

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A WATER PURCHASE CONTRACT BETWEEN THE CITY OF ABILENE, TEXAS, AND THE CITY OF CLYDE, TEXAS.

WHEREAS, the City of Clyde, Texas, has requested the City of Abilene to execute a water purchase contract; and,

WHEREAS, the City Council is of the opinion that such contract should be executed; now, therefore,

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

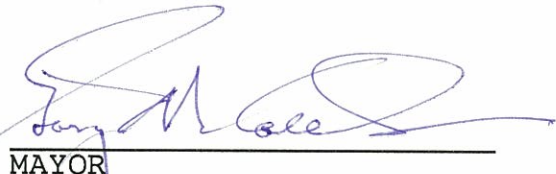
PART 1: That the water purchase contract between the City of Abilene and the City of Clyde, a copy of which is attached hereto and made a part hereof for all purposes, be, and the same is hereby, in all things, approved.

PART 2: That the Mayor be and he is hereby authorized to execute said contract for and on behalf of the City of Abilene.

ADOPTED this 28th day of June, A.D. 1990.

ATTEST:


CITY SECRETARY


MAYOR

APPROVED:


CITY ATTORNEY

WATER SUPPLY CONTRACT WITH CLYDE

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THE STATE OF TEXAS

COUNTY OF TAYLOR

WATER SUPPLY CONTRACT WITH CLYDE

This contract is made this 28 day of June, 1990, by and between the City of Abilene, Texas, a Municipal Corporation of Taylor and Jones Counties, Texas, (hereinafter referred to as "Abilene"), acting by and through its Mayor, who has been duly authorized to act by the City Council of Abilene, and the City of Clyde, Texas, a Municipal Corporation of Callahan County, Texas, (hereinafter referred to as "Purchaser"), acting by and through its Mayor who has been duly authorized to act by the City Council of said Purchaser.

WITNESSETH:

That for and in consideration of the covenants, promises and agreements set forth herein, it is mutually agreed as follows:

I. GENERAL PROVISIONS

A. Purpose

The purpose of this Contract is for Abilene to sell and provide water to the Purchaser for rural residential and rural agricultural uses and those purposes incidental to rural and rural agricultural uses under the provisions of this Contract.

Abilene shall act by and through its agent (Director of Water Utilities or his duly authorized representative) unless otherwise stated in this Contract. Purchaser shall act

by and through its agent (the Mayor or his duly authorized representative) unless otherwise stated in this Contract.

B. Modification

This Contract may be changed or modified only with the consent of the City Council of Abilene, the City Council of Purchaser, and Farmer's Home Administration, hereafter referred to as FmHA. Once the debt to FmHA by Purchaser is satisfied, consent need only be obtained from City Council of Abilene and City Council of Purchaser. Any modification shall be in writing. Such modification may be requested by either party, in which event a joint meeting of such both parties shall be held within ninety (90) days after the giving of such notice, at which joint meeting the requested changes or modifications shall be considered and discussed. No such change or modification may be made which will affect adversely the prompt payment, when due, of all monies required to be paid by Purchaser under the terms of this Contract.

C. No Assignment

Purchaser shall not assign nor transfer in whole or in part the rights and obligations granted in this Contract without first obtaining the written consent of Abilene's agent, except that Purchaser may pledge this Contract as part of the security for any loan from FmHA.

Upon default by Purchaser, it is agreed that FmHA may assign this Contract to a successor in interest if the assignee agrees to comply with all provisions of the Contract.

D. Duration, Termination

This Contract shall be effective for a period of forty (40) years, beginning June 28, 1990, through June 28, 2030.

a) Upon the breach of any of the provisions of this Contract, Purchaser may terminate this Contract by giving written notice within thirty (30) days of such breach to Abilene's Director of Water Utilities by registered or certified mail to the address shown on the signature page.

The notice shall explain in detail the provision(s) of the Contract that is breached and the circumstances giving rise to the breach.

Abilene shall have ninety (90) days upon receipt of written notice to correct the violation of the Contract.

b) Upon the breach by Purchaser of any of the provisions of this Contract, Abilene may terminate this Contract after providing written notice of the breaches to FmHA and the Purchaser. While an indebtedness exists to FmHA by Purchaser, FmHA reserves the right to assume all rights and obligations of Purchaser. It is agreed that Purchaser shall have ninety (90) days and FmHA shall have one hundred and twenty (120) days to correct any and all violations of the contract after receipt of written notice of same by registered or certified mail to the address shown on the signature page.

The notice shall explain in detail the provision(s) of the contract that is breached and the circumstances giving rise to the breach. It is specifically

provided that a failure to pay Abilene for water supplied under this Contract under Abilene's billing schedule; and any changes thereto is breach of this Contract.

Should Purchaser pay the amount of money owed to Abilene after Abilene has given notice, this Contract shall remain in full force and effect. If Purchaser pays the monthly charges, Abilene, by accepting the payments, shall not be considered as having waived any of its rights under this Contract.

E. Notices

All notices required under the terms of this Contract shall be in writing and sent by registered or certified mail to the address shown on the signature page.

F. Venue

Venue for any legal proceeding shall be in the City of Abilene, Taylor County, Texas.

G. Force Majeure

That 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 Purchaser to make 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 ten (10) days 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" includes, but is not limited to, acts of God, strikes, or other industrial disturbances, acts of war, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, drought, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and inability on part of Abilene to deliver water under, or of Purchaser 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 judgement of the party having the difficulty.

H. Paragraph Headings

The paragraph headings contained herein are for convenience in reference to this Contract and are not intended to define or to limit the scope of any provision of this Contract.

I. Interpret Contract Fairly

Although this Contract is written by Abilene, should

any part of this Contract be in dispute, then this Contract shall be interpreted fairly to both parties.

J. Pay Delinquent Accounts

Purchaser agrees that no legally enforceable obligations owed by it to City of Abilene, Abilene Independent School District, or West Central Texas Municipal Water District, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

K. Attorney's Fees

If either party brings legal action to enforce the terms of this Contract, and prevails, that party shall be entitled to reasonable attorney's fees.

L. Violation of Contract

If Purchaser does any of the following, it shall be liable and owe to Abilene a fee of \$1,000 per violation per month that violation continues:

1. Fails to comply with Abilene's Drought Contingency Plan, which is attached as Exhibit A and made a part of this Contract.
2. Sells water in violation of this Contract.

M. Conflict

In the event any provision of this Contract shall conflict with a State law, the Texas Constitution, or a Federal law or the U.S. Constitution, the State law or the Texas Constitution or Federal law or U.S. Constitution shall control.

N. Contingent

The Contract is contingent upon approval by the FmHA in writing, by the State Director of the FmHA. If the FmHA does not approve this Contract within six (6) months from the date this Contract is made, this Contract shall be invalid and void. Any Contract between the Purchaser and Abilene existing at the time this Contract is made shall remain valid unless or until this Contract becomes valid.

After approval by the Purchaser, Abilene, and FmHA of this Contract, this Contract shall take the place of prior existing contracts between the Purchaser and Abilene.

If the construction of the water supply distribution system by the Purchaser is being financed by a loan made or insured by, and/or a grant from the United States of America, acting through the Farmer's Home Administration of the United States Department of Agriculture, FmHA's role is that of providing financing to the Purchaser and insuring FmHA's loan is repaid.

O. Subject to Certification of Convenience

Upon execution and approval by Abilene, Purchaser, and FmHA of this Contract, the terms and conditions of the Contract shall be filed with and be a part of any "Certificate of Convenience and Necessity" that has been or will be issued to Purchaser by the Texas Water Commission. If Purchaser has no "Certificate of Convenience and Necessity", Purchaser is not required to file this Contract with the Texas Water Commission.

II. FURNISHING WATER

A. Delivery Point

Abilene agrees to sell and to provide water to Purchaser at a point of metering which shall be known as the "Delivery Point(s)".

"Delivery Point No. 1" of the water supply line shall be located at the intersection of FM 18 and Elmdale Road. Routing of the water supply line shall be parallel to FM 18 from Delivery Point No. 1 for 8.1 miles to the city limits of Clyde. A pump station and storage tank shall be located approximately 1.9 miles east of the delivery point.

Additional "Delivery Points" may be designated as negotiated between Abilene and Purchaser.

Purchaser agrees to purchase and to take delivery of said water at the delivery point for Purchaser's own use. Except as to customers that exist at the time of the signing of the Contract, which include Eula Water Supply Corporation and Callahan County Water Supply Corporation, purchaser shall not resell the water provided under this Contract within 5 miles east of Delivery Point #1 without written approval by Abilene's City Council.

Abilene shall be obligated to treat and to filter the water to be delivered to and received by Purchaser so that the water is the same quality as that supplied to the customers of Abilene.

Purchaser shall protect its storage and distribution system from cross connections under the specifications required by the health standards of the State of Texas, and

any changes thereto.

B. Quantity and Demand

Purchaser represents that its estimated quantity of water will be 100,000,000 gallons per year which shall be known as the "Base Contract Amount". Purchaser agrees that Abilene's capability to provide increases of water in quantity is subject to available supply and deliverability, as determined by Abilene's agent.

"Demand" means the quantity of water used by Purchaser within a water year.

"Water Year" means the year beginning January 1 and ending December 31.

"Base Contract Amount" means any water year demand that equals or exceeds 100,000,000 gallons.

The "Maximum Daily Flow Rate" of water that Abilene's system is capable of delivering to Purchaser at "Delivery Point No. 1" is 1,400 gallons per minute; at a minimum pressure of 20 psi. Abilene is not required to deliver any more water to Purchaser than the maximum daily flow rate.

Abilene will use its best efforts to remain in a position to furnish water sufficient for the reasonable demands of Purchaser but Abilene's obligation under this Contract shall be dependent on the amount of water available to Abilene from its own source of supply.

If unavoidable distribution problems arise, Abilene reserves the right to further limit Purchaser's quantity of water to be taken on an hourly, daily, and/or monthly basis as Abilene determines necessary to preserve adequate water

for both parties.

In the event a water conservation stage is in effect under the Drought Contingency Plan and as a result of such water conservation the Purchaser uses less water than the Contract amount, then the demand charge shall be modified as follows:

The demand charge amount shall be waived on a monthly basis for each month a water conservation stage is in effect during the water year.

If there is a change in Abilene's Drought Contingency Plan, written notice of such change shall be mailed to Purchaser and FmHA.

C. Rates

Purchaser agrees to purchase water at the rate of \$1.38/1,000 gallons, hereinafter referred to as the Contract Rate, which shall be the effective rate from the date of execution of this agreement until one (1) year thereafter; provided, that the price of the water to Purchaser shall never be less than the amount charged any "Commercial Class" water user for the same quantity under Abilene's standard established rate making schedules. Purchaser agrees that the Abilene City Council has the right to revise the rate schedule from time to time to cover all reasonable, actual, and expected costs, including the costs of future water supplies. It is specifically understood and agreed that, in increasing or decreasing the standard established rate for "Commercial Class" customers of Abilene within its corporate limits, Abilene shall act in good faith, and any such in-

crease or decrease in such standard rate shall be based upon valid economic reasons substantially relating to the costs of Abilene supplying such water. Abilene shall give sixty (60) days advance written notice of any rate change to Purchaser and FmHA.

Purchaser agrees to pay a total annual demand charge for each water year based on (1) the 100,000,000 gallon base contract amount less current water year demand, or (2) the highest water year demand established during the preceding five years, less current water year demand, whichever is greater.

Rate Schedule:

Contract Rate - \$1.38 per 1,000 gallons

Demand Charge - \$.20 per 1,000 gallons

The "Demand Charge" represents the cost of reserving the water for Purchaser.

D. Payment

Abilene agrees to render a statement of charges for the base rate monthly. Payment is due upon receipt of the statement. Purchaser agrees to pay promptly. The demand charge shall be billed within sixty (60) days after each water year. Payment will be in a lump sum which is due thirty (30) days from receipt of the statement.

E. Additional Surface Water Supplies

If Purchaser develops or acquires additional surface water supplies from any source other than Abilene, resulting in reduced quantity from Abilene, then Abilene is released from the obligation to supply the contract amount mutually

established under Part II. B. of this Contract. In such event, Abilene may adjust its supply obligation to levels commensurate with Purchaser's reduced demand.

If within the term of this Contract, Purchaser totally or partially discontinues taking water from Abilene because such other water supplies have been developed or acquired, Purchaser shall for five (5) years or the balance of this Contract, whichever is less, remain liable for demand charges at the billing level in effect at the date of written notification of such partial or total cessation of Base Contract Amount. However, Abilene may waive Purchaser's obligation in the event of nominal reductions based on Purchaser's plans if Abilene has received prior notice of the plans and concurred in the reduction.

F. Maintain Facilities and Equipment

Purchaser agrees to construct and install all pipeline, valves, Master Meter(s), fittings and appurtenances required to meet the quantity and demand requirements set forth in paragraph B. of this Section. All facilities constructed by the City of Clyde, including the Master Meter(s), in order to meet quantity and demand requirements as set forth in paragraph B of this Section, will be owned and maintained by the City of Clyde.

Both parties to this Contract shall have access to such meter equipment at all reasonable times. It shall be the duty of either party to this Contract to notify the other party in the event that the meter(s) is registering inaccurately or malfunctioning so the meter(s) can be promptly

repaired. Each meter will be operated and maintained so as to record with commercial accuracy. Abilene will notify Purchaser prior to any meter tests. Either party has the right to request a meter be tested with the other party having the right to witness such test. If Purchaser requires that an independent testing service be used, Purchaser shall pay the cost of said testing service if the meter(s) is found to be accurate. If the meter(s) is found to be inaccurate, Abilene shall pay the costs of said testing service.

G. Unit of Measurement

The unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U. S. Standard Liquid Measure.

H. Title to Water

Title to all water supplied hereunder shall remain in Abilene to the delivery point(s). From such point(s) (whether metered there or not), title shall pass to Purchaser.

I. Hold Harmless

Each party agrees to indemnify, hold harmless, and defend the other party and their officers, agents, and employees from and against all liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expense, including court costs, attorneys' fees, and other reasonable costs occasioned in connection with the transportation, delivery and disposal of

said water while title to the water remains in such party.

J. Acquisition of Facilities

If Purchaser moves or abandons the designated delivery point(s), Purchaser shall pay all costs incurred in relocating the delivery point(s).

If Abilene annexes any area in which the equipment, facilities, or easements of the Purchaser are located, the ownership and/or title to such equipment, facilities, or easements shall remain with the Purchaser subject to the rights and liens of the lending agency to the Purchaser. In the event Abilene requests the removal, replacement, or relocation of any equipment or facilities such as meters, pumps, or air gap reservoirs, the expense for such removal, replacement, or relocations, shall be borne by Abilene.

In the event Abilene purchases any facilities under this contract, Abilene shall pay present fair market value less depreciation as set in this paragraph.

The present fair market value shall be based on the present total cost of pipe, labor, and installation less depreciation. The usable life shall be 40 years from the date of actual installation. For example, if the line was installed 10 years previous to the time of acquisition, the line shall be depreciated 1/4 of its present total cost of installation and the Purchaser shall be paid 3/4 of the present cost of installation.

These two provisions shall mean that Purchaser shall be paid (1) all expense for removal, replacement, or relocation of facilities, and (2) fair market value for any facilities

acquired by Abilene, if Abilene requests relocation of facilities.

1. FmHA shall be provided written notice by Abilene ninety (90) days prior to Abilene's acquisition of any facilities from the Purchaser as provided in the paragraph II. J.
2. FmHA shall evaluate Abilene's offer to insure that the Purchaser is receiving present fair market value as defined in this paragraph II. J. If FmHA has not objected to the offer within one hundred twenty (120) days of receipt by FmHA, Abilene's offer shall be deemed to be a fair market offer.

After receiving approval or no objections by FmHA, Abilene shall notify the Purchaser thirty (30) days before exercising its right to acquire Purchaser's facilities.

The provisions of this paragraph II. J. are limited to the water supply line, pump station, storage tank and appurtenances thereto located along the water supply line routing between Abilene and Purchaser as defined in paragraph II. A. Any facility acquisition, relocation, or removal by Abilene shall not affect Abilene's obligation to provide water to Purchaser under this Contract.

CITY OF ABILENE, TEXAS

CITY OF CLYDE, TEXAS

Business Address:
c/o Director of Water Utilities
P. O. Box 60
Abilene, Texas 79604

Business Address:
c/o Mayor
Drawer TT
Clyde, Texas 79510

By: *[Signature]*
Mayor

By: *[Signature]*
Mayor

ATTEST:

ATTEST:

[Signature]
City Secretary (City Seal)

[Signature]
City Secretary (City Seal)

APPROVED AS TO FORM:

APPROVED AS TO FORM:

[Signature]
City Attorney

[Signature]
City Attorney

This Contract is approved on behalf of the FmHA this 6
day of July, 1990.

By: *[Signature]*
Title: Assistant District Director