

**AMENDMENT NO. 1 TO THE INTERLOCAL AGREEMENT
BETWEEN THE CITY OF FORT WORTH AND THE CITY OF
BENBROOK FOR FLOOD STUDY OF MARY’S CREEK**

This First Amendment (“Amendment No. 1”) to the Interlocal Agreement (M&C C-23796) (City Secretary Contract No. 39306) (“Interlocal Agreement”) is entered into by and between the City of Benbrook (“Benbrook”), acting by and through Andy Wayman, its duly authorized City Manager, and the City of Fort Worth (“Fort Worth”), acting by and through Fernando Costa, its duly authorized Assistant City Manager, both of Tarrant County, Texas. Benbrook and Fort Worth may be referred to herein individually as a “Party,” or collectively as the “Parties.”

WHEREAS, the Interlocal Agreement and this Amendment No. 1 are made under the authority of Sections 791.001-791.029, Texas Government Code; and

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

WHEREAS, the Parties find that the recitations of the Interlocal Agreement are incorporated herein; and

WHEREAS, this Amendment No. 1 amends the Interlocal Agreement; and

WHEREAS, the Interlocal Agreement called for the selection of a qualified engineer to perform a hydrologic and hydraulic study of the lower part of the Mary’s Creek from West Vickery Boulevard to U.S. Highway 183 but excluded evaluation of the proposed Water Reclamation Facility (the “Original Study”); and

WHEREAS, Amendment No.1 calls for assessing flood risks from the proposed Water Reclamation Facility discharging to Mary’s Creek; and

WHEREAS, Fort Worth selected Freese & Nichols, Inc. (“Engineer”) to perform the Original Study; and

WHEREAS, the Engineer has made satisfactory progress toward completion of the Study; and

WHEREAS, both Benbrook and Fort Worth have recognized the need for extending the Mary’s Creek study area; and

WHEREAS, this Amendment No. 1 will extend the limit of the Original Study area up to the Fort Worth City Limits (“Expanded Study”); and

WHEREAS, Fort Worth and Benbrook desire to enter into this Amendment No. 1 to provide for the division of costs for the Expanded Study in accordance with the terms and conditions of the Interlocal Agreement.

NOW, THEREFORE, Benbrook and Fort Worth agree as follows:

1. Fort Worth agrees to amend its Professional Services Agreement with Freese & Nichols, Inc., to undertake the Expanded Study for an additional fee of \$281,173.00, including \$209,780.00 for basic Expanded Study tasks, \$16,518.00 for Additional Services to address Original Study review questions by the U.S. Army Corp of Engineers, \$17,858.00 for Resolution of Discharge Discrepancy to address flow frequency changes in the Clear Fork of the Trinity below Lake Benbrook, and \$37,017.00 for application of a Letter of Map Revision (LOMR) to FEMA if both parties so elect.
2. Benbrook agrees to reimburse Fort Worth within thirty (30) days of receipt of invoices for same for its share of the costs of the Expanded Study based upon invoices received by Fort Worth from the Engineer; provided that the maximum payment by Benbrook to Fort Worth under this Amendment 1 shall not exceed \$57,101.00 for Expanded Study Tasks and \$9,254.00 for a LOMR application.
3. Both parties agree that a LOMR application will not be authorized unless both parties agree that they desire to do so at the conclusion of the basic Study Tasks.
4. Nothing in the performance of this Amendment No. 1 shall impose any liability for claims against Benbrook or Fort Worth other than claims for which the Texas Tort Claims Act may impose liability.
5. Upon completion of the Study, Fort Worth and Benbrook shall remain responsible for administration of each City's floodplain ordinance within each Party's respective city limits.
6. The Parties do not intend for any third party to obtain a right by virtue of this Amendment No. 1.
7. By entering into this Amendment No. 1, the Parties do not intend to create any obligations expressed or implied other than those set out herein; further, this Amendment No. 1 shall not create any rights in any party not a signatory hereto.
8. This Amendment No. 1 does not waive Benbrook's rights under a legal theory of sovereign or governmental immunity; nor does it waive the City's rights under a legal theory of sovereign or governmental immunity.
9. Nothing contained in this Amendment No. 1 is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary

is hereby expressly disavowed. It is understood and agreed that this Amendment No. 1 does not create a joint enterprise, nor does it appoint any Party as an agent of any other Party, for any purpose whatsoever.

- 10. This Amendment No. 1 becomes effective when signed by the last Party whose signing makes the Agreement fully executed and remains in force and effect until the completion and acceptance of the Study unless otherwise terminated.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals.

CITY OF BENBROOK:

CITY OF FORT WORTH

Andy Wayman
City Manager

Fernando Costa
Assistant City Manager

Date: _____

Date: _____

ATTEST:

RECOMMENDED BY:

Joanna King
City Secretary

Douglas W. Wiersig
Director, Transportation Public Works

APPROVED AS TO FORM
AND LEGALITY:

M&C _____

Douglas W. Black
Assistant City Attorney

Date: _____

ATTEST

Ronald P. Gonzales
Assistant City Secretary