

UTILITY CONVEYANCE AGREEMENT

This Agreement is entered into on this _____ day of _____, 20____, by and between the City of Benbrook (“City”) and the Benbrook Water Authority (“Authority”).

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

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

RECITALS

City and Authority have previously entered into an Interlocal Agreement dated _____ which Agreement provides the terms and conditions pursuant to which City will construct certain water facilities and convey same to the Authority; and

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

City now wishes to convey and Authority wishes to take title to such facilities, pursuant to the Interlocal Agreement.

AGREEMENT

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

1. **Conveyance.** City hereby sells, conveys, transfers, and delivers to Authority all of the water facilities free and clear of all liens, claims, encumbrances, options, charges, assessments, reservations, or restrictions. The Facilities being conveyed hereby are more completely described in the plans and specifications described in Exhibit B, attached hereto, which are incorporated herein by reference (“the Facilities”).
2. **Assignment.** City hereby assigns all of its rights in the Facilities to Authority and agrees to make provision for the transfer of any guarantees and warranties executed by any contractor and all other rights of City pursuant to the provisions of any Construction Contract(s).
3. **Representations by City.** City represents to Authority that:
 - a. **Title.** All the property rights in the Facilities covered by this Agreement are hereby conveyed to Authority, free and clear of all liens, debts, claims,

encumbrances, options, charges, assessments, reservations, and restrictions, attorney's fees and any other kind of expenses that may be incurred by or against the Authority by reason of construction and conveyance of the Facilities.

- b. Rights-of-Way and Easements. City represents, warrants, and guarantees that the Facilities are located in public utility easements or road rights-of-way as shown on recorded plats. City 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 City in connection therewith are hereby transferred to Authority whether or not expressly described herein.
 - c. Possession. City 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 City, threatened or affecting the properties to be sold hereunder and there are no pending condemnation proceedings of which City is aware connected with the Facilities or other properties to be conveyed hereunder.
 - e. Known Defects. City 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 City.
 - 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 City is a party.
 - h. "Record" or "As-Built" Drawings and Engineer's Letter. Contemporaneously herewith City has provided Authority with a complete set of "record drawings," together with a sealed letter by a licensed professional engineer that the Facilities were constructed as shown in the approved Contract Documents (plans & specifications) and all properly executed change orders.
4. Limitation of Liability. Liability for damages arising out of or resulting from the construction, design, performance or completion of any work on the Facilities to be performed by the City, its contractors, subcontractors, officers, agents or employees, or in consequence of any failure to properly safeguard the work shall remain with the City, together with the title to the Facilities, until the acceptance by the Authority. Thereafter, the Authority shall have liability

for damages arising out of the receipt, transportation, delivery, storage, treatment, handling and/or disposal of all water discharged into the Authority's System. Each party agrees to save, release and hold harmless the other Party from all claims, demands, and causes of action, damages, losses and costs, fines and expenses, including reasonable attorneys' fees, and all response, remediation and corrective action costs (collectively "Liabilities") that may be asserted by anyone, including state and federal administrative agencies, at any time on account of the contents, transportation, delivery, reception, storage, treatment handling and/or disposal of the water while it is in the control of such Party.

5. Expenses. Except as specifically set forth herein, each party shall pay its own expenses incident carrying this Agreement into effect and consummating all transactions contemplated hereby.

6. Further Assurances. City agrees that from time to time and upon the request of Authority, City 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.

7. Representations Survive Conveyance. The agreements and representations made by the parties to this Agreement shall survive the conveyance of the Facilities. If it is determined City failed to obtain and convey to the Authority all required easements within its boundaries for the maintenance and operation of the Facilities, should the Authority at a future date be required to relocate the Facilities and their appurtenances, outside of City's conveyed easements and rights-of-way easement to the Authority, such relocation shall be at the Authority's expense.

8. 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.

9. No Waiver. Nothing herein shall waive, discharge, satisfy, modify or limit any rights, obligations of the parties hereto with respect to the Interlocal Agreement, except as specifically provided in Section 4 of this Agreement.

This Agreement to be effective as of the ____ day of _____, 20__.

CITY OF BENBROOK

By: _____

BENBROOK WATER AUTHORITY

By: _____

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

 This instrument was acknowledged before me on the ____ day of _____,
20____, by _____ of The City of Benbrook, Texas, on behalf of said
City.

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

 This instrument was acknowledged before me on the ____ day of _____,
20____, by _____ President, Board of Directors, Benbrook Water
Authority, on behalf of said Authority.

Notary Public, State of Texas