

CITY

CERTIFICATE FOR RESOLUTION #17-1986

THE STATE OF TEXAS :
COUNTIES OF TAYLOR AND JONES :
CITY OF ABILENE :
We, the undersigned officers of said City, hereby certify as follows:

1. The City Council of said City convened in REGULAR MEETING ON THE 22ND DAY OF MAY, 1986, at the City Hall, and the roll was called of the duly constituted officers and members of said City Council, to-wit:

- Walter E. Wheat
- A. E. Fogle, Jr.
- Gary D. McCaleb
- Harold D. Nixon

- David Stubbeman, Mayor
- Welton Robinson
- Patricia A. Patton, City Secretary
- Betty Ray

and all of said persons were present, except the following thus absentees: none Whereupon, among other business, the constituting a quorum. A written resolution was transacted at said Meeting: A WATER TRANSMISSION LINE RESOLUTION AUTHORIZING EXECUTION OF A WATER DISTRICT CONTRACT WITH WEST CENTRAL TEXAS MUNICIPAL WATER DISTRICT. It was then duly moved and seconded that said Resolution be passed; and, after due discussion, said motion carrying with it the passage of said Resolution, prevailed and carried by the following vote:

AYES: All members of said City Council shown present above voted "Aye".

NOES: None.

2. That a true, full and correct copy of the aforesaid Resolution passed at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; that said Resolution has been duly recorded in said City Council's minutes of said Meeting; that the above and foregoing paragraph is a true, full and correct excerpt to said City Council's minutes of said Meeting pertaining in the passage of said Resolution; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said City Council as indicated therein; that each of the officers and members of said City Council was duly and sufficiently notified of said Meeting, in advance, of the time, place and purpose of the aforesaid Meeting, and that said Meeting would be introduced and considered for passage at said Meeting, and each of said officers and members consented, in advance, to the holding of said Meeting for such purpose, and that said Meeting was open to the public and public notice of the time, place and purpose of said meeting was given, all as required by Vernon's Ann. Civ. St. Article 6252-17.

3. That the Mayor of said City has approved and hereby approves the aforesaid Resolution; that the Mayor and the City Secretary of said City have duly signed said Resolution; and that the Mayor and the City Secretary of said City hereby declare that their signing of this Certificate shall constitute the signing of the attached and following copy of said Resolution for all purposes.

SIGNED AND SEALED the 22nd day of May, 1986.
David Stubbeman
Mayor

Patricia A. Patton
City Secretary

SEAL

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RESOLUTION #17-1986
AUTHORIZING EXECUTION OF WATER TRANSMISSION LINE CONTRACT
WITH WEST CENTRAL TEXAS MUNICIPAL WATER DISTRICT

THE STATE OF TEXAS :
COUNTIES OF TAYLOR AND JONES :
CITY OF ABILENE :

WHEREAS, the City of Abilene (hereinafter called "City"), has requested West Central Texas Municipal Water District (hereinafter called "District") to construct a parallel raw water transmission line and pumping facilities from Hubbard Creek Lake to the City (hereinafter called "Project"), which project would be paid from the sale of the District's revenue bonds; and

WHEREAS, it is deemed advisable by the governing bodies of both the District and the City to enter into a water transmission line contract in reference to the construction and maintenance of the Project and the payment by the city of the bonds to be authorized by the District to fund this Project; and

WHEREAS, it is hereby officially found and determined that a case of emergency or urgent public necessity exists which requires the holding of the meeting at which this Resolution is adopted, and that said meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Vernon's Ann. Texas Civ. St. Article 6252-17.

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

1. That the Water Transmission Line Contract with West Central Texas Municipal Water District is hereby approved and the Mayor and City Secretary are hereby authorized and directed to execute the Water Transmission Line Contract in the form substantially attached hereto.

2. That the officers and employees of the City are hereby directed to aid the District in the execution of the Water Transmission Line Contract and to assist the District in the culmination of the issuance of the District's bonds and the construction of the proposed Project.

PASSED AND APPROVED this the 22nd day of May, 1986.


Mayor
City of Abilene

ATTEST:


City Secretary
City of Abilene

SUBMITTED AND APPROVED BY ME BEFORE ADOPTION:


City Attorney
City of Abilene

SEAL

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WEST CENTRAL TEXAS MUNICIPAL WATER DISTRICT - CITY OF ABILENE
1986 WATER TRANSMISSION LINE CONTRACT

THE STATE OF TEXAS :
WEST CENTRAL TEXAS : KNOW ALL MEN BY THESE PRESENTS:
MUNICIPAL WATER DISTRICT :

WHEREAS, the West Central Texas Municipal Water District (hereinafter sometimes called the "District") is a conservation and reclamation district created by and functioning under Art. 8280-162, V.A.T.C.S., (hereinafter sometimes called the "Act"), pursuant to Article 16, Section 59 of the Texas Constitution; and

WHEREAS, the City of Abilene (hereinafter sometimes called the "City") in Taylor and Jones Counties, is a city duly organized and existing pursuant to the Constitution and laws of the State of Texas and its Home Rule Charter; and

WHEREAS, the District has previously authorized West Central Texas Municipal Water District Water Supply Bonds, Series 1960 and Series 1971 to finance the construction of the District's Hubbard Creek Reservoir and distribution system, which bonds have been refunded by West Central Texas Municipal Water District Unlimited Tax and Revenue Refunding Bonds, Series 1985; and

WHEREAS, the City has entered into a Water Contract dated September 29, 1959 with the District, as amended on August 22, 1985, to purchase water from the Hubbard Creek Reservoir (hereinafter sometimes called "Water Contract"); and

WHEREAS, the City has requested the District to construct a 36" parallel raw water transmission line from Hubbard Creek Reservoir to the City which would permit the City to increase its daily water volume delivery from Hubbard Creek Reservoir from 15.5 MGD to 31 MGD; and

WHEREAS, the City has approved the plans and specifications and contracts for constructing a 36" diameter parallel pipe line and pumping facilities for transmission of raw water from Hubbard Creek Reservoir to the City, dated April, 1986 as

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prepared by Freese and Nichols, Inc., Consulting Engineers, Fort Worth, Texas, (hereinafter sometimes called "Project"); and

WHEREAS, the District and the City are authorized to make and enter into this Contract under the Act, Art. 4413 (32c), V.A.T.C.S., and other applicable laws; and

WHEREAS, the parties hereto recognize and agree to these facts:

- (a) that the District is preparing to issue, sell, and deliver its Bonds for the purpose of acquiring and constructing the Project; and
- (b) that the District will pledge part of the City's payments to the District under this Contract to the payment of principal of and the interest on its Bonds issued in connection with the Project.

IT IS THEREFORE CONTRACTED AND AGREED BETWEEN THE DISTRICT AND THE CITY AS FOLLOWS:

Section 1. DEFINITIONS. The terms and expressions used in this Contract, unless the context shows clearly otherwise, shall have meanings as follows:

- (a) "Project" means the Project as defined in the preamble to this Contract.
- (b) "Board" and "Board of Directors" means the Board of Directors of the District.
- (c) "Bonds" means any bonds to be issued by the District for the acquisition, construction, or completion of the Project, whether in one or more series or issues, or any bonds issued to refund same.
- (d) "Bond Resolution" means any resolution of the Board of Directors authorizing the issuance of Bonds and providing for their security and payment, as such resolution(s) may be amended from time to time as therein permitted.
- (e) "Fiscal Year" means the District's fiscal year, currently the year beginning October 1 of each

calendar year and ending on September 30 of the following calendar year.

(f) "Operation and Maintenance Expenses" means all costs and expenses of operation and maintenance of the Project, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements for which no special fund is created in any Bond Resolution, operating personnel, the cost of utilities, the costs of supervision, engineering, accounting, auditing, legal services, supplies, services, administration of the Project, including the District's general overhead expenses attributable to the Project, insurance premiums, equipment necessary for proper operation and maintenance of the Project, and payments made by the District in satisfaction of judgments resulting from claims not covered by the District's insurance arising in connection with the operation and maintenance of the Project. The term does not include depreciation.

Section 2. OBLIGATION OF DISTRICT TO CONSTRUCT. The District agrees to pay and will pay all of the actual costs of acquiring and constructing the Project through the issuance of its Bonds pursuant to the Act, and other applicable laws, to provide the money for such payment.

Section 3. DISTRICT'S BOND RESOLUTION. The proceeds from the sale of the Bonds will be used for the payment of all of the District's costs and expenses in connection with the Project and the Bonds, including, without limitation, all financing, legal, printing, and other expenses and costs incurred in issuing its Bonds. Such Bonds initially will be issued by the District in an amount not to exceed \$24,500,000, which is estimated to be sufficient to cover all the aforesaid costs and expenses and other amounts required. Each Bond Resolution of the District shall specify the exact principal amount of the Bonds initially issued, which shall mature not

more than 25 years from the date of such Bonds, and shall bear interest at not to exceed the maximum legal rates, and the Bond Resolution shall create and provide for the maintenance of a revenue fund, an interest and sinking fund, and a debt service reserve fund, all in the manner and amounts as provided in such Bond Resolution. The City agrees that if such Bonds are actually issued and delivered to the purchaser thereof, the Bond Resolution authorizing the Bonds shall for all purposes be deemed to be in compliance with this Contract in all respects, and the Bonds issued thereunder will constitute Bonds as defined in this Contract.

Section 4. CONSULTING ENGINEERS. The District and the City agree that Freese and Nichols, Inc., Consulting Engineers, Fort Worth, Texas, shall constitute and be defined as the "Consulting Engineers" for the Project; that the Project will be acquired and constructed in accordance with plans and specifications prepared under the supervision of the Consulting Engineers. It is further agreed that the Consulting Engineers may be changed, but only with the agreement of both the District and the City.

Section 5. ACQUISITION AND CONSTRUCTION CONTRACTS. The District will enter into such contracts as are necessary to provide for acquiring and constructing the entire Project, and said contracts shall be executed as required by the laws applicable to the District. The District shall pay the amounts due under said contracts from the proceeds from the sale of its Bonds. Any proceeds from the sale of its Bonds remaining after completion of the Project shall be used to pay principal and interest on the Bonds, and reduce to that extent the payments required to be made by the City under this Contract.

Section 6. PAYMENTS BY CITY. (a) That the District will provide and make available to the City the raw water transmission line of the Project. Although the District shall have and retain title to the Project, it is agreed that the City shall have the exclusive use of the entire Project throughout its

useful life. It is understood that the City will continue to pay the District for the purchase of the water received through the raw water transmission line of the Project pursuant to the Water Contract and that this Contract is only in reference to the construction, maintenance and financing of the Project. In consideration for the District's acquiring, constructing, providing, and making available the Project to the City, the City agrees to make the payments hereinafter specified. As further consideration, it is agreed that the District will have the sole responsibility for operating and maintaining the entire Project throughout its useful life, and that the District will operate and maintain the entire Project throughout its useful life; and the City agrees to indemnify and to save and hold harmless the District from any and all claims, damages, losses, costs, and expenses, including reasonable attorneys fees, arising at any time from the acquisition, construction, existence, ownership, operation and/or maintenance of the entire Project. It is further agreed that the City's obligation to make any and all payments with respect to the Bonds under Section 6(b)(1) and (2) and 6(c) of this Contract will terminate when all of the District's Bonds issued in connection with the Project, or any Bonds issued to refund same, have been paid and retired and are no longer outstanding; and it is agreed that the cessation of such payments or charges is and will be a reasonable arrangement after such Bonds have been retired. However, the City shall make the payments to cover operation and maintenance expenses of the Project as provided in Section 6(b)(3) throughout the life of the Project, and the City must continue to pay the District for the water purchased from the District pursuant to the Water Contract. It is further understood and agreed that the District's only source of funds to pay the principal of and interest on its Bonds and to pay its expenses in connection with its Bonds and the Project, is from the payments to be made by the City to the District under this Contract.

(b) That the City agrees to make the following payments to the District during the term of this Contract:

1. Such amounts, payable semiannually, on or before April 25 and October 25 of each year beginning on April 25, 1987, as are necessary to pay the interest coming due on the District's Bonds on each May 1 and November 1 and to pay annually on October 25 of each year, beginning on October 25, 1987, such amounts as are necessary to pay the principal coming due on the District's Bonds each November 1, plus the fees and charges of the Paying Agent/Registrar for paying or redeeming the Bonds and/or interest thereon coming due on such date, and the fees and charges of the Paying Agent/ Registrar for transferring and registering the Bonds.

2. Such amounts as are necessary to make all payments into any debt service reserve fund or other special fund or funds required to be established and/or maintained by the provisions of any Bond Resolution.

3. Such amounts, payable monthly on or before the 20th day of each month, equal to the amount of estimated Operation and Maintenance Expenses of the District for the Project for the next ensuing calendar month, as shown in the Annual Budget or amended Annual Budget as provided in Section (d) hereof.

(c) If, in addition to the amount initially issued, the District finds it necessary to issue Bonds for the purpose of completing the Project to the extent contemplated by this Contract, Bonds in addition to those described in Section 3 hereof may be issued in the amount required to provide for the completion of the Project and to pay the expenses of issuance of such Bonds, as well as to fund, if and to the extent necessary, additional amounts in the interest and sinking fund and the debt service reserve fund. If such completion Bonds are issued the amounts to be paid to or retained by the District under all Sections of this Contract shall be increased proportionately, and such amounts shall at all times be sufficient to pay the principal of and interest on all such Bonds and all other requirements in connection therewith. It is understood and agreed that the only source of funds for the District to acquire, construct, and complete the Project is from the issuance and sale of its Bonds (including additional Bonds) pursuant to this Contract.

(d) District covenants that it will operate and maintain the Project in accordance with accepted good business and

engineering practices and in accordance with requirements of all applicable Federal and State laws, and any rules and regulations issued and to be issued by appropriate agencies in the administration of said laws. The City and the District agree that their obligations hereunder shall include compliance with the requirements made under said laws, and any rules and regulations issued pursuant thereto. Not less than sixty (60) days before the commencement of each Fiscal Year while this Contract is in effect, District shall cause its tentative budget for Operation and Maintenance Expenses of the Project for the ensuing Fiscal Year to be prepared and a copy thereof filed with the City. A reasonable amount to cover and reimburse the District for its administrative and overhead expenses directly attributable to the Project and the Bonds, including the cost of routine annual accounting reports, shall be included as an item of Operation and Maintenance Expenses. If no protest or request for a hearing on such tentative budget is presented to District within thirty (30) days after such filing of the tentative budget by the City, the tentative budget for the Project, when adopted by District's Board of Directors, shall be considered for all purposes as the "Annual Budget" for the ensuing Fiscal Year. But if a protest or request for a hearing is duly filed, it shall be the duty of the District to fix the date and time for a hearing on the tentative budget before its Board of Directors and shall so advise the City in writing. The Board of Directors shall consider the testimony and showings made in such hearing, and the Board of Directors of District may adopt the budget or make such amendments thereof as to it may seem proper. The budget thus approved by the Board of Directors of the District shall be the Annual Budget for the next ensuing Fiscal Year. The Annual Budget may be amended to provide for transfers of budgeted funds between expenditure accounts, provided however that said transfers do not result in an overall increase in budgeted funds as approved in the Annual Budget. The Annual Budget may be amended and

increased through formal action by the Board of Directors of District, if required. Certified copies of any amended Annual Budget and the resolution authorizing same shall be filed immediately by the District with the City.

(e) The City now has outstanding combined waterworks and sewer system revenue bonds, and represents and covenants that the use of the facilities and services to be obtained pursuant to this Contract are essential and necessary to the operation of the City and its combined waterworks and sewer system, and that all payments to be made hereunder by it will constitute reasonable and necessary "operating expenses" of the City's combined waterworks and sewer system, within the meaning of Vernon's Article 1113, and the provisions of the ordinances, respectively, which heretofore have authorized, and hereafter may authorize, the issuance of all combined waterworks and sewer system revenue bond issues of the City, with the effect that the City's obligation to make payments from the revenues of its combined waterworks and sewer system revenues under this Contract shall have priority over its obligations to make payments of the principal of and interest on any and all of its combined waterworks and sewer system revenue bonds heretofore and hereafter issued. The City agrees to fix and collect such rates and charges for waterworks and sewer services to be supplied by its combined waterworks and sewer system as will make possible the prompt payment of all expenses of operating and maintaining the entire Project and operating and maintaining the City's entire combined waterworks and sewer system, including all payments, obligations, and indemnities contracted hereunder, and the prompt payment of the principal of and interest on all City bonds or other obligations heretofore and hereafter issued or incurred to be payable from the net revenues of its combined waterworks and sewer system.

(f) Recognizing the fact that the City urgently requires the facilities and services of the Project covered by this Contract, and that such facilities and services are necessary

for actual use and for standby purposes; and further recognizing that the District will use the payments received from the City hereunder to pay, secure, and finance the issuance of the Bonds, it is hereby agreed that if and when any Bonds are delivered, the City shall be obligated to make the payments required by this Contract, regardless of whether or not the District actually provides such facilities and services, or whether or not the City actually receives or uses such facilities and services, and the holders of the Bonds shall be entitled to rely on the foregoing agreement and representation.

Section 7. ACQUISITION AND CONSTRUCTION. The District agrees to proceed promptly with the acquisition and construction of the Project. The District covenants that it will make a diligent effort to commence construction as soon as practicable. The District does not anticipate any delays in commencing or completing the Project, but the District shall not be liable for any damages occasioned by the construction or completion of the Project, or any delays in completion of the Project.

Section 8. CONDITIONS PRECEDENT. The obligation on the part of the District to acquire and construct the Project shall be conditioned upon the following:

- (a) sale of Bonds in an amount sufficient to assure the acquisition and construction of the Project; and
- (b) the District's ability, or the ability of the contractors, to obtain all permits, material, labor, and equipment necessary for the acquisition and construction of the Project.

Section 9. USE OF CITY'S PUBLIC PROPERTY. By these presents, the City authorizes use by the District of any and all real property, streets, alleys, public ways and places, and general utility or sewer easements of the City for acquiring and constructing the Project, as provided in this Contract.

Section 10. FORCE MAJEURE. If, by reason for Force Majeure, any party hereto shall be rendered unable wholly or in part to carry out its obligations under this agreement, with the exception as hereinafter provided, then 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 upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or 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 within all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. It is specifically excepted and provided, however, that in no event shall any Force Majeure relieve the City of its obligation to make payments to the District as required under Section 6 of this Contract.

Section 11. INSURANCE. The District agrees to carry fire, casualty, public liability, and other insurance on the Project for purposes and in amounts which would ordinarily be carried by a privately owned utility company owning and operating such facilities, except that the District shall not be required to carry liability insurance except to insure itself

against risk of loss due to claims for which it can, in the opinion of the District's General Counsel, be liable under the Texas Tort Claims Act or any similar law or judicial decision. Such insurance will provide, to the extent feasible and practicable, for the restoration of damaged or destroyed properties and equipment, to minimize the interruption of the services of such facilities. All premiums for such insurance shall constitute an Operation and Maintenance Expense of the Project.

Section 12. REGULATORY BODIES. This Contract and the Project shall be subject to all valid rules, regulations, and laws applicable thereto passed or promulgated by the United States of America, the State of Texas, or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 13. USE OF THE PROJECT. It is agreed and understood that the City shall not, under any circumstances, or permit its inhabitants, under any circumstances, to use the Project in any manner which would cause the design capacity of the Project to be lessened or cause any governmental permit granted for the Project to be violated.

Section 14. TERM OF CONTRACT. That the term of this Contract shall be for the useful life of the Project, and in any event for the period during which any of the District's Project Bonds, and any Bonds issued to refund same, or any interest payable thereon, are outstanding and unpaid.

IN WITNESS WHEREOF, the District and the City, acting under authority of their respective governing bodies have caused this contract to be duly executed in several counterparts, each of which shall constitute an original, all as of the ____ day of _____, 1986, which is the date of this Contract.

WEST CENTRAL TEXAS
MUNICIPAL WATER DISTRICT

BY  President, Board of Directors

ATTEST:


Secretary, Board of Directors
(SEAL)

CITY OF ABILENE, TEXAS

BY  Mayor

ATTEST:


City Secretary
(SEAL)