

RESOLUTION NO. 20-1984

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT BY AND BETWEEN THE CITY OF ABILENE AND ABILENE CATTLE FEEDERS COMPANY TO SUPPLY RAW WATER.

WHEREAS, Abilene Cattle Feeders Company desires raw water at its operations in Abilene; and,

WHEREAS, the Company desires to enter into an agreement with the City of Abilene whereby the City agrees to sell and Company agrees to buy raw water; and,

WHEREAS, the City Council is of the opinion that such a contract should be entered into subject to the terms and conditions expressed in the agreement attached to this resolution; now, therefore,

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

PART 1: That the contract with Abilene Cattle Feeders Company, which is attached hereto, be, and is hereby approved, and the Mayor is hereby authorized to execute same on behalf of the City of Abilene.

PART 2: That this resolution shall take effect immediately from and after its passage.

ADOPTED this 12 day of April, A.D. 1984.

ATTEST:

Patricia Patton
CITY SECRETARY

J. J. Hall
MAYOR

APPROVED:

Gary Sanders
CITY ATTORNEY

CITY



STATE OF TEXAS X
COUNTY OF TAYLOR X

CONDITIONAL RAW WATER SUPPLY CONTRACT

This agreement entered into on the date shown at the end hereof is between the City of Abilene, of Taylor and Jones Counties, Texas, (hereafter City) and Abilene Cattle Feeders, a Texas partnership, (hereafter Company).

Whereas, the City of Abilene and Abilene Cattle Feeders have previously entered into a water supply contract on September 13, 1973; and,

Whereas, Abilene Cattle Feeders has requested an increase in the amount of water available from the City; and,

Whereas, the City recognizes the valuable contribution made to the area economy by Abilene Cattle Feeders but also is aware of the need to carefully review water supplies and sales; now therefore,

The parties agree as follows:

1. That this contract shall supercede and take the place of the previous contract of September 13, 1973, and cover all raw water sales to Abilene Cattle Feeders.

2. That the City agrees to sell and Company agrees to buy raw water at a minimum rate of thirty-one cents (~~31~~) per thousand (1,000) gallons, provided however, that should the rates charged for water furnished to industrial users be either increased or decreased, then the rate to be paid by Company to City under the conditions set forth above in this paragraph will be increased or decreased in the same proportion that thirty-one cents (~~31~~) bears to sixty-six cents (~~66~~). (That is to say, by way of example, if the rates charged for water furnished to industrial users were to be increased from its present rate of sixty-six cents (~~66~~) per thousand gallons to a new rate of seventy-two cents (~~72~~) per thousand gallons, then the new rate which Cattle Feeders is to pay would be x in the equation $\frac{31}{66} = x \frac{\cdot}{72}$.)

Further, this adjusted minimum rate shall be reviewed periodically to compare it to the cost of "other source replacement" water from sources other than Lake Fort Phantom or Lake Abilene. The "other source of replacement" water cost shall be calculated by taking the average cost of such water, since the last adjustment, plus 6¢ per

thousand gallons. Company will then pay whichever cost is higher, it being the intent herein for Company to pay the price of City's most expensive replacement water.

Company will pay a stand-by or administrative minimum fee of \$1,800.00 per year if no water is taken which will be due by January 31 of the next year. Any water payments will be credited toward this minimum fee.

3. That the maximum amount of raw water to be delivered by City to Company shall be three hundred thousand (300,000) gallons of raw water per day. The maximum amount per month shall be computed by the number of days times this daily amount. However, the maximum for one year shall be 85,000,000 gallons. If more than the maximum monthly amount is used in any month, then City and Company will take whatever steps necessary to prevent overuse and/or to adjust for such overage the following month.

4. That the raw water tap shall be at a point of delivery on Farm to Market Road 707, West of Buffalo Gap Road near the existing Company delivery point.

5. That Company shall construct all water lines, pump stations, and all other facilities for this operation; shall bear the expense for tapping the above mentioned water line; shall provide its own water meter; and shall bear the expense of installing the meter and meter box.

6. That Company shall pay all pumping charges resulting under this agreement and shall maintain the water lines in good repair at all times.

7. That the primary term of this raw water contract shall be for approximately fourteen (14) years expiring September 13, 1998.

8. That in the event that a power failure, line eruption, or any other situation disrupts the water flow, Company agrees to hold City harmless of any responsibility or liability to Company resulting from such disruption.

9. That it is further agreed and understood that this agreement to sell raw water is only applicable when City does not need the water to be used for treatment and regular municipal use.

If at any time during the term of this contract the City determines that the raw water requested by Company is needed to continue to the treatment plant so it can be used for municipal purposes, then City will have no obligation to provide such water.

Company specifically understands that this is a conditional agreement to provide water when water is available and water is not needed for municipal use. Company agrees to this restriction and understands that the time when it needs this additional water the most may also be the time when City will need it for municipal purposes, and that in such event City will have no obligation to provide and may not provide the water requested. Company hereby gives City the express, specific authority to close or otherwise restrict the contract point to prevent the diversion of raw water needed for municipal purposes.

The operation of this paragraph does not require City to have initiated water rationing, but only the determination that the water is needed for municipal use.

10. 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 Company 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 the part of the City to deliver water hereunder, or of Company 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 parting having the difficulty.

11. That in the event that either City or Company should violate any of the terms of this agreement, the aggrieved party shall promptly notify the offending party of the violation. The offending party shall have thirty (30) days to cure the violation after the sending of notice. In the event such violation is not cured within said thirty (30) days, the aggrieved party 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 such 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 either party of any remedies at law they may have for violations of terms of this contract, but shall be in all things supplemental thereto.

12. That Company agrees not to supply raw water to any other person, residence, or incorporation or use this water for irrigation purposes without the written permission of the water utilities director of the City of Abilene, and any such authorized sale shall be in strict compliance with the terms of such permission.

13. This contract is made subject to and in conformity with the applicable provisions of the Abilene City Code, except to the extent that any of such provisions may be in conflict herewith and in which event, the provisions hereof shall govern. This contract is also made subject to approval by the appropriate state and federal agencies and courts of any permit or contract changes required to allow sale of raw water by this agreement. It shall not become effective until such approvals are obtained, and will become null and void if approval has

not been obtained within 1 1/2 years from the date of City Council approval of this contract.

IN WITNESS WHEREOF, this agreement is executed in duplicate originals, this 12 day of April, A.D. 1984, and to become effective on the 1st day of JULY, 1985. ⁽⁸⁸⁾

ATTEST:

Suzanna Patton
City Secretary

THE CITY OF ABILENE
BY: Jul Ball
Mayor

APPROVED:

Ray Landers
City Attorney

P.O. Box 5336
Mailing Address

Abilene, Texas 79605

692-5945
Phone Number

ABILENE CATTLE FEEDERS COMPANY

BY: Jim Alexander

BY: Robert W. Morford
Robert W. Morford