

THE STATE OF TEXAS :

COUNTY OF TARRANT :

THIS CONTRACT (hereinafter called "Contract") made and entered into as of the 21st day of July, 1972, by and between Trinity River Authority of Texas, a governmental agency and a body politic and corporate, created by Chapter 518, Acts of the Regular Session of the 54th Legislature, pursuant to Article XVI, Section 59 of the Constitution of Texas (herein called "Authority"), and the City of Coppell, Texas, a municipal corporation of the State of Texas, acting under the laws of the State of Texas (herein called "City");

W I T N E S S E T H :

WHEREAS, City owns and operates its water distribution system and is in need of an additional source of water supply; and

WHEREAS, Authority has contracted with the City of Dallas, Texas (herein called "Dallas") for a water supply; and

WHEREAS, Authority proposes to issue its Bonds for the purpose of constructing facilities to enable it to supply treated water to City (herein called "Project"), in accordance with a report of Rady and Associates, Inc., Consulting Engineers, entitled

Water Supply Report for the City of Coppel, dated 1972, as such report may be amended or supplemented prior to the execution of construction contracts and as changed by change orders entered after construction contracts have been executed, or as such report may be amended or supplemented to provide expanded service in the future (herein called "Engineering Report"); and

WHEREAS, it is desirable and necessary to City that Authority supply water to City;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Authority agrees to construct the Project in accordance with the Engineering Report and to supply water to City and City agrees to pay Authority for water supplied upon terms and conditions hereinafter set forth, to-wit:

Section 1. DEFINITION OF TERMS. Terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

A. "Annual Payment" means the amount of money to be paid to Authority by City each year under this Contract.

B. "Annual Requirement" means the total amount of money required for Authority to pay all Operation and Maintenance Expense of the Project, to pay the debt service on its Bonds and to pay

any amounts required to be deposited in any special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolution.

C. "Bond Resolution(s)" means the resolution or resolutions of Authority which authorize the Bonds.

D. "Bonds" means the revenue bonds issued by Authority, whether one or more issues, and the interest coupons appertaining thereto, to finance the Project.

E. "Dallas Contract" means that contract between Authority and the City of Dallas, dated as of July 21, 1972, under which the City of Dallas agrees to sell water to Authority for resale to City.

F. "Fiscal Year" means the fiscal year of Authority, which is December 1 through November 30.

G. "Operation and Maintenance Expense" means all costs of operation and maintenance of the Project including (for greater certainty but without limiting the generality of the foregoing) the cost to the Authority of water purchased from the City of Dallas for resale to City, under the Dallas Contract, repairs and replacements for which no special fund is created in the Bond Resolution(s), the cost of utilities, supervision, engineering,

accounting, auditing, legal services, and any other supplies, services, administrative costs and equipment necessary for proper operation and maintenance of the Project, and payments made by Authority in satisfaction of judgments resulting from claims not covered by Authority's insurance or not paid by City arising in connection with the operation and maintenance of the Project. The term also includes the charges of the bank or banks where the Bonds are payable.

Section 2. CONSTRUCTION OF PROJECT. Authority will construct the Project in accordance with the Engineering Report, and will issue its Revenue Bonds to finance all or a part of the cost of the Project.

Section 3. QUANTITY, QUALITY, POINT OF DELIVERY, MEASURING EQUIPMENT, UNIT OF MEASUREMENT AND DELIVERY PRESSURE.

A. QUANTITY. Authority agrees to sell and to deliver to City at the Delivery Point hereinafter provided, and City agrees to purchase and take at such Delivery Point, treated water not exceeding the amount of treated water available to Authority under the Dallas Contract for its own use and for distribution to all of the customers served by City's distribution system, except to the extent otherwise provided herein.

B. QUALITY. The water to be delivered by Authority and received by City shall be treated water. City has satisfied

itself that such water will be suitable for its needs.

C. POINT OF DELIVERY. The Point or Points of Delivery into City's distribution system shall be as designated in the Engineering Report, and at such other point or points as may be mutually agreed by the Parties. Agreement by Authority as to such point or points of delivery shall be evidenced by approval in writing by the Staff of Authority of the location of such additional point or points of delivery.

D. MEASURING EQUIPMENT. (a) Authority shall furnish, install, operate and maintain or cause to be operated and maintained the necessary metering equipment of standard type for measuring properly the quantity of water delivered under this agreement and complying with requirements of the Dallas Contract. Such metering equipment shall be located at a location to be designated by Authority. Such meter or meters and other equipment so installed shall remain the property of Authority. City shall have access to such main metering equipment at all reasonable times, but the reading, calibration and adjustment thereof shall be done only by the employees or agents of Authority. For the purpose of this agreement, the original record or reading of the main meter shall be the journal or other record book of Authority in its office in which the records of the employees or agents of Authority who take the reading are or may be transcribed. Upon written request of

City, Authority will give City a copy of such journal or record book, or permit City to have access to the same in the office of Authority during reasonable business hours.

(b) Not more than once in each calendar year, on a date as near the end of such calendar year as practical, Authority shall calibrate its main meter or meters, if requested in writing by City to do so, in the presence of a representative of City, and the parties shall jointly observe any adjustments which are made to the meter in case any adjustments shall be necessary, and if the check meter hereinafter provided for has been installed, the same shall also be calibrated by City in the presence of a representative of Authority and the parties shall jointly observe any adjustment in case any adjustment is necessary. If City shall in writing request Authority to calibrate its meters and Authority shall give City written notice of the time when any such calibration is to be made and a representative of City is not present at the time set, Authority may proceed with calibration and adjustment in the absence of any representative of City.

(c) If either party at any time observes a variation between a main delivery meter and the check meter, if any such check meter shall be installed, such party will promptly notify

the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the main meter shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours' notice of the time of any test of meter so that the other party may conveniently have a representative present.

(d) If, upon any test, the percentage of inaccuracy of metering equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half ($1/2$) of the time elapsed since the last date of calibration, but in no event farther back than a period of six (6) months. If, for any reason, the main meter is out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered, through the period such meter is out of service or out of repair, shall be estimated and agreed upon by the parties thereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter if the same has been installed and is accurately registering. Otherwise, the best data available

shall be deemed any other meters in the transmission line or treatment plant which can be related to the main delivery meter. If no other meters in the system are operational which will allow determination of delivered quantity, then the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

(e) City may, at its option and its own expense, install and operate a check meter to check the meter installed by Authority, but the measurement of water for the purpose of this agreement shall be solely by the Authority's meter, except in the cases hereinabove specifically provided to the contrary. Such check meter shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Authority, but the reading, calibration and adjustment thereof shall be made only by the City, except during any period when a check meter may be used under the provisions hereof for measuring the amount of water delivered, in which case the reading, calibration and adjustment thereof shall be made by Authority with like effect as if such check meter had been furnished or installed by Authority.

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

F. DELIVERY PRESSURE. The water shall be delivered by Authority at the point of delivery at a pressure sufficient to transmit the water into the City's distribution system.

Section 4. FISCAL PROVISIONS. A. FINANCING. Authority will pay for the cost of construction of the Project and will issue its Bonds in amounts necessary which, together with other available funds, if any, will be sufficient to accomplish such construction.

B. ANNUAL REQUIREMENT. It is acknowledged and agreed that payments to be made under this contract will be the only source available to Authority to provide the Annual Requirement; and that the Authority has a statutory duty to establish and from time to time to revise the charges for services to be rendered and made available to City hereunder so that the Annual Requirement shall at all times be not less than an amount sufficient to pay or provide for the payment of:

- (a) All Operation and Maintenance Expense;
- (b) the principal of and the interest on the Bonds, as such principal and interest become due, less interest to be paid out of Bond proceeds as permitted by the Bond Resolution;

- (c) during each Fiscal Year, any special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolution; and
- (d) an amount in addition thereto sufficient to restore any deficiency in any of such funds or accounts required to be accumulated and maintained by the provisions of the Bond Resolution.

C. PAYMENTS BY CITY. (a) For services to be rendered to City by Authority hereunder, City agrees to pay, at the time and in the manner herein provided, the Annual Requirement, which shall be determined by Authority and shall constitute City's Annual Payment.

(b) City's Annual Payment shall be made to Authority in twelve (12) equal monthly installments. In the event Authority is unable to offer service under this Contract to City for the complete Fiscal Year of 1973, the first year of service hereunder, the portion of City's Annual Payment attributable to Operation and Maintenance Expense shall be reduced to the prorata portion of the Fiscal Year for which service is provided. Such payments shall be made in accordance with and at the times set forth in a Schedule of Payments for 1973 which will be supplied to City.

(c) the Operation and Maintenance Expense for the first year of operation is estimated to be \$16,000.00. This amount shall be used in determining City's Annual Payment for Fiscal Year 1973. Each year thereafter, the Operation and

Maintenance Expense to be used in determining City's Annual Payment shall be such expense as established for the Project by Authority's Annual Budget.

(d) At the close of each Fiscal Year the actual Operation and Maintenance Expense of the Project shall be determined by Authority. If the actual Operation and Maintenance Expense exceeded the amount used in establishing City's Annual Payment, such excess shall be billed to City and City shall pay such amount within ten (10) days of receipt of such bill. If the actual Operation and Maintenance Expense is less than the amount used in establishing City's Annual Payment, Authority shall credit City for the excess amount paid by City.

(e) In the event City fails to make any monthly payment when due, interest on such amount shall accrue at the rate of ten per cent (10%) per annum from the date such payment became due until paid in full with interest as herein specified. In the event any such payment is not made within sixty (60) days from the date such payment became due Authority may, at its

option, discontinue service to City until the amount due Authority is paid in full with interest as herein specified. Provided, that any such discontinuance of service shall not relieve City of the obligation to pay that part of the Annual Payment attributable to principal of and interest on the Bonds.

(f) On or before November 1 of each year, Authority shall furnish City with a schedule of the monthly payments to be made by such City to the Authority for the ensuing Fiscal Year. City hereby agrees that it will make such payments to the Authority on or before the fifth (5th) day of each month of such Fiscal Year. If the City at any time disputes the amount to be paid by it to Authority, City shall nevertheless promptly make the payment or payments determined by Authority, and, if it is subsequently determined by agreement, arbitration or court decision that such disputed payments made by City should have been less, or more, Authority shall promptly revise and reallocate the charges for services hereunder in such manner that City will recover its overpayment or Authority will recover the amount due it.

(g) If, for any reason, it becomes necessary to alter or amend City's Annual Payment after a schedule of payments has been supplied to City, Authority will provide City with an updated schedule of payments.

Section 5. SPECIAL PROVISIONS. A. Authority will proceed to finance and construct the Project to the end that it

will be able to deliver treated water to City beginning on July 1, 1974, or when the City of Dallas is capable of delivering water from its Elm Fork Treatment Plant to the Project. It is specifically recognized by City that Authority will not be able to deliver water under this Contract until water is available to Authority under the Dallas Contract. Accordingly, Authority shall not be liable to City for any damages occasioned by delay in delivering water hereunder which are occasioned by delay in receiving water under the Dallas Contract.

B. Title to all water supplied hereunder shall remain in Authority through the Point of Delivery, and upon passing through the Point of Delivery, such title to the water shall pass to City. Each of the parties hereto agrees to save and hold the other party harmless from all claims, demands and causes of action which may be asserted by anyone on account of the transportation and delivery of said water while title remains in such party.

C. It is expressly understood and agreed that any obligations on the part of Authority to complete the Project and to provide water to City shall be conditioned upon obtaining water under the Dallas Contract and Authority's ability to obtain all necessary material, labor and equipment and upon the ability of Authority to finance the cost of the Project through the actual sale of Authority's Bonds.

D. Authority shall never have the right to demand payment by City of any obligations assumed by it or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxes levied by City. City's obligations under this Contract shall never be construed to be a debt of the City of such kind as to require it under the law of this State to levy and collect a tax to discharge such obligation, it being expressly understood by the parties hereto that all payments due by City hereunder are to be made from water and sewer revenues received by City.

E. City represents and covenants that all payments to be made hereunder by it shall constitute "Operating Expenses" of its waterworks and sewer system as defined in Article 1113 of the Revised Civil Statutes of Texas, as amended, and that all such payments will constitute operating expenses of City's waterworks and sewer system.

F. City agrees to fix and collect such rates and charges for water and sewer services to be supplied by its waterworks and sewer system as will produce revenues in an amount equal to at least the minimum payments due under this Contract and to comply with provisions of ordinances authorizing its outstanding revenue bonds.

G. Authority shall not be liable to City for any damages occasioned by the inability of Authority to supply water required by City if such inability is caused by the inability of the City of Dallas to deliver water required by Authority to meet its contractual obligations.

H. In the event Authority is sued or is placed on notice of demand for payment of a claim or claims not covered by Authority's insurance or claims not paid by City arising in connection with the operation and maintenance of the Project, then in any of said events, Authority shall forthwith notify City in writing as to the nature of the claim or litigation which could result in an increase in operation and maintenance expense. City shall have ten (10) days from receipt of such written notification in which to advise and comment to Authority concerning any claim, suit or demand for payment.

I. City, acting as agent of Authority, shall operate and maintain at City's expense the Project, with the exception of the metering station which will be operated and maintained by the City of Dallas. Provided, Authority shall have the right to review the operation and maintenance procedures of City at least one (1) time annually at a time to be determined by Authority. City covenants to make such corrections to its operation and maintenance procedures as Authority may deem necessary to safeguard the Project.

J. Authority recognizes that City's consulting engineers have designed or will design the Project and will supervise construction of the Project. Authority agrees to utilize such design, including plans and specifications, for the Project, subject to approval by Authority, and will assume responsibility for the fees of such consulting engineers for the design and supervision of construction of the Project.

Section 6. FORCE MAJEURE. A. If by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of City to make the payments required under B. of this section, 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 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, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires,

hurricanes, storms, floods, washouts, drouths, 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 Authority to deliver water hereunder for any reason, or the City to receive water hereunder for any reason, or on account of any other causes not reasonably within the control of the party claiming such inability.

B. Recognizing that the Authority will use payments received by City to pay, secure and finance the issuance of the Bonds, it is hereby agreed that upon the issuance and sale of any Bonds by the Authority to provide funds for the Project, City shall be unconditionally obligated to pay that part of the Annual Payment representing debt service on such Bonds, regardless of whether or not the Authority is actually delivering water to City hereunder, or whether or not City actually takes water hereunder, whether due to Force Majeure or otherwise. Under such circumstances, the amount due to Authority from City shall be the debt service on the Bonds for the period of any such failure of service hereunder.

Section 7. LIMITATION OF AUTHORITY OBLIGATION. This Contract is in all things subject to the Dallas Contract. By the execution of this Contract, City acknowledges that it has received and reviewed a true copy of such Contract. City agrees

that it will take no action which would cause a violation of Authority's contract with the City of Dallas.

Section 8. SPECIAL CITY COVENANTS. A. City agrees to cooperate with the City of Dallas and/or Authority in the acquisition of rights-of-way within City necessary for the installation of a pipeline from the Elm Fork Treatment Plant to Hackberry Junction and from the Takeoff Point to City's water system and for the metering facilities as specified in the Dallas Contract. City hereby authorizes the City of Dallas and Trinity River Authority of Texas to exercise the powers of eminent domain necessary for the acquisition thereof. The City of Dallas or Trinity River Authority of Texas shall not require City to prosecute the action for condemnation. Subject to the prior approval by City as to the route, City further agrees to allow the City of Dallas to acquire such rights-of-way as the City of Dallas may need to extend subpipelines from such pipelines across City to serve the City of Dallas customers, which customers sell water outside of City.

B. City will grant to the City of Dallas and Authority the necessary easements and rights-of-way within its public streets, alleys, and ways to construct and maintain all the water facilities for the pipelines covered hereunder and in the Dallas Contract that may lie within City.

C. City will grant to the City of Dallas ingress to and egress from its reservoirs by City of Dallas personnel, its contractors, and agents for the purpose of installing, maintaining and operating the devices, identified by paragraph 4 of Section 2.3 of the Dallas Contract. Said Dallas Contract is incorporated by reference for all purposes required hereby.

D. City will not permit any person to make any water connection or do any plumbing work on any of the water lines of City except that such person be a licensed plumber under the laws of this State and any governing ordinances, if any, or a licensed plumber under the laws and ordinances of the City of Dallas.

E. It is further mutually understood and agreed that City will maintain a careful inspection of its water mains and exercise diligence and care in the maintenance of said water mains within City, and in the installation of connections and laterals that may be connected with the said water system within City, and that the connections to be made within City shall be made in strict conformity with State and Federal rules and regulations governing the operation, maintenance and protection of public water supplies and shall not by any rule or regulation of City create a situation which will endanger the public water system and supplies of the City of Dallas or its customer cities or cause the City of Dallas to violate the State and Federal laws relating to potable water supplies as they now exist or may exist

during the life of this Contract. Failure on the part of City to provide and enforce such regulations shall, after notice in writing of the specific violation or violations, and the failure of City to correct such violation or violations within a reasonable time after receipt of such notice, terminate the Contract between the City of Dallas and Trinity River Authority of Texas under which water is supplied for City, such termination being at the option of the City of Dallas.

F. It is expressly agreed and understood that the City of Dallas shall never be liable to City for the failure to furnish an adequate water supply in any of the following events: (a) it develops that the City of Dallas finds it necessary to restrict or curtail the use of water under the Provisions of Paragraph 4 of Section 1.0 of the Dallas Contract; (b) the pressure, amount or quality of water fails; (c) the water becomes contaminated; or (d) the City of Dallas becomes unable to furnish this water service as a result of sabotage, or any other reason beyond the control of the City of Dallas.

G. It is anticipated that City will continue to maintain and operate its present water supplies, well, and pump facilities. It is agreed, however, that wherever inter-connection of the Dallas system and the City system permits the possibility of any back-flow of water from the City's system into the City of Dallas' system by reason of pressure failures or for any other reason that

the City will maintain and operate these facilities in accordance with the laws of the State of Texas and will maintain State approval of their facilities.

H. City agrees not to sell or transfer or permit the sale or transfer of water which must be replaced by or obtained from the City of Dallas to any person or entity whose purpose is the resale of such water nor to enter into any contracts for sale of water to such persons or entities except upon prior written approval by the City of Dallas, which approval may be granted solely within the discretion of the City of Dallas.

Section 9. TERM OF CONTRACT; MODIFICATION; NOTICES.

A. TERM OF CONTRACT. This Contract shall be effective upon execution hereof and shall continue in force and effect for a period of thirty (30) years from the date the City of Dallas is capable of delivering water to Authority and thereafter shall continue in effect until all Bonds and refunding bonds issued in lieu of the Bonds have been paid.

B. MODIFICATION. No change or modification of this Contract shall be made which will affect adversely the prompt payment when due of all moneys required to be paid by City under the terms of this Contract and no such change shall be effective which would cause a violation of any provisions of any resolution of Authority authorizing the issuance of Bonds or any bonds issued to refund any of the Bonds.

C. NOTICES. All notices or communications provided for herein shall be in writing and shall be either delivered to City or Authority, or, if mailed, shall be sent by registered mail, postage prepaid, addressed to City or Authority at their respective addresses.

D. SEVERABILITY. The parties hereto agree that if any of the provisions of this Contract should be or be held to be invalid or to contravene the laws of this State, or the United States, such fact shall not invalidate the whole agreement, but it shall be construed as though not containing that particular provision, and the rights and obligations of the parties shall be construed and remain in force accordingly.

E. CONTINUED SERVICE. The parties hereto agree that upon the expiration of this Contract that City shall have the right to continued service upon execution of an appropriate agreement between City and Authority.

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.

TRINITY RIVER AUTHORITY OF TEXAS

BY: Walter H. Brown
General Manager

ATTEST:

George W. Perry
Secretary

(AUTHORITY SEAL)

CITY OF COPPELL, TEXAS

BY Hubert A. Scott
Mayor

ATTEST:

Dorothy Simmons
Acting City Secretary

(CITY SEAL)