

RESOLUTION NO. 15-08

A RESOLUTION AUTHORIZING WATER CONTRACT WITH WEST DELTA WATER SUPPLY CORPORATION AND GRANTING AUTHORITY TO THE MAYOR TO EXECUTE SAID RESOLUTION AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE MAYOR'S SIGNATURE TO THIS RESOLUTION AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL INSTRUMENTS REQUISITE IN IMPLEMENTING THIS RESOLUTION AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE CITY MANAGER'S SIGNATURE TO THIS RESOLUTION.

A regular meeting of the City Council of the City of Commerce, Texas, was held in Commerce, Texas, at City Hall, on the 17th day of February 2015, at 6:00 p.m., a majority of council members being present and constituting a quorum, the following resolution was adopted:

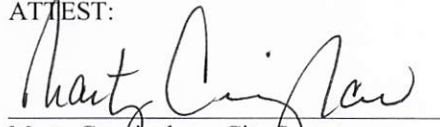
WHEREAS, after careful consideration it would be in the best interest and general welfare of the City of Commerce that the City extend its water contract with West Delta Water Supply Corporation for an additional 25 years and to increase amount to 3,000,000 per month.

NOW, THEREFORE, BE IT RESOLVED that the Mayor of the City of Commerce, Texas, be authorized and he is hereby authorized to execute this Resolution; and that the City Manager be authorized to execute agreement, a copy of which is marked Exhibit "A" and being made a part hereof just as if copied herein verbatim, and all instruments requisite in implementing this resolution.

BE IT FURTHER RESOLVED that the City Secretary be authorized and she is hereby authorized to attest to the signature of the Mayor to this Resolution, and to attest to the signature of the City Manager to any instruments requisite to implementing this Resolution.

PASSED BY THE GOVERNING BODY of the City Council of the City of Commerce, Texas, on the 17th day of February 2015.

ATTEST:

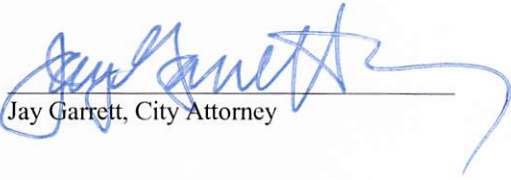

Marty Cunningham, City Secretary

(seal)

CITY OF COMMERCE, TEXAS

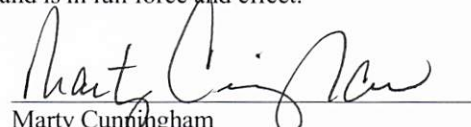

John Ballotti, Mayor

APPROVED AS TO FORM:


Jay Garrett, City Attorney

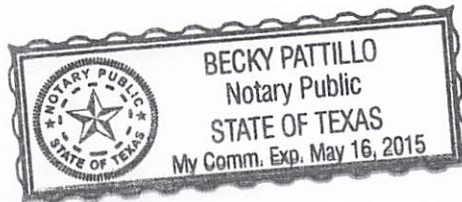
I, Marty Cunningham, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of a resolution, and that the same has not been repealed and is in full force and effect.

(seal)


Marty Cunningham
City Secretary

Sworn to and subscribed before me, on this the 25th day of February, 2015, to certify which witness my hand and seal of office.

(seal)




Becky Pattillo
Notary Public, State of Texas

STATE OF TEXAS

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COUNTY OF HUNT

§

This Contract entered into this 20th day of March, 19~~98~~⁹⁰, between the City of Commerce, a municipality and political subdivision of the State of Texas, incorporated and operating under provisions of the Texas Constitution and the laws of the State of Texas relating to Home Rule Cities, acting by and through its Governing Body, being authorized by resolution, a copy of which being attached hereto and made a part hereof, hereinafter referred to as "City, and WEST DELTA WATER SUPPLY CORPORATION, acting by and through its President, he being authorized by resolution, a copy of which being attached hereto and made a part hereof, hereinafter referred to as "Corporation". In consideration of the mutual agreements contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do covenant and agree as follows:

W I T N E S S E T H :

WHEREAS, Corporation, in order to meet its present demands for water for its customers and to provide an adequate and dependable water supply for future needs of its operation, has heretofore negotiated with the City Commission of the City of Commerce for purchase of raw water from the City of Commerce; and

WHEREAS, City will have available water in the quantities hereinafter contracted to be sold by it to the Corporation;

NOW, THEREFORE, in consideration of the mutual covenants and agreement herein contained, City agrees to furnish and Corporation agrees to pay for water supply services upon the terms and conditions and for the consideration hereinafter set forth, to-wit;

Section 1. QUANTITY. Subject only to the provisions of this section City agrees during the period of this contract, to tender and make available to Corporation for its own use and at the delivery point as hereinafter specified raw water in a volume of a minimum of five hundred thousand (500,000) gallons a month and up to two million (2,000,000) gallons per month.

Should Corporation desire to increase this maximum rate of delivery as hereinabove fixed, a formal request stating the desired rate of increased delivery shall be addressed to City and shall then become a matter of negotiation between Corporation and City. City will use its best efforts to remain in a position to furnish water as herein contracted to be sold to Corporation, but its liabilities shall be limited in accordance with other conditions herein contained. In the event drouth conditions create a shortage of water so that it becomes necessary for City to impose restrictions upon water usage upon its other customers, City may serve written notice upon Corporation and upon receipt of such notice Corporation shall immediately impose the same restrictions with respect to the use of water upon its customers. In the event the total water supply available to City shall be insufficient to meet all the needs of customers of City, and the Corporation, the City may prohibit the use of water by Corporation for any purpose other than purely domestic uses, as set out above, and then may pro-rate the water available among the customers of City and the Corporation. In the event of such shortage, Corporation shall be furnished water in the quantity which bears the same proportions to the total water available to City as the average amount of water used per day by Corporation bears to the average amount of water used per day by all other customers of City for the preceding thirty (30) days period. City shall use all means within its disposal to resume normal water supply to Corporation as quickly as possible.

Section 2. POINT OF DELIVERY AND PRESSURE. It is agreed that water will be furnished at a reasonable constant pressure at the following point of delivery, same being shown on the attached plat marked Exhibit "A" and made a part hereof. The equipment and devices for measuring water also being shown on the attached plat marked Exhibit "A" and made a part hereof.

City agrees to delivery at said point of delivery, the quantities of water herein contracted for, at the pressure which is maintained at this point in the water supply system of the City, it being hereby specifically agreed that corporation may utilize whatever pressure maintained in the City system for the movement of the water herein contracted to be purchased through the supply line to the first reservoir of the Corporation.

Section 3. MEASURING EQUIPMENT. Corporation shall furnish and install at its own expense and will operate and maintain at its own expense at said delivery point, the necessary equipment and devices of standard type for measuring properly the quantity of water delivered under this agreement. Either the City or the Corporation may request special meter tests at any time with the cost of all tests being borne by the party making the request. Meters registering not more than two percent above or below normal shall be deemed to be accurate. The reading of any meters which have been disclosed by test to be inaccurate shall be corrected for the ninety (90) days previous to such test in accordance with the percentage of inaccuracy found by such test. If any meter shall fail to register for any period, the amount payable shall be based upon the water delivered in the corresponding period immediately prior to the failure, unless City and Corporation shall agree on an amount of water furnished during such period. The meter used under this agreement shall be read on the last day of each calendar month by City and shall be available for checking by a representative of the Corporation during usual business hours on the last day of each calendar month.

Section 4. PRICE AND TERMS. The service to be performed under this contract by City consists of the readiness of the City to deliver to Corporation, water in accordance with the provisions of Section 1 hereof. In return for such service, Corporation agrees to compensate City by payment of certain monthly sums of money for each of which sums City agrees, if required by Corporation, to deliver all or so much thereof as Corporation may desire, of a certain corresponding volume of water as set forth below in the following schedule:

For each one thousand (1,000) gallons of water, Corporation agrees to pay to City the sum of ninety five cents (\$.95).

Payment of the monthly service charge listed above shall be made each month with a guaranteed minimum payment of FOUR HUNDRED SEVENTY FIVE AND NO/100THS DOLLARS (\$475.00) per month by the Corporation to the City and shall be due and payable on or before the 10th day of the month following the service. City shall have the right, as with its own customers, to discontinue water service upon the failure of Corporation to pay the monthly service charge on or before the 20th day of the month following the service.

Section 5. Due to the length of the term of this contract, there will a annual review of the price of water provided for herein as well as the amount of water to be purchased by Corporation. Therefore, should changes and/or changes in the contract, and/or modifications be dictated, then and in such event, a modification may be requested by either party, in which event a joint meeting of such governing body shall be held not less than ninety (90) days after 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 Corporation under the terms of this Contract.

Section 6. FORCE MAJEURE. In case of reason of "Force Majeure" either party hereto shall be rendered unable wholly or in part to carry out its obligations under this agreement, 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 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 disturbance, 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, earthquakes, fires, hurricanes, storms, washouts, drouths, arrests, restraining of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipe lines or canals, partial or entire failure of water supply and inability on part of City to deliver water hereunder, or of City 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 requirements that any "Force Majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts be according 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.

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Section 7. TERMS OF CONTRACT. This contract shall continue in force and effect for a period of twenty five (25) years from the date of the first tender of delivery by City of water to Corporation, and for such period of time in addition thereto as may be necessary for Corporation. Corporation agrees that it will set its meter at the point of delivery hereinabove referred to, during construction of the system, City agrees that it will commence deliveries of water hereunder at any time when requested by Corporation, and provided that Corporation give City thirty (30) days notice of its intention to begin the acceptance of water.

Section 8. NON-ASSIGNABILITY. Said Corporation understands and agrees that this Contract may not be assigned without the City's express written consent.

Section 9. NOTICES. All notices or communications provided for herein shall be in writing and shall be either delivered to Corporation or City, or if mailed, shall be sent to registered mail postage prepaid, addressed to West Delta Water Supply Corporation, _____ or until otherwise specified by City in writing to City Hall, City of Commerce, Commerce, Texas.

Section 10. PLACE OF PERFORMANCE. All amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid or done in Hunt County, Texas, and Hunt County, Texas is hereby acknowledged and agreed to be the place of performance of the obligations referenced in this Contract. In the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in Hunt County, Texas.

This Contract constitutes the entire contract between the parties hereto, and there are no agreements understandings, restrictions, warranties, or

representations between the parties other than those set forth herein or herein provided for.

IN WITNESS WHEREOF, the parties hereto, 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 and year first above written.

EFFECTIVE this 20th day of March, 198⁹⁰9.

CITY OF COMMERCE

BY: David M. Ayers
Title: Mayor
Date: March 20, 1990

ATTEST:

Kim Lee
Secretary

(Seal)

WEST DELTA WATER SUPPLY CORPORATION

By: David W. Smith
Title: President
Date: 3-20-90

ATTEST:

Tony L. Bettes
Secretary

(Seal)