

WHOLESALE TREATED WATER CONTRACT

THE STATE OF TEXAS)
COUNTY OF DALLAS)

THIS Contract made and entered into this the ____ day of _____, 1987, by and between the City of Dallas, Texas, hereinafter called "Dallas," and the City of Coppell, Texas, hereinafter called "Coppell" or "Customer"

WHEREAS, Dallas and the Trinity River Authority, hereinafter called "TRA," entered into a contract on the 21st of July, 1972, for TRA to purchase treated water from Dallas for the purpose of resale by TRA to Coppell.

WHEREAS, the July, 1972, contract to provide water to TRA for resale to Coppell will not provide adequate water supply to meet Coppell's future needs and does not recognize present policy for treated water contracts as contained in the Memorandum of Agreement signed by the several Customer Cities and adopted by Dallas' Council; and

WHEREAS, Dallas and Coppell desire to enter into a standard wholesale treated water contract to provide additional water supply and connections for Coppell and recognize the present policy for treated water contracts; and

NOW, THEREFORE, Dallas and Coppell in consideration of the terms, covenants and conditions herein contained, hereby agree as follows:

W I T N E S S E T H :

1.0 WATER SALES:

1.1 Dallas agrees to deliver to Customer potable water in accordance with the specifications and restrictions in Section 3.0 hereof. Dallas agrees to provide potable water to meet volume and demand requirements of Customer as provided herein.

1.2 Delivery of potable water to meet the requirements of Customer is subject to and limited by available system supply and system deliverability, as determined by the Director of Water Utilities of Dallas. Such delivery shall not be unreasonably withheld.

EXHIBIT C, incorporated herein and made a part of this Contract, contains additional stipulations in regard to water sales under the Dallas and Trinity River Authority contract of 1972.

2.0 DEMAND; CHANGES IN DEMAND:

2.1 "Demand" means the maximum rate of flow mutually established by Customer and Dallas that may be taken by Customer within a Water Year.

2.2 "Water Year" means the year beginning June 1 and ending May 31.

2.3 If Dallas fails to make available the currently established demand for seven or more consecutive days the demand charge for such days shall be calculated by using the maximum rate of delivery for such days times the current annual demand charge divided by 365 times the number of days of reduced flow.

2.4 If Dallas fails to make available the currently established demand for 30 or more consecutive days the demand charge for that Water Year shall be calculated by using the maximum rate of delivery for such days times the current annual demand charge.

2.5 Customer shall give reasonable notice to Dallas of anticipated changes in demand requirements. Such notice shall be given at least 6 months in advance if the requested change, when considered with other pending or contemporaneous requests, does not require construction of additional facilities. The Director of Water Utilities of Dallas may waive the 6 month notice requirement for good cause shown. If construction of additional facilities is required, such advance notice as will be necessary to allow for financing, design and construction of the needed facilities shall be given.

2.6 Customer agrees to pay the total annual demand charge for any increase in the agreed upon maximum demand during a Water Year; and for each Water Year to pay annual demand charges based on (1) the current Water Year demand or (2) the highest demand established during the five Water Years preceding, whichever is greater.

2.7 Customer agrees that Dallas' capability to provide increases in demand or volume is subject to available supply and deliverability, as determined by the Director of Water Utilities of Dallas.

3.0 DELIVERY POINT, ACCESS, ETC.:

3.1 Dallas agrees to deliver water contracted for by Customer at delivery point(s) as delineated in Exhibit B attached hereto and at such additional points as may be mutually agreed upon by both parties. The cost of all delivery facilities, whether delineated in Exhibit B hereof or mutually agreed upon at a later date, shall be borne by Customer, except that Dallas may elect to require oversizing of the delivery facilities for the benefit of Dallas or other parties. If Dallas elects to oversize delivery facilities,

Dallas shall be responsible for oversizing costs to the extent of the difference between Customer's required delivery facilities and the oversize specified by Dallas. Unless otherwise mutually agreed to by Dallas and Customer, Customer shall be responsible for the design, contracting, construction and financing of facilities and acquisition of any right-of-way for delivery of the water from the Dallas system to the delivery point(s). Plans shall be submitted to Dallas for written approval; and all designs, materials and specifications shall conform to Dallas' requirements. Customer agrees that Dallas has the right to make periodic inspections during the construction phase of the delivery facilities. Final acceptance of completed delivery facilities is subject to the written approval of Dallas.

3.2 Unless otherwise agreed by both parties, Dallas shall construct and maintain meter vaults, meters, and all associated facilities, and obtain electric and telephone service in connection therewith, if needed. Customer agrees to reimburse Dallas for actual construction costs attributable to service of Customer, excluding costs of engineering, design, telemetry equipment, telephone and electric service.

3.3 Customer agrees that after final inspection and acceptance of delivery facilities, Customer will convey title of those facilities and rights-of-way in conjunction therewith to Dallas. Upon conveyance of title to delivery facilities by appropriate instrument(s) Dallas shall be responsible for operation and maintenance thereof.

3.4 Customer agrees to provide ingress and egress for Dallas' employees and agents to all its premises inside Customer's boundaries to install, operate, inspect, test, and maintain facilities owned or maintained by Dallas within city limits of Customer.

3.5 Dallas agrees to provide ingress and egress for Customer's employees and agents to all premises inside Dallas' boundaries to install, operate, inspect, test, and maintain facilities, and read meters owned or maintained by Customer within Dallas.

3.6 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 that the meter(s) can be promptly repaired. Each meter will be operated and maintained so as to record with commercial accuracy. Dallas will notify Customer 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 Customer requires an independent testing service be used, Customer shall pay the cost of said testing service if the meter(s) is found to be accurate. If meter(s) is found inaccurate, Dallas shall pay the costs of said testing service.

EXHIBIT C, incorporated herein and made a part of this Contract, contains additional stipulations on Conditions of Service and Delivery Points.

4.0 BOOKS AND RECORDS:

Dallas agrees that Customer or its agent may have access to the books and records of Dallas Water Utilities at reasonable times. Customer agrees that Dallas or its agent may have access to the books and records of the Customer's Water Utilities at reasonable times.

5.0 ADDITIONAL SURFACE WATER SUPPLIES:

5.1 If Customer develops or acquires additional surface water supplies from any source other than Dallas, resulting in reduced demand from Dallas, then Dallas is released from the obligation to supply the demand amount mutually established under Section 2 hereof. In such event, Dallas may adjust its supply obligation to levels commensurate with Customer's reduced demand.

5.2 If, within the term of this Contract, Customer totally or partially discontinues taking water from Dallas because such other water supplies have been developed or acquired, Customer shall for five 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 notification of such partial or total cessation. This obligation, once established, shall serve as liquidated damages and is intended to compensate Dallas for the expenditures incurred on Customer's behalf for the cost of installation of supply, transmission, treatment, delivery and service facilities. Provided, however, that Dallas may waive Customer's obligation in the event of nominal reductions based on Customer's plans if Dallas has received prior notice of the plans and concurred in the reduction. It is agreed by the parties that liquidated damages are a reasonable substitute for compensatory damages which are difficult or impossible to calculate herein. This obligation is intended by the parties not to be a penalty, but instead, a reasonable measure of damages.

6.0 RESALE:

Customer agrees not to sell water purchased from Dallas to any person or entity outside the corporate boundaries of the City of Coppell (as may be adjusted from time to time) unless Customer has received prior written approval from the Director of Water Utilities of Dallas. In granting such authorization, Dallas may establish the terms and conditions of the conveyance of such water including, but not restricted to, the setting of monetary rates for sale of such water. "Convey" means sell, trade, donate, exchange, transfer title, or contract therefor.

7.0 RATES AND PAYMENT:

7.1 Rates charged Customer, including demand charges established herein, shall be established by ordinance of Dallas. The capital costs contributed by the Customer for delivery facilities and metering facilities shall be excluded from the rate base.

7.2 Customer understands that Dallas City Council has the right by ordinance to revise the rates charged, from time to time as needed, to cover all reasonable, actual and expected costs. Any revision of rates shall be pursuant to principles set forth in the Memorandum of Agreement attached hereto. Dallas shall give Customer a minimum of 6 months notice of intent to revise rates. Dallas will furnish Customer a draft copy of the Cost of Service Study for Proposed Rates thirty (30) days prior to Dallas submitting a rate increase request to its City Council.

7.3 Customer agrees to give Dallas a minimum of 30 days notice of intent to protest rates or any other condition of service.

7.4 Dallas agrees to render a statement of charges monthly. Payment is due upon receipt of statement. Customer agrees to pay promptly. Demand charge shall be billed monthly.

7.5 In the event a meter(s) is discovered malfunctioning, then the amount of water that has passed through the meter will be estimated for each day the meter has not functioned correctly. The last correctly measured monthly consumption will be used as a basis for mutually computing the amount of water delivered to Customer during the time the meter has not been functioning correctly.

8.0 CURTAILMENT:

8.1 Customer agrees that if water supplies or services are curtailed within Dallas, Dallas may impose a like curtailment on deliveries to Customer. Customer will cooperate by imposing conservation measures upon its sales.

8.2 Customer agrees to develop a water conservation plan which incorporates loss reduction measures and demand management practices designed to insure that the available supply is used in an economically efficient and environmentally sensitive manner. Upon request, Customer will furnish a copy of its conservation plan to Dallas.

8.3 To the extent Dallas imposes restrictions or grants privileges of general applicability to itself and customer cities, including rules relating to the curtailment of water delivery and availability, Dallas agrees to impose such restrictions and grant such privileges equitably and in a non-discriminatory fashion.

9.0 RIGHTS-OF-WAY AND STREET USE:

9.1 Customer agrees to furnish any rights-of-way necessary within or without Customer's boundaries for Dallas to make delivery of water as provided in Section 3 hereof, and to convey such rights-of-way to Dallas as therein provided.

9.2 Customer agrees that with prior written approval of Customer, Dallas may use streets, alleys and public rights-of-way within Customer's boundaries for pipeline purposes to provide water to Customer or to other customers without charges or tolls, provided that Dallas makes the necessary repairs to restore the streets, alleys or public rights-of-way used to their original condition. Such use and repairs shall be pursuant to the terms and conditions of the conveyance Customer duly grants for such purposes.

9.3 Dallas agrees that, with prior written approval of Dallas, Customer may use Dallas streets, alleys and public rights-of-way, within Dallas boundaries for pipeline purposes to provide water to Customer without charges or tolls, provided Customer makes necessary repairs to restore the streets, alleys or public rights-of-way used to their original condition. Such use and repairs shall be pursuant to the terms and conditions of a private license duly granted by the Dallas City Council.

10.0 STANDARDS:

10.1 Customer shall protect Customer's storage and distribution system from cross connections under the specifications required by health standards of the State of Texas.

10.2 Customer agrees to provide air gaps for any ground storage and backflow preventers for any elevated storage.

10.3 Customer agrees to provide internal storage sufficient to meet its emergency needs and to maintain a reasonable load factor for deliveries from Dallas to Customer.

11.0 MEMORANDUM OF AGREEMENT:

The Memorandum of Agreement, attached hereto and marked Exhibit A, effective December 17, 1979, and executed by various Customer entities is incorporated herein, as if copied word for word and is made a part of this Contract. Any revision of the Memorandum of Agreement, according to its terms and not in conflict herewith, shall automatically be incorporated and become a part of this Contract.

12.0 FORCE MAJEURE, ETC.:

12.1 If, for any reason, not reasonably within the control of the party so claiming, either party hereto shall be rendered in whole or

in part unable to carry out its obligations under this Contract, then that party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. Such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

12.2 Dallas shall not be liable in damages for damage to Customer's water mains or water system resulting from the rate of flow or quantity of water delivered.

12.3 Customer hereby agrees to hold Dallas whole and harmless from any claims or damages arising as a result of the chemical or bacteriological content of water provided to the Customer, unless the damages resulting from the chemical or bacteriological content of the water are caused by the negligence of Dallas.

12.4 Customer agrees and is bound to hold Dallas whole and harmless from any act or omission of any representative, agent, customer, employee, and/or invitee of Customer.

12.5 Recognizing that Dallas' and Customer's undertakings as provided in this Contract are obligations, the failure in the performance of which cannot be adequately compensated in money damages, Dallas and Customer agree that, in the event of any default, the other party shall have available to it the equitable remedy of specific performance in addition to other legal or equitable remedies which may be available to such party.

13.0 SPECIAL PROVISIONS:

Special provisions applicable to this Contract are attached hereto and styled Exhibits B and C. These Exhibits are incorporated herein, as if copied word for word. Exhibit B delineates the delivery facilities. Exhibit C contains provisions peculiarly applicable to the contract with Customer and supplements provisions of this standard Contract.

14.0 TERM:

This Contract shall remain in force and effect for a term of 30 years, from the date of execution of the Contract.

EXHIBIT C, incorporated herein and made a part of this Contract contains additional stipulations in regard to the term of this Contract.

15.0 VENUE:

The parties herein agree that this Contract shall be enforceable in Dallas, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Dallas County, Texas.

16.0 NO VERBAL AGREEMENT:

This Contract contains all commitments and agreements of the parties hereto and no verbal or written commitments shall have any force or effect if not contained herein.

17.0 APPLICABLE LAWS:

This Contract is made subject to all applicable laws of the State of Texas and the United States.

18.0 CONTRACT INTERPRETATION:

In interpreting the various provisions of this Contract in a Court of Law, any said court having jurisdiction shall apply the laws of the State of Texas to interpret the terms and provisions of this Contract.

19.0 CAPTIONS:

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

20.0 NOTICES:

Any notice required under this Contract may be given to the respective parties at the following addresses by Certified Mail, postage prepaid:

Customer

City of Coppell, Texas
Attn: City Manager
P.O. Box 478
Coppell, Texas 75019

Dallas

City of Dallas, Texas
Attn: City Manager
City Hall
Dallas, Texas 75201

EXECUTED as of the _____ day of _____, 1987, on behalf of the CITY OF DALLAS by its City Manager, duly authorized by City Council Resolution No. 87-_____, adopted on Oct. 27,

1987, and approved as to form by its City Attorney; and on behalf of the CITY OF COPPELL, by its duly authorized officials.

APPROVED AS TO FORM:
ANALESLIE MUNCY
City Attorney

CITY OF DALLAS
RICHARD KNIGHT, JR.
City Manager

BY _____
Assistant City Attorney
Submitted to City Attorney
LH

BY _____
Assistant City Manager

APPROVED AS TO FORM:

CITY OF COPPELL

BY *Lawrence A. Johnson*
City Attorney

BY *Lou Duggan*
Lou Duggan, Mayor

ATTEST:

BY *Dorothy Simmons*
City Secretary

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EXHIBIT A

MEMORANDUM OF AGREEMENT

1. Purpose: The purpose of this agreement is to settle current rate disputes, and to provide a basis for determining rates in the future.
2. Water System Policy: Dallas operates a water system to provide safe and reliable water supply, adequate for the current water use and future growth of Dallas and customer cities, and to avoid any substantial subsidization of any class of customers by any other class of customers.
3. Responsibilities:
 - a. Dallas is responsible for planning, financing, constructing and operating the water supply system to the extent permitted by available water revenues, for developing cost of service information to support rate changes, and for informing customer cities of changes and financial data.
 - b. Customer cities are responsible for keeping Dallas informed concerning their projected water supply needs and operating requirements, for planning and managing their system to promote water conservation and efficient system operation, and for paying rates adequate to cover costs incurred in providing service to them.
4. Rate Setting Principles (for wholesale treated water)
 - a. Revenue requirements are to be determined on utility basis, at original cost.
 - b. Dallas is to receive a rate of return on rate base equal to embedded interest rate plus 1.5%, which is agreed to be an adequate return to cover its costs and risks and as compensation for ownership and management responsibilities.
 - c. All existing and future reservoirs and associated facilities are to be included in common rate base. Customer cities as a class, shall pay their proportionate share of costs for reservoir storage, including that portion held for future use. Initially, customer cities shall cover 26% of total reservoir costs. This percentage shall be increased or decreased in direct proportion to future changes in actual usage in conjunction with periodic cost of service studies. (Dallas pays the balance.) Allocation of other costs is to be based on current use.
 - d. There will be a two part rate (volume and demand), with allocation of costs in rate design to encourage efficient operation of water system.
 - e. At the end of ten years, and each ten years thereafter, the City of Dallas or a majority of customer cities who are a party to this agreement may request a review of the above rate setting principles; and if so, the principles shall be subject to renegotiation.
5. Initial Rates and Rate Base Allocations: The initial rates accepted under this agreement are:

Rate of Flow Controller Cities - 10.42¢/1000 gal
and \$36,793/mgd

Flat Rate Cities - 43.04¢/1000 gal

Initial Rate Base Allocations shall be as follows:

Reservoirs	25.7%
Raw Water Transmission	19.4%
Purification Facilities	19.4%
Treated Water Transmission	19.4%
Distribution	2.3%
Other/Administration	14.4%

Dallas will prepare a cost of service study to support these rates and allocations, and will submit it to the customer cities to review and accept prior to submission to the Texas Water Commission.

6. Term: The term of this agreement is thirty years, and such additional periods as the parties may agree upon.
7. Approved changes: Changes in the rate setting principles or other conditions may be made by mutual agreement of all parties at any time. If any state or federal governmental agency having jurisdiction disapproves any material part of this agreement during the term, the agreement is subject to cancellation by any party.
8. Individual contracts for wholesale water service between Dallas and customer cities will be consistent with this Memorandum of Agreement. Dallas and customer cities will honor their existing water service contracts.
9. Individual Interest in Reservoir the City of Dallas will negotiate with such customer cities that desire to purchase an individual interest in the present Dallas reservoir system. This offer to negotiate shall not extend past 9/1/82.
10. Execution of this agreement by the undersigned indicate that such individuals will recommend to their respective city councils or governing boards settlement of the rate controversy on the basis set forth herein.

City of Addison

By: Charles McBeth

City of Farmers Branch

By: _____

City of Balch Springs

By: J. A. Kerner

Flower Mound Municipal
Utility District #1

By: Samuel L. Austin

Water Control and Improvement
District No. 6

By: Johnny M. Keel

City of Grand Prairie

By: Clay Johnson, City Mgr

City of Carrollton

By: Bonnie Miller

City of Cedar Hill

By: W. W. Goff

City of Cockrell Hill

By: A. C. Goff

City of Coppell

By: Jane R. E. Goff

City of DeSoto

By: Dorothy Talley

As approved by Resolution 79-83 attached hereto.

City of Duncanville

By: M. W. Harrison

City of Hutchins

By: Jim Harrison

City of Irving

By: Jack P. Huffman

City of Lancaster

By: John R. Marshall Adm. Mgr.

City of Richardson

By: B. R. Bunchey

City of Seagoville

By: David B. Couch

City of Dallas

By: John R. Harrison

By: John R. Harrison

By: Norman E. May

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Effective Date: The above Memorandum of Agreement was approved by the governing body of the parties executing same. The rates provided for therein were implemented by an ordinance passed by the Dallas City Council on December 12, 1979 and the complaints of all customers executing such agreement were dismissed by the Texas Water Commission on December 17, 1979. Such agreement therefore became effective on December 17, 1979.

EXHIBIT B

DELIVERY FACILITIES

Description:

At the effective date of this Contract, the location and capacity of metering facilities to serve Customer under this Contract have not been determined. Such facilities will be determined by an Engineering study to be funded by Coppell. It is anticipated that the study will be concluded within twelve months of the effective date of this Contract. Coppell agrees that the study shall be of adequate scope and depth to allow evaluation and address compliance with the "Conditions of Service for Treated Water Customers", Dallas Water Utilities, January 1985.

EXHIBIT C

SPECIAL CONTRACT CONDITIONS/AGREEMENTS SPECIAL CONDITIONS CONCERNING STANDARD CONDITIONS

The following conditions and clarifications are agreed to by Dallas and Coppel in regard to the following conditions of this contract:

C1.0 WATER SALES

This Contract does not pertain to delivery of treated water through the existing connection point on Sandy Lake Road. That connection provides water to the Trinity River Authority for resale to the City of Coppel under terms of a Dallas TRA contract of July 21st, 1972. Technical and administrative matters in regard to that connection and contract shall be kept separate from connectins developed under this Contract.

However, if after the execution date of this Contract, Coppel acquires Trinity River Authority's rights in their present delivery facilities, those facilities will, at Coppel's option, be acceptable to Dallas as delivery facilities under this Contract.

C3.0 DELIVERY POINT

Customer agrees to develop master plans in conformance with the "Conditions of Service for Treated Water Wholesale Customers", Dallas Water Utilities, January 1985 to identify delivery points to serve the City of Coppel. Plans will be made available for Dallas' review in a form acceptable to Dallas, within twelve months of the effective date of this Contract. Customer accepts the "Conditions of Service for Treated Water Wholesale Customers" as may be revised from time-to-time as a condition of this Contract.

C14.0 TERM

Customer shall commence planning, design and construction of delivery points and start to take water under this Contract no later than May 31, 1992.

Except for any conditions beyond Customer's control, as contemplated by Condition 12.0, in which instance Dallas will agree to a reasonable extension of the May 31, 1992 deadline for Customer to start taking water under this Contract, if Customer does not start to take water under this Contract by May 31, 1992, Dallas shall have the sole right to terminate this Contract.