VIA TELEPHONE CONFERENCE

NOTICE IS HEREBY GIVEN in accordance with order of the Office of the Governor issued March 16, 2020, the City Council of the City of Benbrook will conduct its Regular Meeting scheduled for **7:30 p.m.** on **Thursday September 3, 2020**, in the City Council Chambers, 911 Winscott Road, Benbrook, Texas by telephone conference in order to advance the public health goal of limiting face-to-face meetings (also called "social distancing") to slow the spread of the Coronavirus (COVID-19). While this meeting is open to the public, social distancing will be enforced.

For this meeting, the presiding officer will be physically present at the location described above. However, one or all other members of the City Council may participate in this meeting remotely through telephone conference providing for two-way audio communication for each member of the City Council.

This Notice and Meeting Agenda, and the Agenda Packet, are posted online at http://www.benbrook-tx.gov/AgendaCenter.

The public toll-free dial-in number to participate in the telephonic meeting is: 1-866-894-9011 or local number 817-443-6248.

The public will be permitted to offer public comments telephonically as provided by the agenda and as permitted by the presiding officer during the meeting. This meeting will be recorded, and the recording will be available to the public in accordance with the Open Meetings Act upon written request

AGENDA

BENBROOK CITY COUNCIL
THURSDAY, SEPTEMBER 3, 2020
911 WINSCOTT ROAD, BENBROOK, TEXAS
PRE-COUNCIL WORKSESSION 7:00 P.M.
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. CITIZEN COMMENTS ON ANY AGENDA ITEM

III. MINUTES

1. Approve Minutes Of The Regular Meeting Held August 20, 2020

Documents:

CC MINUTES-08-20-20.PDF

IV. PRESENTATION BY ECONOMIC DEVELOPMENT CORPORATION

EDC-2020-03 Ratify The Benbrook Economic Development Corporation Budget For FY2020/2021

Documents:

EDC-2020-03 EDC BUDGET 2020-2021.PDF

EDC-2020-04 Approve Economic Development And Performance Agreement Between The City Of Benbrook, The Benbrook Economic Development Corporation (BEDC), And Kenneth Russell, And A Temporary Commercial Lease Agreement Between The BEDC And Kenneth Russell (Public Hearing)

Documents:

EDC-2020-04 DEVELOPMENT AGREEMENT RUSSELL.PDF
EDC-2020-04 AGREEMENT RUSSELL.PDF

V. REPORTS FROM CITY MANAGER

A. GENERAL

G-2480 Adopt Resolution Authorizing The City Manager To Execute An Interlocal Agreement For Mutual Aid For Information Technology Services

Documents:

G-2480 ILA MUTUAL AID TECHNOLOGY.PDF
G-2480 RESOLUTION AND EXHIBIT.PDF

VI. OTHER MATTERS OF BUSINESS

1. Second Public Hearing On Proposed Budget For FY 2020/2021

VII. 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 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

VIII. 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.

IX. ADJOURNMENT

WORKSESSION

1. Discuss Municipal Complex
2. Discuss City Council/Citizen Email and Correspondence

MINUTES
OF THE
MEETING OF THE
BENBROOK CITY COUNCIL
THURSDAY, AUGUST 20, 2020

The regular meeting of the Benbrook City Council was held on August 20, 2020 at 7:30 p.m. in the Council Chambers with the following Council members present:

Jerry Dittrich, Mayor
Renee Franklin-via Telephone Conference
Larry Marshall- via Telephone Conference
Dustin Phillips-via Telephone Conference
Jim Wilson-via Telephone Conference
Laura Mackey-via Telephone Conference
Jason Ward-via Telephone Conference

Also Present:
Andy Wayman, City Manager
Jim Hinderaker, Assistant City Manager
Joanna King, City Secretary
Beth Fischer, Deputy City Secretary
Rick Overgaard, Finance Director
Wes Cooper, Systems Administrator

I. CALL TO ORDER

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

II. CITIZEN COMMENTS ON ANY AGENDA ITEM

Mayor Dittrich paused the meeting for any citizen comments on any agenda item via telephone conference. There were no calls.

III. MINUTES

1. Minutes of the regular meeting held August 6, 2020

Motion by Mr. Wilson, seconded by Dr. Marshall to approve the minutes of the regular meeting held August 6, 2020.

Vote on the Motion by Roll Call:

Ayes: Ms. Franklin, Dr. Marshall, Mr. Phillips, Mayor Dittrich, Mr. Wilson, Ms. Mackey, Mr. Ward

Noes: None

Motion carried unanimously.

IV. REPORTS FROM CITY MANAGER

A. GENERAL

G-2477 Accept Finance Report for period ending July 31, 2020

Rick Overgaard gave the following report: General Fund revenues for the month of July were $750,966. Major revenues collected for the month include Property taxes of $122,488, Franchise taxes of $23,229, Fines and Forfeitures of $61,876, Charges for Services of $70,897, Permits of $78,318, Interest of $5,723, and Other Agency of $80,424. Sales tax collected and recognized as revenue in July was $304,404. Fiscal year to date sales tax is 20.39% greater than last year at this time. General Fund revenues collected through the end of July were $19,513,002 and 92.6% of the budget.

General Fund expenditures for the month of July were $1,562,564. Fiscal year to date expenditures were $16,762,997 and 79.7% of the adopted budget.

Total General Fund revenues of $19,513,002 were greater than General Fund expenditures of $16,762,997 by $2,750,005.

Debt Service revenues for the month of July totaled $4,302 and were all from property tax. Fiscal year to date revenues total $1,550,332. Expenditures for July were $52,135 and were for debt service payments due August 1st. The next debt service payments will occur in February 2021. Total revenues of $1,550,332 exceeded total expenditures of $1,549,905 by $427.

EDC revenues through July 31, 2020, were $1,491,984. EDC expenditures through the end of July were $1,392,380. Total revenues exceeded total expenditures by $99,604.

Total revenues received through July 31, 2020 were $3,863,128 from stormwater utility fees, mineral lease revenue, TIF payment, and interest earnings. Total expenditures for the Capital Projects Fund were $4,211,063 through the end of July. July expenditures included the following projects: Highway 377 and Clearfork Emergency Access Bridge. Total expenditures exceeded total revenues by $347,935. Sufficient funds are available in the current fund balances of the Capital Projects Fund. This fund operates on a project basis rather than a specific fiscal year.

On July 31, 2020, the City had $19,654,326 invested at varying interest rates; the EDC had $4,663,104 available.

Motion by Dr. Marshall, seconded by Mr. Phillips to accept the finance report for the period ending July 31, 2020.

Vote on the Motion by Roll Call:

Ayes: Dr. Marshall, Mr. Phillips, Mayor Dittrich, Mr. Wilson, Ms. Mackey, Mr. Ward, Ms. Franklin

Noes: None

Motion carried unanimously.

G-2478 Accept Drainage Easement across Oncor Transmission Line Property

Jim Hinderaker gave the following report As part of the approved Whitestone Crest Phase 2 Addition development plan, the developer, SJ Rolling Hills Development LP, secured a 100-foot wide drainage easement across Oncor's transmission line property known as the Benbrook 345 KV Tap Line (North) and Benbrook 345 KV Tap Line (South).

The drainage easement is necessary to legally convey public storm water generated by non-pervious improvements associated with the Whitestone Crest Phase 1 and 2 developments across Oncor's transmission line property to a 60-inch inlet located at the northwest corner of the Whitestone Ranch Phase 4 Addition

The developer is responsible for the initial grading, revegetation and headwall improvements associated with the project.

Motion by Ms. Franklin, seconded by Ms. Mackey to approve the drainage easement, as described in the attached drainage easement agreement.

Vote on the Motion by Roll Call:

Ayes: Mr. Phillips, Mayor Dittrich, Mr. Wilson, Ms. Mackey, Mr. Ward, Ms. Franklin, Dr. Marshall

Noes: None

Motion carried unanimously.

V. OTHER MATTERS OF BUSINESS

1. Public Hearing on Property Tax Rate for 2020

Rick Overgaard gave the following summary of the proposed 2020 Property Tax Rate:

No-New-Revenue and Voter-Approval Tax Rates (per $100 valuation)

- No-New-Revenue Tax Rate $0.601195
- Voter-Approval Tax Rate $0.623936
- Proposed Tax Rate $0.622500

Proposed Ad Valorem Tax Rates (per $100 valuation)

- General Fund $0.6015
- Debt Service Fund $0.0210
- Operating Funds $0.6225

Changes in Assessed Valuations

- Certified Appraised Value 5.08%
- Total Taxable Value 3.65%

Assessed Value Data

- New Construction $40,977,168
- One Cent of Property tax $ 237,728

At the August 6, 2020 City Council meeting the Finance Director presented the certified appraisal roll from Tarrant Appraisal District (TAD). City Council accepted the certified appraisal roll and appointed the Finance Director to calculate and publish the No-New-Revenue tax rate and Voter-Approval tax rate, and enter tax data in www.tarranttaxinfo.com portal. Notices were published in the Fort Worth Star-Telegram on August 12, 2020. The public hearing on the tax rate is being held tonight, August 20, 2020. The City Council will also adopt the 2020 Property Tax Rate at tonight's meeting (August 20, 2020).

Mayor Dittrich opened the public hearing at 7:51 p.m. and announced that the telephone lines were open to accept citizen input on the proposed tax rate. After three minutes there were no calls received.

Mayor Dittrich closed the public hearing at 7:54 p.m.

G-2479 Adopt Ordinance fixing and levying ad valorem tax for 2020

Motion by Ms. Franklin, seconded by Mr. Ward that the property tax rate be increased by the adoption of a tax rate of $0.6225, which is effectively a 3.54% increase in the tax rate.

Vote on the Motion by Roll Call:

Ayes: Mayor Dittrich, Mr. Wilson, Ms. Mackey, Mr. Ward, Ms. Franklin, Dr. Marshall, Mr. Phillips

Noes: None

Motion carried unanimously.

Ordinance No. 1258 being **"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS, FIXING AND LEVYING MUNICIPAL AD VALOREM TAXES FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020 AND ENDING SEPTEMBER 30, 2021, AND FOR EACH YEAR THEREAFTER UNTIL OTHERWISE PROVIDED, AT THE RATE OF $0.6225 PER ONE**

HUNDRED DOLLARS ($100.00) ASSESSED VALUE ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE CITY OF BENBROOK, TEXAS, AS OF JANUARY 1, 2020, TO PROVIDE REVENUES FOR THE PAYMENT OF CURRENT EXPENSES AND TO PROVIDE AN INTEREST IN DEBT SERVICE FUNDS ON ALL OUTSTANDING DEBTS OF THE CITY; DIRECTING THE ASSESSMENT THEREOF; PROVIDING FOR DUE AND DELINQUENT DATES TOGETHER WITH PENALTIES AND INTEREST THEREON; PROVIDING FOR PLACE OF PAYMENT; PROVIDING FOR APPROVAL OF THE TAX ROLLS PRESENTED TO THE CITY COUNCIL; PROVIDING FOR THE REPEAL OF INCONSISTENT ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE AND DECLARING AN EFFECTIVE DATE.

2. First Pubic Hearing on proposed budget for FY 2020/2021

Rick Overgaard gave the following summary of the 2020-2021 Proposed Budget:

- 2019/2020 tax rate $0.62777
- Adopted 2020/2021 tax rate $0.62250

Revenues and Transfers In

- General Fund $21,268,900
- Debt Service Fund $ 1,719,267
- Operating Funds $22,988,167

Expenditures and Transfers Out

- General Fund $21,264,353
- Debt Service Fund $ 1,610,241
- Operating Funds $22,874,594

Transfers Out – General Fund

- Capital Asset Replacement $500,000

Transfers to Operating Funds

- Road Damage Fund $ 22,439
- Storm Water Utility Fund $733,366
- TIF Fund $501,203

Projected Ending Fund Balances

- General Fund $8,500,767
- Debt Service Fund $ 453,430
- Operating Funds $8,954,197

Budget Highlights (Base Budget)

- Continuation of current services, programs and staffing levels
- No Decision Packages

- No Cost of Living Adjustment for Full-Time Employees
- Flat Sales Tax growth
- Purchase Fire Truck per Capital Improvements Program
- Increase Asphalt Overlay Program per Capital Improvements Program

Debt Service Fund

- Principal and interest payments for three General Obligation Bond issues
- Transfers from Storm Water Utility Fund and TIF Fund for related debt - $1,234,569
- Debt Service Property Tax Rate at $0.0210

This is the first public hearing on the proposed Fiscal Year 2020-2021 budget. The next public hearing will be held on September 3, 2020. City Council will adopt the FY 2020-2021 budget and ratify property tax revenue increase at the September 17, 2020 meeting.

Mayor Dittrich opened the public hearing at 8:00 p.m. and announced that the telephone lines were open to accept citizen input on the proposed budget. After three minutes there were no calls received.

Mayor Dittrich closed the public hearing at 8:03 p.m.

VI. INFORMAL CITIZEN COMMENTS

Mayor Dittrich paused the meeting for any informal citizen comments via telephone conference. There were no calls.

VII. COUNCIL MEMBER AND STAFF COMMENTS

Jim Hinderaker gave report on COVID-19.

VIII. ADJOURNMENT

Meeting adjourned at 8:09 p.m.

APPROVED:

_____

Jerry B. Dittrich, Mayor

ATTEST:

_____

Joanna King, City Secretary

City of Benbrook

CITY COUNCIL COMMUNICATION

DATE:	REFERENCE NUMBER:	SUBJECT:	PAGE:
09/03/2020	EDC-2020-03	Ratify the Benbrook Economic Development Corporation Budget for FY2020/2021	1 of 2

The proposed Economic Development Corporation (EDC) FY2020/2021 budget totals $1,553,486. City departments submit budgets for City Manager and Finance Department review. While administrative/operating costs are approved through the normal city review process, the EDC board of directors considers, approves, and recommends EDC project funding, as generally described in account(s) 5700.

A summary of the Benbrook Economic Development Corporation FY2020/2021 proposed budget, with corresponding accounts, is as follows:

Administrative Budget Accounts 5000-5300	$528,486
BEDC Projects - 5700	
5705 Storefront Improvement Grant (ongoing)	$200,000
5706 NW Winscott (enviro, maintenance, incidentals)	$100,000
5707 Westpark Corner (demo, maintenance, incidentals)	$75,000
5718 Timber Creek Center (reimburse façade improvements)	$150,000
5722 Benbrook Boulevard (infrastructure/beautification)	$500,000
TOTAL PROJECTS	$1,025,000
TOTAL BEDC FY2021 BUDGET	**$1,553,486**

End-of-Year Available Funds

On October 1, 2020, Staff projects a fund balance of approximately $4,606,840. Projected FY2020/2021 total revenue is approximately $1,500,000. The projected FY2020/2021 end-of-fiscal-year fund balance is $4,553,354; notwithstanding unanticipated budget adjustments for new project expenditures and possible revenue from the sale of EDC-owned properties.

At their August 17, 2020 regular meeting, the BEDC board conducted a public hearing and unanimously approved the budget. There were no citizen comments.

SUBMITTED BY:	DISPOSITION BY COUNCIL: ☐ APPROVED ☐ OTHER (DESCRIBE)	PROCESSED BY: CITY SECRETARY
CITY MANAGER		DATE:

RECOMMENDATION

The Benbrook Economic Development Corporation (BEDC) Board of Directors recommends that City Council approve the BEDC budget for FY2020/2021.

City of Benbrook

CITY COUNCIL COMMUNICATION

DATE:	REFERENCE NUMBER:	SUBJECT:	PAGE:
09/03/2020	EDC-2020-04	Approve Economic Development and Performance Agreement between the City of Benbrook, the Benbrook Economic Development Corporation (BEDC), and Kenneth Russell, and a Temporary Commercial Lease Agreement between the BEDC and Kenneth Russell (Public Hearing)	1 of 2

Russell Feed & Supply, located at 8704 Benbrook Boulevard, has been in operation since 1997, when Kenneth Russell purchased three feed stores in the area. For over 20 years, Mr. Russell has provided farmers, ranchers, and homeowners with needed supplies, from horse and cattle feed, to pet care items, vaccination clinics, and lawn and garden products.

Located at the corner of Benbrook Boulevard and Mercedes Street, the 9,650sf feed store is small but growing business, and Mr. Russell is seeking to purchase adjacent city-owned tracts to expand his business.

City staff has been working with the Russell team to reach agreement on a new development that meets Russell's operation needs, encourages construction of a new building with enhanced material and architectural elements, and accommodates public art features that help elevate the City's brand on this prominent commercial corridor.

ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT

Staff worked with Russell and the City Attorney to draft the attached Economic Development and Performance Agreement. The agreement outlines a process whereby Kenneth Russell can acquire the city-owned properties to construct a new Russell Feed & Supply, as depicted in the agreement Exhibits.

The Agreement outlines obligations of each party, along with timelines. Some items are listed below:

City Obligations

- Prepare bid documents in accordance with attached agreement Exhibits.
- Retain ownership and provide maintenance, repair, and upkeep of approximately 4,000sf on the Mercedes corner to showcase public art and branding elements.

Russell Obligations

- Submit appropriate bid to purchase the city property.
- File appropriate applications for any required replat, rezone, and conditional use permitting.

SUBMITTED BY:	DISPOSITION BY COUNCIL: ϒ APPROVED ϒ OTHER (DESCRIBE)	PROCESSED BY: CITY SECRETARY
CITY MANAGER		DATE:

- Perform all necessary site improvements required to construct the new facility.
- Obtain all necessary permits and insurances.
- Design and construct the facility and obtain required certificate of occupancy.

BEDC Obligations

- Reimburse Russell for costs associated with site improvements, not to exceed $186,000.
- Authorize, fund, and maintain all city branding features of the project to include a community mural along the north wall of the new building, and public art or other elements on the Mercedes corner.
- Temporarily lease to Russell the existing EDC-owned Marc's Automotive property, located at 9331 and 9351 Westpark Drive.

TEMPORARY COMMERCIAL LEASE AGREEMENT

To avoid interruption in Benbrook Russell Feed & Supply operations while construction of the new facility is ongoing, the attached lease agreement (Exhibit "C" of the developer agreement) allows Kenneth Russell to temporarily lease the EDC-owned property, at no cost, for a period of up to 12-months, with a possible extension, if needed.

RECOMMENDATION

Following a public hearing, the Benbrook Economic Development Corporation (BEDC) board of directors recommends that City Council approve the Economic Development and Performance Agreement between the City of Benbrook, the Benbrook Economic Development Corporation (BEDC), and Kenneth Russell, and approve a Temporary Commercial Lease Agreement between the BEDC and Kenneth Russell.

ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE CITY OF BENBROOK, THE BENBROOK ECONOMIC DEVELOPMENT CORPORATION, AND KENNETH RUSSELL.

This Economic Development and Performance Agreement ("Agreement") is made and entered into by and between the City of Benbrook, the Benbrook Economic Development Corporation, and Kenneth Russell ("Russell"). The Benbrook Economic Development Corporation (the "BEDC") is a nonprofit corporation organized under the Development Corporation Act of 1979, codified in Subtitle C1 of Title 12 of the Texas Local Government Code (Chapters 501 through 505) (the "Act"); and the City of Benbrook, Texas, a Texas home rule municipality (the "City") for the purposes and considerations stated below:

RECITALS:

1. Russell owns and operates Russell Feed & Supply located at 8704 Benbrook Boulevard, in Benbrook, Texas ("Russell Property").

2. The City owns parcels of real estate located adjacent to the Russell Property located at the corner of Benbrook Boulevard and Mercedes Street, and addressed as 8700 and 8730 Benbrook Boulevard, comprising approximately 1.623 acres depicted on EXHIBIT "A" ("City Property").

3. Russell seeks to acquire a portion of the City Property, replat it to combine with the Russell Property, and construct a new Russell Feed & Supply store (the "Facility") in accordance with this document as approved by City staff.

4. The City desires to convey a portion of the City Property in order that it be developed substantially as depicted and described on EXHIBIT "B" to better complement Benbrook Boulevard, encourage new development that incorporates the use of enhanced material and architectural elements that cities are currently disallowed from requiring due to the passage of HB 2439 by the 86th Texas Legislature, and elevate the City's brand on this prominent corner in Benbrook.

5. The City intends to retain approximately 4,000 square feet at the corner of Mercedes Street and Benbrook Boulevard ("Mercedes Corner") to showcase public art and branding elements, and to create a synergy that promotes continued quality development on Benbrook Boulevard.

6. The BEDC desires to facilitate and incentivize the construction of the Facility and to contribute to the enhancement on Mercedes Corner.

7. Construction of the Facility requires that the existing Russell Feed & Supply building be demolished and the BEDC desires to provide temporary lease space for Russell to operate his business during the construction of the Facility, according to the terms of this Agreement, as described in a Temporary Commercial Lease Agreement, attached as EXHIBIT "C".

8. The BEDC has determined and found that the development of the Facility, as defined herein, will create jobs as defined by the Act, and that the expenditure of the BEDC is suitable or required for the development of a new or expanded business enterprise, and falls within the definition of a Project as defined in Section 505.157 of the Act.

9. The BEDC, which has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to City as a result of Russell's development and operation of the Facility, desires to have Russell construct the Facility. This Facility will increase the taxable value of the Property and will directly and indirectly result in the creation of additional jobs throughout the City and the value of the benefits of the development of the Facility will outweigh the amount of expenditures required of the BEDC under this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Authorization.**

This Agreement is authorized by the Act.

2. **Definitions.**

CAPITAL INVESTMENT means and shall include all costs incurred relating to the improvement of the Property, including the actual construction costs and other costs of all buildings, structures, infrastructure, fixed machinery and equipment, utilities, landscaping and other onsite and offsite improvements, including without limitation all labor and materials, engineering costs, surveying costs, fees of consultants, designers and other professionals, landscape design, platting fees, permit fees, geotechnical investigation, construction material testing, and inspection fees. It shall not include costs for financing the construction, marketing of the Facility, or land acquisition.

CERTIFICATE OF OCCUPANCY means the document issued by the City of Benbrook certifying the Facility is in compliance with applicable building codes and other laws and indicating it to be a condition suitable for occupying.

CITY, BEDC, RUSSELL PROPERTY and CITY PROPERTY have the meanings set forth in the recitals.

COMMENCE CONSTRUCTION has the meaning set forth in Section 4.B (1).

DEVELOPMENT means the construction of the Facility and Mercedes Corner.

FACILITY means the 15,445 square foot retail establishment constructed in conformance with EXHIBIT "B" and the requirements of this Agreement located on the Property for the operation of an expanded Russell Feed & Supply.

FTE means any employee on a forty (40) hour or more per week schedule or the combination of two (2) or more employees on part-time schedules equaling at least forty (40) hours.

INCENTIVES mean the payment by the BEDC to Russell pursuant to Section 6.A of this Agreement.

MERCEDES CORNER means the approximate 4,000 square foot parcel retained by the City out of the City Property, depicted and described on EXHIBIT "D".

PROPERTY means the resulting combined tracts comprised of the City Property and the Russell Property, excluding Mercedes Corner.

RUSSELL means Kenneth Russell or his heirs, executors, administrators, successors, or assigns.

3. **Term.**

This Agreement shall be effective as of the date of execution of all parties. This Agreement will terminate after all obligations by both parties are fulfilled, or as otherwise provided for in this Agreement.

4. **City Obligations.**

A. City Property. The City will prepare bid documents to market the City Property for development in accordance with EXHIBIT "B", with a sales price of no less than Six Hundred Eighty Six Thousand Eight Hundred Fifty Dollars ($686,850) and assurances from the successful bidder to develop the property in accordance with the plan herein contained, as approved by City staff.

B. Conditions to Sale of City Property.

(1) Should Russell fail to substantially commence site improvements and construction of the Facility within 180 days after a building permit is issued for the Facility, the City has the right, but not the obligation, to exercise its rights to repurchase the City Property under an option contract. For purposes of this Agreement, "commence construction" means to obtain a building permit for the Facility, have signed an agreement with a general contractor to construct the Facility, and the general contractor has poured the foundation for the Facility.

(2) The City shall have a first right of refusal to purchase the City Property should Russell offer the City Property for sale at any time prior to the Certificate of Occupancy being issued.

C. Mercedes Corner. The City will retain ownership and provide maintenance, repair and upkeep of Mercedes Corner.

5. **Russell Obligations.**

In consideration of the BEDC agreeing to provide the Incentives in accordance with the terms, provisions, and conditions of this Agreement, Russell agrees to the following, contingent upon his being the successful bidder to acquire the City Property.

A. Property Acquisition and Site Improvements.

(1) Close on City Property. Russell shall close on the City Property (less Mercedes Corner) no later than 90 days after notification of successful bid.

(2) Zoning and Platting. No later than 60 days after closing on the conveyed City Property, Russell shall file applications to replat the Russell Property and City Property and to rezone the Property and apply for a conditional use permit for outside storage and display.

(3) Building Permit. Russell shall secure a building permit for the Facility within 365 days after real estate closing.

(4) Site Improvements. Russell shall perform all necessary site improvements required to construct the Facility, including, but not limited to obtaining TxDOT approval for access drive(s), and relocating utilities.

B. Facility. In conjunction with the construction of the Facility, Russell agrees to the following:

(1) Be solely responsible for the design and construction of the Facility and shall comply with all subdivision regulations, building codes, and other ordinances of the City applicable to the Facility and its construction. The design of the Facility must be approved by the City of Benbrook (and such approval shall not be unreasonably withheld or delayed) prior to commencement of construction.

(2) Obtain a building permit and Commence Construction of the Facility no later than 180 days following property acquisition.

(3) Design and construct the Facility in substantial conformance with the development standards depicted and described on EXHIBIT "B" and the criteria and development standards set forth in the ordinances of the City, the requirements of this Agreement, as well as applicable state and federal laws, resulting in a Capital Investment of no less than One Million Nine Hundred Thousand Dollars ($1,900,000) at the time a Certificate of Occupancy is obtained.

(4) Obtain a Certificate of Occupancy for the Facility no later than 12 months after property acquisition, unless otherwise agreed upon in writing between the BEDC and Russell.

C. Use of Facility. Russell shall operate the Facility as Russell Feed & Supply for a period of 5 years after obtaining the Certificate of Occupancy.

D. Easements. Russell shall provide all necessary easements to allow City and public access through the Property to Mercedes Corner.

E. Public Art. Russell will provide stucco surface along approximately 75' x 12' north facing wall to accommodate a community mural, designed, commissioned, approved, and maintained by the BEDC; and shall allow the mural to remain on the Facility for no less than five (5) years. Thereafter the BEDC, City, and Russell may negotiate continued responsibilities.

F. Sign. Russell agrees to allow the BEDC to use the name Russell Development and representations of the Facility and the Development in promotion of the City of Benbrook and the BEDC.

G. FTE. Russell shall use best efforts to employ and retain at least 15 FTEs during the term of this Agreement.

6. **Duties of BEDC.**

A. Incentives to Russell. Provided Russell is in compliance with his obligations under this Agreement, the BEDC will reimburse Russell for costs associated with site improvements on the Property and the City-required building upgrades for the Facility listed on EXHIBIT "E" to this Agreement, at an amount not to exceed $186,000. Payment of the Incentives shall be contingent on Russell providing documentation satisfactory to the BEDC of those eligible costs. The Incentives shall be paid within thirty (30) days after issuance of the Certificate of Occupancy for the Facility.

B. Mercedes Corner. The BEDC will authorize, fund, and maintain all branding features located on Mercedes Corner. Examples of proposed branding features are set forth on EXHIBIT "F".

7. **Lease.**

A. Lease. As further incentive for Russell to construct and operate the Facility, and to permit the continued operation of Russell Feed & Supply in Benbrook during the construction of the Facility, the BEDC will enter into a lease agreement with Russell at no charge for the vacant offsite building owned by the BEDC at 9331 Westpark Drive and the adjacent tract at 9351 Westpark Drive (the "Lease Property"). The parties agree that the value of this incentive is Forty Eight Thousand Dollars ($48,000) for a twelve (12) month lease period.

B. BEDC Obligations Under Lease. The BEDC will remove existing signage from the Lease Property and will sponsor temporary roadway signage negating the need for a sign permit.

C. Russell Obligations Under Lease. Russell will be responsible to obtain required permits, insurances, maintenance and repairs of the Lease Property, as outlined in the Temporary Commercial Lease Agreement attached, and to pay all associated fees for the following:

(1) Building permits for any structural, electrical, plumbing, HVAC, or fencing changes to the building on the Lease Property;

(2) Conditional use permit for outdoor storage and display; and

(3) Certificate of Occupancy prior to occupying the building.

8. **Regulations Regarding Building Products, Materials, or Methods.**

The parties hereto find that the area described herein constitutes an area of architectural importance and significance and the City Council of the City of Benbrook, Texas, hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Gov't Code (the "Code"). In consideration for the mutual covenants and conditions contained herein and pursuant to §3000.002(d) of the Code, Russell voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date hereof (the "Regulations") that govern the use or installation a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the property, regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, Russell voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The parties agree that: (a) the City will not issue any permits for the Property in violation of this Section; (b) the covenants contained within this Section constitute a material term of this Agreement; (c) Russell's voluntary consent to the application of the Regulations to the Property, as described in this Section, constitutes a material inducement for the City to authorize the Incentives described herein; (d) the covenants contained herein shall run with the land and shall bind Russell and all successors and assigns; and (e) this Section shall survive termination or expiration of this Agreement.

9. **Indemnification.**

RUSSELL, IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY AND THE BEDC ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PREMISES OR IMPROVEMENTS. RUSSELL AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, THE BEDC, THEIR OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, THE BEDC, THEIR OFFICERS, AGENTS OR EMPLOYEES.

10. **Access to Information.**

Russell agrees to provide the BEDC access to information related to the construction of the Facility during regular business hours upon reasonable notice. The BEDC shall have the right to require Russell to submit any necessary information, documents, invoices, receipts or other records to verify costs of the Capital Investment.

11. **Determination of Rough Proportionality.**

As additional consideration for the payment received by Russell from the BEDC under this Agreement, Russell hereby agrees that any land or property it donates to the City as part of the development of the Property and Facility for any public improvements is roughly proportional to the need for such land and Russell hereby waives any claim therefore that it may have. Russell further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said donation are related both in nature and extent to the impact of the Facility. Russell waives and releases all claims it may have against the City related to any and all rough proportionality and individual determination requirements mandated by Subchapter Z of Chapter 212, Texas Local Government Code, as well as other requirements of a nexus between development conditions and the projected impact of the Facility.

12. **Default.**

A. If a party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within thirty (30) days after delivery of written notice of such default from another party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages and/or specific performance for such default.

B. Should Russell fail to comply with any term of this Agreement, Russell shall have thirty (30) days after written notice from the BEDC to come into compliance. If the noncompliance is not cured within that period, Russell agrees to pay to the BEDC in accordance with this Subsection. Should Russell enter into the lease contemplated by Section 7 of this Agreement, but fail to timely construct the Facility, Russell shall repay the City the value of the lease within thirty (30) days of notice of default by the City. Should Russell fail to occupy the Facility as Russell Feed & Supply for a period of five (5) years after obtaining a Certificate of Occupancy, he shall repay the BEDC the Incentives provided in Section 6A on a prorated basis within thirty (30) days of notice of default. Should Russell fail to timely construct the Facility, the BEDC may determine that Russell forfeited his right to the Incentives provided under Section 6A.

13. **General Provisions.**

A. Mutual Assistance. Russell and the BEDC shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying the terms and provisions.

B. Representations and Warranties. Russell represents and warrants to the BEDC that it has the requisite authority to enter into this Agreement. Russell represents and warrants to the BEDC and the City that it will not violate any federal, state, or local laws in operating the business, that all proposed property improvements shall conform to the applicable building codes, zoning ordinances, and all other ordinances and regulations.

C. Section or Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

D. Attorneys Fees. In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action. Provided, however, all reasonable attorneys fees incurred by the BEDC or the City for preparation or review of any revision, modification, or amendment of this Agreement proposed by Russell following the original execution of this Agreement, and all reasonable attorneys fees incurred for preparation or review of other Russell-proposed additional or related documents shall be at Russell's sole cost.

E. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

F. Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by Russell, the City, and the BEDC.

G. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. Russell may assign all or part of its rights and obligations hereunder only upon prior written approval of the BEDC, which approval shall not be unreasonably withheld or delayed.

H. Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

RUSSELL: Kenneth Russell
Russell Feed & Supply
5710 Jacksboro Hwy
Fort Worth, Texas 76114-1570

BEDC: Director
Benbrook Economic Development Corporation
911 Winscott Road
P.O. Box 26569
Benbrook, Texas 76126

CITY: City Manager
City of Benbrook
911 Winscott Road
P.O. Box 26569
Benbrook, Texas 76126

with a copy to: Betsy Elam
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place
Suite 200
Fort Worth, Texas 76107

I. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

J. Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue shall lie in Tarrant County, Texas.

K. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

L. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

M. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

N. Covenant Running with the Land. All rights, covenants, restrictions, burdens, privileges and charges, set forth in this Agreement shall exist at all times as long as this Agreement is in effect, among all parties having any right, title. or interest in any portion of all of the Property.

O. Force Majeure. If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, failure, refusal or delay in issuing permits, approvals or authorizations), injunction or court order, terrorist attacks, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Agreement (but excluding delays due to financial inability), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

P. Compliance with Law. Russell covenants and certifies that it does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Russell or its branch, division, or department is convicted of a violation under 8 U.S.D. Section 1324a(f), Russell shall repay the BEDC the full amount of the Incentive made under this Agreement, plus 10% per annum from the date the Incentive was made. Repayment shall be paid within on hundred and twenty (120) days after the date Russell receives notice of violation from the BEDC.

BENBROOK ECONOMIC DEVELOPMENT CORPORATION

By: _____
Kent Williams, President

Date: _____

ATTEST:

_____
City Secretary

APPROVED AS TO FORM AND LEGALITY:

Betsy Spur
City Attorney

CITY OF BENBROOK

By: _____
Andy Wayman, City Manager

Date: _____

ATTEST:

_____
City Secretary

APPROVED AS TO FORM AND LEGALITY:

Betsy Spur
City Attorney

KENNETH RUSSELL

By:

Kenneth Russell

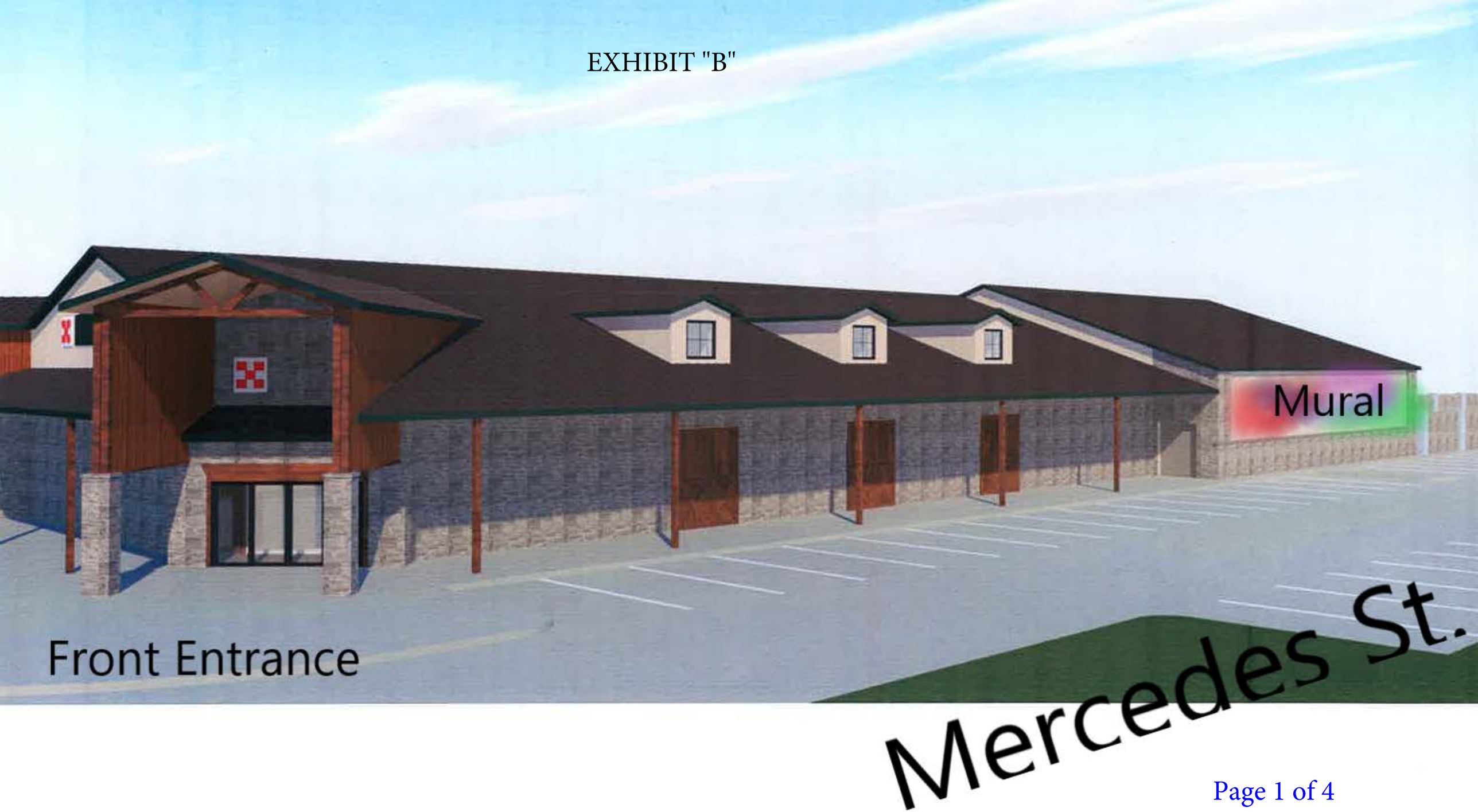
Date:

8/13/2020

EXHIBIT "A"

Russell's Feed & Supply - 8704 Benbrook Blvd.

EXHIBIT "B"



South
Front Entrance
Benbrook Blvd.

MURAL
Back of Building
Mercedes St.

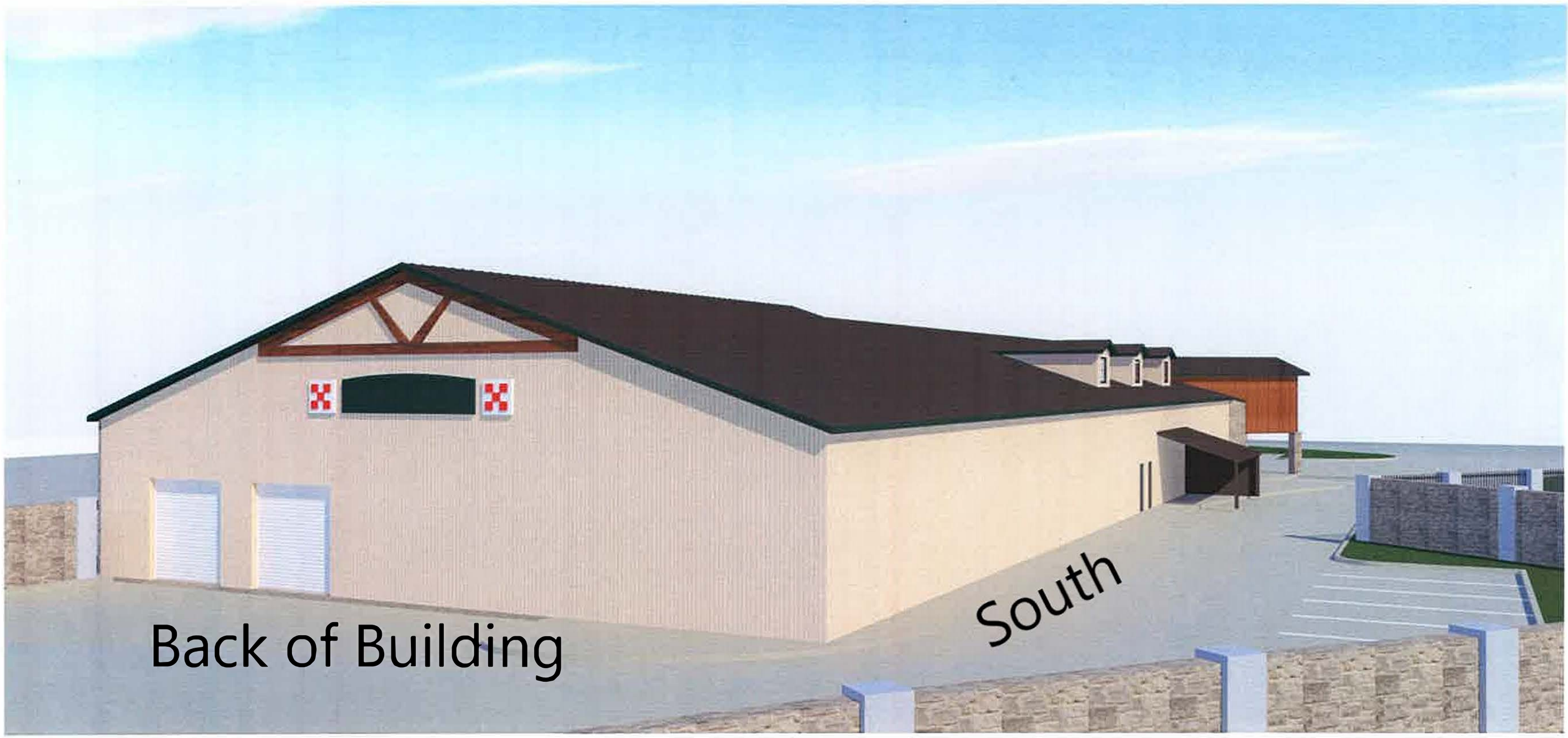

Back of Building
South

EXHIBIT "C"

TEMPORARY COMMERCIAL LEASE AGREEMENT

For good and valuable consideration, the parties to this Temporary Commercial Lease Agreement (the "**Lease**") agree as follows:

ARTICLE ONE

DEFINED TERMS

As used in this Lease, the terms set forth in this Article One have the following meanings:

1.01 Effective Date: [TBD]

1.02 Landlord: **Benbrook Economic Development Corporation**,
a Texas economic development corporation

Address: attn: Cathy Morris
Economic Development and Marketing Director
911 Winscott Road, Benbrook, Texas 76126
Phone: 817-249-6090
Email: cmorris@benbrook-tx.gov

1.03 Tenant: **[Kenneth Russell]**

Address: 5710 Jacksboro Hwy, Fort Worth, TX 76114
Phone: 817- 624-6224
Email: krussell57fish@aol.com

1.04 Premises:

Block C, Lots 2R and 3R1 of the Westpark Addition to the City of Benbrook, Tarrant County, Texas, commonly known by the street addresses of 9331 and 9351, Westpark Drive, Benbrook, Texas 76126

1.05 Term:

From the Effective Date until **[TBD]**, as may be shortened or extended by agreement of the parties (the "**Expiration Date**"). Landlord agrees that it shall not unreasonably agree to extend this Lease, for a reasonable period of time not to exceed three (3) months, in the event that Tenant, upon the exercise of due diligence, is unable to complete the construction of its intended new location by the Expiration Date.

1.06 Base Rent: **None - Zero Dollars ($0.00)**

1.07 Security Deposit: **None**

1.08 Permitted Use: _____

_____

LANDLORD'S INITIALS _____ TENANT'S INITIALS _____

ARTICLE TWO

LEASE AND TERM

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord for the Term stated in Section 1.05 and the Base Rent stated in Section 1.06.

ARTICLE THREE

INSURANCE AND INDEMNITY

3.01 Property Insurance. Landlord shall not be required to maintain insurance policies covering damage to the Premises. Tenant may, at Tenant's sole expense, obtain and maintain insurance on Tenant's fixtures, equipment and improvements in or on the Premises as Tenant reasonably deems necessary to protect Tenant's interest. Any property insurance carried by Landlord or Tenant will be for the sole benefit of the party carrying the insurance and under its sole control.

3.02 Liability Insurance. During the Term, Tenant shall maintain a commercial general liability insurance policy, at Tenant's expense, insuring Tenant against liability arising out of the use or occupancy of the Premises, and naming Landlord as an additional insured. The initial amounts of the insurance must be at least $1,000,000.00 for Each Occurrence, $2,000,000.00 General Aggregate per policy year, and $500,000.00 Medical Expense. The coverage amounts will be subject to periodic increases as Landlord may reasonably determine from time to time. The amounts of the insurance will not limit Tenant's liability or relieve Tenant of any obligation under this Lease. The policies must contain cross-liability endorsements and must insure Tenant's performance of the indemnity provisions of Section 5.04. The policies must contain a provision that prohibits cancellation or modification of the policy except upon thirty (30) days' prior written notice to Landlord. Tenant shall deliver a copy of the policy or certificate of insurance to Landlord before the Commencement Date and before the expiration of the policy during the Term. If Tenant fails to maintain the policy, Landlord may elect to maintain the insurance at Tenant's expense or terminate the Lease immediately.

3.03 Indemnity. Landlord will not be liable to Tenant or to Tenant's employees, agents, invitees or visitors, or to any other person, for any injury to persons or damage to property on or about the Premises or any adjacent area owned by Landlord caused by the negligence or misconduct of Tenant, Tenant's employees, subtenants, agents, licensees or concessionaires or any other person entering the Premises under express or implied invitation of Tenant, or arising out of the use of the Premises by Tenant and the conduct of Tenant's business, or arising out of any breach or default by Tenant in the performance of Tenant's obligations under this Lease. Tenant hereby agrees to defend, indemnify and hold Landlord harmless from any loss, expense or claims arising out of such damage or injury.

3.04 Waiver of Subrogation. Each party to this Lease waives any and every claim that arises or may arise in its favor against the other party during the Term of this Lease for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises, to the extent the loss or damage is covered by and recoverable under valid and collectible insurance policies. These mutual waivers are in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties. Inasmuch as these mutual waivers will preclude the assignment of any such claim by way of subrogation to an insurance company (or any other person), each party agrees to immediately give to each insurance company that has issued an insurance policy to such party written notice of the terms of such mutual waivers, and to cause the policies to be endorsed to prevent the invalidation of the insurance coverage by reason of these waivers.

ARTICLE FOUR

USE OF PREMISES

4.01 Permitted Use. Tenant may use the Premises only for the Permitted Use stated in Section 1.08. Tenant has independently investigated and verified to Tenant's satisfaction the extent of any limitations or non-conforming uses of the Premises and Tenant is not relying upon any representations of Landlord with respect to any such matters.

4.02 Compliance with Laws. Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises, and will promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances and other activities in or upon, or connected with the Premises, all at Tenant's sole expense.

4.03 Utility Services. Tenant shall pay the cost of all utility services used for the Premises, including, but not limited to, initial connection charges and all charges for electricity, gas, water, sewer, storm water disposal, trash removal, telephone, Internet access and other communication services, and any other services that are commonly understood to be utilities, and the cost of replacing light bulbs and tubes.

4.05 Landlord's Access. Landlord and Landlord's agents will have the right to, upon reasonable advance notice, and without unreasonably interfering with Tenant's business, enter the Premises: (a) to inspect the general condition and state of repair of the Premises, (b) to make any repairs required or permitted under this Lease, (c) to show the Premises or the Property to any prospective tenant or purchaser, and (d) for any other reasonable purpose. If Tenant changes the locks on the Premises, Tenant must provide Landlord with a copy of each separate key.

4.06 Exemptions from Liability. Landlord will not be liable for any damage to the business (including any loss of income), goods, inventory, furnishings, fixtures, equipment, merchandise or other property of Tenant, Tenant’s employees, invitees or customers, or for any injury to Tenant or Tenant's employees, invitees, customers or any other person in or about the Premises, whether the damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or wind; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising on or about the Premises or other portions of the Property, or from other sources or places; or (d) any act or omission of any other occupant of the Property.

ARTICLE FIVE

PROPERTY CONDITION, MAINTENANCE, REPAIRS AND ALTERATIONS

5.01 Property Condition/Acceptance of Premises. Tenant has inspected, or has had an opportunity to inspect, the Premises, before the execution of this Lease. Tenant has determined that the Premises may be used for the Permitted Use. Tenant agrees to accept the Premises in “**AS IS**” condition and with all faults. Tenant waives any implied warranties of Landlord as to the quality or condition of the Premises or the Property, or as to the fitness or suitability of the Premises or the Property for any particular use.

5.02 Maintenance and Repairs. Landlord will not be required to perform any capital expenditure, replacement, maintenance or repairs, to the Premises whatsoever. Tenant will be fully responsible, at Tenant’s expense, for any and all needed maintenance and repairs.

ARTICLE SIX

DAMAGE OR DESTRUCTION

In the event of any damage or destruction of the Premises, Landlord shall not have any obligation to rebuild, repair or replace any part of the Premises. In such event, Tenant's only right shall be to terminate the Lease and vacate the Premises.

ARTICLE SEVEN

LANDLORD'S INITIALS _____ TENANT'S INITIALS _____

ASSIGNMENT AND SUBLETTING

Tenant may not assign this Lease or sublet the Premises or any portion thereof. Landlord may assign this Lease to any purchaser of the Property.

ARTICLE EIGHT

ENVIRONMENTAL REPRESENTATIONS AND INDEMNITY

8.01 Tenant's Compliance with Environmental Laws. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of Federal, State, county and municipal authorities pertaining to Tenant's use of the Property and with the recorded covenants, conditions and restrictions, regardless of when they become effective, including, without limitation, all applicable Federal, State and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and with any direction of any public officer or officers, pursuant to law, which impose any duty upon Landlord or Tenant with respect to the use or occupancy of the Property.

8.02 Tenant's Indemnification. Tenant shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Property by Tenant, or Tenant's agents, employees, contractors or invitees without the prior written consent of Landlord. If the presence of Hazardous Materials on the Property caused or permitted by Tenant results in contamination of the Property or any other property, or if contamination of the Property or any other property by Hazardous Materials otherwise occurs for which Tenant is legally liable to Landlord for damage resulting therefrom, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of rentable or unusable space or of any amenity or appurtenance of the Property, damages arising from any adverse impact on marketing of building space or land area, sums paid in settlement of claims, reasonable attorneys' fees, court costs, consultant fees and expert fees) that arise during or after the Term as a result of the contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial work, removal or restoration work required by any Federal, State or local government agency because of Hazardous Materials present in the soil or ground water on or under the Property. Without limiting the foregoing, if the presence of any Hazardous Materials on the Property (or any other property) caused or permitted by Tenant results in any contamination of the Property, Tenant shall promptly take all actions at Tenant's sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Materials, provided that Landlord's approval of such actions is first obtained.

8.03 Definition. For purposes of this Lease, the term **"Hazardous Materials"** means any one or more pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent or oil as defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Clean Water Act, as amended, the Water Pollution Control Act, as amended, the Solid Waste Disposal Act, as amended, or any other Federal, State or local environmental law, regulation, ordinance, or rule, whether existing as of the date of this Lease or subsequently enacted.

8.04 Survival. The representations and indemnities contained in this Article Eight will survive the expiration or termination of this Lease.

LANDLORD'S INITIALS _____ TENANT'S INITIALS _____

ARTICLE NINE

MISCELLANEOUS AND ADDITIONAL PROVISIONS

9.01 Amendments or Modifications. This Lease is the only agreement between the parties pertaining to the lease of the Premises and no other agreements are effective unless made a part of this Lease. All amendments to this Lease must be in writing and signed by all parties.

9.02 Notices. All notices and other communications required or permitted under this Lease must be in writing and will be deemed delivered, whether actually received or not, on the earlier of: (i) actual receipt if delivered in person or by messenger with evidence of delivery; or (ii) receipt of an electronic facsimile transmission ("Fax") or email ("Email") with confirmation of delivery; or (iii) upon deposit in the United States Mail as required below. Notices may be transmitted by Fax or Email to the Fax telephone number or email address specified in Article One of this Lease, if any. Notices delivered by mail must be deposited in the U.S. Postal Service, certified mail, return receipt requested, postage prepaid, and properly addressed to the intended recipient as set forth in Article One. Notices sent by any other means will be deemed delivered when actually received, with proof of delivery. After possession of the Premises by Tenant, Tenant's address for notice purposes will be the address of the Premises unless Tenant notifies Landlord in writing of a different address to be used for that purpose. Any party may change its address for notice by delivering written notice of its new address to all other parties in the manner set forth above.

9.03 Attorneys' Fees. If, on account of any breach or default by Tenant under this Lease, it becomes necessary for Landlord to employ an attorney to enforce or defend any of its rights or remedies under this Lease, Lessee agrees to pay Landlord its reasonable attorneys' fees and court costs, if any, whether or not suit is instituted in connection with the enforcement or defense.

9.04 Venue. All obligations under this Lease will be performed, payable and enforceable exclusively in Tarrant County, Texas. The laws of the State of Texas will govern this Lease.

9.05 Survival. All obligations of any party to this Lease that are not fulfilled at the expiration or the termination of this Lease will survive such expiration or termination as continuing obligations of the party.

9.06 Binding Effect. This Lease will inure to the benefit of, and be binding upon, each of the parties to this Lease and their respective heirs, representatives, successors and assigns. However, Landlord will not have any obligation to Tenant's successors or assigns unless the rights or interests of the successors or assigns are acquired in accordance with the terms of this Lease.

9.07 Patriot Act Representation. Landlord and Tenant each represent to the other that: (1) its property interests are not blocked by Executive Order No. 13224, 66 Fed. Reg. 49079; (2) it is not a person listed on the Specially Designated Nationals and Blocked Persons list of the Office of Foreign Assets Control of the United States Department of the Treasury; and (3) it is not acting for or on behalf of any person on that list.

LANDLORD EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND TENANT'S OBLIGATIONS HEREUNDER ARE NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ANY OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PERFORM ITS OBLIGATIONS, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.

LANDLORD'S INITIALS _____ TENANT'S INITIALS _____

This Lease shall be effective as of the Effective Date.

LANDLORD:

Benbrook Economic Development Corporation

By (Signature): _____
Name: Kent Williams
Title: President
Date of Execution: _____

TENANT:

[Kenneth Russell]

By (Signature): _____
Name: [Kenneth Russell]
Title: _____
Date of Execution: _____

LANDLORD'S INITIALS _____ TENANT'S INITIALS _____

EXHIBIT "D"

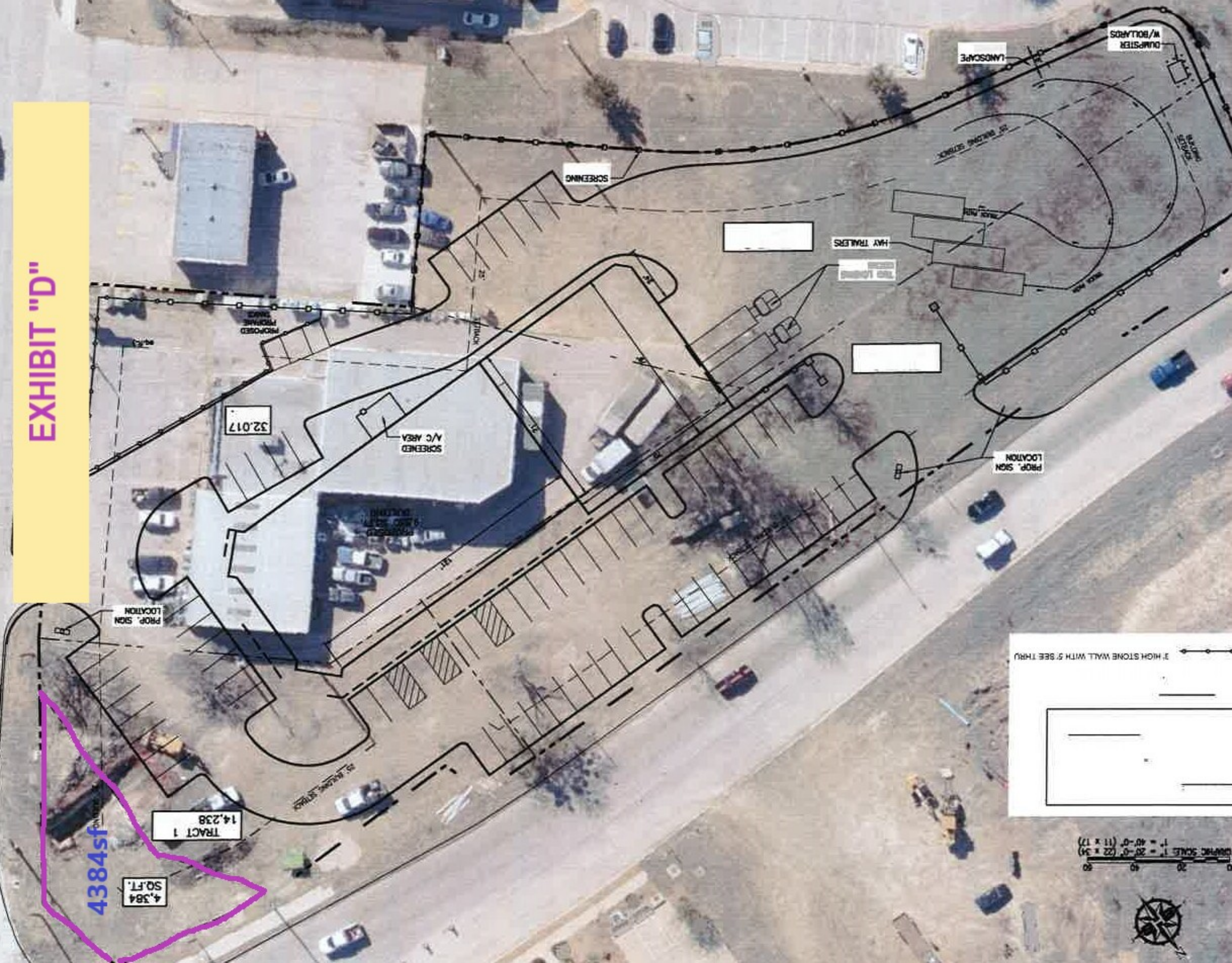

4384sf
4,384 SQ.FT.
TRACT 1
14,238
PROP. SIGN LOCATION
32.017
SCREENED A/C AREA
PROPOSED PROPANE TANKS
PROPOSED 9,000 SQ.FT. BUILDING
PROP. SIGN LOCATION
SCREENING
HAY TRAILERS
LANDSCAPE
DUMPSTER W/BOLLARDS
3' HIGH STONE WALL WITH 5' SEE THRU
GRAPHIC SCALE 1" = 20'-0" (22 x 34)
1" = 40'-0" (11 x 17)

EXHIBIT "E" - COST ESTIMATES ONLY

RUSSELL FEED
BENBROOK TEXAS
6/8/2020

Category	Code	Description	Bid	
01 GENERAL REQ.	01:1100	ARCH/PLANS	$ 10,000.00	
	01:1200	Engineering	$ 68,300.00	MEP/STRUCT/BHP CIVIL SURVEY
	01:1300	City Permits/Fees	$ 18,000.00	PERMIT/WATER SEWER?
	01:1500	Temp Facilities/Utilities	$ 2,500.00	
	01:1600	Interior Clean	$ 3,000.00	
	01:1700	Exterior Clean/Dumpster	$ 4,500.00	
		TOTAL	$ 106,300.00	
02 SITE WORK	02:2050	Basic Site Materials And M	$ 88,400.00	
	02:2500	Utility Services	$ -	
	02:2600	Drainage/Contain/Erosion	$ 6,000.00	SILT FENCE ETC
	02:2610	Soil Testing	$ 3,000.00	
	02:2800	SOIL INJECTION	$ 19,814.00	
	02:2900	Landscaping/Irrigation	$ 50,000.00	
	02:2950	Site Restoration And Rehab	$ 114,000.00	DEMO OLD BLDG/PAVING
		TOTAL	$ 281,214.00	
03 CONCRETE	03:3050	Basic Concrete Materials A	$ 160,000.00	SLAB AND PORCHES
	03:3100	Concrete Forms Set Por Lab	$ 18,500.00	DOCK WALLS
	03:3200	Concrete Reinforcement/Mat	$ -	
	03:3300	SIDEWALK AT STREET 5'X1100'	$ 30,250.00	CITY SIDEWALK
	03:3350	Parking/Flatwork	$ 315,585.00	70,000 SQ FT PAVING
	03:3360	CURBS	$ 15,000.00	1500 FT CURBS
	03:3400	Drilled Concrete Piers	$ -	
	03:3500	TRAFFIC CONTROL	$ 2,700.00	TRAFFIC CONTROL
	03:3600	Concrete Pump	$ 6,000.00	
		TOTAL	$ 548,035.00	
04 MASONRY	04:4050	Masonry Materials & Labor	$ 158,000.00	SPLIT FACE CMU FENCE AND CONCRETE FOOTING/PIERS AT COLS
	04:4200	Masonry Units/ Brick Allow	$ -	
	04:4400	Stone/Material Allowance	$ 35,000.00	2600 SQ FT STONE/1 SIGN
	04:4700	Simulated Masonry/Stucco/E	$ 16,700.00	2000 SQ FT STUCCO AT WAREHOUSE WALL AND DORMERS
		TOTAL	$ 209,700.00	
05 METALS	05:5100	Structural Metal Framing L	$ 320,000.00	
	05:5500	Metal Fabrications Steel S	$ 18,500.00	LOGOS /SHELVES
	05:5700	Ornamental Metal/ Wrought	$ 14,100.00	WROUGHT IRON FENCE AT PANEL YARD AND OVER HEAD
		TOTAL	$ 352,600.00	
06 CARPENTRY	06:6100	Rough Carpentry Labor	$ 50,000.00	ALL INTERIOR WALLS PORCHES CEDAR ETC
	06:6110	Frame Lumber/Materials	$ 55,000.00	ALL WOOD FRAME INTERIOR CEDAR MATERIALS
	06:6200	Trim/Finish Labor	$ 1,800.00	SET INTERIOR DOORS
	06:6210	Trim Mtls/Wood Doors	$ 4,500.00	INTERIOR DOORS/TRIM WINDOWS ETC
	06:6400	Cabinets/Arch Woodwork	$ 7,000.00	
	06:6500	Specialty	$ 4,200.00	ELIASON DOOR TO WAREHOUSE
		TOTAL	$ 122,500.00	
07 THERMAL & MOIST. PRO.	07:7200	Thermal Protection /Insula	$ 4,000.00	BATT EXTERIOR WALLS
	07:7300	Shingles, Roof Tiles, And	$ -	
	07:7400	Roofing And Siding Panels	$ -	
	07:7600	Flashing&Sheet Metal/Guter	$ -	
	07:7700	Roof Specialties And Acces	$ -	
	07:7800	Fire And Smoke Protection	$ -	
	07:7900	Joint Sealers/Lot Striping	$ 8,500.00	STRIPE PARKING LOT
		TOTAL	$ 12,500.00	
08 DOORS & WINDOWS	08:8100	Metal Doors And Frames	$ -	
	08:8300	Specialty Doors/ Garage Ov	$ -	
	08:8400	Entrances And Storefronts	$ 27,400.00	4 STANLEY AUTO DOORS
	08:8500	Windows	$ 1,600.00	2 FAUX BARN DOORS AT PORCHES CITY REQUEST
	08:8600	Skylights/Shower Doors	$ -	
	08:8650	Mirrors	$ -	
	08:8700	Hardware	$ 5,000.00	DOOR LOCKS GRAB BARS CLOSERS RESTROOM WALL COVERING ETC
	08:8900	Glazed Curtain Wall	$ -	
		TOTAL	$ 34,000.00	
09 FINISHES	09:9050	Basic Finish Materials And	$ 5,600.00	STAINLESS COUNTERS
	09:9060	Granite Counter Tops	$ 2,800.00	
	09:9070	Laminate Counter Tops	$ 1,200.00	
	09:9100	Metal Support Assemblies	$ -	
	09:9200	Drywall Mat/Lab	$ 7,200.00	ALL OFFICE WALLS AND CLG
	09:9210	Tape Bed/Texture	$ -	
	09:9300	Wall Tile Labor	$ -	
	09:9310	Wall Tile Mat/Allowance	$ -	
	09:9500	Ceilings/ Suspended Accous	$ -	
	09:9610	Carpet Mat/Lab	$ -	
	09:9630	Wood Labor	$ -	
	09:9640	Floor Tile Material Allowa	$ 1,200.00	MAT LABOR VINYL PLANK OFFICE /RESTROOM
	09:9650	Floor Tile Labor	$ -	
	09:9660	Stain Concrete	$ 20,000.00	
	09:9700	Wall Finishes Frp	$ -	
	09:9800	Punch Out Materials	$ -	
	09:9810	Punch Out Labor	$ -	
	09:9900	Paints And Coatings	$ 52,000.00	
		TOTAL	$ 90,000.00	
10 SPECIALTIES	10:10400	Identification/Signs	$ 300.00	
	10:10520	SIGN ALLOWANCE	$ 14,000.00	
		TOTAL	$ 14,300.00	

RUSSELL FEED
BENBROOK TEXAS
6/8/2020

11 EQUIPMENT	11:11200	Septic/Water Supply And T	$	-	
	11:11450	Appliance/ Allowance Resi	$	-	
		TOTAL	$	-	
12 FURNISHINGS	12:12300	Manufactured Casework	$	-	
		TOTAL	$	-	
13 SPECIAL COND.	13:13120	Pre-Engineered Structures	$	-	
	13:13150	Swimming Pools	$	-	
	13:13165	Water Well	$	-	
	13:13850	Detection And Alarm	$	4,500.00	
	13:13900	Fire Suppression	$	90,000.00	
		TOTAL	$	94,500.00	
14 CONVEYING	14:14160	Loading Dock Equipment	$	3,500.00	
	14:14200	Elevators	$	-	
		TOTAL	$	3,500.00	
15 MECHANICAL	15:15100	Plumbing Building Service	$	21,000.00	
	15:15200	L.P. Gas/Tank	$	4,500.00	
	15:15300	Fire Protection Piping	$	-	
	15:15400	Allownce/Plumbing Fixture	$	-	
	15:15700	HVAC Equipment	$	87,000.00	
		TOTAL	$	112,500.00	
16 ELECTRICAL	16:16050	Basic Electrical Material	$	82,000.00	
	16:16500	Owner Allowance Lighting	$	9,000.00	MISC LIGHTS AND BIG/FAN
	16:16700	ONCOR	$	8,700.00	ONCOR SERVICES
	16:16800	Sound And Video	$	-	
		TOTAL	$	99,700.00	
		Builders Risk Insurance	$	6,500.00	
		Closing Costs	$	-	
		Contractor Fee	$	-	
		General Liability Insurance	$	12,000.00	
		Retention	$	-	
		Supervision	$	11,000.00	
		SUBTOTAL	$	2,110,849.00	
Percentage for fee	10	Contractor Fee	$	211,084.90	
		PROJECT TOTAL	$	2,321,933.90	
		ADDITIONAL COST ITEM REQUESTED BY CITY			
		INCREASE ROOF PITCH	$	6,500.00	
		DORMERS,	$	15,000.00	
		EXTRA ENTRY GABLE STONE/FRAMING/ELECT	$	17,500.00	
		2 STANLEY AUTO DOORS AT ENTRY	$	13,700.00	
		ALL STUCCO	$	16,700.00	
		ADDITIONAL STONE WORK	$	8,000.00	
		ADDED FAUX BARN DOORS AT PORCHES	$	1,600.00	
		ADDITIONAL CONCRETE DUE TO BLDG FACING MERCEDES	$	9,800.00	
		SCREEN FENCE CITY ORDINANCE		158,000.00	
		TOTAL CITY REQUESTED ITEMS	$	246,800.00	

EXHIBIT "F" - CONCEPTUAL IDEAS ONLY

SMALL TOWN
WITH A
BIG
BACKYARD

Benbrook
TEXAS
Small Town,
Big Backyard

City of Benbrook

CITY COUNCIL COMMUNICATION

DATE:	REFERENCE NUMBER:	SUBJECT:	PAGE:
09/03/20	G-2480	Adopt a Resolution authorizing the City Manager to execute an Interlocal Agreement for Mutual Aid for Information Technology Services.	1 of 1

Cities across the country have experienced technology emergencies that have severely impacted municipal operations. These disasters come in many forms including cybersecurity attacks, major system failures, tornados or other weather events, and illness affecting a significant number of IT staff.

Municipal IT leaders in North Texas have developed an Interlocal Agreement (ILA) to provide mutual aid services to participating governmental entities. The ILA provides a framework to both request assistance and respond to a disaster. Similar to mutual aid agreements for public safety services, the ILA establishes terms and conditions in advance to speed response and clarify roles and responsibilities.

Adopting a mutual aid ILA for technology is a “best practice” approach to preparing for cybersecurity attacks and other incidents.

RECOMMENDATION

Staff recommends that the City Council adopt the Resolution authorizing the City Manager to execute an Interlocal Agreement for Mutual Aid for IT services.

SUBMITTED BY:	DISPOSITION BY COUNCIL: ϒ APPROVED ϒ OTHER (DESCRIBE)	PROCESSED BY: CITY SECRETARY
CITY MANAGER		DATE:

RESOLUTION NO. 2020-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS, APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH THE CITY OF ALLEN AS HOST ENTITY AND OTHER PARTICIPATING ENTITIES FOR MUTUAL AID FOR INFORMATION TECHNOLOGY SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, natural and manmade disasters can impact governmental operations; and

WHEREAS, the City Council wishes to enter an Agreement with the City of Allen as Host Entity and other cities as Participating Entities as they enter similar agreements; and

WHEREAS, the parties desire to help other governmental entities or be helped by them in the event of a natural or manmade disaster; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791, Government Code, authorizes units of local government to contract with one or more other units to perform governmental functions and services; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS:

SECTION 1. That the Interlocal Cooperation Agreement for Mutual Aid for Information Technology Services by and between the City of Benbrook as a Participating Entity and the City of Allen as Host Entity, a true copy of which is attached hereto as Exhibit “A” and made part hereof for all purposes, is accepted and approved in all respects by the City Council. The City Manager is authorized and directed to execute such Agreement on behalf of the City of Benbrook and to take such other administrative steps as may be necessary to participate in the mutual aid agreement.

SECTION 2. This Resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS, on the 3rd day of September 2020.

APPROVED:

_____
Jerry B. Dittrich, Mayor

ATTEST:

_____
Beth Fischer, Deputy City Secretary

APPROVED TO AS FORM:

_____
City Attorney

EXHIBIT "A"
INTERLOCAL COOPERATION AGREEMENT FOR MUTUAL AID FOR INFORMATION TECHNOLGY SERVICES

This Interlocal Cooperation Agreement ("Agreement") is by, between, and among the City of Allen, Texas (the "Host City") and the undersigned Participating Local Governments of the State of Texas (each a "Participating Entity"), acting by and through their respective authorized representatives (referred to individually as a "Party" and collectively as the "Parties").

RECITALS:

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code; and

WHEREAS, each Participating Entity may experience a cyber incident, natural disaster, or other emergency capable of degrading or disrupting information technology services ("IT Services") beyond the capabilities of the Participating Entity; and

WHEREAS, each Participating Entity acknowledges the importance of prompt restoration of IT Services to allow local governments to function and operate; and

WHEREAS, each Participating Entity has agreed to adopt a formal or informal cyber response plan in the event of a significant cyber incident; and

WHEREAS, each Participating Entity has agreed to adopt a formal or informal response plan in the event of a natural disaster or other emergency; and

WHEREAS, a Participating Entity requesting IT Services (hereinafter referred to as a "Requesting Entity") receives benefit from a responding Participating Entity (hereinafter referred to as a "Responding Entity") through the provision of supplemental IT Services personnel or computer hardware for the period of support; and

WHEREAS, the Responding Entity receives the benefit of its IT Services personnel gaining knowledge through the experience of aiding in the restoration of IT Services during a crisis; and

WHEREAS, the Parties desire to enter a mutual aid agreement to offer time and expertise of IT Services personnel to assist in the detection, response and short-term remediation of the cyber incident or assist in the repair and restoration of IT Services due to a natural disaster or other emergency.

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Unless the context clearly indicates otherwise, the following words and phrases used in this Agreement shall have the following meaning:

"Host Entity" shall mean the City of Allen, Texas.

"IT Incident" shall mean an event or set of circumstances resulting from a cyber incident, natural disaster, pandemic or other emergency (including state or local declared state of disaster pursuant Chapter 418 Texas Government Code) whether natural or manmade, which is capable of degrading or disrupting information technology services beyond the capabilities of the Requesting Entity.

"Mutual Aid" shall mean, but is not limited to, such IT Service resources as facilities, equipment, services, supplies, and personnel.

"Participating Entity" shall mean a participating local government that executes this Agreement.

"Requesting Entity" shall mean the Participating Entity that requests Mutual Aid under this Agreement as result of an IT Incident under the terms of this Agreement.

"Responding Entity" shall mean the Participating Entity providing Mutual Aid to a Requesting Entity in response to a request from a Requesting Entity under this Agreement as a result of an IT Incident.

ARTICLE II
PURPOSE

The purpose of this Agreement is to establish a mutual aid agreement between and among the Parties, which will allow each Participating Entity to provide Mutual Aid to a Requesting Entity as a result of, in response to, or during an IT Incident.

ARTICLE II
TERM; TERMINATION

3.1 The term of this Agreement shall be for a period of one (1) year commencing on the last date of execution by the Participating Entity ("Effective Date"). Thereafter, this Agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless sooner terminated as provided herein.

3.2 A Participating Entity may terminate its participation in this Agreement by providing thirty (30) days prior written notice to terminate its participation in this Agreement to the Host Entity. The Host Entity shall provide written notice of any such termination to the designated representative of each Participating Entity.

3.3 A Participating Entity's participation in this Agreement may be terminated by the Host Entity for cause, including, but not limited to, failure to comply with the terms

or conditions of this Agreement upon thirty (30) days prior written notice to such Participating Entity.

3.4 Termination by one or more Parties to this Agreement does not affect the Agreement as it applies to the remaining Parties.

ARTICLE IV
RESPONSIBILITY OF PARTIES

4.1 Requesting Assistance. The Chief Information Officer ("CIO"), Information Technology Director ("IT Director"), or designee of the Participating Entity that has experienced an IT Incident may request Mutual Aid from the CIO, IT Director, or designee of another Participating Entity verbally or in writing. The determination as to what Mutual Aid may be made available to the Requesting Entity without unduly interfering with the IT Services of the Responding Entity shall be made at the sole discretion of the CIO, IT Director, or designee of the Responding Entity. Each Participating Entity agrees to assess local resources to determine availability of Mutual Aid based on current or anticipated needs of the Responding Entity. Requests for Mutual Aid shall not be requested by a Party unless it is directly related to the IT Incident and resources available from the Requesting Party are inadequate.

4.2 Each Participating Entity recognizes that it may be requested to provide aid and assistance at a time when it is necessary to provide aid and assistance to the Participating Entity's own constituents. This Agreement shall not be construed to impose any obligation on any Participating Entity to provide Mutual Aid to Requesting Entity. Each Participating Entity may choose not to render Mutual Aid at any time for any reason, or to recall such Mutual Aid that has been provided at any time.

4.3 Procurement of Equipment, Software and Services. The Requesting Entity shall be responsible for any incidental costs, equipment, software, or services related to the Mutual Aid response to the IT Incident. If the Responding Entity indicates a need for the acquisition or purchase of equipment, software, or services, the Requesting Entity shall decide if such acquisition or purchase is necessary and will make any required acquisition or purchase.

4.4 Personnel Costs. The Requesting Entity shall pay any overtime costs that occur for personnel of the Responding Entity if requested by the Responding Entity. The Responding Entity shall provide the Requesting Entity with a written invoice for such overtime costs which shall include an itemized list of Responding Entity employees, the date and time of overtime hours worked within sixty (60) days after the provision of such Mutual Aid. The Requesting Entity shall pay such invoice to the Responding Entity within thirty (30) days after receipt of such invoice.

4.5 Use of Computer Hardware. A Requesting Entity in need of computer hardware (e.g. personal computers, laptops, servers, network equipment, etc.), will compile a written list of such computer hardware and the estimated length of time that such equipment is needed which may be sent to the Participating Entities. Any Participating Entity may choose to respond in whole or part and is under no obligation to provide computer hardware to the Requesting Entity. A Responding Entity which chooses to loan computer hardware will respond back to the Requesting Entity to affirm that such computer hardware or portion thereof is available for temporary use. The Responding Entity makes no claim of the currency or operational use of the computer

hardware nor is the Responding Entity liable for any damages resulting from the Requesting Entity's use of any computer hardware so provided. The transportation and delivery of such computer hardware or charges related thereto shall be the responsibility of the Requesting Entity unless otherwise agreed by those Parties. The Requesting Entity shall be responsible for, and pay the Responding Entity for any damages, loss, or destruction of such computer hardware while in the use and possession of the Requesting Entity, including the transport thereof. Any ongoing maintenance, lease or other fees related to such computer hardware shall continue to be paid by the Responding Entity.

4.6 Criminal Justice Information System ("CJIS"). The Requesting Entity shall be responsible for restricting the Responding Entity personnel from access to CJIS information unless the Responding Entity personnel have completed all CJIS background checks and is in current compliance with CJIS training requirements.

4.7 List of Participating Entities. The Host City shall maintain a current list of Participating Entities and provide such list to a Participating Entity upon request

ARTICLE V
INSURANCE

5.1 Worker's Compensation Coverage. Each Party shall be responsible for its own actions and those of its employees and is responsible for complying with the Texas Worker's Compensation Act.

5.2 Automobile Liability Coverage. Each Party shall be responsible for its own actions and is responsible for complying with the Texas motor vehicle financial responsibility laws.

5.3 General Liability Insurance. Each Party agrees to obtain general liability and public official's liability insurance, if applicable, or maintain a comparable self-insurance program.

5.4 Liability. To the extent permitted by law and without waiving sovereign immunity, each Party shall be responsible for any and all claims, demands, suits, actions, damages, and causes for action related to or arising out of or in any way connected with its own actions, and the actions of its personnel in providing Mutual Aid rendered or performed pursuant to the terms and conditions of this Agreement. Except as specifically stated in this Agreement, each Party waives all claims against the other Parties hereto for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of Mutual Aid pursuant to this Agreement, except those caused in whole or in part by the negligence of an officer, employee, or agent of another Party. It is expressly understood and agreed that in execution of this Agreement, no Party waives, nor shall be deemed to have waived, 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 create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights for any third parties not signatories hereto.

ARTICLE VI
MISCELLANEOUS

6.1 Expending Funds. Each Party that furnishes Mutual Aid pursuant to this Agreement shall do so with funds available from current revenues of such Party. No Party shall have any liability for the failure to expend funds to provide Mutual Aid.

6.2 Interlocal Cooperation Act. The Parties agree that Mutual Aid in the context contemplated herein is a "governmental function and service" and that the Parties are "local governments" as that term is defined herein and in the Interlocal Cooperation Act, Texas Government Code Chapter 791.

6.3 Severability. If a provision contained in this Agreement is held invalid for any reason, the invalidity does not affect other provisions of the Agreement that can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

6.4 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.5 Amendment. This Agreement may be amended only by the mutual written consent of the Parties.

6.6 Third Parties. This Agreement is intended to inure only to the benefit of the Parties hereto. This Agreement is not intended to create, nor shall be deemed or construed to create any rights in third parties.

6.7 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. By execution of this Agreement the Participating Entity consents to be a Party to this Agreement and acknowledges that it is not necessary to receive copies of the Agreement from other local governments that are, or which become, Parties to this Agreement.

6.8 Entire Agreement. This Agreement is the entire agreement between and among the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between and among the Parties that in any manner relates to the subject matter of this Agreement.

6.9 Governing Law. This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.10 Recitals. The recitals to this Agreement are incorporated herein.

6.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all the counterparts shall constitute one and the same instrument.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period following the termination of this Agreement shall survive termination.

6.13 Notice. All notices pertaining to this Agreement shall be in writing and shall be deemed delivered (i) when received at a Party's address if hand delivered or sent via overnight delivery service by way of USPS, UPS, FedEx, or similar carrier, or (ii) on the third (3rd) business day after being deposited in the United States mail, postage prepaid, certified mail, addressed to Participating Entity at the address set forth below the signature of the Party

6.14 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

[Signature Pages to Follow]

EXECUTED this _____ day of _____ 2020.

City of Allen, Texas

By: _____
Eric Ellwanger, City Manager

One Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

ATTEST:

By: _____
City Secretary

APPROVED AS TO FORM:

By: _____
City Attorney

PARTICIPATING ENTITY:

CITY OF BENBROOK, TEXAS

By: _____
Andy Wayman, City Manager
911 Winscott Road
Benbrook, Texas 76126

ATTEST:

By: _____
Beth Fischer, Deputy City Secretary

APPROVED AS TO FORM:

By: _____
City Attorney