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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
APPROVING A CONTRACT BETWEEN THE CITY OF ABILENE AND THE
POTOSI WATER SUPPLY CORPORATION.

WHEREAS, the City of Abilene and the Potosi Water Supply Corporation
have heretofore reached an agreement under which the City of Abilene will furnish
water to said Water Corporation and after review of said contract proposal by the
appropriate governmental agencies certain technical changes were required in
wording, and it is the recommendation of the administrative staff that said changes
be made and said contract approved in final form; now, therefore,

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

Section 1: That the Water Supply contract attached hereto between the City of
Abilene and the Potosi Water Supply Corporation be, and the same is hereby, in
all things approved.

Section 2: That the Mayor be, and is hereby, authorized and directed to
execute said contract on behalf of the City of Abilene.

Section 3: That this resolution shall take effect immediately from and after
its passage.

Adopted this 11th day of July, A. D. 1963.

ATTEST:

W. Lee Byrd
MAYOR

Lila Jean Martin
CITY SECRETARY

APPROVED AS TO FORM:
JOHN W. DAVIDSON, City Attorney

John W Davidson

Copy to:
Bob Lambert 8-5-64
Wells 7-13-66

WATER SUPPLY CONTRACT

THE STATE OF TEXAS |

COUNTY OF TAYLOR |

THIS AGREEMENT made and entered into this the 11th day of July, A. D. 1963, by and between the City of Abilene, Texas, a municipal corporation situated in Taylor County, operating as a Home Rule City under its Charter adopted November 6, 1962, pursuant to the Constitution and Statutes of the State of Texas, hereinafter referred to as "City", and acting by and through its Mayor, having been duly authorized to act by the City Council of the City of Abilene, and the Potosi Water Supply Corporation, a water supply corporation organized under Article 1434a, VATS, hereinafter referred to as "Corporation", acting by and through its President, James Dominy, having been authorized to so act by the Board of Directors of said Corporation,

WITNESSETH:

WHEREAS, the Corporation was organized to find a means of supplying water to the rural inhabitants of the unincorporated community of Potosi and its surrounding area, and since its formation has diligently explored various means over the past four years to obtain a water supply for the above described area, which lies southeast of the City; and,

WHEREAS, the Corporation has previously been unable to reach a mutual agreement with the City by which the City would furnish a domestic water supply to said Corporation, and the shareholders of said Corporation, who comprise a majority of the inhabitants of the Potosi Community, have recently proposed to obtain a supply of water from wells and to form a water control and improvement district to assure the successful operation of the well system; and,

WHEREAS, the City is opposed to the formation of a water control and improvement district in its vicinity because the formation of said district would deter the orderly growth of the City in the direction of Potosi, could eventually

constitute a danger to its water supply reservoirs and could eventually create an additional financial burden upon its citizens, and has found it possible to make a new proposal to the Corporation which would be satisfactory with said Corporation, and would remove entirely the necessity of drilling wells and forming a water control and improvement district; and,

WHEREAS, the Potosi community lies within the watershed of Lake Kirby and Lake Fort Phantom Hill, and the City has under its control and operation the principal supply of domestic water in its area and is willing, as a good neighbor, to share the excess of its domestic water supply with the inhabitants of the Potosi community, under mutually agreeable terms and conditions; and,

WHEREAS, the inhabitants of the rural community of Potosi desire to obtain a water supply from the City rather than to drill wells and form a water control and improvement district; now, therefore,

KNOW ALL MEN BY THESE PRESENTS:

THAT in consideration of the mutual covenants and agreements contained herein, the City agrees to sell and the Corporation agrees to buy water treated to be suitable for human consumption under the terms, conditions and considerations hereinafter set forth as follows:

I. PURPOSE: That it is the purpose of this agreement that the City will supply water to the Corporation to meet the present needs and provide for a reasonable growth in the Potosi area. It is further the intent of this agreement that the City will supply water to the Corporation under the same policies and considerations granted by the City to the regular customers of its Water and Sewer Department. It is expressly not the purpose and intent of this agreement to en-

courage or permit in the Potosi area new or additional (1) large commercial development which would require a water connection exceeding one and one-half inches (1 1/2"), or (2) industrial or subdivision development outside the corporate limits of the City. It is further expressly not the purpose or intent of this agreement to sell water to the Corporation at terms more favorable than those normally granted to regular customers within its corporate limits.

II. QUANTITY: That the City agrees to sell and deliver at the delivery point hereinafter specified and the Corporation agrees to purchase and take at said delivery point up to forty one million six hundred twenty-five thousand (41,625,000) gallons of water during each calendar year of the life of this contract. City will use its best efforts to remain in a position to furnish the above supply of water, but its obligation shall be limited to the amount of water available to the City from its own sources of supply. In this connection, it is further expressly agreed between the City and the Corporation that should the supply of water available to the City drop below a sixty (60) day supply then, in that event, the obligation and duty of the City to supply water to the Corporation shall cease until the water supply increases to a sixty (60) day supply. In the event of such a temporary water shortage it becomes necessary for the City to ration water to its customers within the corporate limits of the City, the Corporation agrees to apply the same basis of rationing to its customers as is applied by the City to its regular customers.

III. TERM: That the term of this agreement between the City and the Corporation shall be for a period of forty (40) years from the date of execution of said agreement, and it is furthermore agreed that the Corporation shall have an option to renew this agreement under the same terms and conditions as apply at the expiration of forty (40) years for an additional term of ten (10) years, provided, however, said Corporation will notify the City in writing at least six (6) months in advance of its intention to exercise said option.

IV. CONSIDERATION:

That in consideration of the City supplying water to the Corporation as agreed herein, the Corporation agrees to purchase said water at the rate of thirty-nine and one-half cents (\$.395) per thousand (1,000) gallons. This rate is based upon the following: (1) the standard established rate for customers of the City within its corporate limits; (2) plus an additional five per cent (5%) of this standard established rate; and (3) an increment in lieu of taxes being paid by water customers within the corporate limits of the City in support of the West Central Texas Municipal Water District (Hubbard Creek Dam Project) or future water supply projects in which the City may participate. To determine the rate per gallon increment in lieu of taxes to be added to the above established standard rate and additional five per cent (5%) as above set forth, the total amount of taxes paid to the West Central Texas Municipal Water District during the immediately preceding year shall be divided by the total gallons of water sold during the same year, all by or to water customers within the corporate limits of the City. After the expiration of the initial ten (10) year period of this agreement, the City shall have the right to increase or decrease said rate of thirty-nine and one-half cents (\$.395) per thousand gallons in an amount not to exceed five per cent (5%), and shall further have the right to increase or decrease the then existing rate per thousand gallons an additional five per cent (5%) every five (5) years thereafter during the life of this agreement. Any increase or decrease in the rate shall be determined by changes in the above rate formula or other similar factors substantially related to costs of the City supplying water, but in no event shall said rate change exceed five per cent (5%) of the then existing rate.

The City will bill the Corporation each month at the applicable rate per thousand gallons for water supplied to the Corporation during the previous month, and said statement will be rendered to the Corporation by the fifth (5th) of the succeeding month and shall be due to the City and payable by the Corporation on

the fifteenth (15th) of each month in which the statement is received by the Corporation. In the event the Corporation should fail to make any payment by the fifteenth (15th) of the month, said statement shall be deemed delinquent and shall be due and payable with interest at six per cent (6%) per annum from the first day of the month in which payment became delinquent. The City shall notify the Corporation in writing when any such payment to the City shall become delinquent, and if said delinquency is not removed within thirty (30) days after the sending of such written notice, the City may, at its discretion, cease supplying water to the Corporation under the terms of this agreement and declare this agreement forfeited and null and void as provided for in Section XXII hereof.

As a further consideration herein, the Corporation agrees that its shareholders will move to withdraw or dismiss the petition to incorporate the Potosi Water Control and Improvement District of Taylor County, Texas, presently pending before the Commissioners' Court of said County.

V. POINT OF DELIVERY: That the point of delivery at which the City will deliver water to the Corporation and the point at which said Corporation shall receive the water shall be at the southeast corner of the intersection of the extension of South 24th Street in the City of Abilene, Texas, and Farm-to-Market Road 1750; or at such other point of delivery as may be subsequently mutually agreed upon between the City and the Corporation under the terms of this agreement.

VI. QUALITY: That the quality of water to be supplied to the Corporation by City shall be the same as supplied to customers of the City within its corporate limits and shall be treated and filtered.

VII. UNIT OF MEASUREMENT: That the unit of measurement for water to be delivered by the City to the Corporation shall be one thousand (1,000) gallons of water, U. S. Standard Liquid Measure.

VIII. TIE-IN FACILITIES: That the Corporation agrees at its sole expense to furnish all equipment, facilities, means and methods of tying in to the City water main at the point of delivery, and further agrees that all such equipment, facilities, means and methods shall be approved in advance by the Director of Public Works of the City and the Department of Health of the State of Texas. The City agrees at its expense to construct the initial air gap reservoir separating the distribution systems of the City and the Corporation. The Corporation agrees at its expense to operate and maintain said air gap reservoir.

IX. CORPORATION FACILITIES: That the Corporation shall at its expense construct, install, operate and maintain its pumps, meters and distribution mains. Such installation and operation of the Corporation's distribution system from the point of connection to and including the air gap reservoir (specifically excepting what size distribution line shall be installed) shall be in accordance with requirements of the Health Department of the State of Texas, and subject to the review and written approval, in advance, of the Director of Public Works of the City.

X. INSPECTIONS. That the Director of Public Works of the City shall be given an opportunity to review and comment on the plans and specifications of the Corporation pertaining to its distribution system, commencing with the air gap reservoir and extending into the Potosi community. The City, its employees, agents or representatives, shall have the right to inspect the facilities and equipment of the Corporation at reasonable times.

XI. MEASURING EQUIPMENT: That the Corporation shall furnish, install and maintain at its expense the necessary equipment and devices of standard type for properly measuring the quantity of water delivered by the City under this agreement. Said equipment and devices shall be approved in writing in advance by the Director of Public Works of the City. The equipment and devices to measure the quantity of water delivered shall be placed at a point mutually agreed upon by the City and the Corporation. Both the Corporation and the City shall have access to

such metering equipment, but the calibration and adjustment thereof shall be accomplished by the meter manufacturer's representative upon request of either the City or the Corporation. In case it shall become necessary to make adjustments in the meters or metering devices, both the Corporation and the City shall be notified in advance so they each will have sufficient time to arrange for a representative to be present while any tests or adjustments are being made. In the event any meter is out of repair so that the amount of water delivered by the City cannot be ascertained or computed from a reading thereof, the water delivered through the period such meter is out of service shall be estimated and agreed upon by the City and the Corporation upon the basis of the best data available. For such purposes, the best data available shall be deemed to be the registration of any check meter after the same has been installed and is accurately registering. Otherwise, the amount of water delivered by the City during such period may be estimated by (1) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (2) estimating the quantity of water delivered during the preceding periods under similar conditions when the delivery meter was registering accurately.

XII. TITLE: That title to all water supplied by the City under this agreement shall remain in the City to the point of delivery and from such point (whether metered or not) title shall pass to the Corporation. The Corporation agrees to save and hold harmless the City from all claims, demands or causes of action of any nature whatsoever which may be asserted by any person in any wise relating to the transportation, delivery and disposal of the water after title to the water has passed to the Corporation.

XIII. PUBLIC VENDING METERS: That the Corporation shall have the privilege of installing a public vending meter to furnish water to its customers or members, provided, however, this privilege shall not be construed to mean that the Corporation shall be entitled to a greater supply of water from the City than set forth under the maximum limitation in Section II of this agreement.

XIV. FORCE MAJEURE:

In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this agreement, other than the obligation of the Corporation to make the payment required under the terms hereof, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party filing such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, war, orders of any kind of the Government of the United States or the State of Texas, or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and inability on part of City to deliver water hereunder, or of Corporation to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts as acceding to the demands of the opposing party or parties when such course is unfavorable in the judgment of the party having the difficulty.

XV. ACQUISITION OF FACILITIES:

That in the event the City shall annex any area in which the equipment, facilities or easements of the Corporation are located, the following procedures shall be followed:

- (1) The ownership and/or title to such equipment,

facilities or easements shall remain in the Corporation subject to the rights and liens of the lending agency to the Corporation.

(2) The City shall incorporate and make use of such portions of or all of said equipment, facilities or easements, as it may deem necessary or desirable, into the City's public water system and, in that event, shall assume full and normal servicing, repair, maintenance and replacement responsibilities and obligations of such portions of the system as would normally be applicable to the remainder of the City's public water system, said system shall be subject to all the policies, ordinances and regulations normally applicable to the City's public water system. Before the City shall make use of any such equipment, facilities or easements of the Corporation, it shall give notice in writing to the Corporation.

(3) In the event the City should assume the above described services and maintenance responsibilities of the Corporation's equipment, facilities or easements, customers of the Corporation connected to that portion of the system would then commence paying to the City the standard established water service rates charged to regular water customers of the City within its corporate limits, provided, however, in order to insure sufficient revenue to the Corporation so that it may retire its loan to its lending agency, the number of water customers of the Corporation shall not be decreased below two hundred twenty-five (225).

(4) At such time as the first mortgage loan to its lending agency has been retired by the Corporation, title and ownership of any portion of the line for which the City has assumed servicing, repairs, maintenance and replacement responsibilities shall vest in the City, which will continue to maintain said line as a part of its public water system.

(5) In the event it should become necessary, because of annexation by the City, to remove any equipment or facilities such as meters, pumps, or air gap reservoirs to a point outside the corporate limits of the City, the expense for the first such removal shall be borne entirely

by the City; thereafter, the expense of any such removal shall be distributed evenly between the City and the Corporation. Any new delivery point and method or manner of tying in shall be subject to the approval of the Director of Public Works of the City and the Department of Health of the State of Texas.

(6) The City and Corporation mutually agree to make every effort to prevent cross connections between their respective water distribution systems in order that the certification of the public water supply of the City will not be jeopardized.

XVI. RE-SALE OF WATER: That the Corporation agrees that it will prohibit the re-sale or transfer of water delivered by the City under this contract from any of the Corporation's members or customers to another party, unless the written consent of the City is obtained in advance. The sale of water by the Corporation shall be guided by Section I of this agreement.

XVII. ASSIGNMENT OF CONTRACT: That the Corporation agrees that it will not assign this agreement without the written consent, in advance, of the City, except nothing herein shall be construed to prohibit the pledging of the contract as security for any construction loan, and should the holder of that obligation elect to continue performance under the contract after taking possession under the pledge, the terms and conditions of this contract shall be fully applicable. The Corporation shall notify the City in writing of the name of any pledges of the contract at such time as the pledge is made.

XVIII. ABIDE BY LAWS: That the City and the Corporation mutually agree that each will abide by all the rules, regulations and laws of the United States of America, the State of Texas and any other governmental body having jurisdiction over the subject matter of this agreement.

XIX. RESTRICTION OF SUPPLY: That in the event the Corporation should exceed the maximum limitation of water to be supplied during any one calendar year under this contract, the City shall have the right to restrict the amount of

water to be delivered in order to enforce the maximum limitation of this agreement.

XX. NOTICES. That any notice required under the terms of this agreement shall be in writing and shall be delivered by certified mail addressed to the respective governing body.

XXI. MODIFICATIONS: That the terms of this agreement may at any time be changed and/or modified with the consent of the Council of the City and the Board of Directors of the Corporation.

XXII. FORFEITURE: That in the event that either the City or the Corporation should violate any of the terms of this agreement, the other party shall promptly notify the other respective party of the violation. In the event said violation is by the Corporation, the City will send notice of the violation to any lending agency of the Corporation, at the same time it notified the Corporation. In the event said violation is not cured within thirty (30) days after the sending of such notice, the City may cut off the water supply to the Corporation. In the event that said violation of the terms of this contract by the Corporation is not cured within thirty (30) days, any lending agency of the Corporation shall have a period of six (6) months from the date of the sending of the original notice of the violation to cure the violation and/or assume the contract of the Corporation. In the event the violation is not cured within six (6) months after the sending of the original notice, the City may declare the contract forfeited and null and void. In the event the City should violate the terms of the contract, the City shall have sixty (60) days to cure the violation after the sending of notice by the Corporation. In the event said violation is not cured within said sixty (60) days, the Corporation may declare this contract null and void. In the event either party exercises its right hereunder to declare the agreement forfeited and null and void, the party making said declaration shall notify the other party of the cancellation of the agreement and no further action shall be required thereof. This section shall not deprive the City or the Corporation, or any other party, from any remedies at law they may have for

violation of terms of this contract, but shall be in all things supplemental thereto.

XXIII. PRE-REQUISITES FOR CONTRACT: That it is hereby mutually agreed between the City and the Corporation that in the event the Commissioners' Court of Taylor County does not deny or dismiss the petition to incorporate the Potosi Water Control and Improvement District of Taylor County, Texas, or in the event the lending agency fails to approve this agreement for purposes of lending financial assistance to the Corporation, then this contract shall be null and void.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this agreement to be duly executed as of the day and year first above written.

ATTEST:

Lila Jew Martin
CITY SECRETARY

CITY OF ABILENE, TEXAS

BY: W. Lee Byrd
W. LEE BYRD, MAYOR

ATTEST:

JERAL MILLER
JERAL MILLER, SECRETARY

POTOSI WATER SUPPLY CORPORATION

BY: James F. Dominy
JAMES DOMINY, PRESIDENT


THE STATE OF TEXAS |

COUNTY OF TAYLOR |

BEFORE ME, the undersigned authority

on this day personally appeared W. LEE BYRD, MAYOR of the City of Abilene, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Abilene a municipal corporation, and that he executed the same as the act of such corporation for the purposes and considerations therein expressed, and in the capacity therein stated.

~~June~~ ^{July} GIVEN UNDER MY HAND AND SEAL OF OFFICE this 11** day of A. D. 1963.


Notary Public in and for Taylor County, Texas
Les Cochran

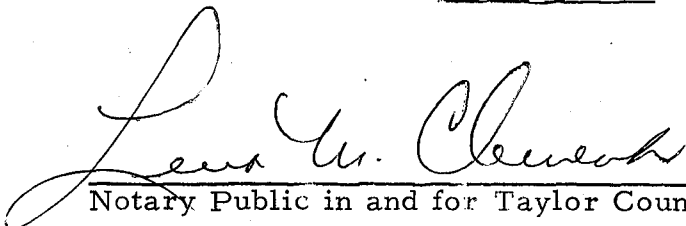
THE STATE OF TEXAS |

COUNTY OF TAYLOR |

BEFORE ME, the undersigned authority

on this day personally appeared ^FJAMES DOMINY, President of the Potosi Water Supply Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Potosi Water Supply Corporation, and that he executed the same as the act of such corporation for the purposes and considerations therein expressed, and in the capacity therein stated.

~~June~~ ^{July} GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12 day of A. D. 1963.


Notary Public in and for Taylor County, Texas