

TARRANT COUNTY REGIONAL WATER SUPPLY FACILITIES  
BENBROOK RESERVOIR CONTRACT

THIS CONTRACT (this "Contract") is made and entered into as of the 11<sup>th</sup> day of JUNE, 1992, by and among Tarrant County Water Control and Improvement District Number One (the "District"), the City of Fort Worth, Texas ("Fort Worth"), the City of Arlington, Texas ("Arlington"), the City of Mansfield, Texas ("Mansfield"), Trinity River Authority of Texas ("TRA"), the City of Weatherford, Texas ("Weatherford"), and Benbrook Water and Sewer Authority ("BWSA") (hereinafter sometimes collectively referred to as the "parties").

W I T N E S S E T H:

The District, TRA and BWSA are conservation and reclamation districts and political subdivisions of the State of Texas created and operating pursuant to TEX. CONST. art. XVI, § 59. Fort Worth, Arlington, Mansfield and Weatherford are duly created cities and political subdivisions of the State of Texas operating under the Constitution and laws of the State of Texas, including their respective Home Rule Charters. The parties are authorized to enter into this Contract pursuant to TEX. REV. CIV. STAT. ANN. art. 4413(32c) (Vernon 1976 and Vernon Supp. 1992), (the "Interlocal Cooperation Act"), and other applicable laws.

The District presently owns and operates surface raw water supply facilities which consist primarily of Eagle Mountain Dam and Reservoir, Bridgeport Dam and Reservoir, Cedar Creek Dam, Reservoir and Pipeline, and Richland-Chambers Dam, Reservoir and Pipeline (the "System").

The District has determined that it would be prudent, economical and beneficial to all of its customers to include Benbrook Reservoir as a part of the

MAY 28 1992

System, and to build, as an improvement to the System, a pipeline between Benbrook Reservoir and the present terminus of the Cedar Creek and Richland-Chambers Reservoirs' pipelines (the Benbrook Project).

Fort Worth, Arlington, Mansfield and the TRA obtain raw water from the System pursuant to certain agreements with the District, including that certain Amendatory Contract by and among such entities dated as of September 1, 1982 (the "Amendatory Contract"), a copy of which is attached hereto as Exhibit "A" and by reference is adopted herein for all purposes. Fort Worth also obtains water from the Clear Fork, Trinity River, pursuant to Certificate of Adjudication No. 08-3340 (Certified Filing No. 757B); from Benbrook Reservoir pursuant to that certain contract by and between Fort Worth and the United States Army Corps of Engineers (the "Corps of Engineers") dated as of March 13, 1969 (the "Fort Worth contract"); and pursuant to Certificate of Adjudication No. 08-3366 (Permit No. 2413) issued by the Texas Water Commission on April 5, 1985 ("Fort Worth's certificate"). The portion of the capacity of Benbrook Reservoir that is committed to Fort Worth pursuant to the Fort Worth contract and permit is 7,250 acre-feet, or ten (10%) percent of the 72,500 acre-feet total conservation storage capacity. Pursuant to the Amendatory Contract, Fort Worth pays the District, subject to certain minimum total requirements, only for that water from Benbrook Reservoir actually used by Fort Worth. The charges that Fort Worth is obligated to pay the Corps of Engineers under the Fort Worth contract are made operation and maintenance expenses of the System under the Amendatory Contract, and are credited against Fort Worth's total payments to the District for all water supplied to Fort Worth.

BWSA also obtains water from Benbrook Reservoir pursuant to that certain contract by and between BWSA and the Corps of Engineers dated as of August 3,

1971, as amended by that certain supplemental agreement dated as of May 18, 1979 (such contract, as amended, is herein referred to as "BWSA's contract"), and pursuant to Certificate of Adjudication No. 08-3365 (Permit No. 2735) issued by the Texas Water Commission on April 5, 1985 ("BWSA's certificate"). The portion of the capacity of Benbrook Reservoir that is committed to BWSA pursuant to BWSA's contract is 16,460 acre-feet, or twenty-two and seven/tenths (22.7%) percent of the 72,500 acre-feet total conservation storage capacity. Pursuant to this contract, BWSA will pay the District, subject to certain minimum total requirements, only for that water from Benbrook Reservoir actually used by BWSA. The charges that BWSA is obligated to pay the Corps of Engineers under the BWSA contract are made operation and maintenance expenses of the System by this Contract and will be credited against BWSA's total payments to the District for all water supplied to BWSA.

The remaining uncommitted conservation storage capacity of Benbrook Reservoir is 48,790 acre-feet, or sixty-seven and three/tenths (67.3%) percent of the 72,500 acre-feet total conservation storage capacity. Fort Worth has negotiated with the Corps of Engineers for a contract for the use of the remaining uncommitted conservation storage capacity of Benbrook Reservoir and, on January 14, 1981, filed an application ("Application No. 2126A") with the Texas Water Commission for a permit authorizing the use of such capacity. Fort Worth's Application No. 2126A contemplates the use of such capacity together with the capacity currently committed to Fort Worth (a total of 56,040 acre-feet) to produce a water supply both with and without the Benbrook Project in operation.

Weatherford also desires to obtain water from Benbrook Reservoir and, on January 20, 1982, filed an application ("Application No. 4240") with the Texas

Water Commission for a permit authorizing the use of the 48,790 acre-feet of remaining uncommitted conservation storage capacity. Fort Worth's Application No. 2126A and Weatherford's Application No. 4240 were set for a consolidated hearing before the Texas Water Commission. At the request of Fort Worth, Weatherford and BWSA, the hearing on the two applications were continued indefinitely.

BWSA also desires to obtain additional water from Benbrook Reservoir, but has not filed an application with the Texas Water Commission. BWSA and Weatherford have agreed between themselves on the allocation of the Dependable Yield each is to receive.

On January 7, 1983, Fort Worth filed a rate petition with the Texas Department of Water Resources (the "Rate Petition") asking that the Commission fix the rates for the supply of water from Benbrook Reservoir to BWSA and Weatherford. In the Rate Petition, Fort Worth further requested that the hearing on the Rate Petition be consolidated with the hearing on Fort Worth's Application No. 2126A and Weatherford's Application No. 4240. At the request of Fort Worth, Weatherford and BWSA, the Department has continued indefinitely its processing of the Rate Petition.

On May 29, 1986, Fort Worth, Weatherford, BWSA, together with TRA, Mansfield, Arlington, and the District, agreed to settle their differences and enter into a settlement agreement (the "Agreement"). Among the obligations imposed by the Agreement was for the District to seek a contract with the Corps of Engineers to obtain the use of Benbrook Reservoir's entire 72,500 acre-feet of conservation storage. Because of a change in Corps of Engineers policy, the District was only able to negotiate a contract with the Corps of Engineers for the

use of the remaining 48,790 acre-feet of conservation storage capacity. The Corps of Engineers has executed such a contract, a copy of which is attached hereto as Exhibit "B" (the "District contract"). In order to make the entire conservation storage space of Benbrook Reservoir available to the System and comply with the conditions of the May 29th, 1986 Agreement, Fort Worth and BWSA agree to assign their Corps of Engineers contracts or otherwise authorize the District to use the conservation storage made available to them under their Corps of Engineers contracts.

Pursuant to the terms of the Agreement, the District filed its Application No. 5157 with the Texas Department of Water Resources for the use of the entire 72,500 acre-feet of conservation storage capacity of Benbrook Reservoir. The Texas Water Commission granted the District's application and issued to the District Permit No. 5157, a copy of which is attached hereto as Exhibit "C" (the "District's permit"). Among other things, Permit No. 5157 is subject to the following conditions:

1. The District obtaining and maintaining contract(s) with the Corps of Engineers for the use of the 72, 500 acre-feet of storage.
2. The District signing the Corps of Engineers contract.
3. Withdrawal of Fort Worth's Application No. 2126A, Weatherford's Application No. 4240, and a request that Certificates of Adjudication No.'s 08-3365 and 08-3366 be cancelled.

The Corps of Engineers failure to sign a 72,500 acre-feet Corps of Engineers contract with the District requires that some changes be made to the draft Benbrook contract that was Exhibit A to the May 29, 1986, agreement and that Permit No. 5157 be amended to reflect the change in the Corps of Engineers contract.

The parties desire to enter into this Contract to (1) enable the District to execute the District's contract and accept the District's permit; and (2) to set forth the terms and conditions pursuant to which water will be supplied from Benbrook Reservoir to BWSA, Weatherford, and to existing customers of the District.

**NOW THEREFORE**, for and in consideration of the foregoing and the mutual promises, covenants, obligations, and benefits hereinafter set forth, the parties agree as follows:

**Section 1. Approval of Contract, Permit, and Charges.** The parties hereby approve the District's contract, the District's permit, and any permit amendments necessary to effectuate this contract. The District shall promptly cause the District's contract to be properly executed and filed with the Texas Water Commission together with notice of acceptance of the District's permit. Further, the parties agree that in addition to the System operation and maintenance expenses established in the Amendatory Contract, that it is appropriate to include the charges that BWSA is obligated to pay the Corps of Engineers under the BWSA contract as a system operation and maintenance expense.

**Section 2. Assignments, Authorization, Payment, and Withdrawal.** Subject to execution of the District's contract by the Corps of

Engineers and the District, Fort Worth hereby assigns to the District, and the District hereby accepts, all of Fort Worth's rights, obligations and liabilities under Fort Worth's contract, Fort Worth's Certificate of Adjudication No. 08-3366 and Application No. 2126A. If Fort Worth's contract assignment is not recognized by the Corps of Engineers, Fort Worth hereby authorizes the District to use the conservation storage space available under Fort Worth's contract. Fort Worth will continue to pay the Corps of Engineers pursuant to its contract under the same conditions previously established in the Amendatory Contract. The charges that Fort Worth is obligated to pay the Corps of Engineers under the Fort Worth contract are made operation and maintenance expenses of the System under the Amendatory Contract, and are credited against Fort Worth's total payments to the District for all water supplied to Fort Worth. Subject to execution of the District's contract by the Corps of Engineers and the District, BWSA hereby assigns to the District, and the District hereby accepts, all of BWSA's rights, obligations and liabilities under BWSA's contract and BWSA's certificate. If BWSA's contract assignment is not recognized by the Corps of Engineers, BWSA hereby authorizes the District to use the conservation storage space available under BWSA's contract. BWSA will continue to pay the Corps of Engineers pursuant to its contract under the conditions established in this contract. Subject to execution of the District's contract by the Corps of Engineers and the District, Weatherford hereby assigns to the District, and the District hereby accepts, all of Weatherford's rights, obligations and liabilities under Application No. 4240. Subject to execution of the District's contract by the Corps of Engineers and the District, Fort Worth hereby withdraws the Rate Petition, and agrees to promptly give appropriate notice of such withdrawal to the Texas Water Commission.

**Section 3. Purchase and Sale.** The District agrees to sell and to deliver to BWSA and Weatherford at the applicable Point or Points of Delivery (hereinafter defined) for each of them, raw or untreated surface water from Benbrook Reservoir and the Benbrook Project to be used for municipal purposes in accordance with the terms of this Contract. BWSA and Weatherford agree to pay for such water in accordance with the terms hereof.

**Section 4. Dependable Yield.** The parties agree that for purposes of this Contract, the amount of water that can be supplied from Benbrook Reservoir in every year in the future after fully honoring all senior water rights (the "Dependable Yield"), both with and without the Benbrook Project in operation, is to be 6,833 acre-feet (as used in this Contract, the term "year" shall mean calendar year). The Dependable Yield without the Benbrook Project in operation may be revised by the District from time to time based on corrections or changes in data over time (e.g., sedimentation, inflows, evaporation, senior water rights, etc.), or based on improvements or refinements in the method of calculation. The parties agree that pursuant to Certificate of Adjudication No. 08-3366 (Permit No. 2413), Fort Worth's existing share of the Dependable Yield of Benbrook Reservoir is 683 acre-feet and that pursuant to Certificate of Adjudication No. 08-3365 (Permit No. 2735), BWSA's existing share of the Dependable Yield of Benbrook Reservoir is 1,551 acre-feet.

**Section 5. Allocation of the Dependable Yield from Benbrook Reservoir.** The Dependable Yield from Benbrook Reservoir shall be allocated between Fort Worth, BWSA and Weatherford as follows:

Fort Worth	-	683 acre-feet or ten (10%) percent of the Dependable Yield.
BWSA	-	3,380 acre-feet or forty-nine and five/tenths (49.5%) percent of the Dependable Yield.
Weatherford	-	2,770 acre-feet or forty and five/tenths (40.5%) percent of the Dependable Yield.

**Section 6. Maximum Annual Commitments From Benbrook Reservoir.**

A. For each year prior to the first full year after the Benbrook Project becomes operational ("the First Project Year"), the maximum annual commitment to BWSA and Weatherford shall be their allotted share of the Dependable Yield.

B. The District's only obligation pursuant to this Contract to provide a raw water supply to BWSA and Weatherford in addition to their allotted share of the Dependable Yield of Benbrook Reservoir shall be upon the District's construction and commencement of operation of its Benbrook Project. After the First Project Year, the District will use its best efforts to remain in position to furnish raw water sufficient for the reasonable demands of BWSA and Weatherford in the same manner but its obligation shall be limited to the amount of water available to it from the System. The District agrees to use its best efforts to issue its Bonds in amounts necessary to acquire, construct, maintain, improve,

and extend the entire System, so as to enable the District to furnish such water. However, Fort Worth, Arlington, Mansfield, and TRA (the "Initial Contracting Parties") shall, within the limits permitted by law, have absolute priority over BWSA and Weatherford to the use of all System water as though BWSA and Weatherford were Additional Contracting Parties, except for and excluding BWSA and Weatherford's allotted share of the Dependable Yield of Benbrook Reservoir. If for any reason priority for the use of System water is prohibited by law and rationing shall be applied, as between the Initial Contracting Parties, BWSA and Weatherford, if water from the System must be rationed, such rationing shall, within the limits permitted by law, be done by the District on the basis of the total amount of all water from the entire System, including the Dependable Yield of Benbrook Reservoir, taken by each Initial Contracting Party, BWSA and Weatherford, respectively, during the last preceding Annual Payment Period in which rationing among said parties was not necessary.

**Section 7. Annual Commitments to BWSA and Weatherford.** On or before the first day of June of each year, BWSA and Weatherford shall give written notice to the District specifying the amount of water, expressed in acre-feet, that each desires to be committed to it for the following year (the "Annual Commitment"). If either party fails to give such notice by such date in any year, the Annual Commitment for such party for that year shall be the Annual Commitment for such party for the preceding year.

**Section 8. District's Operation of and Use of Water from Benbrook Reservoir.** BWSA and Weatherford agree that the District shall be authorized to divert each year the amount of the Dependable Yield of Benbrook Reservoir remaining after deducting BWSA's and Weatherford's Annual

Commitment for that year. The parties further agree that the District shall be authorized to use Benbrook Reservoir for terminal storage and to commingle water from the System with water impounded in Benbrook Reservoir and to overdraft Benbrook Reservoir (i.e., to make withdrawals such that the total rate of use from the lake is in excess of the Dependable Yield of 6,833 acre-feet per year), subject to the following guidelines:

A. The District may make overdraft withdrawals from Benbrook Reservoir at any time the lake is at or above elevation 694.0 mean sea level. Prior to the First Project Year, overdraft withdrawals may be made when the lake is below 694.0, except that the District shall not withdraw more than 683 acre-feet per year or ten (10%) percent of the Dependable Yield if the lake is or drops below the level needed to support that rate of withdrawal and the amount of use projected for BWSA and Weatherford in the current calendar year in accordance with the following table:

Total Projected Water Use from Benbrook Reservoir by BWSA and Weatherford During the Current Calendar Year <u>(Acre-Foot)</u>	Minimum Lake Elevation Below Which the District Shall Not Withdraw More Than 683.3 Acre-Feet <u>(per Year)</u>
Zero	674.1
1,000	677.3
2,000	681.4
3,000	685.0
4,000	688.4
5,000	691.2
6,149.7	694.0

If the lake is below the required level as determined from the above table for only a portion of a given calendar year, the amount of water that the District is entitled to withdraw in excess of the 683 acre-feet during that portion of the year shall be

determined by multiplying 683 acre-feet by the ratio of the number of days that the lake is below the required level to the total number of days in the year.

B. If the District has not made overdraft withdrawals from Benbrook Reservoir since the lake was last at elevation 694.0, the limitation outlined in Paragraphs "A and B," above, shall not apply and the District, at its option, may divert each year thereafter the amount of the dependable yield of Benbrook Reservoir remaining after deducting BWSA's and Weatherford's Annual Commitment for that year.

C. After the First Project Year, the limitation outlined in Paragraphs "A" and "B," above, shall not apply.

**Section 9. Commitments to BWSA and Weatherford with Benbrook Project in Operation.** Beginning with the First Project Year, the District will provide BWSA's and Weatherford's Annual Commitment in excess of their allotted share of the Dependable Yield of Benbrook Reservoir subject to the priority of right of the Initial Contracting Parties as provided in the Amendatory Contract and in Section 6B of this Contract. The District also will provide BWSA and Weatherford more than their Annual Commitment, if requested to do so, provided such excess water is reasonably available to the District.

**Section 10. Payments by Fort Worth and Other Existing Customers.** The payments required to be paid by Fort Worth and other existing customers of the District for water supplied from Benbrook Reservoir, the rates charged such customers, and other relevant terms relating thereto, shall be governed by the terms of the Amendatory Contract.

**Section 11. Payments by BWSA and Weatherford.**

A. BWSA and Weatherford each agree to pay its "Annual Payment" (hereinafter defined) for each year, directly to the District, in approximately equal monthly payments, on or before the 10th day of each month, as hereinafter provided. For each year, the Annual Payment for BWSA and Weatherford shall be the amount calculated by multiplying each party's Annual Commitment for such year, expressed in thousands of gallons, times the rate applicable on the first day of such year as hereinafter provided. BWSA's and Weatherford's Annual Payments for any given year may be redetermined, after consultation with each of said parties, at any time during such year, to the extent deemed necessary or advisable by the District, if either party is furnished water by the District in excess of the Annual Commitment or if any of the conditions set out in Section 4C(g) of the Amendatory Contract are satisfied. If either BWSA's or Weatherford's Annual Commitment exceeded their actual measured number of thousands of gallons of raw water taken pursuant to this Contract, their Annual Payment shall be equal to the cost of their Annual Commitment, unless prior to the end of the year notice was given to the District that their Annual Commitment would exceed their actual use and the District agreed it could make use of the difference during the year. In such event, the Annual Payment shall be redetermined as provided for in the following Section 11.B.

B. At the close of each year, the District shall determine the actual measured number of thousands of gallons of raw water taken pursuant to this Contract by BWSA and Weatherford during said period. If the actual annual use was less than the Annual Commitment and the District agreed it could make use of the difference during the year, the adjusted Annual Payment of both BWSA

and Weatherford shall be the amount calculated by multiplying the number of thousands of gallons so taken by each of them times the rate applicable on the first day of such year, together with any adjustment or redetermination pursuant to the last sentence of the foregoing Section 10A. The difference, if any, between each estimated Annual Payment pursuant to which BWSA and/or Weatherford have made payments and the actual Annual Payment, when determined, shall be applied as a credit or debit to BWSA's and/or Weatherford's account with the District and shall be credited or debited in 1/12 increments to each customer's next twelve monthly payments, or as otherwise agreed upon between the District and the affected customer, provided that all such credits and debits shall be made in a timely manner within the next year. Additionally, BWSA payments to the Corps of Engineers under the BWSA contract also will be credited against BWSA's total water use for the year either in 1/12 increments in its next twelve monthly payments, or as otherwise agreed upon between the District and BWSA, provided that all such credits shall be made in a timely manner within the next year.

C. As soon as practicable after the date of this Contract, and on or before the fifteenth day of June of each year thereafter, the District shall furnish BWSA and Weatherford with an estimated schedule of the monthly payments to be made by such party to the District for the following year, together with supporting budgetary or proposed budgetary data showing the basis for arriving at such schedule. BWSA and Weatherford each hereby agree that it will make such payments to the District on or before the 10th day of each month in accordance with such schedule. If, during any year, BWSA's or Weatherford's Annual Payment is redetermined as provided above, the District will promptly furnish such party with an updated schedule of monthly payments reflecting such

redetermination. If either BWSA or Weatherford at any time disputes the amount to be paid by it to the District, the complaining party shall nevertheless promptly make such payment or payments, but if it is subsequently determined by agreement or court decision that the disputed payments made by the complaining party should have been less, or more, the District shall promptly revise and reallocate the charges among BWSA and Weatherford, in such a manner that the complaining party will recover its overpayment or the District will recover the amount due it. All amounts due and owing to the District by BWSA and Weatherford or to BWSA and Weatherford by the District shall, if not paid when due, bear interest at the rate of ten (10) percent per annum from the date when due until paid. The District shall, to the extent permitted by law, suspend delivery of water from the System to BWSA and Weatherford if such party remains delinquent in any payments due hereunder for a period of sixty (60) days, and shall not resume delivery of water while such party is so delinquent. The District shall pursue all legal remedies against any such delinquent party to enforce and protect the rights of the District, the other parties, and the holders of the District's bonds. It is understood that the foregoing provisions are for the benefit of the holders of the District's bonds. If any amount due and owing by BWSA or Weatherford to the District is placed with an attorney for collection, such party shall pay to the District all attorney's fees, in addition to all other payments provided for herein, including interest.

D. The District shall never have the right to demand payment by BWSA or Weatherford of any obligations assumed by it or imposed by it under and by virtue of this Contract from funds raised or to be raised by taxes, and the obligations under this Contract shall never be construed to be a debt of such kind

as to require BWSA or Weatherford to levy and collect a tax to discharge such obligation.

E. BWSA represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its combined waterworks and sewer system, and all such payments will be made from the revenues received by BWSA from such system. Weatherford represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its combined waterworks and sewer system, as defined in TEX. REV. CIV. STAT. ANN. art. 1113 (Vernon 1963 and Vernon Supp. 1992), and that all such payments will be made from the revenues of its combined waterworks and sewer system. BWSA and Weatherford each represent and have determined that the water supply to be obtained from Benbrook Reservoir, both with and without the Benbrook Project in operation, is absolutely necessary and essential to the present and future operation of its water system and is the only available and adequate source of supply of water therefor, and, accordingly, all payments required by this Contract to be made by each party shall constitute reasonable and necessary operating expenses of its respective system or systems as described above with the effect that the obligation to make such payments from revenues of such system or systems shall have priority over any obligation to make any payments from such revenues, whether of principal, interest, or otherwise, with respect to all bonds hereafter issued by such party.

F. BWSA and Weatherford each agree throughout the term of this Contract to continuously operate and maintain its combined waterworks and sewer system or water system, as the case may be, and to fix and collect such

rates and charges for water and sewer services or water services to be supplied by its combined waterworks and sewer system or water system as aforesaid as will produce revenues in an amount equal to at least (i) all of its payments under this Contract and (ii) all other amounts as required by the provisions of the ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding.

G. Recognizing the fact that the parties urgently require the facilities and services of the System, and that such facilities and services are essential and necessary for actual use and for standby purposes, and recognizing the fact that the District will use payments received hereunder to pay and secure the District's bonds, it is hereby agreed that each of the parties shall be unconditionally obligated to make the payments required hereunder, without offset or counterclaim, regardless of whether or not the District actually acquires, constructs, or completes the Benbrook Project, or whether or not any party actually receives or uses water from the System whether due to force majeure or otherwise, regardless of any other provisions of this or any other contract or agreement between any of the parties hereto. This covenant by the parties shall be for the benefit of the holders of the District's bonds.

**Section 12. Rates Applicable to BWSA and Weatherford.**

A. Prior to the First Project Year, BWSA and Weatherford each agree to pay the District for water furnished to them from Benbrook Reservoir at the "Minimum Rate" (hereafter defined). After the First Project Year, the rate charged BWSA and Weatherford for water up to their allotted share of the Dependable Yield of Benbrook Reservoir shall be the Minimum Rate. The rate charged BWSA and Weatherford for water furnished to them by the District in

excess of their allotted share of the Dependable Yield of Benbrook Reservoir shall be at each year's applicable "Standard Rate" (hereafter defined), as follows:

1. During the first five (5) consecutive years following the first year either party is furnished water by the District in excess of its allocated share of the dependable yield of Benbrook Reservoir, each party shall pay the District at each years then applicable Standard Rate for an amount of water which shall equal the maximum amount of water furnished to each party in excess of their allocated share of the dependable yield of Benbrook Reservoir in any year of the five (5) consecutive years.

2. For each year following the first five (5) consecutive years, each party shall pay the District each year the then applicable Standard Rate for an amount of water which shall equal the greater of the following amounts, expressed in thousands of gallons: (a) for each year, the amount that the Annual Commitment for such party exceeds its allocated share of the dependable yield of Benbrook Reservoir for such year; or (b) for each year, the average amount that each such party's measured diversions, expressed in thousands of gallons, exceeded its allocated share of the dependable yield of Benbrook Reservoir during the immediately preceding five (5) consecutive years.

B. The "Minimum Rate" for any given year shall be the rate, expressed in cents per 1000 gallons, determined pursuant to the following formula:

$$\text{Minimum Rate} = \frac{\text{TE}}{\text{DY} \times \text{F}} \times 1000$$

WHERE:

TE = a dollar amount sufficient to pay or provide for the total expenses of the District relating to Benbrook Reservoir in a given year including, without limitation, all charges by the Corps of Engineers pursuant to the District's contract, Fort Worth's contract, and BWSA's contract, and all costs and expenses of the District allocable to Benbrook Reservoir, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements, operating personnel, the cost of utilities, the costs of supervision, engineering, accounting, auditing, legal services, supplies, services administration, and equipment necessary for proper operation and maintenance of Benbrook Reservoir, and payments made by the District in satisfaction of judgments resulting from claims not covered by the District's insurance arising in connection with such operation and maintenance. The term does not include depreciation. All District costs associated with the District's Benbrook Project shall be excluded from this definition.

DY = dependable yield of Benbrook Reservoir without the Benbrook Project in operation (in acre-feet per year)

F = 325,851 gallons per acre-foot

C. The "Standard Rate" for any given year shall be the rate for water charged by the District to TRA and Mansfield, expressed in cents per 1000 gallons, in effect on the first day of such year pursuant to the Amendatory Contract.

**Section 13. Points of Delivery.** The Points of Delivery of water from Benbrook Reservoir to BWSA and Weatherford hereunder shall be at one or more points on the perimeter of Benbrook Reservoir or downstream of said reservoir on the Clear Fork, Trinity River, as may be agreed to by the parties, and shall include the points of delivery on the Clear Fork downstream of Benbrook Reservoir presently utilized by BWSA. The Points of Delivery of water from Benbrook Reservoir to existing customers of the District which are parties to the Amendatory Contract shall be governed by that contract. Nothing herein shall be construed as the grant by any party to any other party of interests in or permission to use lands or other properties.

**Section 14. Measurement.** BWSA and Weatherford shall provide, operate, maintain and read meters which shall record water taken by such parties from the District at the Points of Delivery. Water shall be measured through conventional types of approved meters. BWSA and Weatherford shall keep accurate records of all the measurements of water required under this Contract, and the measuring devices and such records shall be open to inspection of the District at all times. The District shall have access to the metering equipment at all reasonable times. Upon written request of the District, BWSA and Weatherford will give the District copies of such records or permit the District to have access to the same in the office of such parties during reasonable business hours. Not more than once in each calendar month, on a date as near the end of such calendar month as practical, BWSA and Weatherford shall calibrate their raw water meters if requested in writing by the District to do so, in the presence of a representative of the District, and the parties shall jointly observe any adjustments that shall be necessary. If the District shall in writing request either party to

calibrate its raw water meters, such party shall give the District notice of the time when any such calibration is to be made and, if a representative of the District is not present at the time set, such party may proceed with the calibration and adjustment in the absence of any representative of the District. If upon any test of the raw water meters, the percentage of inaccuracy of such metering equipment is found to be in excess of two (2) percent, registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then for a period extending back one half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If any meters are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. Otherwise, the amount of water delivered during such period may be estimated by:

- (a) Correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or
- (b) Estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

**Section 15. Title.** Title to all water supplied hereunder shall be in the District up to each Point of Delivery, at which point title shall pass to the receiving party. Each of the parties hereto hereby agrees to save and hold each other party hereto harmless from all claims, demands, and causes of action which may be

asserted by anyone on account of the transportation and delivery of said water while title remains in such party.

**Section 16. Quality.** The water to be delivered by the District at Benbrook Reservoir shall be raw, untreated water from Benbrook Reservoir or the System. Each party has satisfied itself that such water will be suitable for its needs. The District and the parties shall cooperate, each within its legal powers, in preventing all possible pollution and contamination of the reservoirs and watersheds from which Benbrook and System water is obtained. NO OTHER WARRANTY IS EXPRESSED OR IMPLIED.

**Section 17. Force Majeure.** If by reason of force majeure, any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of BWSA and Weatherford to make the payments required hereunder, then if such party shall give notice and full particulars of such force majeure in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or

entire failure of water supply, and inability on the part of the District to deliver water hereunder for any reason, or on account of any other causes not reasonably within the control of the party claiming such inability.

**Section 18. Amendatory Contract and Water Rights.** Nothing contained in this Contract shall be considered to be a modification or amendment of the Amendatory Contract, except to the extent that this Contract provides the terms and conditions by which the District shall furnish water to BWSA and Weatherford. Neither BWSA nor Weatherford shall be considered to be an "Additional Contracting Party" as defined in the Amendatory Contract. Nothing contained in this Contract shall be construed to abrogate or impair Fort Worth's existing water rights in the Clear Fork, Trinity River, pursuant to Riparian claims to which Fort Worth may be legally entitled and pursuant to Certificate of Adjudication No. 08-3340 (Certified Filing No. 757B) which provides in part as follows:

Owner's right to divert and use water under the authority of this certificate is superior to any right of the U. S. Corps of Engineers to impound water in Lake Benbrook and the City of Fort Worth has the right to demand releases from the impoundment to fulfill its municipal rights authorized herein.

**Section 19. Non-Exclusive Supply.** Nothing herein shall be construed as prohibiting either BWSA or Weatherford from obtaining water from sources other than the District. All water supplied by the District to BWSA and Weatherford hereunder shall be used for municipal purposes and shall be used within the boundaries of BWSA as the same may exist from time to time and within the city limits and extra territorial jurisdiction areas of Weatherford as the

same may exist from time to time, unless the District gives its written consent to do otherwise. The District's written consent may be given only after the District has obtained the advice of the Advisory Committee established pursuant to the Amendatory Contract.

**Section 20. Assignment.** None of the rights, privileges, duties or liabilities of any party hereunder may be assigned without the consent of all parties to this Contract.

**Section 21. No Other Agreements.** This Contract constitutes the sole agreement between the parties hereto and supersedes any and all prior understandings, negotiations, representations or agreements, whether oral or written. It is expressly provided, however, that this Contract does not change or supersede the Amendatory Contract, except to the extent that this Contract provides the terms and conditions by which the District shall furnish water to BWSA and Weatherford.

**Section 22. Notice.** Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice"), herein provided or permitted to be given, made, or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner

shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the District, to:

Tarrant County Water Control and Improvement District Number 1  
P. O. Box 4508  
Fort Worth, Texas 76106

If to Fort Worth, to:

City of Fort Worth  
c/o Director, Fort Worth Water Department  
1000 Throckmorton  
Fort Worth, Texas 76102

If to Arlington, to:

City of Arlington  
P. O. Box 231  
Arlington, Texas 76010

If to Mansfield, to:

City of Mansfield  
100 East Broad Street  
Mansfield, Texas 76063

If to TRA, to:

Trinity River Authority of Texas  
P. O. Box 60  
Arlington, TX 76004

If to BWSA, to:

Benbrook Water Supply Authority  
1121 Mercedes Street  
Benbrook Texas 76126

If to Weatherford, to:

City of Weatherford  
P. O. Box 255  
Weatherford, Texas 76086

The parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other parties hereto.

**Section 23. State or Federal Laws, Rules, Orders, or Regulations.** This Contract is subject to all applicable Federal and State laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction.

**Section 24. Severability.** The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Contract or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstances should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State of Texas or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Contract or the application of such sections, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Contract shall be severable and shall be construed and applied as if any such

invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

**Section 25. Remedies Upon Default.** It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by any party hereto and shall be cumulative. Recognizing, however, that the District's undertaking to provide and maintain a supply of water hereunder is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the District agrees, in the event of any default on its part, that each party shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available. Recognizing that failure in the performance of any party's obligations hereunder could not be adequately compensated in money damages alone, each party agrees in the event of any default on its part that the District shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to the District. Notwithstanding anything to the contrary contained in this Contract, any right or remedy or any default hereunder, except the right of the District to receive the Annual Payment which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto or of performance shall be deemed a waiver thereof in the future, nor

shall any such waiver or waivers be deemed or construed to be waiver of subsequent breaches or defaults of any kind, character, or description, under any circumstances.

**Section 26. Venue.** All amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Tarrant County, Texas, which is the County in which the principal administrative offices of the District are located. It is specifically agreed among the parties to this Contract that Tarrant County, Texas, is the place of performance of this Contract; and in the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in Tarrant County, Texas.

**Section 27. Term.** This Contract shall be effective as the date hereof, and shall continue in force and effect thereafter for a period of forty (40) years and thereafter shall continue in force and effect during the entire useful life of Benbrook Reservoir and the Benbrook Project or until termination of the Amendatory Contract, whichever first occurs.

**IN WITNESS WHEREOF,** the parties hereto, acting under the authority of their respective governing bodies, have executed this Contract in seven (7) counterparts, each of which shall constitute an original.

**TARRANT COUNTY WATER CONTROL  
AND IMPROVEMENT DISTRICT NO. 1**

BY:

George W. Shannon  
PRESIDENT, BOARD OF DIRECTORS

ATTEST:

Charles Campbell  
SECRETARY, BOARD OF DIRECTORS

(DISTRICT SEAL)

APPROVED AS TO FORM AND LEGALITY:

BY: Ad Hunter  
ATTORNEY FOR THE DISTRICT

CITY OF FORT WORTH, TEXAS

BY: Mike Boone  
CITY MANAGER

ATTEST:

Alice Chura  
CITY SECRETARY

(CITY SEAL)

APPROVED AS TO FORM AND LEGALITY:

C-13287  
Contract Authorization  
3-24-92  
Date

BY: [Signature]  
CITY ATTORNEY

CITY OF ARLINGTON, TEXAS

BY: [Signature]  
CITY MANAGER

ATTEST:

Cindy Kemp  
CITY SECRETARY

(CITY SEAL)

APPROVED AS TO FORM AND LEGALITY:

BY: [Signature]  
CITY ATTORNEY

CITY OF MANSFIELD, TEXAS

BY: [Signature]  
MAYOR

ATTEST:

Kathrin Howard  
CITY SECRETARY

(CITY SEAL)

APPROVED AS TO FORM AND LEGALITY:

BY: [Signature]  
CITY ATTORNEY

TRINITY RIVER AUTHORITY

BY: [Signature]  
GENERAL MANAGER

ATTEST:

*Ann Scott*

SECRETARY, BOARD OF DIRECTORS

(CORPORATE SEAL)

APPROVED AS TO FORM AND LEGALITY:

BY:

*David W. Riley*  
ATTORNEY FOR TRA

CITY OF WEATHERFORD, TEXAS

BY:

*Sherry Matson*

ATTEST:

*David C. Stord*

(CITY SEAL)

APPROVED AS TO FORM AND LEGALITY:

BY:

\_\_\_\_\_  
CITY ATTORNEY

BENBROOK WATER AND SEWER  
AUTHORITY

BY:

*James H. [Signature]*

ATTEST:

Reck Whitehurst

(CORPORATE SEAL)

APPROVED AS TO FORM AND LEGALITY:

BY:

Signed  
ATTORNEY FOR BWSA

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rev. 2/18/92-dg