

**AGENDA  
BENBROOK CITY COUNCIL  
THURSDAY, SEPTMEBER 1, 2016  
PRE-COUNCIL WORKSESSIN 7:00 P.M.  
CENTRAL CONFERENCE ROOM**

**1. Review and discuss agenda items for regular meeting**

**REGULAR MEETING 7:30 P.M.  
COUNCIL CHAMBERS  
ALL AGENDA ITEMS ARE SUBJECT TO FINAL ACTION**

I. CALL TO ORDER

II. INVOCATION/PLEDGE OF ALLEGIANCE

Invocation To Be Given By Pastor Lonnie Huett Of Restoration Family Church

III. MINUTES

1. Approve Minutes Of The Regular Meeting Held August 18, 2016

Documents:

[CC MINUTES-08-18-16 \(1\).PDF](#)

IV. REPORTS FROM CITY MANAGER

A. GENERAL

G-2260 Authorize Interlocal Agreement With City Of Fort Worth For Household Hazardous Waste Program

Documents:

[G-2260 HHW PROGRAM 2016.PDF](#)  
[G-2260 HHW AGREEMENT.PDF](#)

G-2261 Adopt Ordinance Approving Sale Of 913 Timberline Drive

Documents:

[G-2261 SALE 913 TIMBERLINE DRIVE.PDF](#)  
[G-2261 ORDINANCE APPROVING SALE.PDF](#)

B. CONTRACT

C-300 Authorize Contract For Collection Of Outstanding Ambulance Billing Accounts

Documents:

[C-300 OUTSTANDING AMBULANCE ACCOUNTS COLLECTION.PDF](#)  
[C-300 CONTRACT AMBULANCE ACCOUNTS.PDF](#)

V. OTHER MATTERS OF BUSINESS

1. Conduct 2nd Public Hearing On 2016 Property Tax Rate
2. Conduct 2nd Public Hearing On 2016-2017 Proposed Budget

#### VI. INFORMAL CITIZEN COMMENTS

– State Law Prohibits Any Deliberation Of Or Decisions Regarding Items Presented In Informal Citizen Comments. City Council May Only Make A Statement Of Specific Factual Information Given In Response To The Inquiry; Recite An Existing Policy; Or Request Staff Place The Item On An Agenda For A Subsequent Meeting. The Exception To Informal Comments Is That Once An Election Date Has Been Set By City Council Comments Relative To Elections Will Not Be Broadcast On The City's Cable Channel. However, A Copy Of The Tape Containing Citizens' Comments Will Be Available At City Hall For Review Or Purchase By Interested Citizens.

#### VII. COUNCIL MEMBER AND STAFF COMMENTS

– Announcements From City Councilmembers And City Staff May Be Made For Items To Include: Expression Of Thanks; Congratulations; Condolence; Recognition Of Public Officials, Employees Or Citizens; Information Regarding Holiday Schedules; Reminders Of Community Events Or Announcements Involving An Imminent Threat To The Public Health And Safety Of The Municipality That Has Arisen After The Posing Of The Agenda. No Discussion Or Formal Action May Be Taken On These Items At This Meeting

#### VIII. ADJOURNMENT



**MINUTES  
OF THE  
MEETING OF THE  
BENBROOK CITY COUNCIL  
THURSDAY, AUGUST 18, 2016**

The regular meeting of the Benbrook City Council was held on Thursday August 18, 2016 at 7:30 p. m. in the Council Chambers at 911 Winscott Road with the following Council members present:

Jerry Dittrich  
Renee Franklin  
Larry Marshall  
Jim Wilson  
Mark Washburn  
Ron Sauma

Also Present:

Andy Wayman, City Manager  
Dave Gattis, Deputy City Manager  
Joanna King, City Secretary  
Sherri Newhouse, Finance Director  
Dawn Green, Police Administrative Manager

Others Present:

Ed Gallagher, Planning Director  
Maddie Schwartz, Accounting Supervisor  
Johnna Matthews, Planning Assistant  
Bill Smith  
Denise Huneycutt, Benbrook News  
Matthew Lutes  
Pat Dunkin  
Caroline Lausch  
Darlene Kalil  
Teresa Stitchnot  
Loretta Belisle  
Donna Morrison  
Maryanne Martinez  
and 5 other citizens

**I. CALL TO ORDER**

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

**II. INVOCATION/PLEDGE OF ALLEGIANCE**

Invocation given by Councilmember Renee Franklin.  
The Pledge of Allegiance was recited.

### III. MINUTES

#### 1. Approve Minutes of the Regular Meeting held August 4, 2016

Motion by Dr. Marshall, seconded by Mr. Wilson to approve the minutes of the regular meeting held August 4, 2016.

Vote on the Motion:

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

Abstain: Mr. Sauma

Noes: None

Motion carries 5-1-0

### IV. CITIZEN PRESENTATION

#### 1. Pat Dunkin – 4PAWS – Donation Recognition

Matthew Lutes, a 6<sup>th</sup> grade student at Trinity Valley presented a check in the amount of \$2,500.00 to 4PAWS. Mr. Lutes stated he, along with his family, established the Starfish Foundation, a private foundation and he was making the donation to 4PAWS for making a difference in the community.

Ms. Pat Dunkin accepted the check and expressed 4PAWS appreciation to Mr. Lutes for his generous donation.

### V. PRESENTATION BY PLANNING AND ZONING COMMISSION

**PZ-2016-03 Adopt Ordinance amending Chapter 17.08 Definitions; Chapter 17.20 Districts, District Boundaries and District Uses; Chapter 17.54 – “D” Multiple-Family District; Chapter 17.74 – “MU” Mixed Use District; Chapter 17.75 – “FBC” Form Based Code District; Chapter 17.84 – Supplementary District Regulations; Chapter 17.92 – Sign Regulations; Chapter 17.96 – Fence Regulations; and Chapter 17.98 – Landscape and Buffer Regulations of the Benbrook Municipal Code**

Dave Gattis gave the following report: The Planning and Zoning Commission and City staff regularly review the City’s development regulations for necessary updates. The proposed amendments represent discussions over the past two years. Those proposed amendments include:

#### **Chapter 17.08 – Definitions**

Adds definitions for the following:

- Fence Repair
- Fence Replacement (Substantial Improvement)
- Unified Commercial Development
- Unified Commercial Sign

## **Chapter 17.20 Districts, District Boundaries and District uses**

- Delete listing of “FBC” Form-Based Code District from designated list of zoning districts.
- Delete “FBC” District column from Table 17.20.070, Summary of Uses; and revise uses in “MU” Mixed Use District column.

## **Chapter 17.54- “D” Multiple-Family District**

Section 17.54.032 A is amended to include additional design requirements, to have architectural design requirements for multi-family consistent with other residential zoning districts, including:

- 80% masonry
- 7:12 roof pitch

## **Chapter 17.74 – “MU” Mixed Use District**

- Create a new “MU” Mixed Use District by combining regulations and features from both the existing “MU” District and “FBC” District.

## **Chapter 17.74 – “MU” Mixed Use District**

Revisions to the uses allowed in the District include:

### **Chapter 17.74.20 Use Regulations**

Revision made to uses allowed in the District include:

- 17.74.020 Use Regulations
- 17.74.22 Permitted Uses
- 17.74.024 Conditional Uses
- 17.74.026 Special Exception Uses

### **Chapter 17.74.30 District Design Standards**

- A. Building Form and Development Standards
- B. Building Design Standards
  - Building Placement
  - Block Standards
  - Building Height
  - Parking Location
  - Façade Requirements and Façade Elements
- C. Streetscape Standards
- D. Civic Space and Open Space Standards
- E. Building and Screening Standards
- F. Neighborhood Transition Standards

## **Chapter 17.74.040 Development Site Plan**

- Must meet the intent of the “MU” District
- Requires approval by the Planning and Zoning Commission after a public hearing

## **Chapter 17.75 – “FBC” Form-Based Code District**

With the amendments to the “MU” District, the “FBC” District will be repealed.

## **Chapter 17.84 – Supplementary District Regulations**

The architectural requirements for the “D” Multiple-Family District are revised to be consistent with other residential zoning districts and to correct a typographical error.

## **Chapter 17.92 – Sign Regulations**

- Two tables in the chapter were not consistent regarding building signs for the “D’ District and have been revised.
- Unified Commercial Signs to provide for limited off-premise signs in a coordinated manner has been added.

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## **Chapter 17.96 – Fence Regulations**

Provides clarification of fence permitting requirements and provides for enhanced construction standards and fence materials.

- Permit required for fence over 30-inches in height
- Metal posts in concrete
- Clarification of use of barbed-wire fences
- Inspections required.

## **Chapter 17.98 – Landscape and Buffer Requirements**

- Clarification of zoning districts
- Clarification on landscape thresholds
- Reduced buffer yard plantings
- Modified parking lot landscaping requirements
- Other miscellaneous revisions

The Planning and Zoning Commission considered the amendments at their July meeting and following a public hearing, unanimously recommended adoption.

Mayor Dittrich opened the public hearing at 7:49 p.m. No one spoke to the item.

Mayor Dittrich closed the public hearing at 7:50 p.m.

Motion by Mr. Washburn, seconded by Dr. Marshall to adopt Ordinance No. 1398 amending Chapter 17, Zoning Regulations of the Benbrook Municipal Code.

Vote on the Motion:

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

Noes: None

Motion carries unanimously.

**Ordinance No. 1398 being “AN ORDINANCE AMENDING TITLE 17 - ZONING OF THE BENBROOK MUNICIPAL CODE (1985), AS AMENDED, BY AMENDING CHAPTER 17.08 — DEFINITIONS; CHAPTER 17.20 DISTRICTS, DISTRICT BOUNDARIES AND DISTRICT USES; CHAPTER 17.54 – “D” MULTIPLE-FAMILY DISTRICT; CHAPTER 17.74 – “MU” MIXED USE DISTRICT; CHAPTER 17.75 – “FBC” FORM BASED CODE DISTRICT; CHAPTER 17.84 – SUPPLEMENTARY DISTRICT REGULATIONS; CHAPTER 17.92 – SIGN REGULATIONS; CHAPTER 17.96 – FENCE REGULATIONS; CHAPTER 17.98 – LANDSCAPE AND BUFFER REQUIREMENTS – ZONING OF THE BENBROOK MUNICIPAL CODE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**SECTION 11  
PENALTY CLAUSE**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety or public health and sanitation, including dumping of refuse, and shall be fined not more than Five Hundred Dollars (\$500.00) for all other violations of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 18  
EFFECTIVE DATE**

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

## **VI. REPORTS FROM CITY MANAGER**

### **A. GENERAL**

#### **G-2258 Accept finance report for period ending July 31, 2016**

Sherri Newhouse gave the following report: General Fund revenues for the month of July were \$658,806. Property tax collections were \$107,141. Sales tax collected in June but received by the City and recognized as revenue in July was \$177,732 for the month. General Fund revenues collected through the end of July were \$15,662,669 or 94.00 percent of the budget.

General Fund expenditures for the month of July were \$1,232,509. Expenditures through the end of July were \$13,215,356 or 75.55 percent of the adopted budget.

For the 2015-16 fiscal year-to-date, total General Fund revenues of \$15,662,669 exceeded General Fund expenditures of \$13,215,356 by \$2,447,313.

Debt Service revenues collected for the month of July totaled \$4,235; all revenue was from property taxes. Debt Service expenditures for July were \$110,644 for interest payments on general obligation bonds and certificates of obligation due on August 1.

Total revenues for 2015-16 in the amount of \$408,360 were exceeded by total expenditures of \$1,495,107 by \$1,086,747.

This deficit will be reduced significantly when debt service payments for TIF certificates of obligation and for Storm Water Fund general obligation bonds are re-allocated to the appropriate fund before the end of the 2015-16 fiscal year.

EDC revenues as of July 31, 2016 were \$735,237. Sales tax revenue received by the EDC for the fiscal year was \$709,365. EDC expenditures for July were \$7,350. Revenues for the year in the amount of \$735,237 exceeded total expenditures of \$448,113 by \$287,124.

Total revenues received through July 31, 2016 for the Capital Projects Fund were \$1,995,081. Total expenditures for the Capital Projects Fund in July 2016 were \$52,746; all July expenses were engineering services for drainage projects. Expenses for the Plantation West Project totaled \$23,070. Expenses for the Vista Way Project were \$29,676. For the 2015-16 fiscal year, total revenues of \$1,995,081 exceeded total expenditures of \$830,028 by \$1,165,053.

On July 31, 2016, the City had \$23,716,135 invested at varying interest rates; the EDC had \$6,126,960 available.

Motion by Dr. Marshall, seconded by Mr. Sauma to accept the finance report for the period ending July 31, 2016.

Vote on the Motion:

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

Noes: None

Motion carries unanimously.

**G-2259      Authorize Interlocal Agreement with Fort Worth Independent School District to provide three Police Officers to participate in Annual School Security Initiative**

Dawn Green gave the following report: The Benbrook Police Department provides three full-time School Resource Officers (SRO) for FWISD campuses located in Benbrook. The three officers serve as a liaison between the police department and Benbrook schools. All reports and incidents occurring on school property are handled primarily by the SRO's. During holidays and summer break, the officers perform regular patrol duties. The Fort Worth Independent School District subsidizes fifty percent (50%) of the salary, benefits, overtime, and training for all three officers.

Motion by Mr. Washburn, seconded by Mr. Wilson to approve the Interlocal Agreement between the City of Benbrook and the Fort Worth Independent School District for three (3) full-time School Resource Officers.

Vote on the Motion:

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

Noes: None

Motion carries unanimously

**VII. OTHER MATTERS OF BUSINESS**

**1. Conduct 1<sup>st</sup> Public Hearing on 2016 Property Tax Rate**

Sherri Newhouse provided the following information on the 2016 Property Tax Rate:

The Certified Appraisal Roll was received by Tarrant Appraisal District on July 25, 2016. Staff prepared the "Information on the 2016 Appraisal Roll" to obtain the appraised values; adjustments; exemptions and taxable value of property.

## **Required Calculations**

- Current Property Tax Rate is \$0.657500
- Proposed Property Tax Rate is \$0.650000
- Effective Tax Rate (ETR) is \$0.658006
- Roll Back Tax (RTR) is \$0.754396
- Estimated Net Taxable Value is \$1,736,357,102
- Increase from 2015 is approximately 7.48%
- Net increase from 2015 is approximately 2.73%
- New construction added \$41,267,855
- Each cent represents \$173,636

## **Impact of Over-65 Tax Ceiling**

- Benbrook Residential Accounts equal \$8,487
- Citizens with over-65 tax ceiling equals \$2,408
- Percent over-65 property accounts equals 29.37%

## **Impact of Over-65 Ceiling – Taxable Value**

- Benbrook residential accounts \$1,234,339,324
- Citizens with over-65 tax ceiling \$302,336,256
- Percent over-65 property values 24.49%

Average appraised value of home equals \$167,332

Average taxable value of home equals \$151,936

Average city property taxes equals \$987.52

## **Projected Re-Allocation of Property Tax Rate**

- Current General Fund Rate is \$0.6325 and Debt Service Rate is \$0.0250; total is \$0.6575
- Proposed General Fund Rate is \$.6225 and Debt Service Rate is \$0.0275; total \$0.6500
- Property Tax Rate decreases by \$0.75 from current rate of \$0.6575 to \$0.6500 for 2016.

Mayor Dittrich opened the public hearing on the 2016 property tax rate at 8:01 p.m. No one spoke to the item. Mayor Dittrich closed the public hearing at 8:01 p.m.

## 2. Conduct 1<sup>st</sup> Public Hearing on 2016-2017 Proposed Budget

Sherri Newhouse presented the following information:

### Revenues

General Fund	\$17,502,365
Debt Service Fund	\$ 481,898
Operating Fund	\$17,984.263

### Expenditures

General Fund	\$17,487,650
Debt Service Fund	\$ 954,816
Operating Fund	\$18,442.466

### Transfers and Special Projects

General Fund to Capital Asset Replacement	\$200,000
General Fund to CPF Clear Fork Bridge Project	\$500,000
General Fund to Animal Shelter Fund	\$500,000
General Fund to CPF Vista Way Sidewalks	\$ 80,000
Storm Water Utility Fund to Debt Service Fund	\$458,203

### Variance Between Expenditures and Revenues

General Fund	\$ 14,715
Debt Service Fund	\$(14,715)
Operating Funds	\$ -0-

### Projected Ending Fund Balances

General Fund	\$9,103,128
Debt Service Fund	\$ 65,526
Operating Fund	\$9,168,654

### Current Ad Valorem Tax Rates (Per \$100 valuation)

General Fund	\$0.6325
Debt Service Fund	\$0.0250
Operating Fund	\$0.6575

### Proposed Ad Valorem Tax Rates (Per \$100 valuation)

General	\$0.6225
Debt Service Fund	\$0.0275
Operating Funds	\$0.6500

## Effective and Rollback Tax Rates (Per \$100 valuation)

Proposed Tax Rate	\$0.650000
Effective Tax Rate	\$0.658006
Rollback Tax Rate	\$0.754396

## Impact of Over-65 Tax Ceiling

Benbrook Residential Property Accounts	8,487
Over-65 Ceiling Property Accounts	2,408
Percentage Over-65 Ceiling Property Accounts	28.37

## Impact of Over-65 Tax Ceiling – Taxable Value

Benbrook Residential Property Accounts	\$1,234,339,324
Over-65 Ceiling Property Accounts	\$ 302,336,256
Percentage Over-65 Ceiling Property Accounts	24.49

## Changes in Assessed Valuations

Certified Appraisal Value Increase	7.48%
Total Taxable Value Increase	2.73%
New Construction	\$41,267,855
Property Tax Revenue generated by one cent	\$173,636

## Budget Highlights ( Base Budget)

- Continuation of current services, programs and staffing levels
- Three percent cost-of-living adjustment for full-time employees
- Up to 10% increase in employee insurance costs
- Decrease in TMRS Rate effective January 1, 2017
- Replacement of five police patrol vehicles
- Replacement of computers, peripherals and software as scheduled
- Addition of one school crossing guard

## Budget Highlights (Decision Packages)

- One full-time police officer position
- Reclassification of Communications Specialist
- Three full-time Firefighter/Paramedic positions
- Elimination of three part-time ACFSU positions
- Part-time clerical support for Fire Department
- Part-time clerical support for Municipal Court
- Year-Round part-time workers for Park Department
- Replacement signal light control box for Public Works
- New AED's for Patrol Vehicles
- Scheduling Software for Fire Department

- Fire Inspections Software for Fire Department
- Enhanced and upgraded systems for City computers
- Utility Vehicle for Park Department
- Roof resealing of Police Department facility
- Stand-alone air conditioning system for Server/Computer Room
- Replacement of department-issued hand guns for Police Officers through the Narcotics Account
- Purchase of Gas Masks for Police Patrol and SWAT through Grants
- Replacement of Backhoe and Skid Steer Loader through Capital Asset Replacement Fund (transfer of old equipment to Park Department)

### **Debt Service Fund**

- Transfer from Stormwater Utility for Drainage Bonds \$458,203
- Payment to TIF Certificates of Obligation from TIF
- Use of Debt Service \$14,715 in Reserves for 2016-2017 payments
- Increase Debt Service Property Tax Rate to \$0.027 from \$0.0250 (offset by rate decrease in General Fund Property Tax Rate)

The Finance Director presented the certified appraisal roll from the Tarrant Appraisal District to City Council on August 4, 2016. City Council accepted the Certified Appraisal Roll; set the Anticipated Property Tax Collection Rate at 100%' and appointed the Finance Director to calculate and to publish the Effective Tax Rate (ETR) and the Rollback Tax Rate (RTR).

The next public hearing on the 2016 Property Tax Rate and the Proposed 2016-2017 Budget is scheduled for September 1, 2016.

Mayor Dittrich opened the public hearing on the 2016-2017 proposed budget at 8:15 p.m. No one spoke to the item. Mayor Dittrich closed the public hearing at 8:15 p.m.

### **VIII. INFORMAL CITIZEN COMMENTS**

Pat Dunkin inquired about the temporary carports that are appearing throughout the City and questioned in the Carport Ordinance addressed the issue. Mr. Gattis stated the ordinance pertained to permanent carports but staff would look into the matter.

### **IX. COUNCIL MEMBER AND STAFF COMMENTS**

**IX. ADJOURNMENT**

Meeting adjourned at 8:17 p.m. followed by a worksession:

**Emergency Item**

An urgent public necessity to receive information from the Director of Tarrant County Health Department regarding possible aerial spraying for mosquitos due to concerns about the West Nile Virus currently affecting Tarrant County, Texas, including the City of Benbrook.

**APPROVED:**

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**Jerry B. Dittrich, Mayor**

**ATTEST:**

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**Joanna King, City Secretary**



# City of Benbrook

## CITY COUNCIL COMMUNICATION

DATE: 09/01/2016	REFERENCE NUMBER: G-2260	SUBJECT: Authorize Interlocal Agreement with City of Fort Worth for Household Hazardous Waste Program	PAGE: 1 of 1
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Benbrook is enjoying its 16<sup>th</sup> year in partnership with the Fort Worth Environmental Collection Center (ECC) to recycle hazardous chemicals. The Hazardous Waste program provides Benbrook residents the opportunity to properly dispose of chemicals such as paint, solvents, lawn and garden chemicals and automotive products.

The twice-yearly collection events in Benbrook continue to attract large numbers of participants, averaging approximately 156 households per event. Residents taking items directly to the Fort Worth Environmental Collection Center average approximately 182 annually.

Since beginning this partnership with Fort Worth, Benbrook residents have properly disposed of over 115,000 pounds of chemical waste, safely keeping these hazards out of the storm water system and landfills.

Benbrook's current agreement with Fort Worth expires at the end of September 2016. The proposed agreement is unchanged, with a rate of \$47 per household. The new contract term begins October 1, 2016 and expires September 30, 2017.

**RECOMMENDATION**

Staff recommends that City Council approve the Interlocal Agreement with the City of Fort Worth Environmental Collection Center for FY 2016/2017 to continue participating in the Household Hazardous Waste Program.

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

INTERLOCAL AGREEMENT FOR PARTICIPATION IN FORT WORTH'S

ENVIRONMENTAL COLLECTION CENTER

HOUSEHOLD HAZARDOUS WASTE PROGRAM

FY2017

INTERLOCAL AGREEMENT FOR PARTICIPATION IN FORT WORTH'S  
ENVIRONMENTAL COLLECTION CENTER  
HOUSEHOLD HAZARDOUS WASTE PROGRAM

THIS AGREEMENT is entered into by and between the City of Fort Worth, Texas, a home-rule municipal corporation situated in Tarrant, Denton, Parker, and Wise Counties, Texas, hereinafter called "Fort Worth," acting by and through Fernando Costa, its duly authorized Assistant City Manager and the City of Benbrook, hereinafter referred to as "Participating City" and located in Tarrant County, Texas acting herein by and through Andy Wayman its duly authorized City Manager. (Name)  
(Title)

**DELIVERY OF NOTICES**

**Any notices required to be given under this Agreement shall be delivered as follows:**

If to Fort Worth:

Cody Whittenburg, Environmental Program Manager  
Code Compliance – Environmental Management Division  
City of Fort Worth  
1000 Throckmorton  
Fort Worth, Texas 76102

If to Participating City:

Alex Busken, Management Analyst

City of Benbrook

911 Winscott Road

Benbrook, TX 76126

**OPERATIONAL CONTACTS**

**Participating City's Operational Contact Persons:**

Designated person is: Alex Busken telephone number: 817-249-6008  
Mobile phone number (24-hour) where he/she can be reached: 256-617-1912  
Email Address: abusken@benbrook-tx.gov

Alternate person is Andy Wayman telephone number: 817-249-3000  
Mobile phone number (24-hour) where he or she can be reached: \_\_\_\_\_  
Email Address: awayman@benbrook-tx.gov

**VOUCHER UTILIZATION**

The Participating City:

       DOES wish to use a voucher system for its residents visiting the ECC or a mobile event.

  X   DOES NOT wish to use a voucher system for its residents visiting the ECC or a mobile event.

If a voucher system is used only residents with an official voucher provided by Participating City will be allowed to drop wastes off at the ECC or at mobile events in Participating City. **A copy of the official voucher must be attached to this agreement.**

**INVOICE DELIVERY**

**Invoices to Participating City shall be delivered to:**

City of Benbrook, Attention: Alex Busken  
Name

\_\_\_\_\_  
Department (if applicable)

911 Winscott Road  
Street Address or PO Box

Benbrook, TX 76126  
City, State, ZIP

abusken@benbrook-tx.gov  
email address for billing questions and correspondence

Participating City shall notify Fort Worth in writing if the above contact information changes during the term of this Agreement.

WITNESSETH

WHEREAS, Texas Government Code, Chapter 791, authorizes the formulation of interlocal cooperation agreements between and among local governments; and

WHEREAS, Texas Government Code, §791.011 provides that a local government may contract with another local government to perform governmental functions and services, and §791.003(3)(H) defines waste disposal as a governmental function and service; and

WHEREAS, Texas Government Code, §791.025 provides that a local government may agree with another local government to purchase services; and

WHEREAS, Fort Worth and Participating City desire to enter into an interlocal agreement whereby Fort Worth will purchase the services of a waste disposal/recycling firm or firms and will administer a household hazardous waste collection program; and

WHEREAS, Fort Worth and Participating City mutually desire to be subject to the provisions of Texas Government Code, Chapter 791, also known as the Interlocal Cooperation Act.

NOW THEREFORE, it is agreed as follows:

1.  
DEFINITIONS

- A. Unless a provision in this Agreement explicitly states otherwise, the following terms and phrases, as used in this Agreement, shall have the meanings hereinafter designated.

Act of God means an act occasioned by the direct, immediate, and exclusive operation of the forces of nature, uncontrolled or uninfluenced by the power of humans and without human intervention.

Bill of Lading lists the contents of the mobile collection unit.

Environmental Collection Center (ECC) means the City of Fort Worth Code Compliance-Environmental Management Division facility located at 6400 Bridge Street, Fort Worth, Texas, which is to be used by Fort Worth for the aggregation of household hazardous wastes that have been brought to the facility by participating cities' households for subsequent recycling, disposal, and/or reuse.

Environmental damages means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or un-matured, foreseeable or unforeseeable, including without limitation reasonable attorney's fees and disbursements and consultant's fees, any of which are incurred subsequent to the execution of

this Agreement as a result of the handling, collection, transportation, storage, disposal, treatment, recovery, and/or reuse of waste pursuant to this Agreement, or the existence of a violation of environmental requirements pertaining to same, and including without limitation:

- (a) Damages for personal injury and death, or injury to property or natural resources;
- (b) Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such wastes or violation of environmental requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or otherwise expended in connection with the existence of such wastes or violations of environmental requirements, and including without limitation any attorney's fees, costs and expenses incurred in enforcing this Agreement or collecting any sums due hereunder; and
- (c) Liability to any third person or governmental agency to indemnify such person or agency for costs expended in connection with the items referenced in subparagraph (b) herein.

Environmental requirements means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states, and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including without limitation:

- (a) All requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of hazardous materials, pollutants, contaminants, or hazardous or toxic substances, materials, or wastes whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, storm water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or hazardous or toxic substances, materials, or wastes, whether solid, liquid, or gaseous in nature; and
- (b) All requirements pertaining to the protection of the health and safety of employees or the public.

Force majeure means decrees of or restraints by a governmental instrumentality other than the Parties, acts of God, work stoppages due to labor disputes or strikes, failure of Fort Worth's contractor(s) to perform pursuant to their agreements with Fort Worth for the conduct of the collection of household hazardous waste, fires, explosions, epidemics, floods, extreme weather, riots, war, rebellion, and sabotage.

Household hazardous waste (HHW) means any solid waste generated in a household by a consumer which, except for the exclusion provided for in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.

Manifest means the uniform hazardous waste manifest form(s) that must accompany shipments of municipal hazardous waste or Class 1 industrial solid waste.

Mobile collection event means a household hazardous waste collection event by Participating City utilizing a mobile collection unit.

Mobile Collection Unit (MCU) means a non-self-propelled vehicle used for the periodic collection of household hazardous waste by Participating City, off-site of the ECC, which is transported to the ECC to dispose of the household hazardous waste collected at the mobile collection event. Mobile Collection Units owned by Fort Worth are designed to hold the hazardous waste of approximately 50 to 75 households.

Participating City means the municipality which has entered into this agreement with the City of Fort Worth.

Participating Entities, when used in the plural, means Fort Worth, Participating City, and all other entities which have entered into interlocal agreements with Fort Worth for the ECC household hazardous waste collection program.

Person means an individual, corporation, organization, government, or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Waste has the same meaning as "solid waste" as that term is defined in Texas Health and Safety Code §361.003, and including hazardous substances.

- B. Unless a provision in this Agreement explicitly states otherwise, the following abbreviations, as used in this Agreement, shall have the meanings hereinafter designated.

CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act, its amendments, associated case law, and state counterparts.

CPR - cardiopulmonary resuscitation

DOT - United States Department of Transportation

ECC – Fort Worth Environmental Collection Center

EPA - United States Environmental Protection Agency

HAZCAT - hazardous categorization

HAZWOPER - hazardous waste operations and emergency response and the training, certification, and legal requirements associated therewith

HM - hazardous materials

HHW - household hazardous waste

MCU - Mobile Collection Unit

TCEQ – Texas Commission on Environmental Quality

2.  
PURPOSE

The purpose of this interlocal agreement (hereafter “Agreement”) is the provision of services by Fort Worth to Participating City whereby, subject to the terms and conditions specified below, Fort Worth will administer and supervise a regional household hazardous waste collection program, which will be available to households within Participating City as described herein.

3.  
TERM

This Agreement shall be effective from October 1, 2016 or the date the last party has signed this Agreement, whichever is later, through September 30, 2017; however, the duties and responsibilities of the Parties for events which occurred during the term of the contract shall survive. If Participating City has mobile collection events scheduled during the months of October through December 2017 and this Agreement has not been renewed by the end of the regular term, this agreement shall be extended on a month to month basis until the mobile collection events have been completed or cancelled by Participating City.

In addition, this agreement may be extended by the duly authorized, mutual, and written agreement of the parties for one (1) additional one-year term.

4.  
SERVICES OF FORT WORTH

Fort Worth agrees to perform the following services for Participating City in connection with the ECC household hazardous waste collection program:

- A. Fort Worth will administer a regional household hazardous waste collection program. This program will include the operation of the Environmental Collection Center, which will accept for disposal and/or recycling household hazardous waste from households located within Participating City. Fort Worth shall not accept compressed flammable gas containers; radioactive materials; explosives or potentially shock sensitive materials; biological, etiologic, or infectious materials; wastes from businesses; or any other wastes that Fort Worth has determined are unacceptable. Commercial waste is never accepted by Fort Worth.
- B. Fort Worth will employ or retain personnel to provide the services necessary to perform Fort Worth's obligations in this Agreement.

- C. Fort Worth will enter into a contract(s) with a waste disposal/recycling firm(s) for the handling, collection, transportation, storage, disposal, treatment, recovery, and/or reuse of household hazardous waste that is collected at the ECC or during mobile collection events.
- D. Fort Worth will, if requested in writing by Participating City, provide Participating City with copies of waste manifests for shipments of waste from the ECC.
- E. Fort Worth will, if requested in writing by Participating City, provide Participating City a monthly report of the Participating City's households who disposed of household hazardous waste at the Environmental Collection Center or a mobile collection event.
- F. Fort Worth will issue a report and an invoice at the end of each quarter detailing the number of Participating City's households that disposed of household hazardous waste at the Environmental Collection Center or at mobile collection events.
- G. Fort Worth will act under this Agreement in accordance with all applicable state and federal laws.

H. Mobile Collection Events

Participating City may schedule a mobile collection event to be operated by Fort Worth personnel using one of Fort Worth's MCUs or conduct their own mobile collection events using either Participating City's MCU or Fort Worth's Reserve MCU (as available). State regulations require notification to the Texas Commission on Environmental Quality (TCEQ) at least 45 days prior to conducting the event.

1. Fort Worth Operated Events:

If Participating City would like to schedule a mobile collection event with the Fort Worth Mobile Collection Unit, Participating City shall contact the ECC as soon as possible for a list of available dates. The time and location shall be agreeable to both parties. Participating City may schedule one mobile collection event each contract year. Fort Worth will file notification of the event with TCEQ as required by 30 TAC §335.403.

(a) Scheduling Events

Fort Worth will begin scheduling mobile collection events for the 2017 calendar year on January 9, 2017. To ensure proper notification to TCEQ, events must be scheduled at least sixty (60) days ahead of the proposed date. Participating City acknowledges that Fort Worth contracts with other municipalities and that Fort Worth will be accommodating each Participating City's request on a first come first served basis. Therefore, Participating City acknowledges that its chosen date to schedule a mobile collection event may be reserved by another city and Participating City will have to then choose another date. Participating City will, in no event, be entitled to any damages or recovery of any costs, except as provided herein. Only one mobile collection event using Fort Worth staff and equipment per city is entitled under this contract. Additional events may be accommodated if feasible.

(b) Location

If Participating City chooses to hold the Mobile Collection Event on private property, Participating City shall obtain a signed waiver from the owner of the property sixty (60) days prior to the event. The waiver shall be in the form of Exhibit B or similar form approved by Fort Worth. The signed waiver must be sent to Fort Worth sixty (60) days before the Mobile Collection Event. If the signed waiver is not sent to Fort Worth sixty (60) days before the Mobile Collection Event, Fort Worth will not send the Fort Worth Mobile Collection Unit to the event and Participating City will, in no event, be entitled to any damages or recovery of any costs, except as provided herein. All events must be held on an impervious surface.

- (c) At the Mobile Collection Event, Participating City acknowledges and agrees that Fort Worth shall accept household hazardous waste from the first 50 households that show proof of residency at the Mobile Collection Event. After the first 50 households, Fort Worth will determine in its sole discretion how much more waste it can accept for proper transport back to the ECC. If more households arrive at the event than Fort Worth can accept, Participating City will in no event be entitled to any damages or recovery of any costs, except as provided herein.
- (d) Due to limited storage space at the ECC, Participating City acknowledges and agrees that if it requests the Fort Worth Mobile Collection Unit at a mobile collection event, a Participating City's MCU shall not also be at the event.
- (e) Fort Worth, in its sole discretion, will determine whether to send the Fort Worth Mobile Collection Unit to Participating City's Collection Event during adverse weather, the threat of adverse weather, or other hazardous conditions including but not limited to sleet, snow, rain, mist, or hail. In the event Fort Worth determines not to send the Fort Worth Mobile Collection Unit, Fort Worth shall attempt to notify persons listed herein as an "Operational Contact" by the Participating City and shall attempt to send a Fort Worth employee to the Participating City's event to tell any residents that come to dispose of household hazardous waste that the Fort Worth Mobile Collection Unit will not be coming to the event, but the resident can go to the ECC to dispose of the waste. A map with directions to the ECC also will be provided.
- (f) The Participating City agrees to collect collection data at the MCU and provide Fort Worth with a list of total MCU participants and total quantities of wastes listed in an Excel spreadsheet in a template provided by Fort Worth as Exhibit C, within ten (10) days of the mobile collection event. No vouchers, sign-in sheets, or copies of either will be accepted by Fort Worth.

2. Participating City Mobile Collection Unit:

- (a) Fort Worth agrees to accept household hazardous waste from mobile collection events conducted by Participating City using Participating City's MCU in accordance with the terms of this Agreement.

- (b) Fort Worth agrees to restock the items it removes from Participating City's MCU, however, Fort Worth shall only restock items listed in Exhibit "A," attached and incorporated herein as if set forth.

3 Loan of the Reserve Mobile Collection Unit

The reserve MCU is a specially designed and equipped thirty-six (36) foot gooseneck box-trailer and one (1) ton pickup owned by Fort Worth. Participating City may request the loan of Fort Worth's Reserve MCU free of charge for use in a Household Hazardous Waste collection event when available. Participating City may use the Reserve MCU to transport HHW to Fort Worth's ECC or another collection center that may lawfully receive HHW. Participating City shall provide Fort Worth with a written request, facsimile or e-mail, at least sixty (60) days prior to the event date for which the request is made. Fort Worth shall have sole determination whether the Reserve MCU is available for use by Participating City and shall notify Participating City as soon as is reasonably practicable of such decision. Fort Worth shall not participate in nor be responsible for any part of the Participating City's HHW Collection Event unless and except by written mutual agreement.

- (a) Fort Worth shall disclose any known problems the Reserve MCU may have in performing the tasks necessary for the HHW Collection Event. Prior to issuance of the Reserve MCU, a pre-trip inspection for potential maintenance problems will be performed by Fort Worth. Also, both parties will complete a pre-trip aesthetic assessment. Participating City shall be responsible for all certifications and insurance necessary for the proper operation of the Reserve MCU.
- (b) Participating City agrees to maintain and return the Reserve MCU in as good condition as it was in when Participating City took possession for use. Participating City shall return the Reserve MCU to Fort Worth in a timely manner and as mutually agreed upon.
- (c) Participating City shall be responsible for all property damage, personal injury, or death caused by Participating City's employees, volunteers, contractors, or agents and arising out of the use of the Reserve MCU during the term of this Agreement.
- (d) It is expressly understood and agreed that, in the execution of this Agreement, neither of the parties waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement the parties do not intend to create any obligations, expressed or implied, other than those set forth herein and this Agreement shall not create any rights in parties not signatories hereto.

5.

DUTIES OF PARTICIPATING CITY

Participating City agrees to perform the following duties in connection with the household hazardous waste collection program:

- A. Participating City will designate one of its employees, and another as an alternate, to act as its household hazardous waste collection Operational Contact to interact with Fort Worth as designated on the signature page to this contract.
- B. Participating City will coordinate and fund all program advertising targeted to its own citizens, as it deems necessary. Such advertising shall include the type of wastes that will be accepted at the ECC, the requirement of proof of residency, and weather cancellation information.
- C. Participating City shall notify its residents of the ECC hours of operation and dates it is closed as provided in Section 9 "The Environmental Collection Center Hours of Operation."
- D. Participating City may choose to utilize a voucher system for its residents in order for them to bring HHW to the ECC. If Participating City chooses to use such a system, it shall designate so herein and include a copy of the official voucher. In addition, if a citizen from a Participating City that utilizes a voucher system comes to the ECC or a mobile collection event without a voucher, Participating City acknowledges and agrees that Fort Worth will not accept the household hazardous waste until Participating City authorizes the acceptance in writing.
- E. Participating City may submit a written request for a monthly report listing the number of its city's households that have disposed of household hazardous waste at the ECC or a mobile collection event.
- F. Participating City shall provide traffic control and signage for the mobile collection event, and shall provide personnel to assist Fort Worth with the offloading of material, surveys, and screening of persons dropping off household hazardous waste. Prior to the event, the parties shall agree upon the details of the traffic control, signage, and personnel assistance.
- G. If a Participating City resident presents waste that was collected from multiple households, Fort Worth reserves the right to charge the Participating City based on the total number of households from which the waste originated even if the resident has only one voucher.
- H. Participating City shall provide a means for disposing of solid waste (e.g. boxes, trash, containers) on site during a mobile collection event.
- I. Mobile Collection Events using Participating City's MCU or Reserve MCU
  1. Participating City is responsible for proper notification to TCEQ as required by 30 TAC §335.403.
  2. Participating City shall advise the ECC at least 72 hours in advance of its mobile collection events. Participating City shall collect only HHW during a mobile collection event. Wastes from commercial, agricultural, and industrial sources shall not be accepted. Participating City shall not accept compressed flammable gas containers;

radioactive materials; explosives or potentially shock sensitive materials; biological, etiologic, or infectious materials; or any other wastes that Fort Worth has determined are unacceptable.

3. In accordance with the latest DOT requirements, Participating City's MCU operators will properly categorize, package, mark, label, and load into the MCU, all wastes received at the mobile collection event. Recyclable products (used oil, used oil filters, latex paint, recyclable anti-freeze, lead-acid batteries, and fluorescent lights) will be segregated into containers for recyclables.
4. After accepting wastes, Participating City's MCU operators shall thoroughly check each container for proper labeling and identification. If a container is properly identified, the material will be segregated according to hazard class and prepared for packaging. If a container does not have adequate labeling to permit identification, the MCU operators shall then attempt to identify the material from its physical characteristics using HAZCAT analysis and from information provided by the household presenting the waste.
5. The Participating City's MCU operators shall package all hazardous materials in accordance with DOT requirements, EPA requirements, and all other applicable federal and state requirements. After all the wastes have been properly identified and segregated, the MCU operators will reexamine the wastes for compatibility, list them on the container content sheets, and pack them into drums. Oil-based paints and latex paints shall be bulked separately in 55-gallon drums, or if the paint is left in its container, the paint can be packed in a lined cubic yard box, and packed and labeled according to federal and state regulations. Participating City shall not transport waste that is not HHW to the ECC. Participating City agrees to make its own arrangements to dispose of any non-HHW waste collected at the event.
6. Prior to transporting the HHW from the collection event site, Participating City's MCU operators shall complete a Bill of Lading, and shall keep the Bill of Lading in the cab of the truck hauling the MCU during transportation of the HHW to the ECC. Participating City shall require that a minimum of one copy of the latest North American Emergency Response Guidebook be kept within the cab of the truck.
7. During transportation, Participating City's MCU operators shall placard the MCU for transportation of hazardous waste in accordance with federal and state law.
8. Upon the return of the MCU to the ECC, Participating City's MCU operators shall follow the instructions of Fort Worth regarding the placement of the MCU for unloading. Fort Worth shall take possession of the MCU from Participating City after the MCU has been properly parked for unloading in accordance with Fort Worth's instructions and all required documents have been delivered to the ECC manager or his/her designee at the ECC. Fort Worth shall, within a reasonable amount of time, unload the HHW from the Participating City's MCU and store the unit at the ECC. After being contacted, Participating City shall pickup their unit within 10 days.

9. If Fort Worth, in its sole discretion, determines that Participating City's MCU operators improperly packaged any of the HHW delivered to the ECC, Fort Worth shall repackage such waste, and Participating City shall reimburse Fort Worth as set forth herein.
10. If a spill emanating from the Participating City's MCU or the Reserve MCU occurs at the ECC while the MCU is still in Participating City's possession, Fort Worth shall take control of the spill response and Participating City will reimburse Fort Worth for its response costs as set forth herein.

6.

USE OF WASTE DISPOSAL/RECYCLING FIRMS FOR HOUSEHOLD HAZARDOUS WASTE

- A. Fort Worth will enter into a contract(s) with a waste disposal/recycling firm(s) for the handling, collection, transportation, storage, disposal, treatment, recovery, and/or reuse of household hazardous waste, from the ECC.
- B. Such firm(s) shall be required pursuant to the contract(s) to assume generator status for the waste collected, (excluding used oil, lead-acid batteries and antifreeze) to choose a disposal site for the waste subject to Fort Worth's approval, and to indemnify Fort Worth and participating cities against any and all environmental damages and the violation of any and all environmental requirements resulting from the handling, collection, transportation, storage, disposal, treatment, recovery, and/or recycling of waste collected pursuant to this agreement, when said environmental damages or the violation of said environmental requirements was the result of any act or omission of contractor, its officers, agents, employees, or subcontractors, or the joint act or omission of contractor, its officers, agents, employees, or subcontractors and any other person or entity.
- C. **THE PARTIES RECOGNIZE THAT ALTHOUGH THE FIRM (S) WILL BE REQUIRED TO ASSUME GENERATOR STATUS, THIS ASSUMPTION WILL NOT RELIEVE PARTICIPATING CITY OF LIABILITY FOR THE WASTE UNDER FEDERAL LAW AND STATE LAW.** Fort Worth will arrange for recycling vendors for used oil, batteries, antifreeze, and other materials, as it deems appropriate.

7.

REUSE OF COLLECTED MATERIALS

- A. From time-to-time Fort Worth will make available to residents and businesses of Fort Worth, as well as, Participating City residents and businesses of Participating City for their use, collected household hazardous waste materials that are suitable for reuse, such as paint, fertilizer, motor oil, and antifreeze. Fort Worth shall not charge for any materials that are picked up for reuse.
- B. Some materials made available for reuse may have been consolidated and filtered by Fort Worth prior to being made available. Used antifreeze will have been consolidated in a barrel, filtered, and pH balanced, and new antifreeze may have been added to the barrel.
- C. In regards to materials accepted by Participating City, its employees, residents, or any other person **FORT WORTH MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTIES THAT:**

1. the container contents are what the label indicates;
2. the container contents are those originally placed into the container by the manufacturer;
3. the product is of the quality intended for its use;
4. the contents of the container have been stored properly;
5. the instructions on the container label for use, storage, and first aid are current or correct;
6. the container is in unimpaired condition;
7. the product is still approved for use (i.e., it has not been banned or recalled); and
8. the product can be used without risk to persons, property or the environment.

**FURTHERMORE, ALL WARRANTIES, EXPRESS AND IMPLIED, ARE SPECIFICALLY DENIED. PARTICIPATING CITY SHALL NOTIFY RECIPIENTS OF THESE TERMS AND CONDITIONS.**

D. Participating City shall contact the ECC manager to arrange a pickup time to obtain materials. Participating City agrees that it shall not return to Fort Worth, directly or indirectly, any materials it obtains from Fort Worth under this paragraph.

**E. INDEMNIFICATION REGARDING REUSED OR RECYCLED MATERIALS.**

**1. IN REGARDS TO REUSED OR RECYCLED MATERIALS ACCEPTED BY PARTICIPATING CITY, PARTICIPATING CITY DOES HEREBY WAIVE ALL CLAIMS, INCLUDING PRODUCTS LIABILITY CLAIMS, AND RELEASES, AND HOLDS HARMLESS THE CITY OF FORT WORTH, AND ALL OF ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, EXPENSES OF LITIGATION, OR CAUSES OF ACTION WHICH MAY ARISE BY REASON OF INJURY TO PERSONS, LOSS OF PROPERTY, DAMAGE TO PROPERTY, OR LOSS OF USE OF ANY PROPERTY , OCCASIONED BY THE TRANSPORTATION, STORAGE, HANDLING, USE, AND DISPOSAL BY PARTICIPATING CITY OF ANY MATERIALS ACCEPTED BY PARTICIPATING CITY UNDER THIS AGREEMENT FROM FORT WORTH.**

2. IF THE PARTICIPATING CITY DOES NOT AGREE TO THE INDEMNIFICATION AND WAIVER IN PARAGRAPH E ABOVE, THEN THE PARTICIPATING CITY SHALL NOT ACCEPT, NOR ALLOW ANY OTHER PERSON TO ACCEPT ANY OF THE REUSED OR RECYCLED MATERIALS AND SHALL NOT BE REQUIRED TO AGREE TO THE WAIVER IN PARAGRAPH E. Initial here to reject term 7.E.1. and accept alternate term 7.E.2. \_\_\_\_\_.

F. In regards to materials accepted by residents or businesses of Participating Cities, FORT WORTH MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTIES THAT:

1. the container contents are what the label indicates;
2. the container contents are those originally placed into the container by the manufacturer;
3. the product is of the quality intended for its use;
4. the contents of the container have been stored properly;
5. the instructions on the container label for use, storage, and first aid are current or correct;
6. the container is in unimpaired condition;
7. the product is still approved for use (i.e., it has not been banned or recalled); and
8. the product can be used without risk to persons, property or the environment.

**FURTHERMORE, ALL WARRANTIES, EXPRESS AND IMPLIED, ARE SPECIFICALLY DENIED.**

- G. Participating City shall attempt to inform its residents and businesses that if they go to the Environmental Collection Center to pick up household hazardous waste for reuse, a release of liability must be signed to accept the household hazardous waste for reuse.

8.  
RIGHT TO REFUSE WASTE

Participating City agrees that Fort Worth shall have the right to refuse to accept waste at the ECC from Participating City or Participating City's resident, if in the reasonable judgment of Fort Worth:

- A. The waste is not household hazardous waste;
- B. The waste fails to meet other established criteria established by this Agreement, or that have been established by Fort Worth subsequent to the execution of the Agreement;
- C. The individual does not have sufficient identification to establish that he/she is in fact a resident of Participating City;
- D. Participating City has implemented a voucher system for its residents to dispose of waste, and the individual does not have a valid voucher; or
- E. The waste or the individual presents a hazard to the ECC or to persons or property at the ECC.

9.  
ENVIRONMENTAL COLLECTION CENTER HOURS AND DAYS  
OF OPERATION

A. Hours of Operation

During the term of the Agreement, the ECC's hours of operation are as follows:

Thursday and Friday 11:00 a.m. - 7:00 p.m.

Saturday 9:00 a.m. - 3:00 p.m.

B. Days the Environmental Collection Center will be closed

During the term of the agreement, the ECC will be closed on the following holidays that are observed on days the ECC would otherwise be open to the public:

Thanksgiving holiday, Thursday and Friday, November 24-25, 2016

Christmas holiday, Saturday, December 24, 2016

New Year's holiday, Saturday, December 31, 2016

In addition to the above closures Fort Worth employees may not be available to conduct mobile collection events on other dates to conduct mobile collections within the City of Fort Worth, although the ECC will remain open on those days. The ECC may close due to furlough days or other causes, and the City of Fort Worth does not represent to Participating City that the ECC will be open on any particular days. If additional closures due to any cause are necessary Fort Worth will notify Participating City prior to the closure unless due to an unforeseeable event.

C. Notifying Residents

Participating City agrees to notify its residents of the ECC's hours of operation and dates it will be closed. Participating City also may advertise the 24-hour Environmental Collection Center telephone number: 817-392-5257.

## 10. COMPENSATION

As fair compensation for the services provided by Fort Worth pursuant to this Agreement:

- A. Participating City agrees to pay Fort Worth the sum of **\$47.00** per household per visit to the ECC (or per participating household in a Mobile Collection Event) to dispose of household hazardous waste. If a Participating City resident presents waste that was collected from multiple households, Fort Worth reserves the right to charge the Participating City based on the total number of households from which the waste originated.
- B. If Fort Worth determines that Participating City's MCU operators improperly packaged any of the HHW delivered to the ECC, Fort Worth shall repackage such waste, and Participating City shall reimburse Fort Worth for its staff time at \$20.00 an hour and the cost of supplies.
- C. If a spill emanating from the Participating City's MCU or the Reserve MCU occurs at the ECC while the MCU is still in Participating City's possession, Fort Worth shall take control of the spill

response and Participating City will reimburse Fort Worth for its response costs for City staff time (\$60.00 per hour) plus the cost of supplies and the actual costs for the spill response and remediation incurred by the City of Fort Worth for third party contractors and responding governmental agencies.

- D. The amount due to Fort Worth for services provided under this Section, Paragraphs A, B, and C, shall be billed to Participating City quarterly. Participating City shall pay Fort Worth within 30 days of receiving a bill from Fort Worth. If Fort Worth does not receive payment within 30 days, Fort Worth shall inform Participating City in writing that it will not accept any household hazardous waste from Participating City's residents and that Fort Worth will not participate in a mobile collection event or provide a mobile collection unit until paid.
- E. At the end of the term of this Agreement, Fort Worth shall provide a final accounting to Participating City, which will include the total number of Participating City's households which participated in the program, repackaging fees, if any, and the total cost of spill response charged to Participating City, if any.
- F. Pursuant to the requirements of Government Code §791.011 (a)(3), the amount due to Fort Worth under Subparagraph D. above shall be paid from revenues currently available to Participating City in the present fiscal year.

11.

ARTWORK, "CAPTAIN CRUD AND THE CRUDDIES," AND PROMOTIONAL MATERIALS  
LICENSE AGREEMENT

Fort Worth is the owner of "Captain Crud" and the Cruddies ("Bloomer," "Otto," "Pestie," "Scrub," and "Van Goo") and the recycling buddies ("Scrappy," "Juggles," and "Cana Nana"), "Conquer Your Crud," and "Crud Cruiser", and therefore all ownership rights belong to Fort Worth. Fort Worth has registered these marks as service marks with the Secretary of State.

- A. Fort Worth hereby grants to Participating City a non-transferable, non-exclusive license to use all the artwork and promotional materials that may be provided by Fort Worth to be used solely in the conduct of the business of Participating City's disposal and recycling of household hazardous waste programs. If Participating City wishes to use to Licensed Art and/or Promotional Materials in other limited situations, Participating City must first obtain express written consent from Fort Worth.
- B. Fort Worth may provide licensed Artwork and Promotional Materials to Participating City pursuant to the terms of this Agreement. Participating City acknowledges that by virtue of this License, Participating City acquires only the right to use the original and permitted duplicate copies of the Licensed Artwork and Promotional Materials and does not acquire any rights of ownership in the Licensed Artwork and Promotional Materials, which rights shall remain exclusively with Fort Worth. If Participating City wants to modify or change the artwork and/or promotional materials in any manner, Participating City hereby agrees to contact Fort Worth in

writing to obtain written consent before modifying or changing any artwork and/or promotional materials.

12.  
IMMUNITY

It is expressly understood and agreed that, in the execution of this Agreement, none of the Participating Cities waives, nor shall be hereby deemed to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions, and that the services described in this Agreement are a governmental function.

13.  
FORCE MAJEURE

A delay or failure of Fort Worth to perform services pursuant to this Agreement shall be excused to the extent that the delay or failure to perform resulted from a force majeure event, and the delay or failure was beyond the control of Fort Worth and not due to its fault or negligence. Participating City shall not have, and hereby waives, any claim whatever for any damages resulting from delays or failure to perform caused by a force majeure event.

14.  
TERMINATION

The parties shall each have the right to terminate the Agreement for any reason, with or without cause, upon thirty (30) days written notice to the other party. Upon termination, the parties shall be released from all contractual obligations to the other party excluding "USE OF WASTE DISPOSAL/RECYCLING FIRMS FOR HOUSEHOLD HAZARDOUS WASTE" "REUSE OF COLLECTED MATERIALS" and ARTWORK, "CAPTAIN CRUD AND THE CRUDDIES," AND "PROMOTIONAL MATERIALS LICENSE AGREEMENT" and any terms and conditions arising from events occurring during the term of the contract .

15.  
ENTIRETY

This Agreement contains all commitments and Agreements of the parties hereto, and no other oral or written commitments shall have any force or effect if not contained herein, except that this Agreement can be amended or modified by the parties if such amendment or modification is in writing and signed by Participating City and Fort Worth.

16.  
SEVERABILITY

In the event anyone 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, or unenforceability shall

not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

17.  
VENUE

Should any action, real or asserted, at law or in equity, arise out of the terms and conditions of this Agreement, venue for said action shall be in Tarrant County, Texas.

18.  
AUTHORITY

This Agreement is made for Fort Worth and Participating City as an Interlocal Agreement, pursuant to Texas Government Code, Chapter 791.

19.  
AUTHORIZATION

The undersigned officers and/or agents of the parties hereto are properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions extending such authority have been duly passed and are now in full force and effect.

CITY OF FORT WORTH

CITY OF BENBROOK

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Fernando Costa

Printed name: Andy Wayman

Assistant City Manager

Title: City Manager

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

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

APPROVED AS TO FORM  
AND LEGALITY:

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
Arthur N. Bashor  
Assistant City Attorney

  
\_\_\_\_\_  
City Attorney / Assistant City Attorney

ATTEST:

\_\_\_\_\_  
Mary J. Kayser  
City Secretary

ATTEST:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Contract Authorization

\_\_\_\_\_  
Date

Exhibit "A"

**RESTOCKING LIST FOR THE MOBILE COLLECTION UNIT**

<b>Material</b>	<b>Amount Restocked</b>	<b>Special Needs</b>	<b>Remarks</b>
55 gallon open top drums (open top for loose packs)	Amount taken off the trailer		
55 gallon drums (closed top) (oil, antifreeze, bulk flammable materials and one extra)	Amount taken off the trailer		
Fiber drums (55 or 30 gallon) Aerosols, acids, bases and oxidizers)	Amount taken off the trailer		
Gaylord box liners (plastic)	Amount taken off the trailer		
55 gallon drum liners	Amount taken off the trailer		
5 gallon buckets (filters/haz chemicals)	Amount taken off the trailer		
Survey Forms	Amount taken off the trailer		
Labels/drum placard	Amount taken off the trailer		
Gaylord boxes	Amount taken off the trailer		
Absorbent pads	Amount taken off the trailer		
Vermiculite	Amount taken off the trailer		
Oil dry	Amount taken off the trailer		
Promotional Materials & Brochures	Amount needed		

Exhibit "B"

WAIVER AND RELEASE OF LIABILITY FOR COLLECTION OF HOUSEHOLD  
HAZARDOUS WASTE

I being the owner of property located at \_\_\_\_\_  
have been asked by the City of \_\_\_\_\_ to allow a mobile collection event on  
my property to collect household hazardous waste on the \_\_\_\_\_, 20\_\_\_. I hereby give my  
permission to the City of \_\_\_\_\_ and the City of Fort Worth, to hold a household  
hazardous waste collection event on my property in which the City of \_\_\_\_\_  
has asked the City of Fort Worth to send its mobile collection unit to collect the household hazardous  
waste that is brought to the event.

**Therefore, I hereby RELEASE, DISCHARGE, HOLD HARMLESS, INDEMNIFY** the City of Fort Worth or its  
officers, agents, and employees and the City of \_\_\_\_\_ and its officers, agents,  
and/or employees for any and all claims, demands, liability, causes of action, actions or suits of any  
character that I may have against the City of Fort Worth or its officers, agents, and/or employees and  
the City of \_\_\_\_\_ or its officers, agents, and/or employees for any property loss  
or damage, for any and all personal injury including death or any other damage of any kind or character  
which may arise or that arises from allowing the City of \_\_\_\_\_ to hold a household  
hazardous waste collection event, in which the City of Fort Worth sends its mobile collection unit on my  
property.

I have read this Waiver and Release and fully understand its terms and conditions. I have not been  
influenced in any extent whatsoever by any representation or statements not contained in this  
Agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

Exhibit "C"

MOBILE COLLECTION DATA FORMAT

Location	Address number	Street	Zip code	Number of Households	Paint - latex
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Solvents / flammable	Aerosol cans	Motor oil	Oil Filters	Antifreeze	Auto batteries	Herbicides, pesticides, fertilizer	Cleaners/ corrosives	Cooking oil	Light bulbs	Household batteries	Other (description)
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# City of Benbrook

## CITY COUNCIL COMMUNICATION

DATE: 09/01/2016	REFERENCE NUMBER: G-2261	SUBJECT: Adopt Ordinance Approving Sale of 913 Timberline Drive	PAGE: 1 of 1
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In November 2005, the City Council authorized the purchase of 913 Timberline Drive at a cost of \$121,000. The residential property was classified as a repetitive loss property by the National Flood Insurance Program, meaning that it had sustained two or more flood insurance claims of \$1,000 or more. The property also had a retaining wall that encroached illegally into the Dry Branch Creek bed. In addition, the City's drainage plan identified the need to enlarge the inlet at the front of the property to adequately drain water from the street. Finally, this was one of only two houses that would not be removed from the 100-year floodplain by the Timber Creek Channel project.

The house was demolished in March 2006 and improvements were made to the creek and the storm drain inlet, and the building pad was elevated above the new 100-year flood level. The Letter of Map Revision Based on Fill (LOMR-F) officially removing the building site from the 100-year floodplain on June 19, 2007.

The City has attempted to sell the property through a sealed bid process in 2007, 2008, 2009 and 2016. No bids were received. On August 18, 2006, the City received an unsolicited offer (attached) for \$10,000 from Rick and Donn Teague of 917 Timberline Drive. The Teague's propose to replat the two lots into one lot and construct a detached garage of similar material as their home. The Teague's have met with Staff and understand that the garage has to be constructed to current building codes and floodplain regulations.

**RECOMMENDATION**

Staff recommends that City Council adopt the attached ordinance approving the sale of 913 Timberline Drive (Lot 22, Block 16, Timber Creek Addition) to Rick and Donn Teague for \$10,000 and that the City retain the mineral rights.

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

## **ORDINANCE NO. 1399**

**AN ORDINANCE AUTHORIZING THE MAYOR OR CITY MANAGER OF THE CITY OF BENBROOK, TEXAS, TO EXECUTE A SPECIAL WARRANTY DEED SELLING THE PUBLIC INTEREST IN 913 TIMBERLINE DRIVE (LOT 22, BLOCK 16, TIMBER CREEK ADDITION); PROVIDING FOR ENGROSSMENT AND ENROLLMENT AND PROVIDING AN EFFECTIVE DATE**

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

**WHEREAS**, the City Council of the City of Benbrook, Texas, after due and careful consideration, has determined to sell the city-owned property located at 913 Timberline Drive (Lot 22, Block 16, Timber Creek Addition) (the "Land"); and

**WHEREAS**, Section 253.001 of the Texas Local Government Code provides that to effect the sale of land, the City Council shall adopt an ordinance directing the Mayor or City Manager to execute the conveyance.

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

### **SECTION 1**

The Mayor or City Manager of the City of Benbrook, Texas, is hereby authorized and empowered to execute a special warranty deed and any related documents selling the ownership of the Land, on behalf of the City of Benbrook, Texas.

### **SECTION 2**

A copy of said special warranty deed shall be presented for filing with the County Clerk of Tarrant County, Texas by the office of the City Secretary.

### **SECTION 3**

The City Secretary of the City of Benbrook is hereby directed to engross and enroll this Ordinance by copying the caption and effective date clause of this Ordinance in the minutes of the City Council and by filing the Ordinance in the Ordinance records of the City.

**SECTION 4**

This Ordinance shall become effective immediately upon its passage and publication as provided by law, and it is so ordained.

**PASSED AND APPROVED** the 1<sup>st</sup> day of September, 2016.

\_\_\_\_\_  
Jerry B. Dittrich, Mayor

ATTEST:

\_\_\_\_\_  
Joanna King, City Secretary





# City of Benbrook

## CITY COUNCIL COMMUNICATION

DATE: 09/01/16	REFERENCE NUMBER: C-300	SUBJECT: Authorize Contract for collection of outstanding ambulance billing accounts	PAGE: 1 of 2
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For a number of years, the City of Benbrook contracted with the Municipal Services Bureau (MSB) for the collection of outstanding ambulance accounts and Municipal Court Class "C" Misdemeanor warrants. Recently, MSB changed its service provision and fee structure and the City terminated the warrant collection services contact and entered into a contract with another company. That company does not provide collection services for outstanding ambulance accounts.

Although the contract for ambulance billing was not terminated at that time, MSB has failed to provide responsive collection services. As a result, the City stopped sending information to MSB and has now terminated their service contract.

### AMBULANCE BILLING ACTIVITY

Following EMS transport, a patient is billed for ambulance charges. If insurance provider information is available, a claim is submitted to that provider. Payment on accounts are due 90-days from the initial billing.

Currently, without a method to collect outstanding accounts, the past due accounts stay dormant. By utilizing the services of an outside agency, the City receives an increase in revenue collection and clears outstanding accounts.

### COLLECTION AGENCY CONSIDERATIONS

EMS billing personnel requested quotes and information from other collection agencies. Receivable Recovery Services provided the only quote. Services include:

- Collection fee of 25%, per account collected.
- Client Web Access to track case status immediately.
- Provides mailing of notification including: printing, materials, postage, and skip-tracing services.
- 30-day termination.
- Employees Bi-Lingual Staff.
- HIPPA compliant.

Acadian Ambulance Service (Texas), Amed Ambulance Service (Louisiana), and Hansford County Hospital District (Texas) currently contract with Receivable Recovery Services. Staff contacted these agencies and received a good recommendation for services provided.

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

DATE:

09/01/16

REFERENCE  
NUMBER:

C-300

SUBJECT:

Authorize Contract for collection of outstanding  
ambulance billing accounts

PAGE:

2 of 2

**RECOMMENDATION**

Staff recommends that City Council approve a contract with Receivable Recovery Services for the collection of outstanding ambulance billing accounts.

## BUSINESS ASSOCIATE AGREEMENT / CONTRACT

This Business Associate Agreement (“this agreement”) dated \_\_\_\_\_, 2016 (the “Effective Date”), is entered into by and between City of Benbrook (“each a Covered Entity”) and Receivable Recovery Services, LLC., (“Business Associate”), each a “Party” and collectively, the “Parties.”

**WHEREAS**, Covered Entity and Business Associate have entered into an Agreement (“Services Agreement”), or may subsequently enter into, agreements or other documented arrangements (collectively, the “Business Arrangements”) pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create and use health information that is protected by state and/or federal law; and

**WHEREAS**, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the U.S. Department of Health & Human Services (“HHS”) promulgated the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Standards”), at 45 C.F.R. Parts 160 and 164, to protect the privacy of certain individually identifiable health information (“Protected Health Information”, or “PHI”) and the Security Standards (the “Security Standards”), at 45 C.F.R. Parts 160 and 164, for the protection of electronic protected health information (“EPHI”); and

**WHEREAS**, in order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a “business associate agreement” with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use of disclosure of PHI or EPHI; and

**WHEREAS**, on February 17, 2009, the federal Health Information Technology for Economic and Clinical Health Act was signed into law (the “HITECH Act”), and the HITECH Act imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

**WHEREAS**, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and EPHI, including extending certain HIPAA and HITECH Act requirements directly to business associates; and

**WHEREAS**, the HITECH Act requires that certain of its provisions be included in business associate agreements, and that certain requirements of the Privacy Standards be imposed contractually upon Covered Entities as well as business associates; and

**WHEREAS**, Business Associate and Covered Entity desire to enter into this Business Associate Agreement;

**NOW THEREFORE**, in consideration of the mutual promise set forth in this Agreement and the Services Agreement, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

**1. Business Associate Obligations.** Business Associate may receive from Covered Entity, or create or receive on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the “Confidentiality Requirements”). All

references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use of disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used or disclosed by Covered Entity in the same manner.

**2. Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in this Agreement or Business Arrangements, (ii) consistent with the "minimum necessary" standard in 45 C.F.R. § 164.502(b) as may be amended from time to time, and (iii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein.

**3. Minimum Necessary.** Whenever practicable, Business Associate will limit its use or disclosure of, or requests for, PHI to the Limited Data Set, as defined in 45 CFR 164.514(e)(2) and as it may be amended from time to time. If such limitation is not practicable, Business Associate will limit its use or disclosure of, or its requests for, PHI to the minimum necessary to accomplish the purpose of such use, disclosure, or request. This provision does not apply to the following: (1) disclosure of PHI to the individual, (2) uses or disclosure of PHI pursuant to an authorization executed by the individual or the individual's personal representative, (3) disclosures of PHI made to the Secretary of Health and Human Services (hereinafter referred to as the "Secretary"), (4) uses or disclosures of PHI that are required by law, or (5) uses or disclosures of PHI that are required for compliance with HIPAA regulations.

**4. Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances in writing from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; (b) requires the third party to agree to notify Business Associate immediately, but in no event later than, five (5) business days of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use of disclosure (if applicable) of Limited Data Sets. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents or subcontractors who create, receive, maintain, or transmit protected health information on behalf of Business Associate (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to (i) comply with the restrictions and conditions on the use and disclosure of PHI that apply to the Business Associate under this Agreement, (ii) implement reasonable and appropriate safeguards to protect Covered Entity's PHI received from Business Associate and (iii) promptly notify Business Associate of any HIPAA Breach (see 10.1) involving Covered Entity's PHI. Business Associate shall not be permitted to disclose PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity to Recipients who reside outside of the United States or United States territories. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within (10) business days of the Business Associate becoming aware of such use or disclosure. In addition to Business

Associate's obligations under **Section 10**, Business Associate agrees to mitigate, to the extent practical, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement. Business Associate will not disclose PHI to any Recipients, except as expressly permitted by this Agreement. Business Associate is not authorized to use the PHI to create de-identified information, nor is Business Associate authorized to use the PHI for data aggregation purposes.

**5. Individual Rights Regarding Designated Record Sets.** If Business Associate maintain a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, HI by Covered Entity or, as directed by Covered Entity, an individual who is the subject of the PHI under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associates as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within fifteen (15) days of such request and shall make any amendment requested by Covered Entity within thirty (30) days of such request. Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

**6. Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting with thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.

**7. Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.

**8. Records and Audit.** Business Associate shall make available to the United States Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary, Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity within five (5) business days upon receipt by Business Associate of any and all requests by or on behalf of any and all federal state and local government authorities served upon Business Associate for PHI.

**9. Implementation of Security Standards; Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that are appropriate to Business Associates' size, the complexity of its operations and the nature and scope of its activities and that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act. Furthermore, to the extent feasible, Business Associate will use commercially reasonable efforts to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware, whether it results from acts or omissions of Business Associate, its agents or subcontractors. At the request of Covered Entity, Business Associate shall promptly identify: (i) the identification of the party responsible for causing the Security Incident, if known and (ii) the particulars identified in 45 C.F.R. § 164.404.

#### **10. Data Breach Notification and Mitigation.**

**10.1 HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "HIPAA Breach"), whether the HIPAA Breach results from acts or omissions of Business Associate, its agents or subcontractors. The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this **Section 10.1**, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this **Section 10.1** and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than ten (10) days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than fifteen (15) days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with: (i) contact information for individuals, who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions or learn

additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.

**10.2** A person who conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made as quickly as possible, except as provided by Subsection (d) or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

**10.3 Breach Indemnification.** Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against any and all losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") to the extent arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information. If Business Associate assumes the defense of an Information Disclosure Claim, Covered Entity shall have the right, at its expense, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Covered Entity. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions.

**11. Prohibited Conduct.** Except as permitted by HIPAA or pursuant to a HIPAA-compliant authorization obtained by Covered entity from an individual, Business Associate will not receive, directly or indirectly, any remuneration in exchange for any individual's PHI. Business Associate will not use any individual's PHI for marketing or research purposes (as those terms are defined by the Privacy Standards) without Covered Entity's prior written approval and without obtaining all required authorizations from the individual.

**12. Genetic Information.** Business Associate will not use or disclose PHI that is "genetic information" for "underwriting purposes" (as those terms are defined by the Privacy Standards).

### **13. Terms and Termination.**

**13.1** This agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this **Section 13**, provided, however, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

**13.2** Either Party may immediately terminate this Agreement (the "Terminating Party") and shall have no further obligations to the other Party (the "Terminated Party") hereunder if any of the following events shall have occurred and be continuing: (i) The Terminated Party fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been given to the Terminated Party; or (ii) A violation by the Terminated Party of any provision of the Confidentiality Requirements or other applicable federal or state privacy law relating to the obligations of the Terminated Party under this Agreement.

**13.3** Termination of this Agreement for either of the two reasons set forth in **Section 13.2** above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.

**13.4** Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.

**13.5** Upon termination of this agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents or subcontractors. Further, upon termination of this Agreement, Business Associate shall promptly send Covered Entity written certification of such destruction or return of all of Covered Entity's PHI. In the case of PHI which is not feasible to "return or destroy," for so long as Business Associate maintains such PHI, Business Associate shall (i) extend the protections of this Agreement to such PHI, (ii) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible and (iii) notify Covered Entity of any unauthorized access, use or disclosure of such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.

**14. No Warranty.** PHI is provided to business associate solely on an "as is basis". Covered entity disclaims all other warranties, express or implied, including, but not limited to, implied warranties of merchantability, and fitness for a particular purpose.

**15. Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.

## **16. Miscellaneous.**

**16.1 Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below: Neither party shall refuse delivery of any notice hereunder.

**COVERED ENTITY:**

**BUSINESS ASSOCIATE:**

Law Offices of Ray Ladouceur  
Raymond P. Ladouceur  
22398 Highway 435  
Abita Springs, LA 70420

**16.2 Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

**16.3 Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party.

**16.4 Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

**16.5 Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement. Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

**16.6 Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, excluding its conflicts of law provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in Texas.

**16.7 Equitable Relief.** Business Associate understands and acknowledges that any disclosure or misappropriation of any PHI in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirements in an action for specific performance or injunction for the posting of a bond by Covered Entity.

**16.8 Nature of Agreement; Independent Contractor.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.

**16.9 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary, to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

**COVERED ENTITY:**

City of Benbrook

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

Andy Wayman

City Manager – City of Benbrook

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

**BUSINESS ASSOCIATE:**

Receivable Recovery Services, LLC

By:     RS    

Ryan S. Messina

Vice President Sales

Date:     5.24.16

**FEE SCHEDULE**

**FOR**

**City of Benbrook**

**FLAT RATE:**

25% of all dollars collected regardless of source or where received on bad debt placements

These rates are based on RRS serving as a primary agency for City of Benbrook EMS.

\_\_\_\_\_

Andy Wayman

City Manager – City of Benbrook

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

*TRC*  
\_\_\_\_\_

Ryan Messina

Vice-President Sales

Date: 8.24.16