

# Benbrook Water Authority

## Policies and Procedures

Effective Date:

October 1, 2019

Revised September 1, 2020



Adopted by Resolution No. 2019-10  
September 24, 2019

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## **Revision History**

<u>Date</u>	<u>Revision</u>
9/24/19	Original Adoption (Effective 10/1/19)
9/1/20	Revised Paragraphs 2.01 H(1)(a) & 2.01 H(3)

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## 1.00 DEFINITIONS

Unless a different meaning clearly appears from the context, the following words and terms shall have the following meanings, as they are used in these policies and procedures.

1.01 **AUTHORITY** means the Benbrook Water Authority or “BWA,” which is a Water Conservation and Reclamation District created under the laws of the State of Texas for the purpose of supplying water and sewer service. The Authority’s address is:

P.O. Box 26929  
1121 Mercedes Street  
Benbrook, Texas 76126

1.02 **AUTHORITY’S ENGINEER (AE)** means the licensed Texas engineer(s) or firm employed by the Authority for special engineering services as ordered by the Board of Directors or the Manager for the Authority. The term may also include qualified BWA personnel, if any, designated, at BWA’s sole option, by the General Manager to perform additional engineering services.

1.03 **BOARD** means the Board of Directors of the Benbrook Water Authority.

1.04 **BWA** means the Benbrook Water Authority (formerly known as the Benbrook Water and Sewer Authority) or the Board of Directors of the Benbrook Water Authority.

1.05 **BWA OBSERVATION** means the use by BWA, at BWA’s direction, of its staff to observe the phases and implementation of construction of a project and for the sole and exclusive benefit of BWA. BWA Observation is not performed to discharge any legal obligation owed by the Developer or its agents pertaining to a project. BWA Observation is not performed under the direction of, or for the benefit of Developer, Developer’s Engineer or any contractor or subcontractor on a project.

1.06 **BWA STANDARD CONSTRUCTION CRITERIA** means as follows:

- A. BWA’s “Standard Specifications for Water & Sewer Construction,” latest edition;
- B. The applicable standards of all local, state and federal agencies, including but not limited to the TCEQ, having regulatory authority over water, wastewater, sewage control, lot sizes and right-of-way;
- C. All standards previously applied or adopted by BWA which have not been superseded or withdrawn and all modifications thereafter promulgated by regulatory authorities with applicable jurisdiction including BWA; and
- D. Any and all requirements contained in these Policies and Procedures, including but not limited to design criteria, form, content, sheet size and information required in order to maintain uniformity, quality construction and to provide the necessary information for review by the appropriate person(s).

- 1.07 **CAPITAL IMPROVEMENTS** means any of the following facilities that have a life expectancy of three or more years: water supply, treatment, and distribution facilities; and wastewater collection and treatment facilities; whether or not they are in the service area.
- 1.08 **CONNECTION FEES** means those fees assessed to each customer requesting connection to either water service, sewer service or both from the Authority.
- 1.09 **CONTRACT DOCUMENTS** means the standard form of written documents used by the Authority for award of construction contracts and normally consist of, but are not limited to, Notice to Bidders, Proposal, Qualification of Bidder Statement, Standard Form of Agreement, Bid Bond, Performance Bond, Payment Bond, Certificate of Insurance, Description of Project, General Conditions, Indemnity Agreement, Supplementary Conditions, and Specifications and Drawings. The contract documents are submitted to the Authority and must be approved in writing by BWA prior to execution of a Developer-Authority Agreement.
- 1.10 **CONVEYANCE** means the written transfer of ownership from the Developer under §3.01C(4) herein to the Authority. Developer's transfer constitutes its representation that it has fully complied with BWA's Policies and Procedures, forms and checklists, and all requirements and law applicable thereto. Transfer of ownership hereunder includes BWA's written acceptance of the transfer from the Developer.
- 1.11 **CUSTOMER** shall apply to any individual, government, business entity, or combination thereof, which seeks, obtains, or has obtained an account for water service, sewer service or both from the Authority.
- 1.12 **DELINQUENT ACCOUNTS** means those accounts which have not been paid within twenty (20) days from the date the account statement was mailed by the Authority.
- 1.13 **DEVELOPER** means a person, a government entity and/or business, or combination thereof who plats or otherwise subdivides property for the purpose of building improvements on the property or otherwise seeks to improve, construct or install water or wastewater infrastructure within the City of Benbrook.
- 1.14 **DEVELOPER-AUTHORITY AGREEMENT** means the entire written agreement between the Authority, the Developer and the Contractor concerning the Project.
- 1.15 **DEVELOPER-CONTRACTOR AGREEMENT** means the executed written agreement between the Developer and the Contractor, which has been submitted to and approved by the Authority, concerning the project. The agreement includes all properly executed change orders as of the date of their execution.
- 1.16 **DEVELOPER-ENGINEER AGREEMENT** means the executed written agreement between the Developer and the Developer's Engineer, which shall be submitted to and approved by the Authority, and shall include, at a minimum, the provisions in the



Agreement for Professional Engineering Services attached to these policies and procedures.

- 1.17 **DEVELOPER’S ENGINEER** means the engineer who has been approved by the Authority under 4.03A of these policies and procedures to perform services on a specific project, and can be abbreviated “DE,” who has been employed or retained by a Developer.
- 1.18 **DISTRIBUTION SYSTEM** means the entire system of pipes, conduits and appurtenances employed to distribute water from the supply source to the point of service.
- 1.19 **DOMESTIC SEWAGE** means the waste effluent from dwelling units, residences, institutions, and business buildings having a Biochemical Oxygen Demand (BOD) of not greater than 300 parts per million (ppm).
- 1.20 **DRAWINGS** means the contract drawings and are the part of the Contract Documents prepared by Developer’s Engineer which graphically show the scope, extent, and character of the work to be performed by the Contractor on the Project and conclude with the record drawings which show all improvements as installed in accordance with the approved construction plans and properly executed change orders. Shop drawings and other contractor submittals are not considered drawings.
- 1.21 **IMPACT FEE** means a charge or assessment imposed against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition and complies with the provisions of Chapter 395 of the Local Government Code.
- 1.22 **INDUSTRIAL SEWAGE** means the waste effluent resulting from manufacturing or industrial processes having a Biochemical Oxygen Demand (BOD) greater than 300 parts per million (ppm) and having other characteristics as determined by Authority’s Engineer which would indicate that the effluent is not suitable for direct treatment or would cause excessive per connection loading of the facilities.
- 1.23 **MANAGER** or **GENERAL MANAGER** means the General Manager or other designated employee representative of BWA who is designated by the Board as responsible for operation and management of the Authority’s systems.
- 1.24 **MULTIFAMILY** means a building with multiple units.
- 1.25 **POINT OF SERVICE** means the location where water or sewer service is made available to the customer.

Sewer: Service shall be considered to be available for a customer, without system extension, when the appropriate sewer main is in place in the street in front of, or in the easement adjacent to, the property requiring service or at such other place

as the Authority may specifically indicate, where a private sewer lateral can be or is already connected.

Water: Service shall be considered to be available for a customer, without extension, when the appropriate water line is in place in the street in front of, or in the easement adjacent to the property requiring service or at such other place as the Authority may specifically indicate, where a water service line can be or is already connected.

- 1.26 **PRIVATE SEWER LATERAL** means pipes and appurtenances that carry sewage and liquid waste to the sewer main from the structure or structures served on a parcel of land, regardless whether the parcel is publicly or privately owned. A pipe or appurtenance is considered a private sewer lateral if it, or any portion of it, is located upon the parcel **OR** conveys sewage and liquid waste from any structure located on that parcel to the sewer main. More than one private sewer lateral may be associated with a parcel of land.
- 1.27 **PROJECT** or **DEVELOPER'S PROJECT** means a development proposed by a developer.
- 1.28 **PROJECT MANUAL** means the bound documentary information prepared by Developer's Engineer for bidding and constructing the project. It shall include, but is not limited to, the drawings and specifications and the contract documents.
- 1.29 **RECORD DRAWINGS** mean the documentary information prepared by Developer's Engineer which reflects the actual construction installed on the project after construction is completed by the contractor and approved by the Developer's Engineer.
- 1.30 **SECURITY DEPOSITS** mean the funds placed with the Authority by a customer as a guarantee of payment of monthly charges. No interest will be paid on deposits and a deposit will be refunded either in full or in part on the final bill.
- 1.31 **SERVICE LINE** means water service line.
- 1.32 **SEWER MAIN** means the sewer of sufficient size, existing or proposed, usually but not always located off the customer's property, which serves the customer's area and additional areas as determined by the Authority's Engineer.
- 1.33 **SEWER SYSTEM** means the entire system of conduits, lift stations, and appurtenances required in the general process of removing sewage.
- 1.34 **SEWER SERVICE** means the private sewer lateral.
- 1.35 **SEWERAGE** means sewer system.
- 1.36 **SPECIFICATIONS** means that part of the contract documents consisting of written requirements for materials, equipment, systems, standards and workmanship as

applied to the project, and certain administrative requirements and procedural matters applicable thereto.

- 1.37 **SUPPLY MAIN** means the water main of sufficient size, usually but not always located off the customer's property, which serves the customer's area and additional areas as determined by the Authority's Engineer.
- 1.38 **WASTEWATER** means the liquids and solids which travel through the sewer system, which is also referred to as sewage.
- 1.39 **WATER METER** means the Authority owned, approved and installed meter, including the meter box, which registers the amount of water being purchased by the customer from the Authority.
- 1.40 **WATER SERVICE CONNECTION** means the infrastructure necessary to connect the customer line to the Authority line, including water meter. A standard service connection includes a 1-inch water meter. Service connections of other sizes shall be considered as special service connections. Installation of all service connections shall be pre-approved by the Authority.
- 1.41 **WATER SERVICE LINE** is that part of the water system connecting a supply main to the service meter at the customer's residential or commercial property and normally located within street right-of-way, an alley or easement.

## 2.00 WATER AND SEWER ACCOUNT MANAGEMENT

### 2.01 BASIC POLICY AND SCOPE OF FEES AND CHARGES

#### A. No Free Service

The Authority's customers, agents, servants, or employees who make use of the services or facilities of the Authority's water and sewer system shall pay as herein prescribed.

#### B. Security Deposits

Prior to receiving water and sewer service, every single customer requesting service shall pay a security deposit to guarantee subsequent monthly bill payments. By making an application for service, the applicant agrees to timely pay for all furnished services. Service will not be commenced until the applicant has made the required deposit with the Authority. No interest will be paid on the security deposit and it will be refunded either in whole or in part, as applicable, on the final bill.

#### C. Payment of Bills

Bills are mailed by the Authority monthly to each customer (the "bill date"). Payment for each bill is due not later than twenty (20) days from the bill date. The 20<sup>th</sup> day from the bill date is the "due date." If payment is not received by the due date, the Authority will issue a notice of late payment and impose a 10% processing fee for late payment. The notice of late payment shall advise the customer that unless full payment (the total bill and processing fee) is received by the twenty-eighth (28<sup>th</sup>) day following the bill date, or other written arrangement is made at the Authority's offices by the 28<sup>th</sup> day following the bill date, that all of the customer's service will be terminated on the twenty-ninth (29<sup>th</sup>) day ("cut-off date").

#### D. Termination for non-payment

If payment as described in 2.01C above is not received by the cut-off-date, service will be terminated and a cut-off fee in the amount provided for in the current Schedule of Fees established by the Authority shall be applied to the account. Service may not be restored until the past due amount, including all fees applied to the account, have been paid.

#### E. Multifamily Units

For customers with multifamily units for which each unit is not individually metered for water service, the customer will be assessed multiple minimum billing charges. These charges are comprised of:

- (1) a standard monthly meter and sewer connection charge,
- (2) a minimum charge (both water and sewer) for each premise for which each unit is entitled a set amount of water and sewer, and

- (3) the average consumption each month for each premises (the total usage registered by the master meter(s) divided by the number of units in the complex.)

#### F. Summary of Applicable Fees and Charges

From time to time, BWA establishes and updates fees and charges related to the services it provides through the adoption of applicable resolutions. Those resolutions pertain to the prices for water meters, water and wastewater services, landscape irrigation costs and rules, fire sprinkler costs and rules, costs and rules for development projects, impact fees adopted under Chapter 395 of the Texas Local Government Code, and costs and rules for grease interceptors, among others. A summary of applicable fees and charges may be obtained from the BWA website (<http://www.benbrookwater.com>) or otherwise available upon request to the Authority. A copy of the current applicable resolution pertaining to each charge, where required by law, is available upon request to the Authority.

#### G. Billing Procedures for Demonstrably Inaccurate Meter

If during any billing period a meter stops or is demonstrated to be inaccurate, thereby failing to precisely register water consumption during that period, the following procedures will guide the necessary adjustment to provide the amount due:

- (1) The consumption of the two previous months will be added to the consumption for the previous year's billing for the month in question. The resulting total will be averaged, and that figure will be used as the consumption for the billing period in question.
- (2) If the account in question has no billing history, a minimum billing (identified as an estimated bill) will be sent, and
  - (a) Consumption for the next three months will be averaged.
  - (b) The original estimated bill will be adjusted so as to not be less than the three-month average, and if the adjustment is larger than a minimum bill, the customer will be billed the difference.

#### H. Water Leak Adjustments

- (1) To encourage water conservation and prompt action on the part of the Customer when water leaks occur on the Customer's side of the meter, the Authority may provide an adjustment to the Customer's account balance in the form of a credit following repair of the leak by the Customer.
  - (a) To be considered for an adjustment, the Customer shall submit a request in writing and provide the following:
    - (i) Name, address and account number associated with the account for which the adjustment is requested.
    - (ii) Range of dates associated with the high water bill.
    - (iii) A copy of the repair receipt or paid in full invoice.

- (iv) The date and description of the repair.
- (b) No more than one adjustment may be made within a 12-month period.
- (c) The adjustment made may be up to 50 percent of the difference between the average water use and the actual water use during the period for which the adjustment is requested. The average water use shall be determined by using the larger of:
  - (i) The average of the six previous months of usage; or
  - (ii) Usage during the same period of the previous year; or
  - (iii) The average of the following two months usage of a new customer.
- (2) In addition to the adjustment described in 2.01H(1), an adjustment may be allowed for the sewer billing in connection with the water service.
- (3) Water leak adjustments will not be made in the following instances:
  - (a) For high water use associated with filling of swimming pools, establishment of grasses or landscaping,
  - (b) Where sufficient documentation is not provided.
  - (c) In cases where a leak adjustment was made within the previous 12 months.

#### I. Payment Extensions

Payment extensions may be made available to customers who need additional time beyond the normal bill due date to pay their bill. Requests for payment extensions must be in writing, signed by the customer or a representative of the customer. Payment extensions may allow up to an additional 10 days from the scheduled cut-off date for the customer to make full payment. If full payment is not made by the due date on the payment extension, the customer's water service may be interrupted until such time as the payment extension amount, along with any applicable service charges, is paid in full.

#### J. Payment Plans

Pay-out arrangements may be made available to customers who have an unusually large bill for one month. The bill for the month in question may be spread out over a period of up to 12 months. Customers signing pay-out arrangements must pay in full their monthly water bill plus the amount of the pay-out agreement, no later than the due date for each month's bill. If the required payment amount is not made by the due date, the pay-out arrangement will become void and the customer's water service may be interrupted until such time as all past due amounts, along with any applicable service charges owed on the account, are immediately paid in full.

#### K. Returned Checks/Bank Drafts

Whenever a customer has a returned check or returned bank draft, a charge will be added to the customer's account in accordance with the current Schedule of

Charges established by the Authority. If a customer has two different checks returned within a twelve-month period, no more checks will be accepted for payment on the account for a period of one year from the date of the second returned check. If a customer has two different bank drafts returned during a twelve-month period, the bank draft will be canceled. Payment for returned checks and returned bank drafts must be made with cash or money order. Any returned bank drafts must be paid in full prior to the next draft date or the draft will be canceled.

#### L. Final Bills

Final bills will be generated with the next billing process after the final read date and will not be prorated. Accounts with no water consumption for the service period reflected on the final bill will not be charged.

### 2.02 POINT OF SERVICE

Each customer, making application to the Authority for connection to its water or sewer system, will be advised by the General Manager as to the location of the point of service. If no point of service is available or existing service is inadequate for the water demands proposed by the customer, a system extension or other offsite infrastructure improvements may be required. Refer to Section 3.00 of these Policies and Procedures relating to Service Connections and System Extensions.

### 2.03 SERVICE CONNECTIONS, GENERALLY

A connection charge and security deposit shall be paid in full before a connection is made.

### 2.04 WATER SERVICE CONNECTIONS

A tap fee shall be paid to the Authority for each new tap of a water main required for connection to the point of service. This fee is based on the size of the connection and size of the meter in accordance with the Schedule of Fees established by resolution of the BWA Board, and is independent of impact fees due, if any.

For services installed after October 1, 2019:

- Two premises shall not be allowed to be supplied by a single service or tap where there is a water main in front of the premises, but shall have separate services, unless otherwise approved in writing by the General Manager.
- Commercial properties (excluding multi-family residential) with multiple units shall have not less than one water service (metered) for each unit.

Except as provided in conjunction with water utility construction associated with an executed Developer-Authority Agreement, or unless approved in writing by the General Manager, all new taps shall be made by BWA.

Extension of the service piping from the water meter to the point of use shall be accomplished by the customer at the customer's expense; however, such installation shall be in accordance with BWA Standard Construction Criteria, other resolutions or codes adopted by BWA as well as any applicable ordinances of the City of Benbrook and with all applicable requirements established by any legal entity having jurisdiction.

After installation of the water meter, the maintenance for all portions of the customer's service line between the water meter and point of use shall be the sole responsibility of the customer.

## 2.05 SEWER SERVICE CONNECTIONS

Sewer service connection to the Authority's wastewater collection system will not normally be permitted, unless the customer is presently served, or has applied for service, from the Authority's water distribution system. No connection shall be made to any sewer belonging to the Authority without approval of the Authority.

A tap fee shall be paid to the Authority for each new tap of a wastewater main required for connection to the point of service. This fee is based on the size of the connection in accordance with the Schedule of Fees established by resolution of the BWA Board, and is independent of impact or other fees due, if any.

Except as provided in conjunction with wastewater utility construction associated with an executed Developer-Authority Agreement, or unless approved in writing by the General Manager, all new wastewater (sewer) taps shall be made by BWA.

The customer is responsible for maintaining all parts of the private sewer lateral. If repairs to the private sewer lateral are required due to a structural failure of the lateral, the Authority will repair only that portion of the lateral that lies under publicly maintained, paved city streets, excluding sidewalks, driveways, paved parking spaces or other structures. Repairs to portions of the private sewer lateral that are not under publicly maintained, paved city streets will be the responsibility of the customer.

Any and all costs incurred for the failure to comply with this section shall be borne by the party responsible for assuring compliance with this section including, but not limited to, the cost of uncovering the installation in order that BWA and its authorized agents can determine its compliance with BWA's Standard Construction Criteria.

Sewer service connections to extensions of the City of Fort Worth sewage collection system are subject to approval by BWA and the City of Fort Worth.

## 2.06 IMPACT FEES

### A. Applicability



For all areas within the service limits of the Benbrook Water Authority, impact fees for new growth to provide for water and sewer service shall be assessed. Applicants for water meters will pay the total impact fee. Said impact fees are established pursuant to periodic resolutions adopted by BWA in compliance with Chapter 395 of the Local Government Code (a copy of the most current resolution may be obtained upon request from the Authority.)

**B. Payment Schedule**

Full payment for the charge referred to in 2.06A shall be made at the time of application for the water meter.

**C. Fort Worth Wastewater Impact Fee**

In addition to the BWA water and/or wastewater impact fees, a wastewater impact fee for impacts to the City of Fort Worth wastewater system is required for all connections not exclusively for irrigation purposes. This fee is based on the size of the meter to be set, is a pass-thru to the City of Fort Worth which must be paid at the time of application for a water meter.

## 3.00 SERVICE CONNECTIONS & SYSTEM EXTENSIONS

### 3.01 BASIC POLICY

#### A. Purpose

The purpose of this policy is to establish the terms and conditions under which the Authority provides water and sewer service within the Authority's service area, including locations where service is available as well as where service currently does not exist or is otherwise insufficient for the land use, water demands or wastewater loads proposed.

#### B. BWA Approval Required

No newly constructed or renovated facilities in its service area will be allowed to operate without prior approval by the Authority. BWA has not requested to become, nor has it been authorized to be, a Design Approval Authority by TCEQ under 30 TAC §217.8. Accordingly, the required approval by BWA is in addition to, not in lieu of, the requirements established by TCEQ. These requirements may include, but are not limited to, submittal of a Summary Transmittal Letter and/or plans and specifications properly prepared by those requesting approval of the facilities proposed.

The location and size of all proposed water and wastewater lines and appurtenances thereto shall be adequate to serve the Authority's service area and shall be in accordance with the Authority's most recently adopted Water and Wastewater Master Plan.

Extension of water and sanitary sewer lines for newly subdivided or platted property will be authorized by the Authority only upon determination by the Authority that all facilities necessary to serve the development are adequate. Said determination may be contingent on certification by the Developer's Engineer of the adequacy of existing or proposed facilities relative to proposed water demands and/or wastewater loads. If alternatives exist as to these extensions, the Authority reserves the right to determine the most appropriate alternative.

#### C. Owner/Developer Obligations

##### (1) Engineering, Design and Construction

Except as otherwise provided for herein, the property owner or developer shall install all water and sanitary sewer facilities needed to serve the property or development and shall extend all water and wastewater mains and appurtenances necessary to connect the property or development with the Authority's water supply and distribution system and with the Authority's wastewater collection system.

All public improvements constructed shall be in accordance with BWA's Standard Construction Criteria, with engineered plans prepared by a Texas licensed professional engineer in accordance with the Standard Construction

Criteria as well as the Engineering and Construction Standards described herein (4.00).

Upon written request to the Board by the owner of a given lot or tract of land, the Authority may extend water or sanitary sewer mains and necessary appurtenances to said lot or tract of land, provided that the Board approves said request for service by resolution. In no event shall the Authority be obligated to proceed with extending water or sanitary sewer mains if funds are not available, or if in the determination of the Authority, the extensions may not be practicable.

The Authority's acceptance of plans and specifications not in conformance with all applicable federal, state, and local statutes, codes, rules, regulations, ordinances and BWA's Standard Construction Criteria shall not relieve developer or its agents and contractors of compliance therewith.

The Authority, based upon the submissions by DE, shall be the sole judge of the size, quantity and location of all water and sewer facilities required to serve a developer's property in accordance with BWA's Standard Construction Criteria and the minimum requirements to conform with good public health practice as established by the TCEQ and all applicable regulatory authorities with jurisdiction.

#### (2) Construction Supervision

To satisfy the requirements of the Texas Engineering Practice Act § 1001.407, all construction shall be executed under the direct supervision of a DE, a licensed professional engineer responsible for confirming that the public water and wastewater improvements for the development conform to the BWA Standard Construction criteria as well as all applicable federal, state, and local statutes, codes, rules, regulations or ordinances. It is the developer's responsibility to ensure that the DE, or substitute DE (as described herein) provides the required construction supervision.

#### (3) Certification of Compliance

At the conclusion of the project, developer shall obtain from the DE a written opinion that the project has been constructed in general conformance with the contract documents and all approved change orders and shall provide a copy of same written opinion to BWA prior to BWA's acceptance of the facilities.

#### (4) Conveyance of Constructed Facilities to the Authority

All facilities, required capital improvements, and their appurtenances constructed by the developer in full compliance under these policies and procedures shall, upon completion and acceptance by the Authority, be conveyed to and become the property of the Authority. By execution of the Developer-Authority Agreement, the developer agrees to convey the facilities to the Authority in a form attached as Attachment 1. Transfer by the

developer to the Authority of any real property shall be free of all cost, liens and encumbrances.

#### D. Extent of Authority Participation in Developer Costs

In such cases where the Authority requires an oversized water or wastewater main or any addition or enlargement of the minimum facilities required to serve a developer's property as established by the Authority as applied to the developer's total properties to be developed, the Authority will determine the amount of credit to be allowed developer as the estimated difference between the construction cost of the minimum facilities and the bid cost of the oversized facilities designed to extend adequate service to other areas beyond the developer's property or total area of development.

Where extensions beyond the developer's property will later be required for continuity of the system, the water or wastewater mains within the developer's property shall be constructed to the borders of the area proposed for immediate development or the current filing plat, but the Authority will participate only in the oversizing as required.

At its option, BWA may require the submission of alternative bids prior to its approval of oversizing of the facilities in question.

#### E. Pro-Rata Charge

The amount to be charged customers who connect to previously constructed water and sewer mains shall be determined by the Authority based on upon factors including, but not limited to, the original cost of the previously constructed supply mains and sewer mains, the total area and location of the connecting customer's project, the costs of oversized capacity, if any, and the remaining area of surrounding land available for development, if any. The total area calculation under this section shall be based on the water demand or sewage disposal demand, actual or projected, of the connecting customer's project and all associated properties based upon applicable land use assumptions. There shall be no charge to customers under this section for infrastructure required to be built under Chapter 395 of the Local Government Code.

#### F. Pro-Rata Reimbursement

The amount to be paid by intermediate customers who connect directly to water and sewer mains paid for with a previous customer's funds shall not exceed the amount of the original customer's participation in the cost of the extensions, including engineering and BWA observation fees, less the cost properly chargeable to the property owned by the original customer, and no such payment will be made after expiration of twenty (20) years from date of acceptance of the extensions.

## G. Minimum Standards

Public water distribution and wastewater collection system improvements in BWA's service area shall comply with the following requirements:

- (1) Design and construction shall be in accordance with the Benbrook Water Authority's [Standard Construction Criteria](#), including, but not limited to the Engineering and Construction Standards included in these Policies and Procedures (Reference Section 4.00, below).
- (2) Sizing and layout of water and wastewater mains shall be in accordance with the most recently adopted Benbrook Water Authority Water and Wastewater Master Plan.

## 3.02 REQUESTS FOR AVAILABILITY AND SERVICE

### A. Requests for New Service – Individual Lots or Tracts

To begin the process of provision of utility services, the owner shall submit an application for service to the Authority. The Authority will review the application, and, if service is available, notify the applicant of applicable connection charges or fees which must be paid prior to making connection and/or establishing service. If service availability cannot be confirmed, BWA will identify additional documentation it requires from the applicant to confirm availability or to determine what improvements, if any, may be required to establish service.

### B. Requests for New Service – Proposed Developments

Proposed developments involving the extension of public water and/or wastewater mains for service, or proposed new connections to existing mains adjacent to existing lots to be served shall require the following:

- (1) Written request for service by the Developer.
- (2) Preparation and submittal by the Developer's Engineer of documents in accordance with Section 4.00.
- (3) Payment of applicable fees, in accordance with the current Schedule of Fees established by the Authority and/or these Policies and Procedures.
- (4) Execution of a Developer-Authority Agreement as described in Section 3.03.

For construction projects where the public water and/or wastewater improvements are valued by the Authority at \$25,000 or less and where during review of documents provided under Paragraph 4.02 it is determined by the Authority that the existing infrastructure to which connections are proposed are otherwise adequate and that no additional public infrastructure (expansion or extension) will be required for the Development, the General Manager may waive the requirements of 3.02B(4). To be valid, the waiver must be by separate written instrument signed by the General Manager and all applicable parties, and shall be contingent upon receipt by the Authority of additional information including but

not limited to insurance, indemnification or other requirement to be provided by all applicable parties as the Authority, in its sole discretion, may determine.

If, during review of documents provided under Paragraph 4.02 it is determined that existing infrastructure is inadequate for the proposed connection(s) without modification (e.g. extension or enlargement of existing facilities), BWA will notify the applicant, which will have the option to abandon the request for service, or further pursue construction of facilities required to adequately serve the development, subject to review and approval of the Authority and the execution of a Developer Authority Agreement.

#### C. Availability Requests

Potential customers not requesting service but instead requesting written confirmation regarding the availability of water and/or wastewater service must submit a request to the Authority for an availability letter. Payment of an administrative fee, as identified in the Authority's current Schedule of Fees shall accompany the request for it to be considered. BWA will review the request and, if sufficient information has been provided to evaluate the request, prepare a letter to the requester documenting the availability, or lack thereof, of water and/or wastewater service.

#### D. Authority Response to Requests for New Service

Depending on the magnitude and/or complexity of the project for which service is requested, the Authority may require up to 30 calendar days to respond to the request.

#### E. Additional Fees

Payment of applicable fees which accompany requests for service or other documents submitted as required in accordance with the applicable Schedule of Fees referenced herein and/or as otherwise described in these Policies and Procedures is mandatory.

At any time, should a project involve deviations from these Policies and Procedures or from the adopted Water & Wastewater Master Plan (including but not limited to land use assumptions, proposed water or wastewater demands, pipe sizes and/or main routing) or require additional hydraulic modeling or other analysis by the Authority, payment of additional fees not provided for in the Schedule of Fees shall be required. Additional fees will be determined by the Authority on a case-by-case basis, and will depend on the level of deviation or complexity.

### 3.03 DEVELOPER AUTHORITY AGREEMENT REQUIRED

Prior to the extension of any water or wastewater main to serve property for which service is requested, or construction of other related public water or wastewater appurtenances or facilities required for the property, the sub-divider or property owner shall execute a standard form Developer-Authority Agreement ("DAA") which

clearly defines the purpose, scope and details of the proposed extension or improvements and, by executing the DAA, agrees to abide by its terms and all related requirements established by the Authority. (A copy of the standard form is attached hereto as Attachment “2.”)

## 4.00 ENGINEERING AND CONSTRUCTION STANDARDS

### 4.01 DESIGN REQUIREMENTS – GENERAL

#### A. Referenced Standards

Water and sewer improvements shall be designed and constructed in accordance with all applicable industry standards including, but not limited to, local, state and federal regulations, BWA’s Standard Construction Criteria and these policies and procedures.

#### B. BWA Master Plan

(1) Sizing and layout of water and wastewater mains shall be in accordance with the most recently adopted Benbrook Water Authority Water and Wastewater Master Plan.

(2) General water demand and wastewater load and sizing criteria include:

Water/Wastewater Master Plan Design Standards	
<b>Land Use</b>	
Persons Per Connection	2.05
<b>Water</b>	
Average Day Residential Demand Per Capita	145 gpcd <sup>(1)</sup>
Average Day Non-Residential Demand Per Capita	1,100 gpad <sup>(2)</sup>
Maximum Day to Average Day Peaking Factor	2.4
Peak Hour to Maximum Day Peaking Factor	1.7
Minimum main size*	8 inch
<b>Wastewater</b>	
Average Day Residential Flow Per Capita	80 gpcd
Average Day Non-Residential Flow Per Capita	450 gpad
Peak Wet Weather to Average Day Peaking Factor	5.0
Minimum main size*	8 inch

\* Unless otherwise approved in writing by the General Manager

<sup>(1)</sup> gpcd (gallons per capita per day)

<sup>(2)</sup> gpad (gallons per acre per day)

#### C. Compliance Mandatory

The determination as to whether the submitted design specifications comply with applicable standards, policies, regulations and criteria shall be within the sole discretion of the Authority. Authority approval is subject to all additional requirements imposed by any applicable regulatory authority, including BWA. The Authority agrees to have its designated representative review all specifications and either approve them or provide written comments specifically identifying the required changes. Approval by the Authority signifies the Authority’s acceptance of the general design concept and that the minimum



criteria appear to be satisfied. Such approval shall not be deemed to be a waiver of developer, DE or contractor compliance with all applicable industry standards including, but not limited to, local, state and federal regulations, BWA's Standard Construction Criteria and these policies and procedures. Such approval shall not be deemed to be an assumption of responsibility or liability by the Authority of any negligent act, or omission in the performance by the DE or in preparation of such plans and specifications.

#### D. Developer's Engineer

The Developer, at Developer's expense, shall retain a professional engineer licensed to practice in the State of Texas with experience relevant to the project scope, for:

- (1) Preparation of preliminary documents, reports or studies required herein
- (2) Preparation of construction plans, specifications and contract documents for all public improvements required by the proposed development(s).
- (3) Supervision of construction of public improvements as required by the Texas Engineering Practice Act § 1001.407 and in accordance with 4.05 of these Policies and Procedures.

No public improvements shall be initiated until and unless said plans, specifications and contract documents have been received and approved by the Authority and a Developer-Authority agreement has been approved by the BWA Board of Directors and executed by all required parties.

Prior to the submittal of construction plans, specifications or contract documents for review, the Developer shall ensure that the contract agreement between the developer and engineer is submitted in writing and approved by the Authority as provided for in Paragraph 4.03A.

### 4.02 PRELIMINARY DOCUMENTS

When requested by the Authority in conjunction with the review of a Preliminary Plat, Final Plat or Replat submitted to the City of Benbrook, or as part of a review of a request for service, the Developer shall submit the following:

#### A. Project Description

A detailed description of the type or types of land use proposed should be provided. Included with the description shall be the overall projected water and sanitary sewer demands for the Project when "built out." A breakdown of demands by project phase (if proposed) and by land use should be provided. Information to be submitted with the Project Description includes, but is not limited to, the following:

- (1) Name of Developer, mailing address, local phone number and information on whether developer is an individual, corporation, limited liability company, partnership, joint venture or other business entity;

- (2) Name of person or persons authorized to sign the Developer-Authority Agreement and title of the developer signatory or signatories;
- (3) If developer is a joint venture, provide the names of the joint venturers and a power of attorney or other governing document granting the signatory or signatories the power to sign on the joint venture's behalf;
- (4) If Developer is a corporation, trust or other business entity, provide a corporate resolution granting the signatory or signatories the power to sign on the entity's behalf, or a copy of the governing document granting such authority; and
- (5) Cost estimates derived from a plan drawing, drawn to scale and included in the request, indicating the type, size and location of all the required systems extensions, water lines, sanitary sewer and storm drainage and other facilities related to the project including an estimate of the Developer's share of costs to install the proposed water and sanitary sewer infrastructure, and an estimate of the Authority's share of costs, if any, as well as an estimate for the developer's total construction costs of the project.

#### B. Preliminary Water & Sewer Plan

Two copies of a preliminary water and sanitary sewer plan for the proposed development shall be provided. The preliminary plans shall be prepared under the direction of a Texas licensed professional engineer and meet the following minimum requirements:

- (1) Show size and location of all proposed water and sanitary sewer facilities proposed within the development, including water and sanitary sewer mains, water valves, hydrants and services, sanitary sewer manholes and private service laterals;
- (2) Show size and location of water and/or sanitary sewer main extensions which may be necessary to serve the development;
- (3) Show existing/proposed property boundaries, lot lines, easements and rights-of-way;
- (4) Show existing/proposed contours (minimum 2' intervals);
- (5) Show size and location of above or below ground improvements which may be in conflict with the proposed utilities, and;
- (6) Be printed to scale on a sheet no larger than 22"x34". Scale shall be no smaller than 1"=100'. If a smaller scale is required to show the overall site, a location map/index sheet may be provided for clarity in addition to the larger scale drawings.

#### C. Preliminary Engineering Report

The Developer shall provide to the Authority a written preliminary engineering report from a Texas licensed engineer which complies with the requirements of this section.

- (1) To determine the water and sewer improvements required to provide service to the proposed development and surrounding properties, the developer shall provide to the Authority comprehensive water and sewer facilities studies in its preliminary engineering report to evaluate present and future needs and the adequacy of each planned water and sewer improvement.
- (2) Each study submitted under subsection 4.02C(1) shall include a hydraulic model for water distribution systems and a sewer model for the wastewater collection system. A static model method may be utilized at peak demand flow rates, although BWA may require an additional computer based dynamic model for large and complex improvements.
- (3) BWA will consider approval of the sizes of on-site and approach facilities based on the preliminary engineering report, studies submitted under subsection 4.02C(1), the current Authority guidelines, the City of Benbrook Fire Code, and all other applicable criteria.
- (4) The preliminary engineering report shall also include documentation of developer's compliance with the following criteria.
  - (a) Main requirements. Mains and their appurtenances, must be shown capable of providing water and/or wastewater service to the project from a point in the existing water distribution and/or wastewater collection system that has adequate capacity as determined by a comprehensive study described in subsection 4.02C(1), above;
  - (b) Easements for developer project. Authority may, if necessary, acquire any essential land or easements by eminent domain in order to provide service to a project. The developer shall pay all expenses associated with such condemnation proceedings, including, but not limited to, legal and engineering, as well as costs reasonably related to proceedings before the County Commissioners or the requisite court of law. These costs shall be payable in the form of a cashier's check or other form of payment approved by the Authority. The Authority shall not be responsible to developer for any delays, costs, expenses, or damages of any kind or nature caused to the developer during the time that the Authority is in the process of acquiring any easements through negotiation and/or condemnation.

#### D. Project Schedule

A proposed project schedule including a timeline for each of the following, where applicable: plat approval, construction, initial occupancy and/or date on which service from the Authority will be needed.

#### E. Review Fees

Where applicable, review fees made payable to Benbrook Water Authority in accordance with the current Schedule of Fees adopted by the Authority shall accompany each submittal.

#### F. Preliminary Approval

Preliminary Documents required by the Authority must be submitted in writing, reviewed and approved by the Authority prior to submittal of construction documents or approval of proposed service connection(s).

#### 4.03 DESIGN GUIDELINES FOR DEVELOPERS

BWA's Policies and Procedures are to be used by the Developer and the DE to prepare all required submittals and design documents in accordance therewith and to assure that all modifications made to BWA's water and sewer system comply with all applicable industry standards including, but not limited to, the standards, requirements and criteria of all governmental entities. BWA's Policies and Procedures require submission of written organizational, financial, design, and other documents to BWA through the Authority's designated authorized representative for the benefit of BWA, its water and wastewater system, and its customers.

The following general summary of itemized requirements, along with any and all modifications thereto subsequently adopted by BWA and any other specified requirement in BWA's Standard Construction Criteria, BWA's Policies and Procedures or requirement imposed by the General Manager, shall be complied with by developer and DE.

##### A. Approval of Contract Between Developer and Developer's Engineer

- (1) The Developer shall submit a draft copy of its agreement with its DE (hereafter referred to as "DE Agreement.") The DE Agreement shall include, at a minimum, the provisions in the Agreement for Professional Engineering Services (hereafter referred to as "APES") attached to these policies and procedures as Attachment "3," or any subsequent APES adopted and approved by the BWA Board of Directors or its General Manager, for the benefit of BWA, its water and sewer system, and its customers.

Contracts with terms and conditions conflicting with the provisions with APES, or which propose utilizing the services of professionals without relevant and appropriate experience for the services required may not be accepted.

- (2) Nothing contained in APES which is included in the DE Agreement pursuant to this section will be construed to give any rights or benefits to any persons other than Developer and BWA. All duties and responsibilities undertaken pursuant to those provisions in APES which are included in the DE Agreement pursuant to this section will be for the sole and exclusive benefit of Developer and BWA and not for the benefit of any other person.
- (3) Upon BWA's approval, the Developer shall return one executed copy of the DE Agreement to BWA and any proposed changes to the Agreement which affect those provisions in APES which are included in the DE Agreement shall be submitted in writing and approved by BWA before taking effect.

Failure to comply with this section shall make any such changes voidable at BWA's option.

- (4) Failure to submit a compliant engineering contract under these provisions shall preclude review and/or approval by BWA of the Developer or DE's submittals.

#### B. TCEQ Approval Required

The DE shall ensure that plans and/or summary transmittal letters required by TCEQ for water and/or wastewater system improvements are submitted to TCEQ and approved. Copies of all such documents shall be provided to BWA by the DE.

- (1) The PWS No. for BWA is 2200029.
- (2) Regulated Entity No. for BWA is RN102684693
- (3) The wastewater discharge permit (WQ0012723-001) is held by the Fort Worth Water Department (Village Creek WRF).

The DE shall ensure that the correspondence from TCEQ concerning its plan review (confirming or denying approval) is provided to the Authority.

#### C. Final Project Manual

After BWA's written approval of the preliminary engineering report submitted under Section 4.02C, developer shall submit a final project manual in both electronic (PDF format) and printed form, which shall include the following:

- (1) Construction drawings of the facilities to be located within the project prepared by the DE.
- (2) Specifications and Contract Documents for the project (construction contract) prepared by the DE.
  - (a) The specifications and contract documents shall be printed on 8 ½" X 11" bound sheets, two-sided.
  - (b) The Contract Agreement for water and wastewater improvements shall utilize the Standard Form of Agreement (SFA) between Developer and Contractor, which incorporates BWA's Standard General Conditions. A copy of the SFA is provided in Attachment "4".
- (3) Description of the rights-of-way and easements in the project in which the facilities will be constructed.
  - (a) The final plat must be approved by the Planning and Zoning Commission for the City of Benbrook.
  - (b) Easements required for the project, but not dedicated by plat, must be dedicated by separate instrument. Copies of easements dedicated for the project shall be included in the Project Manual.

It shall be the responsibility of the Developer to promptly notify the Authority of any revisions or alterations to the Project Manual subsequent to previous

approvals by the Authority. In this regard, developer shall not change any requirement contained in the contract documents regarding the obligations of any contractor or subcontractor regarding the project without prior written approval by BWA and the execution of a written and signed change order approved by BWA. Any such approved change order shall require developer to obtain from DE preparation and filing of any and all necessary amendments to the record drawings. The developer shall pay the cost of relocation of system extensions or other Authority facilities resulting from approved change orders to the contract documents.

#### D. Number and Format of Plans and Specifications

Full-sized plans for all public improvements shall be submitted on plan sheets sized twenty-two inches by thirty-four inches (22" x 34") and at a scale of one inch equals 40 feet (1" = 40') horizontally and one inch equals four feet (1" = 4') vertically. Half-sized plans shall be to scale, printed on 11"x17" sheets.

The Authority will provide comments, requests for clarifications or revisions for all stages of review of the submittals herein within thirty (30) days of physical receipt thereof.

The following minimum number and format of contract drawings, technical specifications or contract documents shall be delivered to the Authority during the review phase, construction phase and upon completion of the project. Additional sets may be required by the General Manager.

- (1) Review Phase: Contract documents, including plans, specifications and other contract provisions for initial or subsequent interim review shall include:
  - (a) Two (2) bound copies of the contract documents and specifications stamped for interim review.
  - (b) One (1) electronic (.pdf) copy of the plans, specifications and contract documents noted for interim review.
  - (c) One (1) full-sized and two (2) half-sized sets of printed preliminary plan drawings each time a submittal is made to the Authority for review purposes.
  - (d) Contract documents submitted for review shall be stamped with a "review only, not for construction" stamp meeting the requirements of the Texas Board of Professional Engineers ("TBPE") rules.
- (2) Construction Phase: Upon approval by BWA and TCEQ, the developer shall submit one (1) set in PDF electronic format and three (3) fully executed sets of the approved construction project documents, sealed by the DE in accordance with TBPE rules, including any addenda issued during bidding. Two (2) of the three (3) sets of plans included with the documents may include half-sized plans. At least one (1) set of plans shall be full-sized.
- (3) Project Completion: The Developer shall submit one (1) set of "Record Drawings" when all the improvements are confirmed by the DE to be installed

in accordance with the approved construction plans and properly executed change orders and prior to acceptance by the Authority.

E. Corrected Plans

If the final construction project manual is incomplete, a letter stating the necessary changes required or requested will be provided by the Authority. The letter stating the necessary changes and/or comments shall be returned to the DE for use in making needed corrections. The corrected construction project manual shall then be resubmitted by the DE to BWA along with applicable fees, if any, in accordance with the Schedule of Fees adopted by the Authority.

F. Variances

Each requested variance from strict compliance with BWA's policies and procedures shall be in writing signed by the Developer. Requests for variance from strict compliance with BWA's Standard Construction Criteria shall include a cover letter signed and sealed by the DE and include a statement by the DE clarifying where the submittal does not comply with BWA Standard Construction Criteria as well as a statement that the DE's alternative design results in better constructed facilities for BWA while remaining in full compliance with all other applicable federal, state and local rules, regulations or other applicable requirements. In the event that the variance requires TCEQ approval, the DE shall submit to BWA all communications between the DE and TCEQ prior to BWA's approval for construction. These communications include, but are not limited to, letters of any kind, approvals given or received and all other communications whether written or electronic pertaining to the project.

The Board shall have the ultimate authority to accept or reject any requested variance. Neither statements nor discussion by any member of BWA's staff can constitute acceptance or rejection of any requested variance.

G. Requirements for Project Manual and Contract Document Submittals

(1) Preliminary Project Manual and Contract Document Submittals to the Authority by the Developer

- (a) Three (3) complete preliminary sets of construction plan drawings shall be submitted initially to the Authority for review by the Authority, although other construction project manual elements are not required with this initial submission.
- (b) Three (3) preliminary sets of contract documents, printed and bound, shall be submitted after approval of preliminary construction plan drawings. This submittal will be reviewed by the Authority's Engineer and all other applicable agents selected by BWA.
- (c) Three (3) preliminary sets of specifications shall be submitted after approval of preliminary construction plan drawings by AE. These shall include specifications established by DE to comply with all applicable

federal, state, and local statutes, codes, rules, regulations or ordinances and which conform to the standards adopted by the Authority.

(2) Contract Documents Prepared by Licensed Professional Engineer

- (a) All construction contract documents for extensions or improvements to the Authority's water or sewer facilities shall be prepared by a licensed professional engineer licensed by the State of Texas.
- (b) The completed contract documents shall include the following:
  - (i) Notice to Bidders;
  - (ii) Proposal or Proposals;
  - (iii) Form of Contract between Developer and Contractor (See 4.03C(2)(b));
  - (iv) Required certificates of insurance and mandatory indemnity provisions;
  - (v) Performance Bond equal to 100% of total contract;
  - (vi) Payment Bond equal to 100% of total contract;
  - (vii) Maintenance Bond equal to 100% of total contract for a two (2) year duration, dated after the DE's Final Engineering Construction Report under APES certifying completion of construction and filing the record drawings of the project with the TCEQ;
  - (viii) Description of the Project by Developer's Engineer;
  - (ix) Layout of entire area where facilities are to be constructed showing relation to the Authority's existing facilities and approximate location of proposed improvements. Layout maps for water extensions shall be separate from sewer system extensions;
  - (x) Standard construction details;
  - (xi) Plan profile sheets at scale of not less than 1" = 4' vertical and 1" = 40' horizontal for all sewer extensions;
  - (xii) approved Plat;
  - (xiii) general conditions including, but not limited to standards adopted by the Authority;
  - (xiv) special conditions established by DE to comply with all applicable federal, state, and local statutes, codes, rules, regulations or ordinances and which conform to the standards adopted by the Authority;
  - (xv) specifications;
  - (xvi) Two (2) electronic (PDF) sets of the documents listed above shall be provided on a medium acceptable to the Authority.



#### 4.04 PLATS AND EASEMENTS

##### A. Plat Approval Required

Unless otherwise approved in writing by the General Manager, A final plat, with recording information (instrument number, volume/page, cabinet/slide, etc.) from the Tarrant County plat/deed records showing that the plat has been filed of record shall be received and approved by the Authority prior to commencement of construction of the project.

BWA will consider authorizing construction to proceed prior to plat filing on a case-by-case basis only on condition that the plat has been reviewed and approved by BWA and the City of Benbrook and that both entities can confirm that any modifications to the plat which may be required due to changes to constructed utility alignments may be addressed administratively.

##### B. Easements

- (1) The developer shall dedicate to Authority all easements within the project necessary for the facilities construction within the project and shall dedicate such additional easements as are necessary where a deviation from dedicated utility easements is deemed necessary by the Authority. In locations where the City of Benbrook has approved specific utility location assignments within public utility easements (PUE), internal water distribution lines shall be installed within the PUE at the location assigned for water utility service. Where, in BWA's sole discretion, specific utility location assignments are not applicable, every easement for water lines and sewer lines within the project shall have a minimum width of fifteen (15) feet unless otherwise approved in writing by the Authority. Additional easement width, in BWA's sole discretion, may be required depending on the depth proposed or proximity to other facilities. All easements shall be shown on the final recorded plat of the project.
- (2) Clearing of Easements. The developer shall bear the cost of the initial clearing and chipping the entire width of:
  - (a) All easements required for construction of facilities required for the project;
  - (b) All additional easements required where a deviation from dedicated utility easements is deemed necessary by Authority; and
  - (c) Any other public utility easements.
- (3) The developer shall acquire and pay all costs of obtaining right-of-way easements necessary to connect the developer project to Authority, whether or not the easements have been specifically listed in writing in the project. These costs shall be payable in the form of a cashier's check or other form of payment approved by the Authority.
- (4) Whether by plat or by separate instrument, easements dedicated for construction, operation and/or maintenance of public water or wastewater

facilities shall be dedicated exclusively to BWA and retain for BWA all rights in the dedication language which may be required by BWA.

- (5) New water or wastewater facilities will not be accepted by BWA as complete prior to, or after, plat filing unless the following easement language is directly on the plat or in a separate easement instrument filed prior to plat filing:

**IF DEDICATED BY PLAT, THE PLAT DEDICATION LANGUAGE SHALL INCLUDE THE FOLLOWING:**

*“AND DESIGNATED HEREIN AS LOT \_\_, BLOCK \_\_, \_\_\_\_\_ ADDITION, A SUBDIVISION TO THE CITY OF BENBROOK, TEXAS AND WHOSE NAME IS SUBSCRIBED HERETO, HEREBY DEDICATED TO THE PUBLIC IN FEE SIMPLE ALL STREETS, ALLEYS, RIGHTS-OF-WAY AND PARKS AND DEDICATE TO THE PUBLIC FOREVER ALL WATER COURSES, DRAINS, EASEMENTS AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED, SAVE AND EXCEPT THE WATER EASEMENT.”*

**IMMEDIATELY FOLLOWING THE USUAL AND CUSTOMARY DEDICATION LANGUAGE, AS DESCRIBED ABOVE, THE FOLLOWING DEDICATION LANGUAGE SHALL BE INCLUDED:**

*“That \_\_\_\_\_, the owner [OR INSERT IF A BUSINESS ENTITY “acting by and through its duly authorized agent”] of the property described in this plat, in addition to the forgoing dedication and contemporaneously herewith, does hereby dedicate, grant and convey to the Benbrook Water Authority, Tarrant County, Texas its successors and assigns (“BWA”) a perpetual and exclusive easement (the “Water [and/or Wastewater] Easement” as depicted herein) and does certify the following:*

- i. The Water [and/or Wastewater] Easement shall be used exclusively to construct, reconstruct, install, operate, inspect, repair, make connections to, relocate within the easement, remove or abandon in place and maintain water and sanitary sewer lines, together with all necessary above or below ground appurtenances thereto (the “Pipelines”), and with the right and privilege at any and all times, to enter said premises, or any part thereof, as is necessary or convenient to the proper use of the Water [and/or Wastewater] Easement.*
- ii. Owner agrees not to convey any other easement or conflicting rights within the Water [and/or Wastewater] Easement except (a) Owner may construct a road or pavement across the Water Easement, and (b) subject to BWA’s prior written consent, which consent shall not be unreasonably withheld, install utility crossings or grant additional rights-of-way above or below BWA’s Pipelines (all maintaining sufficient distance to protect*

*the pipe and/or comply with any applicable legal requirement), provided the foregoing intersect BWA's Pipelines at an angle between sixty degrees (60°) and ninety degrees (90°) with each being clearly marked across the Easement and so long as the foregoing construction and use do not unreasonably interfere with BWA's exercise and use of the Water [and/or Wastewater] Easement granted herein, and safe operation of the Pipelines. BWA shall be given at least 30 days advance written notice of any such proposed construction together with any engineering reports. Such construction shall be subject to any applicable or relevant law, regulation or construction standard.*

- iii. Provided any private improvements are placed in the Water [and/or Wastewater] Easement, such improvements shall be placed at no risk or obligation to BWA, and BWA shall have no responsibility to repair or replace such improvements in, under or over the Water[and/or Wastewater] Easement if they are damaged or destroyed in the utilization of these rights granted herein.*
- iv. The BWA shall have the right: (1) to remove and keep removed all or any part of any building, fence, tree, shrub, or other structure, improvement or growth which in any way may endanger or interfere with the construction, reconstruction, maintenance, operation or efficiency of such utility; and (2) of ingress and egress to or from and upon the Water [and/or Wastewater] Easement, other public easements and Owner's adjacent property for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to, enlarging, or removing all or parts of its operation without the necessity at any time of procuring the permission of anyone.*
- v. BWA shall have no responsibility for the maintenance of paving on or upon the Water[and/or Wastewater] Easement.*
- vi. The Water [and/or Wastewater] Easement dedicated by this plat shall also include an additional temporary area of working space for construction, reconstruction, additions, enlargements, and maintenance including such additional area necessary for installation and maintenance of manholes, clean outs, fire hydrants, water services and wastewater services.*
- vii. All modifications to Water [and/or Wastewater] Easement or the terms and conditions contained herein shall be by means of plat or other written, recordable instrument and approved by BWA.*

*BUSINESS ENTITY NAME*

*BY: \_\_\_\_\_*

*NAME: \_\_\_\_\_*

*TITLE: \_\_\_\_\_”*

(6) It shall be the responsibility of the developer to promptly notify the Authority of any revisions or alterations in the preliminary or final development plats.

(7) The Developer shall pay the costs of relocation of system extensions or other Authority facilities resulting from alteration in the preliminary or final plat.

#### 4.05 CONSTRUCTION PERFORMED UNDER DEVELOPER CONTRACT

##### A. Contract Required

All construction shall be performed at Developer's expense under contract in the name of the Developer, based on contract documents for construction which have been prepared by the DE, submitted for approval and approved by the Authority under these policies and procedures. The Authority shall not be liable to any contractor, engineer, attorney or material man employed by Developer or any agent of the Developer, either formal or informal or any third party resulting from the construction or any activity related thereto.

##### B. Method of Procedure

A checklist outlining the procedure to be followed by a Developer in the consideration for and construction of extensions to the Authority's water and sewerage facilities, or the construction of facilities to serve a Developer's property, is attached to these policies and procedures as Attachment "5."

##### C. General Conformance Requirements

All contract documents shall be in general conformance with BWA's Standard Construction Criteria. These standard criteria, however, are intended for use only as a guide. Because BWA's Standard Construction Criteria are minimum guidelines, they may require augmentation in a given project by a more comprehensive set of applicable criteria. As a result, responsibility for actual document preparation and construction standards and practices remains with the DE including, but not limited to, any necessary modifications to BWA's Standard Construction Criteria required to conform to regulatory standards and industry practice.

##### D. Direct Supervision Requirement

Construction shall be under the supervision of a Texas licensed professional engineer, and in accordance with 3.01C(2).

#### 4.06 DEVELOPER AUTHORITY AGREEMENT

##### A. General

The Developer-Authority Agreement shall be subject to the terms of the Authority's policies and procedures. All Developer-Authority Agreements shall also be subject to all future amendments or modifications of the policies and procedures. In the event the terms of a Developer-Authority Agreement conflict with the policies and procedures, the policies and procedures shall control.

The Developer-Authority Agreement shall require that the Developer(s) start construction on the Project within six (6) months from the effective date of the Agreement. A request for an agreement with a term of greater than six (6) months or any extensions to existing agreements shall be considered on a case by case basis. The form of the Developer-Authority Agreement is attached to these policies and procedures as Attachment “2.”

**B. Board Consideration**

Following confirmation by the Authority of its ability to provide water and/or wastewater service as well as confirmation of the Developer’s compliance with the contractual requirements (Engineering and Construction) contained in these Policies and Procedures, the Developer shall submit an executed Developer-Authority Agreement on the Authority’s standard form for consideration by the Board of Directors.

**C. Execution of Developer-Authority Agreement**

Upon approval of the Developer-Authority Agreement by the Board of Directors, the payment of an Administrative/ Observation Fee in accordance with the current BWA Schedule of Fees in place on the date the DAA is executed, as well as the completion of a pre-construction meeting between BWA, DE and Contractor, the Developer may proceed.

**D. Fees and Construction Costs**

The developer shall pay the entire cost of system extensions and required capital improvements directly attributable to the development, as well as the Administrative/Observation Fee in 4.06C.

Water and sewer service will be provided by BWA to the point of service and the developer shall be responsible for 100% of the cost of extending such service, including the cost of the required easements.

**4.07 PRIOR TO THE START OF CONSTRUCTION**

**A. Solicitation for Bids**

Following approval of the Contract Documents by the Authority, the Developer may proceed with soliciting bids, if applicable, for the construction of the Facilities. All contracts under a DAA relating to capital improvements and extensions contemplated to become a part of the Authority’s systems shall be in the name of the Developer and subject to review by the Authority.

**B. Submittal of Contract Documents**

Two sets of fully executed Contract Documents with all addenda, including all bonds, mandatory indemnity agreements and certificates of insurance required therein, shall be provided to the Authority by Developer fourteen (14) days prior to the start of construction.

C. Submittal of Fees

Prior to construction, the Developer shall provide Authority with a cashier's check payable to the Benbrook Water Authority in the amount required by the current Schedule of Fees adopted by the Authority.

4.08 PROJECT CONSTRUCTION REQUIREMENTS

A. Regulatory Authority

All projects shall meet the conditions of all local, state, and federal agencies having regulatory authority over lot sizes, temporary facilities, utilities, drainage, erosion control and right-of-way.

B. Meter Placement – General

Meters should not be placed in locations where they may be subjected to vehicular traffic, such as a meter placed under a driveway providing access to a dwelling. Variances to this requirement will be considered on a case-by-case basis, and only after the developer, through its Engineer, has demonstrated to the satisfaction of the Authority how the likelihood of damage to the meter resulting from said vehicular traffic will be minimized.

C. Project Layout

The developer shall provide accurate on-the-ground markings of all developer projects in conformance to the Authority's requirements.

D. Notification for Observation

The developer shall provide reasonable written notification sufficient to Authority to allow Authority to observe critical elements of construction. These include, but are not limited to:

- (1) Water line and facility installation;
- (2) Sewer line and facility installation;
- (3) Connections to existing water mains and sewer lines;
- (4) Pressure testing procedures; and
- (5) The testing of all water and sewer facilities

E. Remedy for Non-Conformance

If the developer fails to comply with the above, Authority may require developer, at developer's cost, to have the constructed facilities uncovered and exposed for Authority's approval. Developer shall reimburse BWA for any and all costs incurred by BWA in conducting tests and/or reviews which result from notice of construction not in conformance with the contract documents and all applicable legal requirements and industry standards. Said costs may be in addition to the cost of observation paid in conjunction with the approval and execution of the Developer-Authority Agreement. In any event, the entire project's final

conformance with the contract documents and all applicable legal requirements and industry standards is the responsibility of developer.

F. Final Report

For all projects subject to the requirements and regulations of the TCEQ, the DE shall submit a written final report, based upon the direct supervision requirement in these policies and procedures, confirming that the project has been constructed in general conformance with the contract documents and all approved change orders and shall provide a copy of this written opinion to BWA prior to conveyance of the infrastructure from the developer to BWA.

4.09 SERVICE CONNECTIONS (FOR DAA PROJECTS)

A. Water Services

Water service lines and sewer service connections, exclusive of the water meter, shall be constructed at the same time and as a part of the same contract as all other water mains in the developer's addition or development.

B. Water meters

Water Meters shall be purchased by the customer and installed by the Authority at such time as service is required at various locations in the development. Once a meter is installed by the Authority, the customer will be responsible for its proper care. If the meter becomes unserviceable for any reason other than factory defect, the customer will pay for its repair/replacement. Each customer requesting a water meter in a development will pay the impact fee, Fort Worth Wastewater Impact Fee (where required), connection charge and meter deposit, based on the size of the meter requested, which shall not be less than one (1) inch in diameter.

C. Sewer Services

Sewer service connections shall be constructed at the same time and as a part of the same contract for construction as all other sewers in the developer's addition. Each customer requiring a standard sewer service connection shall pay the Authority a connection fee in accordance with the current Schedule of Fees established by the Authority in addition to any applicable BWA and Fort Worth Wastewater Impact Fees.

D. Impact Fees, Connection and Other Fees and Charges

It shall be the responsibility of the Developer to advise each individual builder or purchaser of property within the development of the requirement to pay impact fees, including BWA Impact Fees, Fort Worth Wastewater Impact Fee, as well as standard service connection fees, and deposits before service will be furnished.

4.10 PROJECT ACCEPTANCE AND CLOSEOUT

Upon completion of construction and prior to acceptance by the Authority, the Developer and DE shall submit the following:

- (1) Executed Utility Conveyance Agreement
- (2) Final itemized cost breakdown of installed public water and sanitary sewer improvements, including quantities and unit prices of piping, valves, hydrants, service connections
- (3) Engineer's certification of compliance
- (4) Record drawings, including one (1) full-sized and two (2) half-sized hard copies, one (1) electronic copy (.pdf) and base CAD file (.dwg, .dgn or other as approved by the Authority)
- (5) Any required documentation notifying TCEQ of project completion.



Attachment 1  
Conveyance Agreement

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# UTILITY CONVEYANCE AGREEMENT

This Agreement is made and entered into by and between \_\_\_\_\_ (herein “Developer”) and Benbrook Water Authority, a political subdivision of the State of Texas operating pursuant to Chapters 49 and 51 of the Texas Water Code (herein the “Authority”).

## 1. RECITALS

Developer and Authority have previously entered into the Developer-Authority Agreement dated \_\_\_\_\_ which Agreement provides the terms and conditions pursuant to which Developer will construct certain water and wastewater facilities and convey same to the Authority; and

Developer has completed construction of water and wastewater facilities for use to serve property known as \_\_\_\_\_ of the Official Public Records of Tarrant County, Texas, and contained within the boundaries of the District and as further described on Exhibit A attached hereto.

Developer now wishes to convey and Authority wishes to take title to such facilities, pursuant to the Developer-Authority Agreement.

## 2. Agreement

For and in consideration of the premises and of the mutual obligations, covenants, and benefits hereinafter set forth, Developer and Authority contract and agree as follows:

### 3. Definitions.

- a) Construction Contracts: Contracts pursuant to which the Facilities were installed by the contractor described as follows:

Project	Contractor	Completion Date

- b) Facilities: Water and wastewater facilities constructed to serve the following subdivision:

\_\_\_\_\_

4. Conveyance. Developer hereby sells, conveys, transfers, and delivers to Authority all of the Facilities free and clear of all liens, claims, encumbrances, options, charges, assessments, reservations, or restrictions. The Facilities being conveyed hereby are more completely herein by reference.
5. Assignment. Developer hereby assigns all of its rights under the Construction Contract(s) to Authority and agrees to make provision for the transfer of any guarantees and warranties executed by the contractor and all other rights of Developer pursuant to the provisions of the Construction Contract(s).
6. Representations by Developer. Developer represents to Authority that:

- a) Title. All the properties of Developer covered by this Agreement are hereby conveyed to Authority, free and clear of all liens, claims, encumbrances, options, charges, assessments, reservations, and restrictions.
  - b) Rights-of-Way, Easements, etc. Developer represents, warrants and guarantees that the Facilities are located in public utility easements or road rights-of-way as shown on recorded plats. Developer represents that said plats provide easements and rights-of-way which are adequate and sufficient to permit Authority to operate the Facilities, and any easements and rights-of-way held by Developer in connection therewith are hereby transferred to Authority whether or not expressly described herein.
  - c) Possession. Developer is in possession of the Facilities and no objection to the location or use of the Facilities or adverse claims of title to the lands, easements, rights-of-way, licenses, permits, or leases on which the Facilities are situated is presently being asserted by any person or persons.
  - d) Legal Proceedings. There are no actions, suits, or proceedings pending or, to the knowledge of Developer, threatened or affecting the properties to be sold hereunder and there are no pending condemnation proceedings of which Developer is aware connected with the Facilities or other properties to be conveyed hereunder.
  - e) Known Defects. Developer represents and warrants that the Facilities, including any easements or rights-of-way or other properties to be conveyed hereunder are free of known defects, either legal or technical, that would prohibit Authority's use of the Facilities or other properties to be conveyed hereunder.
  - f) Authorization. This Agreement, the transactions contemplated herein, and the execution and delivery of this Agreement have been duly authorized by Developer.
  - g) No Violation of Other Contracts. This Agreement, and the warranties, representations, and covenants contained herein, and the consummation of the transactions contemplated herein will not violate or constitute a breach of any contract or other agreement to which Developer is a party.
7. Indemnification. DEVELOPER HEREBY INDEMNIFIES AND HOLDS HARMLESS AUTHORITY FROM AND AGAINST ANY AND ALL LIENS, CLAIMS, DEBTS, CHARGES, INDEMNITIES, LOSSES, PENALTIES, ATTORNEY FEES AND ANY OTHER KIND OF EXPENSES THAT MAY BE INCURRED BY OR ASSERTED AGAINST AUTHORITY BY REASON OF CONSTRUCTION OF THE FACILITIES.
  8. Expenses. Except as specifically set forth herein, each party shall pay its own expenses incident to carrying this Agreement into effect and consummating all transactions contemplated hereby. All ad valorem or property taxes applicable to the Facilities to the date of closing, including, without limitation, all taxes for 20 , shall be the obligation of Developer.
  9. Further Assurances. Developer agrees that from time to time and upon the request of Authority, Developer will execute and deliver such other instruments of conveyance and transfer and take such other action as may be reasonably required to more effectively convey, transfer to, and vest in Authority and to put Authority in possession of all of the Facilities conveyed, transferred, and delivered hereunder, and, in the case of contracts and rights, if any, which cannot be transferred effectively without the consent of other parties, to make commercially reasonable efforts to obtain

such consents and take such other action as may be reasonably necessary to assure to Authority the rights and benefits thereof.

- 10. Representations Survive Conveyance. The agreements and representations made by the parties to this Agreement shall survive the conveyance of the Facilities.
- 11. Miscellaneous. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas and can be changed or terminated only by an agreement in writing signed by the parties hereto. This Agreement embodies the entire understanding between the parties and there are no prior effective representations, warranties, or agreements between the parties.
- 12. No Waiver. Nothing herein shall waive, discharge, satisfy, modify or limit any rights obligations of the parties hereto with respect to the Developer Authority Agreement, except as specifically provided in Section 7 of this Agreement.

This Agreement to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**DEVELOPER**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

STATE OF TEXAS            §  
 COUNTY OF TARRANT    §

BEFORE ME THE UNDERSIGNED AUTHORITY, a Notary Public in and for said County and State, on this day personally appeared \_\_\_\_\_ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said \_\_\_\_\_ and that he executed the same as the act of such corporation for the purposes and considerations therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_day of \_\_\_\_\_20\_\_\_\_.

\_\_\_\_\_  
 Notary Public, \_\_\_\_\_ County, \_\_\_\_\_  
 My Commission expires: \_\_\_\_\_

**BENBROOK WATER AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS           §  
COUNTY OF TARRANT   §

BEFORE ME THE UNDERSIGNED AUTHORITY, a Notary Public in and for said County and State, on this day personally appeared \_\_\_\_\_ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said BENBROOK WATER AUTHORITY and that he executed the same as the act of such corporation for the purposes and considerations therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public, Tarrant County, Texas  
My Commission expires: \_\_\_\_\_

Attachment 2  
Developer-Authority Agreement

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# DEVELOPER-AUTHORITY AGREEMENT

STATE OF TEXAS                   §  
  §  
COUNTY OF TARRANT       §

WHEREAS \_\_\_\_\_, (the "Developer,") whose business address is \_\_\_\_\_, is the owner and developer of real property located within Benbrook described on the attached **Exhibit "A,"** hereinafter referred to as the "Development;" and

WHEREAS, the Benbrook Water Authority (the "Authority,") is a conservation and reclamation district created under the laws of the State of Texas and organized for the purpose of providing water and wastewater services to the lands within its boundaries pursuant to Chapters 49 and 51 of the Texas Water Code; and

WHEREAS, Developer wishes to enter into this agreement with the Authority to provide for the construction of the Development, along with certain water and wastewater facilities, which are necessitated by and will serve the Development; and

WHEREAS, there are no existing water and wastewater facilities constructed to provide utility services to the Development; and

WHEREAS, Developer and Authority have met and determined the necessary water and wastewater facilities (the "Facilities") that are required to be constructed in order to provide sufficient water and wastewater services to the Development, such facilities are outlined in Exhibit "B"; and

WHEREAS, Developer wishes to proceed immediately with the Development and is willing to proceed with the construction of the Facilities and convey same to the Authority; and

WHEREAS, the Developer understands and agrees that it is responsible for and has retained at its sole expense the Developer's Engineer ("DE") to design the Facilities in accordance with BWA's Standard Construction Criteria; and

WHEREAS, this Agreement is required to ensure that the Facilities are constructed in accordance with BWA's Standard Construction Criteria, as that term is defined in the Authority's Policies and Procedures ("BWA's Standard Construction Criteria"), as well as the plans and specifications prepared by Developer's Engineer; and

WHEREAS, the Developer shall provide for the construction of the Facilities by and through \_\_\_\_\_, (the "Contractor,") whose business address is \_\_\_\_\_ a construction contractor experienced in the construction of improvements similar to the Facilities; and

WHEREAS, Developer and Contractor recognize that the Authority has an interest in ensuring that the Facilities, which will upon completion and acceptance by the Authority, become public property, are properly constructed in accordance with the Plans and Specifications and that payment by Developer is provided therefor;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Authority, the Developer and the Contractor agree as follows:

1. **Covenants of Developer and Contractor.**

a. Construction. Contractor shall construct the Facilities under the direct supervision of Developer's Engineer in accordance with the Plans and Specifications. Developer shall be responsible for all monies due to the Contractor for construction of the Facilities. In no event shall the Authority be responsible for payment of any of the expenses or costs to construct the Facilities unless otherwise required by Chapter 395 of the Texas Local Government Code. The Authority in its discretion may require the Developer to provide security for payments to the Contractor to ensure that the Developer does not default in its payment obligations to the Contractor.

b. Authority's Engineer. Observations. Tests and Orders. Developer and Contractor Warranty. All work on the Facilities shall be performed in accordance with BWA's Standard Construction Criteria, as that term is defined in the Authority's Policies and Procedures. The Authority reserves the right to decide all questions which arise, either through requested variances or based on BWA observation, as to the quality and acceptability of materials furnished, work performed and the interpretation of the Plans and Specifications and may reject any work not performed in accordance with BWA's Standard Construction Criteria. The Contractor, its surety on the performance bond required herein and the Developer warrant that the Facilities will be free from defects in materials and workmanship and that they will pay to remedy same for a period of two years after the completion of the Facilities and final acceptance by the Authority. This warranty shall not constitute a limitation on the duty to remedy latent defects in construction that were not known at the time of final acceptance or within said two year warranty period.

The Contractor shall furnish the Developer's Engineer with every reasonable facility for ascertaining whether or not the work performed is in accordance with the Plans and Specifications applicable thereto. Any work done or materials used without suitable inspection by the Developer's Engineer may be ordered removed and replaced at Contractor's expense.

The Authority's Engineer may perform periodic observations at his own instance, but said observations do not supplant or replace the Developer's inspection and testing obligations under BWA's Standard Construction Criteria. Additionally, construction will be observed by the Authority's regular personnel, but said observation does not supplant or replace the Developer's inspection or testing obligations.

c. Insurance. Contractor shall provide for insurance in form and in substance in accordance with the Authority's standard insurance requirements for public works projects, which are available upon request.

d. Means and Methods of Construction. The means and methods of construction shall be such as the Contractor may choose; subject, however, to the Authority Engineer's right to reject the Facilities for which the means or method of construction does not, in the judgment of the Authority, assure that the Facilities are constructed in accordance with BWA's Standard Construction Criteria.

e. Books and Records. All of the Developer's and the Contractor's books and other records related to the construction of the Facilities shall be available for immediate inspection upon written request by the Authority.

- f. Bonds. Developer agrees to require the Contractor to furnish the Authority for review and approval prior to the award of the construction contract, the following bonds:
- i. A performance bond for 100% of the contract price, in the name of the Authority and the Developer;
  - ii. A payment bond for 100% of the contract price, in the name of the Authority and the Developer; and
  - iii. A two-year maintenance bond for 100% of the contract price, in the name of the Authority.
- g. Retainage: Final Payment. As security for the faithful completion of the Facilities, Contractor and Developer agree that the Developer shall retain ten (10) percent of the total dollar amount of the contract price until after final approval or acceptance of the Facilities by the Authority. The Developer shall thereafter pay the Contractor the retainage, only after Contractor has furnished to the Developer satisfactory evidence including an affidavit that all indebtedness has been paid, that all indebtedness connected with the work and all sums of money due for labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied. In addition, Contractor shall provide Developer with a consent to final payment from the payment bond surety.
- h. Encumbrances. Upon completion and final acceptance of the Facilities by the authority, the Facilities shall become the property of the Authority free and clear of all liens, claims, charges or encumbrances of any kind. If, after acceptance of the Facilities, any claim, lien, charge or encumbrance is made, or found to exist, against the Facilities, or land dedicated to the Authority, to which they are affixed, the Developer and Contractor shall upon notice by the Authority promptly cause such claim lien, charge or encumbrance to be satisfied and released or promptly post a bond with the Authority in the amount of such claim, lien, charge or encumbrance, in favor of the Authority, to ensure payment of such claim, lien, charge or encumbrance.
- i. INDEMNIFICATION. THE DEVELOPER AND CONTRACTOR SHALL AND HEREBY DO INDEMNIFY, DEFEND AND SAVE HARMLESS, THE AUTHORITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM ACTIONS OR CLAIMS OF ANY CHARACTER, WHETHER REAL OR ASSERTED, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES SUSTAINED BY ANY PERSONS (INCLUDING DEATH) OR TO ANY PROPERTY, RESULTING FROM OR IN CONNECTION WITH THE CONSTRUCTION, DESIGN, PERFORMANCE OR COMPLETION OF ANY WORK TO BE PERFORMED BY SAID DEVELOPER, HIS CONTRACTORS, SUB-CONTRACTORS, OFFICERS, AGENTS OR EMPLOYEES, OR IN CONSEQUENCE OF ANY FAILURE TO PROPERLY SAFEGUARD THE WORK, OR ON ACCOUNT OF ANY ACT, INTENTIONAL OR OTHERWISE, NEGLIGENCE OR MISCONDUCT OF SAID DEVELOPER, HIS CONTRACTORS, SUB-CONTRACTORS, OFFICERS, AGENTS OR EMPLOYEES; AND SHALL PAY ANY JUDGMENT, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE AUTHORITY GROWING OUT OF SUCH INJURY OR DAMAGE.
- j. Agreement Controlling. The provisions of this agreement shall control over any conflicting provision of any contract between the Developer and any third party as to the construction of water or wastewater facilities.

- k. Developer hereby agrees that all appropriate and required utility easements for water and wastewater lines shall be dedicated to the Authority and subject to all other requirements contained herein. The Facilities shall only be constructed in a dedicated easement.
- l. This Agreement shall be subject to the provisions of Resolution #2019-10 adopted by the Authority's Board of Directors, which Resolution is hereby incorporated herein by reference, as well as the BWA's Policies and Procedures and subsequent amendments, if any, thereto.
- m. Developer shall pay all fees and charges outlined in BWA's Policies and Procedures and subsequent amendments. Said payments must be made at the time directed.
- n. Developer specifically understands and agrees that he will not begin construction of the Facilities until the sums and procedures set out by BWA's Policies and Procedures and subsequent amendments have been paid and complied with.
- o. All estimates of cost, plans and specifications for, and supervision of construction of the facilities for the supplying of water and wastewater services shall comply with BWA's Policies and Procedures and subsequent amendments and be approved, as required, by the Authority's Engineer and/or General Manager.
- p. Developer will require the Contractor to allow all construction to be subject to observation at any and all times by Authority representatives, and not to install any Facility unless an observer designated by the Authority is present to observe.
- q. Developer will require the Contractor to have such tests made as the Developer's Engineer may require to comply with BWA's Standard Construction Criteria.
- r. Developer agrees to make this Agreement, as well as BWA's Standard Construction Criteria (except as they are modified by the plans and specifications approved by the Authority) an integral part of the contract with a contractor to construct any or all of the facilities involved.
- s. All Facilities, required capital improvements, and their appurtenances constructed under this Agreement shall, upon completion and acceptance by the Authority, become the property of the Authority, and Developer agrees to convey the Facilities to the Authority in a form approved by the Authority.
- t. Upon completion of the construction contract, Developer will require his engineer to provide the Authority with revised Record Drawings showing the work as actually constructed in electronic format. Acceptable formats shall be provided upon request in writing to the General Manager.
- u. Notice. Any notice to be given hereunder by any party to the other shall be in writing and may be effected by certified mail, return-receipt requested.

Notice to the Authority shall be addressed to:  
General Manager  
P.O. Box 26929  
1121 Mercedes Street  
Benbrook, Texas 76126

Notice to the Developer shall be addressed to:

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Notice to the Contractor shall be addressed to:

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- v. No assignment of this Agreement or of any right accruing hereunder shall be made, in whole or in part by Developer without the prior written consent of the Authority. Any assignment or other transfer of this Agreement without the Authority's prior written consent shall make this Agreement voidable at the Authority's sole option, upon the Authority's discovery of said assignment or transfer.
  - w. Developer shall have six (6) months from the effective date of this Agreement to begin construction of the Facilities.
2. Covenants of Benbrook Water Authority. Upon proper completion of the Facilities and payment of all sums due and owing BWA in accordance with BWA's Standard Construction Criteria, BWA's Policies and Procedures and all subsequent amendments, and this Agreement, BWA agrees to accept the Facilities and place them in service.
  3. Nexus and Rough Proportionality. The Developer acknowledges and agrees that there is a reasonable nexus between the demands created by the Development and the Facilities, and that the costs associated with the construction and dedication of land for the Facilities is roughly proportional to the benefits received and the burdens imposed by the Development. The Developer shall indemnify and hold BWA harmless against any claim by it or others claiming through it, that the required Facilities and associated dedication of land are unlawful exactions.
  4. The Parties herein agree that this Agreement shall be enforceable in Tarrant County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Tarrant County, Texas. The terms and provisions of this agreement shall be construed in accordance with the laws and court decisions of the State of Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas.
  5. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to the Agreement.
  6. This Agreement is made pursuant to the Resolution Adopting and Codifying the Policies and Procedures to be Followed by the Authority's Management in Providing Water and Sewer Service for its Customers as adopted by the Board of Directors of the Authority and amended from time to time (the "Policies and Procedures"). Developer understands that his rights and obligations under this Agreement may be affected by future amendments to the Policies and Procedures. Developer agrees to comply with the requirements of the Policies and Procedures, as may be amended from time to time during the term of this Agreement.

7. The undersigned signatories for Developer and Contractor hereby represent and warrant that such signatories have full and complete authority to enter into this Agreement on behalf of the Developer and Contractor.
  
8. In the event one or more provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first herein written in three counterparts, each of which shall be deemed an original.

DEVELOPER

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

STATE OF TEXAS            §  
 COUNTY OF TARRANT    §

BEFORE ME THE UNDERSIGNED AUTHORITY, a Notary Public in and for said County and State, on this day personally appeared \_\_\_\_\_ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said \_\_\_\_\_ and that he executed the same as the act of such corporation for the purposes and considerations therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_day of \_\_\_\_\_20\_\_\_.

\_\_\_\_\_  
 Notary Public, \_\_\_\_\_ County, \_\_\_\_\_  
 My Commission expires: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS §  
COUNTY OF TARRANT §

BEFORE ME THE UNDERSIGNED AUTHORITY, a Notary Public in and for said County and State, on this day personally appeared \_\_\_\_\_ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said \_\_\_\_\_ and that he executed the same as the act of such corporation for the purposes and considerations therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

BENBROOK WATER AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS §  
COUNTY OF TARRANT §

BEFORE ME THE UNDERSIGNED AUTHORITY, a Notary Public in and for said County and State, on this day personally appeared \_\_\_\_\_ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said BENBROOK WATER AUTHORITY and that he executed the same as the act of such corporation for the purposes and considerations therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public, Tarrant County, Texas  
My Commission expires: \_\_\_\_\_

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Insert Exhibit “A”

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Attachment 3  
Agreement for  
Professional Engineering Services

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# AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

## PART 1 GENERAL PROVISIONS

- 1.01 THIS AGREEMENT is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Developer and, hereinafter referred to as the “Engineer.”
- 1.02 By this AGREEMENT, Engineer agrees that it is designing and constructing modifications to the water and wastewater system owned and operated by the Benbrook Water Authority (hereafter referred to as “BWA” or “Authority”). Developer and Engineer understand that BWA has been created under the laws of the State of Texas for the purpose of providing water and sanitary sewer service as a Public Utility to the City of Benbrook, Tarrant County, Texas.
- 1.03 Developer by this AGREEMENT retains an Engineering Consultant licensed as a Texas professional engineer for general technical consultation, in compliance with the rules and regulations adopted by the Texas Board of Professional Engineers for the practice of engineering, to provide services necessary for the constructing, maintenance and/or repairs to certain new and existing public improvements consisting of water and sanitary sewer improvements as necessary to serve its designated service area. Such improvements are hereinafter called the “PROJECTS.”
- 1.04 This AGREEMENT, including all of its individual sections, attachments and schedules, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings as to the duties described herein, and may only be changed by a written amendment executed by both parties.
- 1.05 If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 1.06 INDEMNIFICATION. IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEVELOPER AND ENGINEER DO HEREBY INDEMNIFY AND HOLD HARMLESS BWA AGAINST LIABILITY AND DEFENSE COSTS AND SETTLEMENT COSTS FOR ANY CLAIMS, SUITS, DEMANDS, CAUSES OF ACTION, DAMAGES, EXPENSES AND COSTS, INCLUDING EXPENSES OF LITIGATION CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ENGINEER OR ENGINEER’S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL.

## PART 2 BASIC SERVICES

- 2.01 Construction Improvements - The Engineer shall render all engineering services reasonably necessary for the design and construction of projects for which a written project authorization has been executed. The Engineer agrees to perform general representation and the basic services outlined below in four phases for all design/construction projects as applicable for which a written project authorization has been executed.
- 2.02 In connection with the Preliminary Design Phase the Engineer shall:
- A. Make such field surveys as may be necessary to prepare preliminary plans;
  - B. Prepare any preliminary plans and reports as may be needed to supplement existing General and Comprehensive Plans, these to include:
    - 1. Preliminary soils exploration, if necessary. Written results of necessary test pits, or borings and soil explorations.
    - 2. Design criteria, including, as applicable, State of Texas requirements, Federal requirements and recommendations from national professional organizations.

## AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

3. Permits, approvals, and grants for construction of improvements, including approvals of plans and specifications by the Texas Commission on Environmental Quality (TCEQ) and others as necessary.
- 2.03 When directed by Developer to proceed with the Design Phase for working drawings and specifications the Engineer shall:
- A. Prepare detailed contract drawings and specifications for construction;
  - B. Make such field surveys as may be necessary to prepare final contract drawings;
  - C. Make or have made and supervise geotechnical investigations including test borings and soil explorations required for preparation of final plans.
  - D. Make or have made and supervise property surveys required for preparation of right-of-way maps, easements, and property descriptions.
  - E. Review applicable existing information, including but not limited to BWA Standard Construction Requirements, latest edition, including Specification and Contract Document standards, and develop independent recommendations based on the information and propose in writing any and all modifications to BWA's Standard Construction Requirements or Standards which are reasonably necessary for the construction of the Project or required by law.
- 2.04 With respect to the Bidding Phase the Engineer shall:
- A. Furnish all necessary copies of the completed plans and specifications for each project for bidding purposes. Engineer shall include minimum insurance and bonding requirements for contractors, which have been approved and established by BWA at BWA's sole discretion, in the contract documents.
  - B. Render all necessary assistance in obtaining bids.
  - C. Attend bid opening.
  - D. Make a written analysis of bids received, including a statement that all bidder references have been contacted by the Engineer and a summary of all pertinent information obtained therefrom, and including a written recommendation on award of contracts.
  - E. Engineer's responsibility regarding the insurance and bonding requirements of bidders, other than including those requirements in the contract documents, is to document in writing that all certificates of insurance and bonds required by the contract documents have been provided by the Engineer to BWA's designated representative for determination by BWA's representative of the adequacy and currency of all certificates of insurance and bonds mandated by the contract documents.
  - F. Render assistance in award of contracts and assembly of the Contract Documents.
- 2.05 With respect to the Construction Phase:
- A. The **Engineer will** provide general representation to Developer and assist with the general administration of the Project and the construction thereof in accordance with professional standards. The construction of the Project shall be executed under the direct supervision of a licensed professional engineer as required by Texas law. Engineer will prepare a scope of work and compensation for Construction Engineering Services that reflects the effort required to comply with the requirement of Texas law for direct supervision during construction by a professional engineer.  
**Engineer shall** initiate and review the work of project engineers and/or representatives and such independent testing laboratories as Engineer determines to be necessary for each project. The Engineer shall report in writing the results of all such independent testing laboratories as Engineer determines to be necessary for each project.  
**Engineer shall** review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the contractor is required to submit, for

## AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

conformance with the design concept of the Project and compliance with the information given by the Contract Documents.

**Engineer shall** make periodic personal visits to the site, as distinguished from the continuous services of a Resident Project Representative described hereafter, to review and verify in writing to Developer the progress and quality of the executed work and to determine if the work is proceeding in accordance with the Contract Documents. In performing this service, the Engineer will not be responsible for the techniques and sequences of construction or the safety precautions incident thereto. During these visits to the construction site, and on the basis of the Engineer's onsite observations as an experienced and qualified design professional, he will keep Developer informed of the extent of the progress of the work, and advise BWA in writing of questionable work performance in the work of contractors which are discovered by the Engineer or otherwise brought to the Engineer's attention in the course of construction.

**Engineer shall** provide general consultation and advice during construction and issue all required instructions to the contractor and prepare routine change orders as required.

**Engineer shall** conduct, in company with BWA, a final inspection of the Project for conformance with the design concept of the Project and compliance with the Contract Documents, and approve in writing final payment to the contractors.

For all projects subject to the requirements and regulations of the Texas Commission on Environmental Quality, the Engineer shall submit a written Final Engineering Construction Report in conformance with both the Engineer's obligations under the Rules and Regulations of the Texas Board of Professional Engineers, and the requirements of the Texas Commission on Environmental Quality for the completion of public works in Texas.

**Engineer shall** perform all studies and present written reports to Developer as required specifically in the scope of services or reasonably necessary for the Project in conformance with federal, state and local statutes, codes, rules, regulations or ordinances applicable to engineering practice.

- B. The construction of the Project shall be executed under the direct supervision of a licensed professional engineer as required by Texas law. Engineer will have complete charge and responsibility for its employees, subcontractors, consultants and agents engaged in performing the required services. No provision in the scope of work or any other document related to this Agreement may in any way impair this obligation of the Engineer. Engineer hereby agrees, however, that under no circumstances shall Engineer be deemed to have control over the details of the work of any employee of BWA.

2.06 Project Management Plan - For each separately executed project authorization, unless otherwise directed in the scope of work, the Engineer shall provide the Developer the following services:

- A. Submit a written Project Management Plan ("PMP") for all services provided by the Engineer including the following:
  - 1. Experience and qualifications of the Project Manager;
  - 2. Proposed schedule for studies, design, bidding, and construction including engineering services during construction, if any;
  - 3. Preliminary and final design reports stating the objects of the project; the compatibility of the Project with existing operations and processes of BWA; the quality control procedures to be implemented by Engineer for the Project.
- B. Upon completion of design, the Engineer may prepare, where necessary, an amended scope of work and compensation as to Construction Engineering Services that, in the Engineer's opinion based upon the completed design, reflect the effort required to comply with the requirement of Texas law for direct supervision during construction by a professional engineer. Any such amended scope and compensation agreement shall be jointly executed with authorized signatures in order to take effect as a part of this Agreement.

## **AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**

2.07 Insurance - The Engineer will procure and maintain for itself insurance as follows and will provide to BWA, upon written request, written proof of insurance as follows:

- A. Workmen's compensation and occupational disease insurance in amounts to satisfy state law;
- B. Comprehensive general liability insurance for bodily injury, death, or loss of, or damage to, property of third persons in the minimum amount of \$1,000,000.00 per occurrence and \$3,000,000.00 in the aggregate;
- C. Automobile liability insurance in the amount of \$1,000,000.00 per occurrence;
- D. Umbrella insurance in the amount of \$5,000,000.00 per occurrence and in the aggregate (providing excess coverage over the limits of b and c above); and

Professional liability insurance in the amount of \$2,000,000.00 for each claim and \$4,000,000.00 in the aggregate. The Engineer's professional liability policy shall include full coverage for claims arising out of professional services relating to safety of the Engineer's personnel as well as services related to construction management and the Engineer's obligation of direct supervision referred to herein;

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by Engineer to any contractor, subcontractor, supplier, other person or entity, or to any surety for or employee of any of them or give any rights in or benefits under this agreement to anyone other than BWA, BWA's employees and agents and Engineer.

All duties and responsibilities undertaken pursuant to this Agreement will be for the exclusive benefit of BWA, BWA's employees and agents and not for the benefit of any other party.

Each policy, except Professional Liability, must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against BWA, its officers, agents, or employees.

2.08 Engineer's Use of Third Parties - Should Engineer require the services of third party agents to carry out its obligations herein, Engineer is solely responsible for determining that all of its third party agents are properly qualified to perform all necessary services under the Engineer's direct supervision and the Engineer shall be responsible for the work performed by its third party agents as if actually performed by the Engineer.

2.09 Planning Reports and Studies - The Engineer shall perform all studies and present written reports to BWA as required specifically in the scope of work or reasonably necessary for the Project in conformance with federal, state and local statutes, codes, rules, regulations or ordinances applicable to engineering practice.

### **PART 3 OWNERSHIP OF DOCUMENTS**

3.01 All documents prepared by or for Engineer and delivered to BWA in performance of this Agreement are considered property of BWA. BWA agrees that reuse of such documents by BWA or by third parties without Engineer's written permission will be at the sole risk of the user without any liability on the part of Engineer, except as otherwise recognized by law. Engineer may make and retain copies of all such documents delivered to BWA. BWA will not aid or assist in the unauthorized use of such documents by third parties except as otherwise allowed or required by law.

### **PART 4 TERMS AND CONDITIONS**

4.01 Compliance with Laws - The Engineer shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work embraced by this Contract.



## **AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**

4.02 Third Parties - Nothing contained in this Agreement will be construed to give any rights or benefits to any person other than the named Parties hereto and BWA, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the named Parties and BWA and not for the benefit of any other person.

4.03 Entire Agreement - This Agreement, together with any duly executed amendments thereto, will constitute the entire Agreement between the Parties and will supersede all prior written or oral understandings and any purchase order terms, pertaining to the Project, that may be issued by BWA.

This Agreement and its Attachments may only be amended, supplemented, modified or canceled by a duly executed written instrument with authorized signatures by the Parties.

4.04 Legal Construction - In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

4.05 Waiver - Non-enforcement of any provision by either Party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

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# Attachment 4

## Standard Form of Agreement

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AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT IN BENBROOK, TEXAS

THIS AGREEMENT is by and between \_\_\_\_\_ (“Owner”) and  
\_\_\_\_\_ (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

[Water Project in Benbrook][Year][ BWA Project #] [*project name*]

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

[*project description*]

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by [*name*] (Engineer), which is to act as Owner’s representative, assumes all duties and responsibilities, and has the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIME AND PRICE**

All time limits and prices for the Project shall be as stated in the attachments hereto under Article 6, subject to the Benbrook Water Authority’s Policies and Procedures, as well as the Standard Construction Criteria defined therein.

**ARTICLE 5 – CONTRACTOR’S REPRESENTATIONS**

5.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has obtained and carefully studied all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions including surface, subsurface and Underground Facilities at or contiguous to the Site which may affect cost, progress and performance of the Work. Contractor has also considered the information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; and the Contract Documents with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- E. Based on the information and observations referred to in Paragraph 5.01.D above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 6 – INITIAL PHASE CONTRACT DOCUMENTS**

### **6.01    *Contents***

- A. The Initial Phase Contract Documents consist of the following:
  - 1. This Agreement.
  - 2. Contractor's Bid and Scope of Work (attached hereto).
  - 3. Preliminary documents required by Section 4.02 of BWA's Policies and Procedures.
  - 4. Benbrook Water Authority's Policies and Procedures and BWA's Standard Construction Criteria are hereby incorporated by reference.
  - 5. Benbrook Water Authority's Standard General Conditions for Construction Contracts are hereby incorporated by reference.

- B. Any conflicts between BWA's Policies and Procedures and the Initial Phase Contract Documents shall be resolved in favor of the requirements of BWA's Policies and Procedures as interpreted by BWA's Board of Directors.

## **ARTICLE 7 – MISCELLANEOUS**

### **7.01** *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### **7.02** *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### **7.03** *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### **7.04** *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### **7.05** *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 7.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

7.06 *Venue*

- A. The contracting parties hereto agree that venue shall lie exclusively in Tarrant County, Texas for any legal action involving or related to this Agreement.

**ARTICLE 8 – INDEMNITY**

8.01 *Contractor’s Indemnity*

**A. CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS BENBROOK WATER AUTHORITY AND ITS PARTNERS, MEMBERS, PARENTS, SUBSIDIARIES, DIVISIONS AND AFFILIATES AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE “INDEMNITEES”), FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, CAUSES OF ACTION, LIABILITY, DAMAGES, JUDGMENTS OR EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS’ FEES AND LITIGATION COSTS, FOR PERSONAL INJURIES, BODILY INJURIES (INCLUDING, BUT NOT LIMITED TO, DEATH) OR PROPERTY DAMAGE, SUFFERED BY ANY PERSON OR ORGANIZATION (INCLUDING EMPLOYEES OF CONTRACTOR OR ITS SUBCONTRACTORS) ARISING OUT OF OR IN ANY WAY CONNECTED WITH CONTRACTOR’S OR ITS SUBCONTRACTORS’ ACTIVITIES AT THE SITE OR THE PERFORMANCE OF CONTRACTOR’S OBLIGATIONS UNDER THIS CONTRACT OR ANY CONTRACT WITH OWNER, EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF ANY INDEMNITEE, OR WHETHER BASED ON WARRANTY, OR OTHERWISE. IT IS THE SPECIFIC INTENTION OF THE PARTIES THAT LIABILITY OF CONTRACTOR AND ITS SUBCONTRACTORS FOR INJURIES TO THEIR EMPLOYEES SHALL NOT BE LIMITED BY CONTRACTOR’S OR ANY OF ITS SUBCONTRACTORS’ WORKERS’ COMPENSATION LIABILITY INSURANCE OR OTHERWISE AND THAT INDEMNITEES SHALL HAVE NO LIABILITY WHATSOEVER FOR INJURIES TO THE EMPLOYEES OF CONTRACTOR OR ITS SUBCONTRACTORS. TO THE EXTENT THAT THE LAWS OF THE GOVERNING JURISDICTION PROHIBIT OR DECLARE UNENFORCEABLE THIS INDEMNIFICATION AS IT APPLIES TO ANY INDEMNITEES’ OWN NEGLIGENCE OR FAULT, THEN THIS INDEMNIFICATION SHALL BE INTERPRETED TO OBSERVE SUCH PROHIBITION OR DECLARATION BUT ONLY TO THE EXTENT NECESSARY TO CAUSE IT TO BE CONSISTENT WITH LAWS OF SAID GOVERNING JURISDICTION AND TO CAUSE THE MAXIMUM INDEMNIFICATION OF INDEMNITEES AS ALLOWED THEREUNDER.**



**B. IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS PARAGRAPH BY AN EMPLOYEE OF THE CONTRACTOR, SUBCONTRACTOR, A SUBCONTRACTOR'S SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER THIS PARAGRAPH.**

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on the date of Contractor's execution of this Agreement (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

(If Owner is a corporation or a partnership, attach evidence of authority to sign.)

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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# Attachment 5 - Checklist

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## PROCEDURES TO BE FOLLOWED FOR SYSTEM EXTENSIONS AND CAPITAL IMPROVEMENTS BY DEVELOPERS

<u>ACTION</u>	<u>POLICIES AND PROCEDURES §§</u>
1. Preliminary Phase - Developer To Submit the Following Documents:	§ 4.02
– project description	§ 4.02A
– preliminary water & sewer plan	§ 4.02B
– preliminary engineering report	§ 4.02C
– project schedule	§ 4.02D
– review fees	§ 4.02E
2. Developer To Submit Standard Form Agreement with Contractor	§ 4.02F
3. Developer To Submit Developer’s Engineer (DE) Agreement for Approval by BWA	§ 4.03A
4. Review Phase	§ 4.03D(1)
5. Developer Authority Agreement	§ 4.06
6. Developer To Submit Final Project Manual for Approval by BWA	§ 4.03C
7. Construction Phase	§ 4.05
8. DE Observes Construction, Submits Record Drawings and Submits Final Report	§ 4.03D(2) & (3) § 4.08F
9. Project Acceptance & Closeout	§ 4.10