion:

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

Noes: None

Abstain: Mr. Wilson and Mr. Sauma

Motion carries 5-0-2.

IV. PROCLAMATION/AWARD/RECOGNITION

1. Receive Community Rating System Plaque from FEMA

Trey Rozelle, Federal Emergency Management Agency (FEMA) FM&L Specialist presented City Council with a plaque welcoming the City into the National Flood Insurance Program Community Rating System Program.

2. Proclamation – Hunger Action Month

Mayor Dittrich presented a Proclamation to Charles Boswell of Tarrant Area Food Bank designation September as 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

James Mills gave the following report: 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).

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 (year-to-date)

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 (year-to-date)

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.

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.

Mayor Dittrich opened the public hearing at 7:45 p.m. No one spoke to the item. Mayor Dittrich closed the public hearing at 7:45 p.m.

G-2364 Approve agreement for County-Wide Fire and EMS Mutual Aid

Tommy Davis gave the following report: In 2004, Benbrook entered into an Interlocal Agreement for Fire and Emergency Medical Services 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, and Lockheed Martin

Other Tarrant County municipalities are in the formal approval process.

Motion by Mr. Washburn, seconded by Mr. Wilson to approve the Tarrant County Fire Chiefs Association proposed Interlocal Agreement for Mutual Aid for Fire Protection and Emergency Medical Services.

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Allison, Mayor Dittrich, Mr. Wilson, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

G-2365 Approve agreement for EMS Protection Services with MedStar Ambulance Services

Tommy Davis gave the following report: 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.

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.

Motion by Dr. Marshall, seconded by Mr. Sauma to approve the mutual aid agreement for EMS protection services with MedStar Ambulance Service.

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Allison, Mayor Dittrich, Mr. Wilson, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

B. CONTRACT

C-317 Award Construction Contract for Vista Way Extension Project

Bennett Howell gave the following report: 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.

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.

The Tax Increment Finance District will fund the project.

Motion by Mr. Wilson, seconded by Mr. Allison to 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.

Vote on the Motion:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Allison, Mayor Dittrich, Mr. Wilson, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

VI. OTHER MATTERS OF BUSINESS

1. Conduct 1st Public Hearing on 2018 Property Tax Rate

Sherri Newhouse gave the following report: The City of Benbrook's property tax rate is allocated between the General Fund and the Debt Service Fund. The current property tax rate for the General Fund is \$0.6125 per \$100 valuation. The current property tax rate for the Debt Service Fund is \$0.0275. The total property tax rate is currently \$0.6400 per \$100 valuation. The 2018-19 Proposed Budget is based on a property tax rate of \$0.6400 per \$100 valuation. The General Fund rate is proposed to decrease by \$0.005 from \$0.6125 to \$0.6075. The Debt Service Fund rate will increase at \$0.0325.

The Tarrant Appraisal District provided the City with certified appraisal rolls. At the August 2, 2018 City Council meeting, the Finance Director presented the certified appraisal roll. Council accepted the certified appraisal roll, set the anticipated property tax rate at \$0.6400, and appointed the Finance Director to calculate and to publish the effective tax rate (ETR) and the rollback tax rate (RTR). At the Budget work session held immediately after the City Council meeting, the Council approved maintaining the property tax rate at the current rate of \$0.6400.

With assistance from the Tarrant County Tax Assessor-Collector, the Finance Director calculated the effective tax rate and the rollback tax rate. The effective tax rate of \$0.619189 less than the proposed property tax rate of \$0.6400. The rollback rate of \$.72608 is over the proposed tax rate of \$0.6400. These property tax rates were published in the *Fort Worth Star Telegram* along with notice of the two public hearings on the proposed property tax rate.

The certified appraised values for 2018 within Benbrook increased by 8.64 percent over the 2017 values. The total taxable value increased by 9.50 percent. New construction contributed \$74,547,363 to the appraisal rolls. Each one cent of property tax generates \$208,867 in revenue.

Mayor Dittrich opened the public hearing on the 2018 Property Tax Rate at 8:01 p.m. No one spoke to the item. Mayor Dittrich closed the public hearing at 8:01 p.m.

2. Conduct 1st Public Hearing on 2018-2019 Proposed Budget

Sherri Newhouse gave the following report: The Proposed Budget, as approved by the Council through the adoption of an ordinance, is comprised of the Operating Funds – the General Fund and the Debt Service Fund. These two funds are financed primarily through property tax revenue.

The City of Benbrook's budget process began in May 2018 with development of departmental budget requests. Department requests consist of the base budget and decision packages. The base budget includes funds to cover current operating costs, staffing levels, and expenses. Decision packages are for new programs, positions, equipment, and vehicles. The City Manager reviews the department requests and develops a proposed budget. The City Council is consulted, during a work session open to the public, for any budget requests and changes to current operations. After the certified appraisal roll is provided by the Tarrant Appraisal District in July, staff is able to finalize revenue projections and complete a proposed budget document for review by the City Council. The 2018-19 Proposed Budget was presented to Council at a work session on August 2, 2018.

The 2018-19 Proposed Budget is based on General Fund revenues of \$20,133,765 and Debt Service Fund revenues of \$686,793. Total Operating Fund revenues are \$20,820,558.

The 2018-19 Proposed Budget is based on General Fund expenditures of \$19,334,179 and Debt Service Fund expenditures of \$973,740. Total Operating Fund expenditures are \$20,307,919.

The 2018-19 Proposed Budget includes the following transfers and special uses of funds:

- Transfer from General Fund reserves to Capital Asset Replacement Fund of \$250,000 to stockpile funds for replacement of a fire engine in the future
- Transfer of \$500,000 in General Fund reserves to Capital Projects Fund for the emergency access bridge
- Use of \$920,000 in unrestricted General Fund reserves for replacement of the fire communications system
- Transfer of \$100,000 from Road Damage Fund to General Fund
- Transfer from Storm Water Utility Fund to Debt Service Fund of \$504,744.

The base budget includes continuation of current services, programs, and staffing levels; step increases for eligible full-time employees; funds to cover an up-to 7.50 percent increase in employee health, dental, and life insurance premiums; decrease in City's contribution rate for retirement effective January 1, 2019; replacement of police-package sport utility vehicles for Police Department;

replacement of computers, peripherals, and software as scheduled; and additional funds for operation of the new animal shelter.

Decision packages approved for funding in the 2018-19 Proposed Budget include:

- Three full-time Fire Fighter/EMT positions with a scheduled hire date of January 1, 2019
- Replacement and upgrade of communications system for Fire Department
- Elimination of 3.75 part-time Fire Fighter positions
- Replacement of five light bars for Police patrol vehicles
- Contracting of school crossing guards program
- Project accounting module for financial management system
- Replacement of one traffic signal cabinet
- Phase one of street sign replacement project
- Expansion of street overlay program
- Additional funds for street repairs and reconstruction
- Replacement of electrical breakers for ball fields operated by Parks Department
- Replacement of trash receptacles in City parks
- Two and one-half percent cost-of-living adjustment for full-time employees

The 2018-19 Proposed Budget includes increased funding for the Capital Asset Replacement Fund; funding of \$250,000 from General Fund reserves. Funds are reserved for replacement of a fire engine. Funds are included in the Facilities Fund to replace the jail door operations system. Funds are available in the Storm Water Utility Fund to replace a street sweeper. Funds are also available in other accounts to procure a tack trailer and jack hammer for the Street Department's bobcat. Funds are available to add shelters in three of the City's parks.

The 2018-19 Proposed Budget for the Debt Service Fund is based on increasing the property tax portion from the current rate of \$0.0275 to \$0.0325. Funding includes:

- Payment of principal and interest for general obligation bonds for three issues
- Transfer of \$504,744 from Storm Water Drainage Fund for general obligation bonds issued prior to establishment of Storm Water Fund
- Addition of funds to Debt Service Fund reserves

Mayor Dittrich opened the public hearing on the 2018-2019 proposed budget at 8:10 p.m. No one spoke to the item. Mayor Dittrich closed the public hearing at 8:11 p.m.

VII. INFORMAL CITIZEN COMMENTS

VIII. COUNCIL MEMBER AND STAFF COMMENTS

IX. ADJOURNMENT

Meeting adjourned at 8:12 p.m.

APPROVED:

Jerry B. Dittrich, Mayor

ATTEST:

Joanna King, City Secretary



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 09/06/18	REFERENCE NUMBER: EDC-2018-04	SUBJECT: Ratify Benbrook Economic Development Corporation Budget for Fiscal Year 2018-2019	PAGE: 1 of 2
-------------------	----------------------------------	---	-----------------

At their August 20, 2018 regular meeting, the Benbrook Economic Development Corporation Board of Directors conducted a public hearing (receiving no public comment) and approved the FY 2018-2019 BEDC budget totaling \$1,428,504.

The board is seeking City Council ratification of the FY2019 Budget.

A summary of the proposed budget is as follows:

Administrative Budget - Accounts 5000 - 5300	\$442,504																
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%; padding: 5px;">5701 Gateway Entrance Sign (balance on project)</td> <td style="width: 20%; text-align: right; padding: 5px;">\$6,000</td> </tr> <tr> <td style="padding: 5px;">5705 Storefront Improvement Program (ongoing)</td> <td style="text-align: right; padding: 5px;">\$150,000</td> </tr> <tr> <td style="padding: 5px;">5706 NW Winscott Infrastructure (TIA, maintenance)</td> <td style="text-align: right; padding: 5px;">\$150,000</td> </tr> <tr> <td style="padding: 5px;">5707 Westpark Corner (TCEQ, maintenance)</td> <td style="text-align: right; padding: 5px;">\$5,000</td> </tr> <tr> <td style="padding: 5px;">5712 8909 Benbrook Boulevard (utility connections, maintenance)</td> <td style="text-align: right; padding: 5px;">\$75,000</td> </tr> <tr> <td style="padding: 5px;">5722 Benbrook Boulevard (landscape, signage, beautification)</td> <td style="text-align: right; padding: 5px;">\$600,000</td> </tr> <tr> <td style="padding: 10px 5px 5px 5px;">5700 Total Projects</td> <td style="text-align: right; padding: 10px 5px 5px 5px;"><u>\$986,000</u></td> </tr> <tr> <td style="padding: 10px 5px 5px 5px;"><u>TOTAL FY 2018-2019 BEDC BUDGET</u></td> <td style="text-align: right; padding: 10px 5px 5px 5px;"><u>\$1,428,504</u></td> </tr> </table>		5701 Gateway Entrance Sign (balance on project)	\$6,000	5705 Storefront Improvement Program (ongoing)	\$150,000	5706 NW Winscott Infrastructure (TIA, maintenance)	\$150,000	5707 Westpark Corner (TCEQ, maintenance)	\$5,000	5712 8909 Benbrook Boulevard (utility connections, maintenance)	\$75,000	5722 Benbrook Boulevard (landscape, signage, beautification)	\$600,000	5700 Total Projects	<u>\$986,000</u>	<u>TOTAL FY 2018-2019 BEDC BUDGET</u>	<u>\$1,428,504</u>
5701 Gateway Entrance Sign (balance on project)	\$6,000																
5705 Storefront Improvement Program (ongoing)	\$150,000																
5706 NW Winscott Infrastructure (TIA, maintenance)	\$150,000																
5707 Westpark Corner (TCEQ, maintenance)	\$5,000																
5712 8909 Benbrook Boulevard (utility connections, maintenance)	\$75,000																
5722 Benbrook Boulevard (landscape, signage, beautification)	\$600,000																
5700 Total Projects	<u>\$986,000</u>																
<u>TOTAL FY 2018-2019 BEDC BUDGET</u>	<u>\$1,428,504</u>																

AVAILABLE FUNDS

As of August 2018, staff projects unencumbered BEDC liquid assets available on October 1, 2018 of approximately \$3,358,998 (note: this number does not reflect any unspent FY2018 claim on funds), and projected FY2019 total revenue to be approximately \$1,150,000. Subtracting the proposed FY2019 budget leaves projected end of fiscal year 2019 funds available of approximately \$3,080,494.

However, at the BEDC board's direction, staff is currently working on several other projects, and anticipates seeking City Council approval and corresponding budget adjustments in FY2019.

Additional revenue may include unspent FY2018 claim on funds, increased interest accrued or sales tax revenue, and proceeds from the sale of BEDC-owned property.

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

DATE: 09/06/18	REFERENCE NUMBER: EDC-2018-04	SUBJECT: Ratify Benbrook Economic Development Corporation Budget for Fiscal Year 2018-2019	PAGE: 2 of 2
-------------------	-------------------------------------	--	-----------------

RECOMMENDATION

The Benbrook Economic Development Corporation Board of Directors recommends that City Council ratify the FY 2018-2019 BEDC Budget.



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 09/06/18	REFERENCE NUMBER: G-2366	SUBJECT: Accept finance report for period ending July 31, 2018	PAGE: 1 of 2
-------------------	-----------------------------	---	-----------------

GENERAL FUND

General Fund revenues for the month of July were \$524,312. Property tax collections were \$82,880. Sales tax collected and recognized as revenue in July 2018 was \$245,717. A separate summary of sales tax revenue collections is provided for informational purposes. Total Franchise Fees for July were \$168,682, and revenue from Charges for Services were \$73,160. Additional franchise fee payments are anticipated prior to the end of the fiscal year. General Fund revenues collected through the end of July were \$16,590,182 or 88 percent of the budget.

General Fund expenditures for the month of July were \$2,230,965, which is higher than last July because of the annual payment to the TIF of \$759,391. Last year, the TIF payment was made in March, 2017. General Fund expenditures to date do not include \$2,000,000 in scheduled transfers; these transfers will be made prior to September 30, 2018. Expenditures through the end of July were \$14,488,060 or 73 percent of the adopted budget.

For the 2017-18 fiscal year-to-date, total General Fund revenues of \$16,590,182 exceeded General Fund expenditures of \$14,488,060 by \$2,102,122.

DEBT SERVICE

Debt Service revenues collected for the month of July totaled \$3,721; all revenue was from property taxes. There was \$82,284 in Debt Service interest expenditures for July. Total revenues for 2017-18 in the amount of \$505,703 were exceeded by total expenditures of \$1,519,299 by \$1,013,596.

EDC

EDC revenues as of July 31, 2018, were \$1,031,817. Revenue was from the EDC's portion of sales tax and interest on investments. EDC expenditures through the end July were \$2,486,619, with \$1,161,729 for land acquisition. EDC revenues for the year were exceeded by EDC expenditures by \$1,454,802.

CAPITAL PROJECTS

Total revenues received through July 31, 2018, for the Capital Projects Fund were \$2,260,557 from Stormwater Utility fees, TIF income, Mineral Lease revenue, and interest earnings. Total expenditures for the Capital Projects Fund were \$4,254,508 through the end of July 2018. July expenditures, in the amount of \$531,475, were for the following projects: Plantation West

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

DATE: 09/06/18	REFERENCE NUMBER: G-2366	SUBJECT: Accept finance report for period ending July 31, 2018	PAGE: 2 of 2
-------------------	--------------------------------	--	-----------------

Drainage, Vista Way, Benbrook Field Drive, Animal Shelter, and the Clear Fork Emergency Access Bridge. Total expenditures exceeded total revenues by \$1,993,951. Sufficient funds are available in the current fund balances of the Capital Projects Fund. This fund operates on a project basis rather than a specific fiscal year.

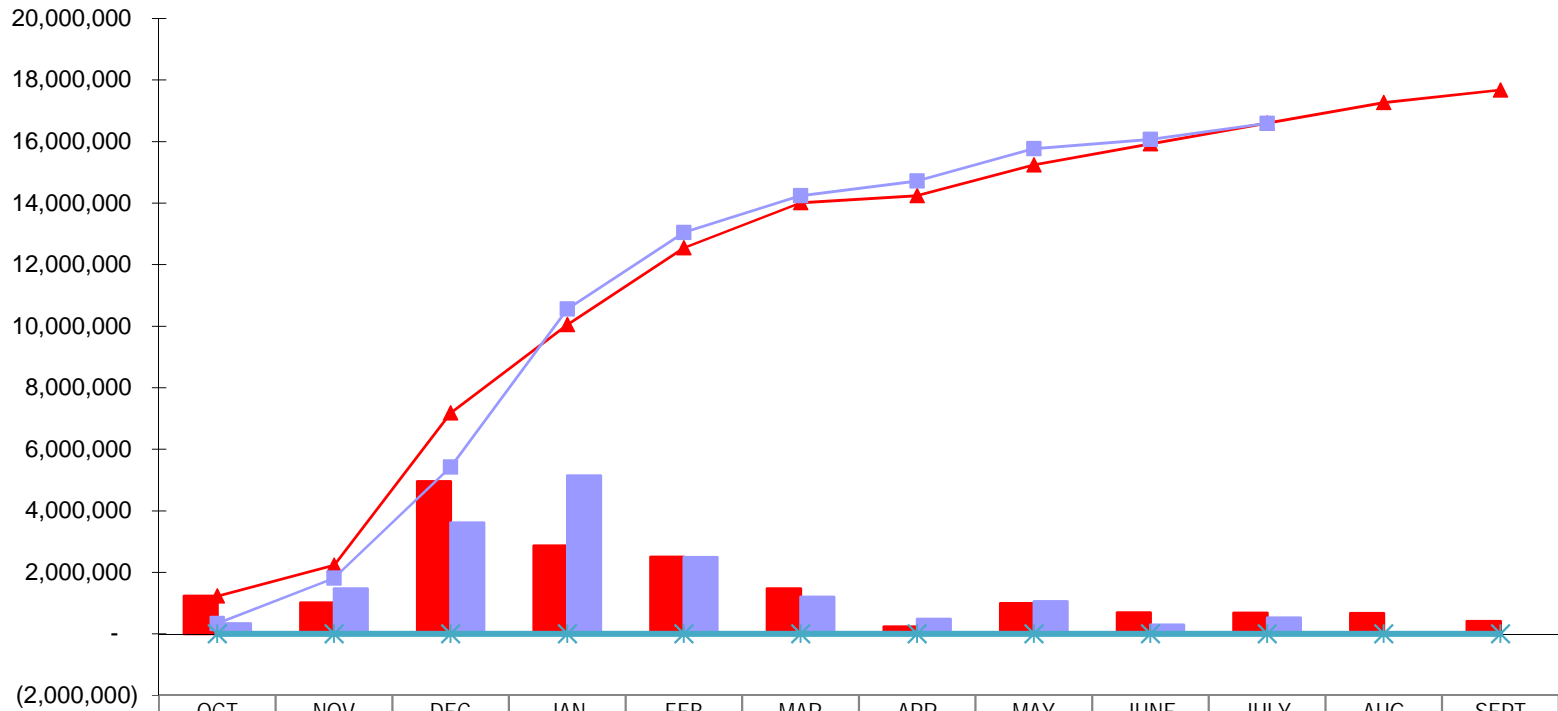
CASH & INVESTMENTS

On July 31, 2018, the City had \$21,253,339 invested at varying interest rates; the EDC had \$5,601,487 available.

RECOMMENDATION

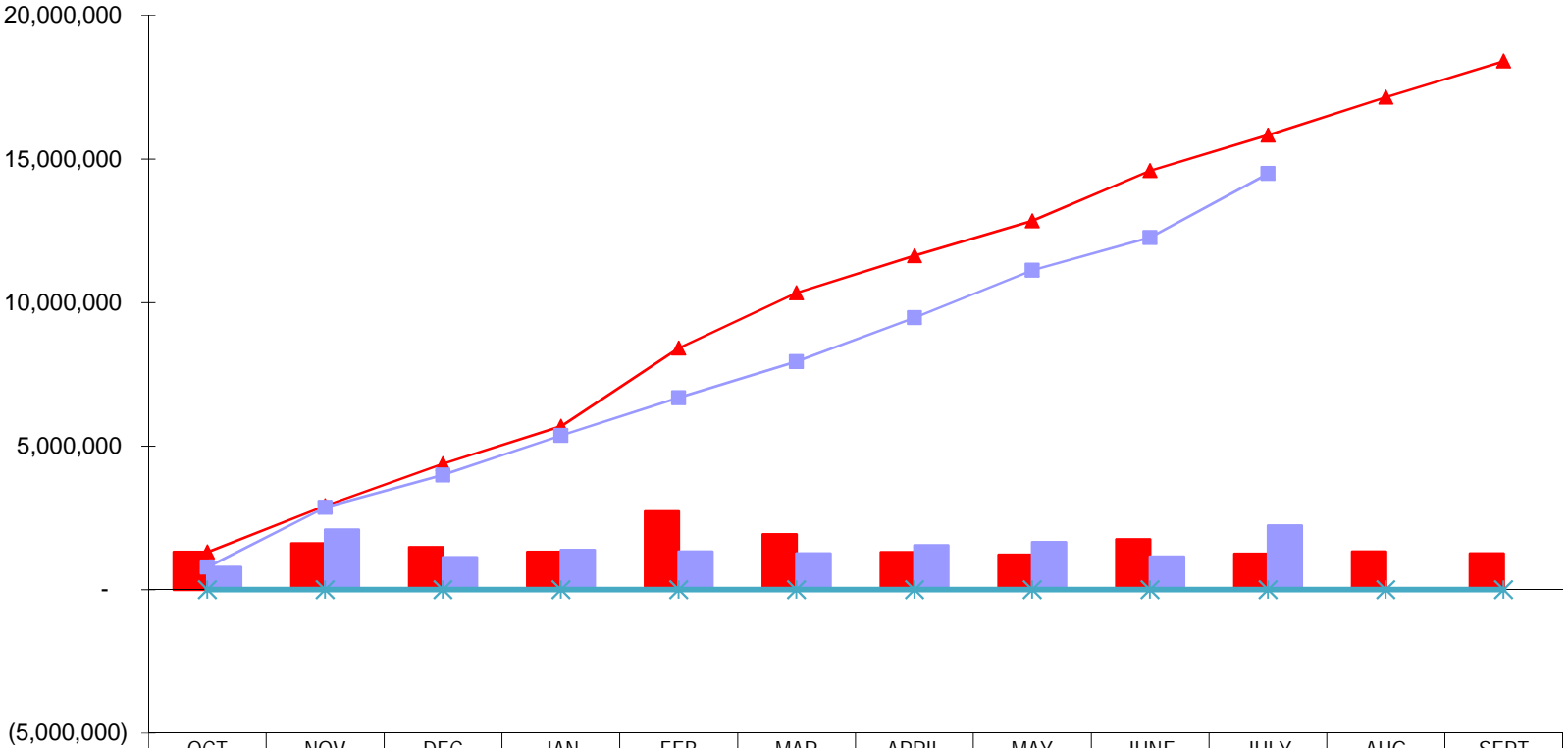
Staff recommends that City Council accept the finance report for the period ending July 31, 2018.

General Fund Revenue Trend Comparison



	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
■ 2016-17	1,225,519	1,005,804	4,948,319	2,864,113	2,500,283	1,463,965	234,804	993,951	687,767	678,517	665,351	404,811
■ 2017-18	338,395	1,469,706	3,608,527	5,139,537	2,487,439	1,194,686	480,538	1,053,789	293,253	524,312	-	-
▲ YTD 16-17	1,225,519	2,231,323	7,179,642	10,043,755	12,544,038	14,008,003	14,242,807	15,236,758	15,924,525	16,603,042	17,268,393	17,673,204
■ YTD 17-18	338,395	1,808,101	5,416,628	10,556,165	13,043,604	14,238,290	14,718,828	15,772,617	16,065,870	16,590,182		
* % Increase 16-17 to 17-18	-72.39%	-18.97%	-24.56%	5.10%	3.98%	1.64%	3.34%	3.52%	0.89%	-0.08%	0.00%	0.00%

General Fund Expenditure Trend Comparison



	OCT	NOV	DEC	JAN	FEB	MAR	APRIL	MAY	JUNE	JULY	AUG	SEPT
■ 2016-17	1,304,199	1,607,687	1,466,600	1,306,426	2,723,054	1,925,776	1,295,793	1,211,974	1,744,790	1,243,309	1,321,519	1,257,276
■ 2017-18	777,908	2,088,420	1,125,744	1,374,833	1,317,536	1,248,670	1,542,116	1,642,777	1,139,091	2,230,965	-	-
▲ YTD 16-17	1,304,199	2,911,887	4,378,486	5,684,912	8,407,966	10,333,742	11,629,535	12,841,509	14,586,299	15,829,609	17,151,128	18,408,405
■ YTD 17-18	777,908	2,866,328	3,992,072	5,366,905	6,684,441	7,933,111	9,475,227	11,118,004	12,257,095	14,488,060		
* % Change 2016-17 to 2017-18	-40.35%	-1.56%	-8.83%	-5.59%	-20.50%	-23.23%	-18.52%	-13.42%	-15.97%	-8.47%	0.00%	0.00%



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 09/06/18	REFERENCE NUMBER: G-2367	SUBJECT: Conduct 2 nd public hearing and adopt Ordinance continuing curfew for minors	PAGE: 1 of 2
-------------------	-----------------------------	---	-----------------

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 public hearing held August 16, 2018, and (2) a second public hearing followed by formal City Council consideration.

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.

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.

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

DATE: 09/06/18	REFERENCE NUMBER: G-2367	SUBJECT: Conduct 2 nd public hearing and adopt Ordinance continuing curfew for minors	PAGE: 2 of 2
-------------------	--------------------------------	--	-----------------

RECOMMENDATION

Staff recommends that City Council conduct the second public hearing to receive public input and adopt 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: 9-6-18	REFERENCE NUMBER: G-2368	SUBJECT: Adopt Ordinance amending Chapter 2.12 of the Benbrook Municipal Code by establishing jurisdiction of the City of Benbrook Emergency Medical Services	PAGE: 1 of 1
-----------------	-----------------------------	--	-----------------

In some municipalities, private ambulance companies provide non-emergency patient transfers. Although staff is not aware of a private ambulance company currently providing non-emergency transfers in Benbrook, private ambulance companies have previously requested to transport patients.

Chapter 2.12 of the Benbrook Municipal Code establishes the administration of the Benbrook Fire Department but does not currently contemplate jurisdictional or health and safety issues related to private ambulance companies.

In order to provide and clarify jurisdictional authority and establish local health and safety oversight of private ambulance companies, the proposed ordinance:

- Establishes the Benbrook Fire Department as solely responsible for emergency and non-emergency EMS calls, except as provided by interlocal agreement.
- Restricts private ambulance companies to non-emergency transfer calls to and from skilled nursing facilities only. The private ambulance companies must secure a permit (\$250) to operate in Benbrook.
- Establishes licensing and health and safety standards for private ambulance companies providing non-emergency transfer calls.
- Designates the Benbrook Fire Department as the on-site medical personnel for all special events unless otherwise approved by the Fire Chief or designee.

RECOMMENDATION

Staff recommends that City Council amend Title 2, Administration and Personnel of the Benbrook Municipal Code by amending Chapter 2.12, by adding Section 2.12.012 to establish jurisdiction and oversight of Emergency Medical Services.

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

ORDINANCE NO. 1429

AN ORDINANCE AMENDING CHAPTER 2.12 OF THE BENBROOK MUNICIPAL CODE (1985) AS AMENDED BY ADDING SECTION 2.12.012 ESTABLISHING DEFINITIONS AND JURISDICTION OF THE CITY OF BENBROOK EMERGENCY MEDICAL SERVICES; 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 ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, Ordinance No. 760 established the function of the Benbrook Fire Department under the control of the City Manager or his representative; and

WHEREAS, the Benbrook Fire Department provides Emergency Medical Services (EMS) for its citizens; and

WHEREAS, City Council has determined the need to establish definitions and jurisdiction of the Emergency Medical Services.

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

SECTION 1

That Section 2.12.012 - Jurisdiction of Emergency Medical Services of Chapter 2.12 – FIRE DEPARTMENT of Title 2 – ADMINISTRATION AND PERSONNEL of the Benbrook Municipal Code, as amended, is hereby established to provide the following:

Section 2.12.012 - Jurisdiction of Emergency Medical Services

A. Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ambulance means any motor vehicle that is specially designed or constructed, equipped, licensed to be used for, maintained and is operated for the transportation of the sick or injured in, about or outside the city.

Ambulance Service means any entity that is licensed by the Texas Department of State Health Services as an Emergency Medical Provider.

Clean and Sanitary means free from dirt, pollution, contamination or disease or relating to good health or protection from dirt, infection or disease.

Emergency Medical Call means any request for ambulance service that is made by telephone or other means of communication in circumstances which are, or have been represented to be, an emergency requiring immediate response.

License means a license issued by the Texas Department of State Health Services or other State or Federal regulatory agency.

Non-Emergency Medical Call means any circumstance that does not call for the immediate response (no emergency lights and/or siren) in which the element of time in transporting the sick, wounded or injured for medical treatment is not essential to the health or life of the person.

Non-Emergency Medical Transfer Call means any request for ambulance service that is made by telephone, or other means of communications in circumstances which are or have been represented to be of a non-emergency nature requiring non-emergency transfer between a skilled nursing facility and a clinic, rehabilitation facility, dialysis, or pre-scheduled appointments for office visits to the patient's primary care physician or specialty physician.

Private Ambulance Service means any privately-owned ambulance licensed by the Texas Department of State Health Services and that has been constructed, equipped and/or used for transferring the sick, or injured under circumstances which are or have been represented to be of a non-emergency nature requiring non-emergency transfer.

Special Events mean any parade, sporting event, concert or other event or gathering requiring on-site standby medical personnel.

Transfer means the moving of a patient from one physical location to another with the use of an ambulance.

B. Jurisdiction

1. All emergency medical calls (911 calls) and non-emergency medical calls that originate in the City of Benbrook are the responsibility of the City of Benbrook

Fire Department EMS, either directly or through interlocal agreement as approved by the Benbrook City Council.

2. No person, either as owner, agent or otherwise shall operate, conduct, maintain, advertise or otherwise engage in or profess to engage in the business of ambulance service upon the streets, alleys or public ways or places of Benbrook, Texas.
3. Notwithstanding Section 2.12.012.B.2 above, the City of Benbrook may grant a private ambulance service permit to any private ambulance service seeking authorization from the City of Benbrook to respond to non-emergency medical transfer calls only. Applicants shall seek authorization annually and provide proof of compliance with Section 2.12.012.C, Standards for Private Ambulance Service, below.
4. If a private ambulance service receives a direct call meeting the definition of an emergency medical call or non-emergency medical call (excluding non-emergency medical transfer calls) within the City of Benbrook, the private ambulance service shall immediately refer the emergency medical call or non-emergency medical call to the Benbrook Fire Department.
5. Private ambulance services will not operate with lights and/or sirens in the City of Benbrook, unless enroute to an emergency call in another jurisdiction or delivering a patient to a hospital emergency room that did not originate in the City of Benbrook.
6. Private ambulance services will not transport patients for non-emergency medical transfer calls in the City of Benbrook with lights and sirens engaged.
7. In the event a private ambulance service is physically located at a skilled nursing facility for the purpose of a non-emergency medical transfer and a patient's condition necessitates an emergency medical call, the private ambulance service must immediately contact the Benbrook Fire Department. The private ambulance service crew members may begin advanced life support and supportive care for the patient until Benbrook Fire Department EMS personnel arrive and assume patient care. At the discretion of the Fire Chief or designee, the private ambulance service may be instructed by the Fire Chief or designee to transfer the patient if in the patients' best interest.
8. If a patient's condition changes during a non-emergency medical transfer and necessitates a transition to an emergency medical transport, the private ambulance service shall notify the Benbrook Fire Department in writing within 7 days following the event. The written notification must include where the patient was picked up, destination, and explanation of why the non-emergency medical transfer transitioned to an emergency medical transport.

9. The Benbrook Fire Department will maintain and provide on-site medical personnel for all special events held in the City of Benbrook, unless otherwise approved by the Fire Chief.

C. Permit Review and Approval Process

1. It shall be unlawful to operate a private ambulance service in the City of Benbrook without a private ambulance service permit.
2. The operator of a private ambulance service shall file an application for a private ambulance service permit with the Benbrook Fire Department on a yearly basis. The application shall be submitted along with the private ambulance service fee, as identified in Chapter 1.12, Fees for City Services.
3. The Benbrook Fire Department shall issue an annual permit only after determination of compliance with the following Standards for Private Ambulance Service:
 - a. Each ambulance shall, when in use as such, be suitable for the transportation of the patient, and conform to health, sanitation and safety standards required by Local, State and Federal law.
 - b. Minimum equipment standards shall be those established by Texas Department of State Health Services.
 - c. Proof of a license from Texas Department of State Health Services to operate as an emergency medical services provider must be posted on the inside of the ambulance.
 - d. A current Texas Department of State Health Services license number must be displayed on the exterior of the ambulance.
 - e. A current certificate must be available for inspection to provide proof of level of care according to Texas Department of State Health Services for inspection standards and maintenance of the same during the permit period.
 - f. The private ambulance service shall comply with the terms and conditions of the City of Benbrook, lawful orders of the Fire Chief, and rules and regulations established under City ordinances, State and Federal laws applicable to the operation of a private ambulance service.

D. Inspections

1. To ensure continued compliance with the above Standards of Private Ambulance Service, all ambulances operated by a permitted private ambulance service are subject to spot inspections by the City of Benbrook, without notice.
2. Failure to pass a spot inspection shall result in the immediate suspension of the private ambulance service permit.
3. A request for re-inspection shall be granted by the Benbrook Fire Department within 72-hours of said request. Upon a determination of compliance with the above Standards for Private Ambulance Service and payment of the re-

inspection fee as identified in Chapter 1.12, Fees for City Services, the suspension shall be immediately lifted.

SECTION 2

That Chapter 1.12 – FEES FOR CITY SERVICES of Title 1 – GENERAL PROVISIONS of the Benbrook Municipal Code, as amended, is hereby revised by amending SECTION 1.12.030 – Public Safety and Municipal Court Fees to include the following fees:

12. Annual Private Ambulance Service Permit Fee	\$250.00
Re-Inspection Fee	\$125.00

The rest of 1.12.030 shall remain the same.

SECTION 3 Cumulative Clause

The ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Benbrook, Texas. As amended, except where the provisions of this ordinance are in direct conflict of such ordinances and such code, in which event the conflicting provisions of such ordinances and such codes are hereby repealed.

SECTION 4 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 the 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 the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or Section.

SECTION 5 Penalty Clause

Any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with or 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 or 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.

SECTION 6
Savings 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 the valid judgement or decree of any court of competent jurisdiction, unconstitutionality shall not affect any of the other phrases, clauses, sentences, paragraphs or 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 7
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 8
Publication Clause

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

SECTION 9
Effective Date

This Ordinance shall be in full force and effect from and after its passage and publication as provided by law, and it is so ordained.

PASSED AND APPROVED this 6th day of September 2018

Jerry B. Dittrich, Mayor

ATTEST:

Joanna King, City Secretary



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 09/06/18	REFERENCE NUMBER: G-2369	SUBJECT: Communications System agreement with the City of Fort Worth for the use of the Fort Worth radio system	PAGE: 1 of 1
-------------------	-----------------------------	--	-----------------

The Texas Local Government Code allows cities to enter into interlocal agreements for the purpose of jointly performing governmental functions. Benbrook participates in multiple interlocal agreements including mutual aid (Tarrant County), garbage billing (BWA), and cooperative purchasing (Buyboard and HGAC).

INTERLOCAL AGREEMENT WITH CITY OF FORT WORTH

Benbrook's current dispatch and handheld radio system for emergency responders and field service employees is a 20-year old UHF system. The Benbrook Capital Improvements Program (CIP) and upcoming 2018/19 budget replaces the system with a modern 800MHz system. The 800MHz system allows for interagency communication, eliminates dead spots and is generally more reliable.

The City of Fort Worth currently operates and manages its own 800 MHz radio system with related infrastructure. Multiple agencies utilize the Fort Worth systems' infrastructure via interlocal agreement. Benbrook's use of Fort Worth's existing infrastructure eliminates very significant capital (millions of \$'s) and maintenance costs. The attached interlocal agreement provides for Benbrook's full use of the Fort Worth 800 MHz system with Benbrook having its own assigned frequency. The annual cost to Benbrook is approximately \$64,600 per year.

RECOMMENDATION

Staff recommends that City Council approve the Interlocal Communications System Agreement with the City of Fort Worth for the use of the Fort Worth radio system.

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

COMMUNICATIONS SYSTEM AGREEMENT

CATEGORY 1 – GOVERNMENT ENTITY

This **COMMUNICATIONS SYSTEM AGREEMENT** (the “**Agreement**”) is made and entered into by and between the **City of Fort Worth (“Fort Worth” or “CFW”)** acting herein by and through its duly authorized Assistant City Manager, and the **City of Benbrook (“Benbrook” or “USER”)**, acting herein by and through its duly authorized Mayor, individually referred to as a “party,” collectively referred to herein as the “parties.” The CFW or Fort Worth shall include all employees, directors, officers, agents, and authorized representatives. Benbrook shall include all employees, directors, officers, agents, and authorized representatives.

RECITALS

WHEREAS, this Agreement is made under the authority of Sections 791, Texas Government Code; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the subject of this Agreement is necessary for the benefit of the public and each has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, each governing body finds that the performance of this Agreement is in the common interest of both parties and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, Fort Worth owns, operates, and maintains Trunked Voice Radio Systems for the purpose of providing Public Safety voice radio communications and is the sole license holder of the CFW Trunked Voice Radio Systems with all privileges and responsibilities thereof.

NOW THEREFORE, Fort Worth and Benbrook agree as follows:

1. GRANT OF LICENSE

Fort Worth hereby grants the **USER** specific permission to operate **USER’s** owned or leased field radio equipment or equipment attached and/or interfaced to the CFW Trunked Voice Radio Systems (the “Radio System”) infrastructure in accordance with the specific details and requirements for use as set forth in “**Exhibit A, Terms of Use,**” which is attached hereto, incorporated herein, and made a part of this Agreement for all purposes. Failure to comply with these specific details and requirements may result in the immediate withdrawal of the specified permissions.

2. **TERM**

This Agreement shall begin upon the last day executed by all authorized parties and shall continue in full force and effect unless terminated in accordance with the provisions set forth herein and in **Exhibit A**.

3. **COMPENSATION**

Benbrook shall remit payment to Fort Worth in the amount and manner set forth in **Exhibit A**.

4. **LIABILITY**

Each party agrees to be liable for any damages or loss that may be caused by its own negligence, omission or intentional misconduct. For purposes of this Section 4, the term party shall include employees, directors, officers, agents, authorized representatives, subcontractors, consultants, and volunteers of the respective party. Nothing in the performance of this Agreement shall impose any liability for claims against either party other than for claims for which the Texas Tort Claims Act may impose liability.

5. **INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that **USER** shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the CFW. Subject to and in accordance with the conditions and provisions of this Agreement, **USER** shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. **USER** acknowledges that the doctrine of *respondent superior* shall not apply as between the CFW, its employees, directors, officers, agents, and authorized representatives, and **USER** and its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. **USER** further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between CFW and **USER**.

6. **NON-APPROPRIATION OF FUNDS**

Fort Worth and **USER** will use best efforts to appropriate sufficient funds to support obligations under this Agreement. However, in the event that sufficient funds are not appropriated by either party's governing body, and as a result, that party is unable to fulfill its obligations under this Agreement, that party (i) shall promptly notify the other party in writing and (ii) may terminate this Agreement, effective as of the last day for which sufficient funds have been appropriated.

7. **RIGHT TO AUDIT**

USER agrees that the CFW shall, at no additional cost to the CFW, during and until the expiration of three (3) years after termination of this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers, records, and communications of the **USER** involving transactions relating to this Agreement. **USER** agrees that the CFW shall

have access during normal working hours to all necessary **USER** facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CFW shall give **USER** reasonable advance notice of intended audits.

8. ASSIGNMENT

USER shall not have the right to assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the CFW. Which such right shall be granted solely at the discretion of the CFW. Any assignment in violation of this provision shall be void.

9. NO WAIVER

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

10. GOVERNMENTAL POWERS/IMMUNITIES

It is understood and agreed that by execution of this Agreement, the neither CFW nor **USER** waives or surrender any of its governmental powers or immunities.

11. AMENDMENTS

No amendment to this Agreement shall be binding upon either party hereto unless such amendment is set forth in writing, dated subsequent to the date of this Agreement, and signed by both parties.

12. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. CONFIDENTIAL INFORMATION

To the extent permitted by law, **USER** for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by the CFW as confidential ("City Information") and shall not disclose any such information to a third party without the prior written approval of the CFW, unless such disclosure is required by law, rule, regulation, court order, in which event **USER** shall notify CFW in writing of such requirement in sufficient time to allow CFW to seek injunctive or other relief to prevent such disclosure. **USER** shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. **USER** shall notify the CFW immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised.

14. FORCE MAJEURE

The parties shall exercise their best efforts to meet their respective duties and obligations hereunder, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any state or federal law or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems, existing contractual obligations directly related to the subject matter of this Agreement, or declaration of a state of disaster or emergency by the federal, state, county, or City government in accordance with applicable law.

15. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

City of Fort Worth
Attn: Susan Alanis, Assistant City Manager
200 Texas Street
Fort Worth TX 76102
Facsimile: (817) 392-8654

City of Benbrook
Attn: Jerry Dittrich, Mayor
911 Winscott Road
Benbrook, TX 76126
Facsimile: (817)249-0884

With Copy to the City Attorney
At same address

With Copy to City Secretary
At the same address

16. GOVERNING LAW / VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. In any such action, each party shall pay its own attorneys’ fees, court costs and other expenses incurred as a result of the action.

17. SIGNATURE AUTHORITY

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

18. ENTIRETY OF AGREEMENT

This written instrument, including all Exhibits attached hereto, contains the entire understanding and agreement between Fort Worth and **USER** as to the matters contained herein. Any prior or

contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with this Agreement. Any previously executed Communication System Agreement between the parties shall be terminated simultaneously with the final execution of this Agreement by both parties.

19. COUNTERPARTS.

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

[Signature Page Follows]

EXECUTED IN MULTIPLE ORIGINALS on this the ____ day of _____, 20____.

CITY OF FORT WORTH:

CITY OF BENBROOK:

By: _____
Susan Alanis
Assistant City Manager

By: _____
Jerry B. Dittrich
Mayor

Date: _____

Date: _____

CONTRACT COMPLIANCE MANAGER:

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

By: _____
Name: Steve Streiffert
Title: Assistant IT Director

APPROVED TO FORM AND LEGALITY:

APPROVED TO LEGALITY:

By: _____
J.B. Strong
Assistant City Attorney

By: _____
Betsy Elam
City Attorney

ATTEST:

ATTEST:

By: _____
Mary J. Kayser
City Secretary

By: _____
Joanna King
City Secretary

Form 1295: _____

Contract Authorization:

M&C: _____

Date Approved: _____

EXHIBIT A

CATEGORY 1, TERMS OF USE

The following definitions shall have the meanings set forth below and apply to this Agreement and the Terms of Use set forth herein:

DEFINITIONS

“Console System” shall mean all hardware and software associated with any dispatch console or set of consoles operated by the **USER** that are connected to the CFW Master Switch.

“Interoperable Communications Governance Committee” (“Governance Committee”) shall mean that group of individuals tasked with maintaining and administering the Interoperable Communications Plan. The Governance Committee shall consist of ten to fifteen individuals with CFW selecting at least one representative and each classification of users selecting at least one representative. The Governance Committee shall determine and may periodically adjust the number of members and the method for selecting members for each classification of users with a goal of ensuring that the Governance Committee reflects the full range of user types.

“Infrastructure Support Fee” shall mean the annual fee charged by CFW to offset costs incurred by the CFW in the operation and maintenance of the Radio System.

“Interoperable Communications Plan” (the “Plan”) means the plan developed and established by CFW and the Governance Committee to facilitate, enhance and simplify radio communications among all agencies utilizing the Radio System or connecting their Site Repeater Systems or Console Systems to the CFW Master Switch. The Plan is available upon request from CFW or can be found on the CFW website at <http://fortworthtexas.gov/itsolutions/>.

“Master Switch” shall mean the primary processing and network infrastructure to which all Console Systems and Site Repeater Systems must connect in order to operate on the Radio System. The Master Switch is currently located at the CFW Eagle Mountain facility.

“Over The Air Rekeying” (“OTAR”) shall mean the management and support of Subscriber Radio encryption keys via over-the-air, radio channel transmission.

“OTAR Administration Fee” shall mean the annual fee charged by CFW to offset costs incurred by the CFW in the management and support of Subscriber Radio encryption keys administered through the Radio System’s OTAR functions.

“Over the Air Programming” (“OTAP”) shall mean the method of implementing programming changes to Subscriber Radios using the over-the-air data capabilities of the Radio System.

“Private Call” shall mean a feature that reserves channel resources specifically for conversations between two Subscriber Radios.

“Site Repeater System” shall mean the base stations, shelter, tower and all site-specific hardware and software infrastructure associated with the provision of a radio site connected to the CFW Master Switch.

“System Upgrade Agreement Fee” shall mean the annual fee charged by CFW to offset cost charged to CFW by Motorola Solutions for the maintenance of the Software Upgrade Agreement applicable to the **USER’s** Console Systems and Site Repeater Systems.

“Subscriber Radio” shall mean a radio that has a unique identification number and is programmed to operate on the Radio System. The term shall include, but not be limited to, control stations (desk top radios), mobile radios, and portable radios.

“Talk Group” shall mean a specific group of Subscriber Radios allowed to communicate privately within that group over shared infrastructure resources.

TERMS OF USE

1. The installation and maintenance of the Radio System infrastructure equipment is the responsibility of CFW unless otherwise stated in this Agreement.
2. The CFW is the holder of the FCC (Federal Communications Commission) license(s) that the Radio System uses for its operation. This Agreement shall not be construed or interpreted to grant, convey, or otherwise provide **USER** with any rights whatsoever to the CFW FCC license(s) or to the Radio Frequency spectrum used by the Radio System.
3. The CFW makes no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location. The **USER** is responsible for conducting appropriate and applicable in-building and geographical coverage testing to determine the expected radio coverage level for **USER’s** equipment.
4. **USER** will be responsible for the acquisition, programming, and maintenance of all equipment **USER** will be utilizing in connection with the Radio System infrastructure, including, but not limited to, Subscriber Radios, consoles, and special equipment.
5. In order to ensure hardware and software compatibility with the Radio System infrastructure, all Subscriber Radios and consoles intended for use by **USER** on the Radio System shall be compliant with Project 25 standards established by the Telecommunications Industry Association. The use of unauthorized radios on the Radio System may result in suspended operation of the radios and/or termination of the Agreement.
6. **USER** agrees to exclusively utilize antennas specifically approved by the radio manufacturer for use with the specific models of **USER’s** radios. The use of short, broad spectrum, or “stubby,” antennas is not recommended. **USER** shall be solely liable for coverage gaps in the event **USER** utilizes short broad spectrum or stubby antennas or other antennas not approved by the manufacturer for use with the specific models of **USER’s** radios.
7. No antenna gain greater than 3 DB will be allowed for mobiles and consolettes.

8. **USER** shall use due diligence in the maintenance and configuration of its Subscriber Radio equipment to ensure that no **USER** radio or console causes a degradation to the Radio System operation. The CFW shall have the right to remove from operation any field radio unit or equipment owned or leased by **USER** that is operating on, attached and/or interfaced to the CFW infrastructure, if CFW determines in its sole reasonable discretion that such equipment is causing interference or harm to the Radio System in any way. The CFW reserves the right to request that **USER** operated field radio units or equipment operating on, attached and/or interfaced to the infrastructure be tested for proper operation and/or repaired by an authorized radio repair facility approved by the CFW. The cost of such testing or repair will be the sole responsibility of **USER**. Furthermore, the CFW shall have the right to deactivate, without prior notification to or consent of **USER**, any field radio or other **USER** equipment suspected of causing interference, intentionally or unintentionally, to any other radios on the Radio System or to the Radio System's overall operation.

9. **USER**'s radios may be used for voice radio communications over the Radio System infrastructure in accordance with the terms and conditions of this Agreement for as long as this Agreement remains in effect.

10. The CFW will be responsible for managing infrastructure loading and demand. CFW reserves the right, without notice to incumbent users, to enter into a similar agreement with other entities or to deny the addition of new Subscriber Radio equipment to any user of the Radio System. The CFW shall have sole discretion in determining whether to allow additional users or radios based on CFW's determination of whether such addition to the Radio System can be made without adversely impacting the Radio System.

11. **USER** is prohibited from utilizing telephone interconnect on the Radio System. This prohibition shall include, but is not limited to, connecting to either the PSTN (Public Switched Telephone Network) or **USER**'s internal phone system(s) through a console patch into the Radio System or to any Subscriber Radio on the Radio System.

12. Due to the radio infrastructure resource allocations required by "Private Call," **USER** is not permitted to utilize "Private Call" on the Radio System.

13. **USER**'s utilization of data communications on the Radio System will be limited to the Radio System's OTAP functions. Performance of data communications over the Radio System is not guaranteed. For programming changes involving more than ten Subscriber Radios, **USER** agrees to coordinate with CFW prior to executing changes to minimize impact on other users and on the Radio System.

14. The use of OTAR in association with Subscriber Radio encryption is prohibited without prior approval of CFW. Administration of encryption keys will be performed exclusively by CFW. **USER** may utilize and administer other encryption methods as required.

15. The CFW will provide **USER** with an Advanced System Key (ASK) for use with the **USER**'s Subscriber Radios only. The ASK will expire annually, and **USER** shall be responsible for requesting a new ASK following expiration if one is required. **USER** will be responsible for

safeguarding the security of the ASK to prevent theft and/or loss. **USER** agrees to notify CFW immediately upon the theft or loss of the ASK.

16. CFW will assign the **USER** Talk Group IDs unique to **USER** operation. All Talk Group names shall include a prefix unique to the **USER**'s agency. No other agency will be authorized to use **USER** Talk Groups without the express written permission of **USER**, and a copy of such permission must be on file with the CFW before such use may occur. The CFW reserves the right to require certain Talk Group ID's to be programmed in **USER** radios. Additionally, the CFW shall have the right to limit the number of Talk Group ID's to be used by **USER** and to disable Talk Groups ID's as it deems appropriate.

17. The CFW has established a coordinated Interoperable Communications Plan to apply to CFW and the users of its Radio System. **USER** agrees to participate in the Plan and include the Plan's interoperable Talk Groups in the programming of its Subscriber Radios and Console Systems.

18. Roaming to other systems or the use of **USER**'s Talk Groups on other trunked systems that are interconnected to the Radio System is prohibited without prior approval by CFW. Roaming to other trunked systems will be limited to the Radio System's interoperable Talk Groups, although this capability may be terminated by CFW if its use is determined to result in performance degradation to either the Radio System or the interconnected trunked system.

19. **USER** may utilize a Network Management Console (NMC) to manage its own environment. **USER** is responsible for acquiring and maintaining, at **USER**'s sole cost, all components required to connect the NMC to the Radio System. The **USER**'s NMC must be partitioned in manner to limit access to **USER**'s own environment only and to prevent **USER** from viewing, accessing, or making any changes to equipment that is not owned or leased by **USER**. The **USER** must ensure the NMC is located in a secure area. USB ports on the NMC must be deactivated except during maintenance activity. All security patches related to operating systems and other associated software must be maintained at current manufacturer-tested levels. No other software applications may be utilized by the NMC.

20. CFW generally maintains aliases for units operating on the Radio System. If the **USER** has acquired the capability to modify its aliases, it may administer and maintain its own subscriber unit aliases. From that point, **USER** will be responsible for administering and maintaining its own subscriber unit aliases, and the CFW will no longer administer and maintain the **USER**'s subscriber unit aliases.

21. USB ports on the **USER**'s Console Systems must be deactivated except during maintenance activity. All security patches related to operating systems and other associated software must be maintained at current manufacturer-tested levels. If required, all connectivity between the Console Systems and the Radio System is the responsibility of the **USER**, including software, hardware and carrier services. Associated costs will be incurred by the **USER**. Unless otherwise approved by CFW, connectivity will be achieved through local terrestrial circuit facilities. The use of other connectivity methods, including but not limited to microwave or fiber, must be approved by the CFW. **USER** may incur additional costs from CFW for other connectivity methods.

22. The CFW shall execute with Motorola Solutions a System Upgrade Agreement for the Console Systems and Site Repeater Systems that would be affected by the software upgrades, including those owned (or leased) and operated by the **USER**. Unless the **USER** is notified otherwise by CFW, the software for the Radio System, all Site Repeater Systems and all Console Systems will be upgraded to the current level every two years. The **USER** will provide all reasonable coordination necessary for the upgrade of its Console Systems. **USER** acknowledges that reductions in functionality may occur during the upgrade process.

APPLICABLE FEES; TERMINATION; REFUNDS

23. **USER** shall pay the CFW an annual Infrastructure Support Fee in the amount of **\$34** per month, per Subscriber Radio or console. This fee is payable in advance on an annual basis for all active radio IDs issued to **USER** at the time of the annual billing. Invoicing will occur on a pro-rata basis when new Radio IDs are issued, and thereafter, at the beginning of each CFW fiscal year. There will be no refunds or credits for radios removed from service during the fiscal year.

24. If the **USER** subscribes to OTAR services, the **USER** shall pay the CFW an annual OTAR Administration Fee in the amount of \$1 per month, per Subscriber Radio. This fee is payable in advance on an annual basis for all active radio IDs issued to **USER** at the time of the annual billing. Invoicing will occur on a pro-rata basis when new Radio IDs are issued, and thereafter, at the beginning of each CFW fiscal year.

25. **USER** shall pay the CFW an annual System Upgrade Agreement Fee equal to the amount invoiced to the CFW by Motorola Solutions, Inc., or its successors, for the upgrade of the **USER's** Console Systems and any other component subject to upgrade as a result of the upgrade of the Radio System.

26. CFW shall have the right to increase any applicable fees under this Agreement each fiscal year to offset any increased costs incurred by CFW in the operation or maintenance of the Radio System. Any increase in applicable fees will be effective at the beginning of the next CFW fiscal year. CFW shall provide **USER** with 60 days' written notice of any intended fee increase, **provided, however**, that this notice period may be less than 60 days if Motorola Solutions provides CFW with less than 60 days' notice of an increase in the System Upgrade Agreement Fee and such reduced notice period shall not impact **USER's** obligation to pay the increased fee.

27. Either **USER** or CFW may terminate this Agreement for any reason, with or without cause, upon ninety (90) days written notice to the other party. If **USER** terminates, there will be no refunds or credits for any fee. If CFW terminates, CFW will issue a refund to the **USER** of all fees, **except for the System Upgrade Agreement Fee**, which is non-refundable, pro-rated to the end of the current fiscal year. The CFW, in its sole discretion, shall have the right to deny **USER** access to the radio infrastructure and/or the right to terminate the Agreement immediately if **USER** fails to make full payment of invoiced system fees within thirty (30) days of the date payment is due. The CFW further reserves the right to terminate this Agreement immediately, or deny access to the **USER**, upon notice of **USER** misuse of the Radio System. Notwithstanding the foregoing, the CFW, in its sole discretion, reserves the right to immediately deny access to the **USER** if such action is required to prevent the spread of a security breach or threatened security breach or due to an emergency, operational issue, or other critical incident between the Master Switch and the

USER's environment. The CFW will use best efforts to restore access to the **USER** as soon as possible once the security breach, emergency, operational issue, or critical incident is resolved.

COMPLIANCE WITH LAWS

28. The **USER** shall comply with all current and future Federal, State, and Local laws, Ordinances, and Mandates, including Federal Communications Commission rules and regulations regarding proper use of radio communications equipment. The **USER** will also comply with the guidelines, or procedures set out in this Agreement. Furthermore, the **USER** is responsible for enforcing such compliance by its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants for **USER** Subscriber Radio equipment. Furthermore, the **USER** will be responsible for payment of any fines and penalties levied against the CFW (as the license holder) as a result of improper or unlawful use of Subscriber Radio equipment owned or leased by **USER**.

29. In order to comply with Federal, State, and Local Laws and/ or Mandates, the CFW, as the license holder, may need to act on behalf of the **USER** regarding possible modifications, reconfiguration, or exchange of Subscriber Radio equipment in order to meet these obligations. For as long as this Agreement is in force, the **USER** will allow the CFW to facilitate such activities on **USER's** behalf as necessary.

30. In the instance where **USER** Subscriber Radio equipment is to be replaced in order to be in compliance with Federal, State, and Local Laws and/or Mandates, title and ownership of such replacement Subscriber Radio equipment shall, upon delivery of Subscriber Radio equipment to the **USER's** site, pass directly to the owner of the equipment that is being replaced. The **USER** shall provide the CFW, or its designee, with the Subscriber Radio equipment to be replaced, in good working order, as determined by the CFW or its designee. **USER** shall be liable for payment of any fees associated with radios deemed to be not in proper working order. **USER** shall be liable for payment of any fees associated with upgrades to Subscriber Radio equipment.

[End of Document]