

CONTRACT NO. 5091

10/14/80

AGREEMENT

ORDINANCE NO. 15745 - 9/10/80

BETWEEN

CITY OF CORPUS CHRISTI, TEXAS

AND

SOUTH TEXAS WATER AUTHORITY

to auth. CM to enter into a water sales
agreement.

AGREEMENT

THE STATE OF TEXAS

COUNTY OF NUECES

This Agreement made this the 14th day of October, 1980, by and between the City of Corpus Christi, Nueces County, Texas, a municipality organized pursuant to the laws of the State of Texas, hereinafter referred to as "City", and the South Texas Water Authority, a conservation and reclamation district and political subdivision of the State of Texas, hereinafter referred to as "Authority":

WITNESSETH:

WHEREAS, the City, by virtue of a contract executed August 10, 1955, between the Lower Nueces River Water Supply District, hereinafter referred to as "District", is the sole purchaser of untreated water from District and treats said water for distribution to customers of City; and,

WHEREAS, Authority has determined that it desires to obtain treated water from City to serve its customers lying within the established boundaries of Authority; and,

WHEREAS, Authority intends to construct water trunk mains and related facilities to transport a fresh supply of potable water from City to the existing and proposed facilities of Authority customers; and,

WHEREAS, City has determined that at this time sufficient water is available to serve the existing customers of City, and meet the obligations of existing contracts of City; and,

WHEREAS, City has determined that at such time as the O. N. Stevens Water Treatment plant expansion is complete sufficient water will be available to provide the anticipated requirements of Authority; and,

WHEREAS, City desires to sell water to Authority for the benefit of City and Authority.

NOW, THEREFORE, for and in consideration of the premises and the sum of Ten and no/100 (\$10.00) Dollars in hand paid to City by Authority, the benefits arising to both City and Authority through the sale of fresh, potable water to Authority, and the mutual covenants and agreement of the parties herein contained, the parties hereby agree as follows:

1. Construction of Facilities: Authority shall contract or cause to be constructed at no expense to City, a water transmission main, pumping and storage facilities, and related appurtenances to be arranged to permit taking water by Authority from the O. N. Stevens Water Treatment Plant to serve portions of Nueces and Kleberg Counties. Authority facilities shall be constructed in accordance with plans and specifications to be prepared by Authority and acceptable to City and may, at the option of Authority, be built in stages as the needs of Authority may require. Approval by City shall relate to those matters which might affect the potential rate and quantity of taking, and land owned by City. Authority shall be responsible for obtaining and maintaining any permits necessary for the construction, operation, and maintenance of the contemplated water main and related appurtenances of Authority.

2. Right-of-Way and Easements: Authority shall be responsible for the acquisition of all easements, rights-of-way, and land necessary for the construction, operation, and maintenance of the facilities to be built by Authority. Access to and use of rights-of-way, land, or easements held by or belonging to City will be provided to Authority without cost where necessary as determined by plans and specifications of Authority facilities as prepared by Authority and acceptable to City.

3. Relocation: If City determines that it is necessary to adjust or relocate facilities constructed by Authority in order that lands or easements belonging to City can be used for water treatment facility improvements, Authority shall bear the full cost of such facility adjustments or relocations. City will give due and careful consideration to the location of Authority's facilities in planning new facilities and will, within the limits of sound engineering and ultimate total project cost to all agencies, minimize the required relocation of facilities by Authority.

4. Quantity: City agrees to sell Authority during the term of this contract or any renewal or extension thereof, subject to the conditions hereinafter set forth, a fresh supply of potable water to Authority at the delivery point hereinafter set forth, and Authority agrees to purchase and

take at said delivery point water at the then published outside City limits (OCL) water rate, and upon terms and conditions applicable to OCL City water sales as amended from time to time by City, not in conflict with the terms of this agreement.

In the event that Authority begins taking water prior to the completion of the O. N. Stevens Water Treatment Plant expansion, City shall limit the quantity of potable treated water sold to Authority to three (3) million gallons per day.

After the completion of the O. N. Stevens Water Treatment Plant expansion City agrees to sell Authority potable treated water in such quantity as may be required by Authority, but limited to a peak hourly rate of ten (10) million gallons per day, during the first twelve month period immediately following the last day of the month in which water is first treated by the expanded O. N. Stevens Water Treatment Plant. In subsequent years City agrees to sell:

- (a) The total amount of water taken by Authority in the previous twelve-month period plus ten percent (10%), or
- (b) The average quantity of water taken by Authority in the previous three (3) years plus ten percent (10%), whichever is greater.

City also agrees to sell whatever quantity of water Authority requires in excess of the above mentioned amounts, if, in the opinion of City, such water is available.

5. Point of Delivery: The delivery point shall be at the outlet side of the O. N. Stevens Water Treatment Plant high-service pump building on the 48-inch main, or at a location mutually agreed on between City and Authority, such point being the location of the transmission main intake facilities to be constructed by Authority in accordance with plans and specifications prepared by Authority and acceptable to City. Minimum pressure will be at or near 50 p.s.i. at the point of delivery. Title to the water shall pass to Authority when it passes through the meter at or near the point of delivery at a location mutually agreed on between City and Authority.

6. Connection Fee: City will construct tap on City main upon payment of the full cost of the connection, consisting of the total cost of labor and materials required to make said tap, and upon application for service by a representative of Authority at the Public Utilities Office of City.

7. Price: The price to be charged for treated water sold by City to Authority shall be the regular established and published outside City limit (OCL) rate at the time of taking, for outside City limits customers of similar location and demand requirements, as determined by City, not in conflict with the terms of this agreement.

8. Quality: It is understood and agreed that City shall use reasonable diligence to prevent pollution or contamination of any of the water supply referred to hereinafter from any cause, and further that such water shall be treated water of such quality as to meet the requirements of the Texas Department of Health at the point of delivery.

9. Maintenance and Operation of Facilities: The water main and related improvements constructed by Authority shall be maintained, operated, and repaired by Authority subject to provisions herein contained. City shall have the right to require Authority to maintain its facilities on City property or easements in a manner comparable to the level of maintenance at similar City facilities.

10. Measurement: The water delivered under this contract shall be measured by a suitable water meter or meters to be furnished and installed by Authority and kept in repair and maintained by City at or near the point of delivery of said water. City shall have the right to specify the type of meter or meters to be used and to specify the installation design of the meter or meters. Checks as to the accuracy of the meter or meters shall be made semi-annually by City, and City shall notify Authority in writing ten (10) days in advance of all semi-annual checks and tests in order that Authority may have a representative present as a witness. Semi-annual tests as to the accuracy of the meter or meters shall be City's expense. If either, City or Authority at any time, shall notify the other that it desires a special test of any meter, the parties shall cooperate in arranging for a special test to be made by City. The expense of the special test of the meter or meters shall be paid by the party requesting such test. If, on any test, the meter tested shall be found to be inaccurate by an amount exceeding two percent (2%), then any previous readings of such meter or meters shall be corrected for a period of inaccurate measurement thereby which is definitely known or agreed upon; but no such correction shall extend

back over a period beginning more than fifteen (15) days prior to the time when such inaccuracy was first made known by either party to the other. If, for any reason, the meter or meters are out of service so that the volume of water delivered hereunder cannot be ascertained or computed from meter readings thereof, the water delivered during the period such meter or meters are out of service shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. City shall read the meter or meters on or about the last day of each month and shall determine from these readings the amount of water delivered to the Authority. City shall service the recording and integrating instruments of the meter or meters and shall retain the charts and integrated readings as a part of the City water records. A copy of all such charts and integrated readings corresponding to Authority's consumption, as reflected in the monthly statement described in Section 12 herein, shall be furnished to Authority upon Authority's request. Any duplicate recorders providing charts for Authority shall be purchased, maintained, and serviced by and at the expense of Authority.

11. Fixed Minimum Obligation: Authority is obligated and hereby agrees to purchase all of its water from City, except water obtained from existing and future wells which are to be operated in such a way as to augment the total dependable yield of City's water supply. Authority is not obligated to purchase any minimum amount of water in any billing month during the period of this contract, but Authority shall pay City a monthly sum equal to the minimum charge for outside City limits (OCL) customers based on master meter size in use at the date of billing as prescribed under Section 7 hereof regardless of whether or not any water is used. This minimum payment is intended to cover the costs of meter readings, testing, billing, and other costs which will continue whether or not any water is withdrawn by Authority.

12. Payments: City shall monthly submit a statement to Authority indicating the quantity of water sold to Authority during the preceding meter reading cycle. Authority shall render payments within fifteen (15) days of receipt of said statement. Any clerical error or minor question regarding said statement will not be sufficient grounds to delay payment by Authority to City. Any such questions shall be properly settled under the terms of this contract and

by the agreement of both parties hereto. Any adjustment in the amount paid as a result of such agreement shall be added to or deducted from the following month's bill. Failure to pay the monthly billing within thirty (30) days after such billing date shall authorize City to discontinue furnishing water to Authority. In the event it becomes necessary to collect such charges through any court procedure, City shall be entitled to also recover a reasonable attorney's fee. In the event it becomes necessary for City to stop the selling of water, due to Authority's failure to pay its water bills, City may require the payment in advance of the monthly water bill based on the previous bill plus any adjustments as a condition to the resumption of furnishing water to Authority.

13. Indemnity: Authority will indemnify City from any liability which might accrue because of facilities constructed by Authority on land or right-of-way owned by City or Authority, and Authority assumes all responsibility for adequately maintaining and safeguarding said facilities. This provision is for the protection of City and Authority, and is not for the benefit of third parties.

14. Restrictions on Sales: Authority agrees not to sell water directly or indirectly to any existing or future users located within City's five-mile extraterritorial jurisdiction in existence as of the effective date of this contract. Specific written approval by City Council of City will be required before Authority sells water which Authority has purchased from City to:

- (a) A municipality, political subdivision, nonprofit corporation, special legislative district or authority located in Nueces County which is not legally constituted as of the effective date of this agreement.
- (b) A municipality, political subdivision, nonprofit corporation, special legislative district or authority which is located outside Kelberg or Nueces County.
- (c) Any private organization or person desiring to resell to others.
- (d) Any subdivision or lot in any subdivision, whether designed for single-family, multiple-family, mobile home, commercial, industrial, or other uses, not included in the initial water line construction program of Authority in an unincorporated area within the area over which City maintains platting control, or to governmental unit for resale to or in such subdivision. Written City Council approval will, in this case, be contingent upon the prior review and approval of the Planning Commission of City.

In the event that written City approval is obtained by Authority to serve users within City five-mile extraterritorial jurisdiction Authority agrees to bind all of its customers within the five-mile extraterritorial jurisdiction of City to the standard water service contract in accordance with Section 55-111, City Code of Ordinances (non-agricultural use where partly or wholly beyond the City limits) or in accordance with Section 55-112 (agricultural use covenant). As a prerequisite for receiving water service from Authority at each individual water tap, each customer or property owner within the five-mile extraterritorial jurisdiction shall properly execute and file with the Director of Public Utilities of City a standard form contract for providing water to property beyond the City limits. As City five-mile extraterritorial jurisdiction is extended periodically, each individual customer or owner coming within such extended jurisdiction shall be bound by Authority to the execution of such contract as provided herein as a condition for continued water service.

Authority shall make available to City the names and tap locations of all direct and indirect customers of Authority who are located within City five-mile extraterritorial jurisdiction, and who are to execute contracts under Section 55-111, and those who are to execute contracts under Section 55-112, City Code of Ordinances, all as set forth herein.

- (e) Any new subdivision or lot in any subdivision, whether designed for single-family, multiple-family, mobile home, commercial, industrial, or other uses, not included in the initial water line construction program of Authority, or to governmental unit for resale to or in such subdivision, unless the plat of such subdivision has been approved by the governmental entity having platting jurisdiction and the developer of the subdivision has installed the subdivision improvements consistent with the standards set forth by said governmental entity. If no governmental entity has such jurisdiction, approval of such plat by Planning Commission of City must be made prior to City granting written approval to Authority for sale of treated water to such subdivision or lot.
- (f) Any private organization or person not included in the initial water line construction program of Authority within an area where no City has platting jurisdiction, or to governmental unit for resale to such organization.

Authority shall not sell water or allow its customers to resell water in violation of the restrictions hereinabove set forth. In the event City determines that Authority and/or its customers are selling or reselling water in violation of such restrictions City shall notify Authority in writing stating specifically each violation. Thereupon Authority shall have thirty (30) days after service of the aforesaid notice in which to remedy or remove the cause or causes of each violation stated in the notice to City satisfaction as determined by the Director of Public Utilities of City. In the event

Authority fails to remedy or remove said cause or causes of each violation within said period of thirty days City will add a \$100.00 surcharge to Authority's next regular outside City limit monthly treated water statement for each instance of violation. Said surcharge(s) will be payable each month until Authority remedies or removes the cause or causes of each violation.

Authority agrees to bind all of its customers to the stipulations contained in this contract.

15. Sales to Agricultural Users: The aforementioned water sales restrictions notwithstanding, Authority shall be permitted to sell water to customers for agricultural use hereby defined as meaning cultivating the soil, harvesting crops, raising livestock, and pasture grazing, without obtaining prior written approval of City. Said agricultural users shall not be engaged in retail sales on the premises served by Authority except for retail sales of non-processed products grown on said premises. Said agricultural premises shall consist of no less than twenty (20) acres.

16. List of Customers: Authority shall furnish City with a list of all direct customers and the location of all taps at the time the initial water line construction is completed and the system put into operation. Upon completion of the initial phase of construction and commencement of operation of the system Authority shall from time to time at City request make available to City, at all reasonable office hours, the names and tap locations of all direct customers. Authority shall also make available to City the names and tap locations of all customers, direct and indirect, who are located within City's five-mile extraterritorial jurisdiction, and who are to execute contracts under Section 55-111, and Section 55-112, City Code of Ordinances. At such time as the system has been completed and is prepared to receive water from City, Authority shall certify in writing that Authority, the transmission system, and all initial customers are in compliance with all requirements, terms, and conditions of this agreement.

17. City Right to Sell: City retains the right to sell water at points and to customers not previously served by Authority that are located within the boundaries of Authority after furnishing written notice to Authority. City agrees not to sell water directly to any customer located within Authority's boundaries to whom Authority is willing and able to provide water service at regular established and published Authority water rates.

18. Storage and Pumping Requirements: Authority shall construct and maintain or require each of its customers to construct and maintain ground or overhead water storage facilities, or a combination of both, in total capacity equal to one day's supply based on the highest daily use of each customer for any one day during the previous five years or a reasonable estimate of the highest daily use of Authority's customers for the upcoming year, whichever is greatest, or install rate controllers to assure an even daily rate of take. Pump intakes directly connected to the water lines of Authority or City's supply main are prohibited. Each ground storage unit shall be equipped with pumps and filling devices and operated so that Authority's daily rate of take from the point of delivery will be even throughout each twenty-four hour period with peak hour demands over the daily average being supplied from Authority's ground and overhead water storage. The pumps shall be sized to meet the peak hourly demands. Authority shall require its customers of treated water to install the proper valves or rate controllers to insure an even rate of take from Authority's water line. The water supply of Authority and of each customer served by Authority shall meet the requirements of the State Department of Health for approval of the State Department of Health, if the customer is directly connected to Authority's water line.

19. Water Rights: It is mutually agreed and understood that City shall have complete and exclusive rights to all water impounded by City reservoir during the time this contract shall remain in force. City binds and obligates itself, however, to take the necessary actions within its power and to make the necessary applications to obtain whatever additional water rights as might be necessary to adequately meet the needs of its existing contracts, this contract with Authority, and any future contractual obligations of City. It is also

mutually agreed and understood that this contract is subject to City obtaining any necessary permission from the Texas Water Commission or other regulatory authority over such matters to sell water to Authority and Authority agrees to support any future City requests to the Texas Water Commission or other regulatory authority for said permission. Should it develop that Authority requires a permit to distribute the water sold to Authority by the City hereunder, City agrees to support application by Authority to the Texas Water Commission or other regulatory authority for such a permit.

20. Default: It is covenanted and agreed that if either party to this contract shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this Contract, then in such event the other party hereto may at its option terminate this Contract by proceeding as follows: The party not in default shall cause a written notice to be served on the party in default stating specifically the cause for terminating this contract and declaring it to be the intention of the party giving the notice to terminate the same; thereupon the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating the contract, and, if within said period of thirty (30) days the party in default does so remedy or remove said cause or causes and fully indemnify the party not in default for any and all consequences of such breach, then such notice shall be withdrawn and this contract shall continue in full force and effect. In case the party in default does not so remedy or remove the cause or causes or does not indemnify the party giving the notice for any and all consequences of such breach within said period of thirty (30) days, then, at the option of the party giving the notice, this contract shall become null and void from and after the expiration of said period. Any cancellation of this contract pursuant to the provisions of the Section shall be without prejudice to the right of either party hereto to collect any amounts then due it from the other party prior to the time of cancellation and with waiver of any remedy to which the party not in default may be entitled for

violations of this contract. No waiver by either party hereto of any one or more defaults by the other in the performance of any provisions of this contract shall operate or be construed as a waiver of any future default or defaults, whether of alike or of a different character.

21. Rationing of Water: Authority and City agree to the following stipulations with regard to the rationing of water:

(a) All water sales agreements between Authority and its customers shall stipulate that should there be a shortage in the basic supply of water which requires the restriction or curtailing of any customer of water within the city limits of City that coincident with such restriction or limitation within City, Authority will limit and restrict all of its customers, both direct and indirect through resale, to the same extent. Such rationing by City shall be applied uniformly to all water customers of City.

(b) It is understood by the parties hereto that industries outside of City and/or District have a lower water use priority than industries inside City and/or said District. It is agreed that any and all industrial users both inside and outside of Authority boundaries which may be directly or indirectly supplied through the lines and distribution system of Authority shall be subject to and bound by the same provisions regarding priorities of users of water as are industrial users outside of City and/or said District which are now or may become users of water directly from City and that all existing industrial customers of City have priority over existing and future industrial customers of Authority. This entire subsection 21(b) shall terminate and be of no further force or effect upon the retirement of the outstanding debt of the District in existence as of the effective date of this agreement.

22. Right to Terminate Contract: If after four (4) years from the date of this contract Authority has not provided facilities for the taking of treated water under the terms hereof, City shall have the right to cancel this contract by giving written notice to the Authority of such intention, or City may, if it

seven (7), extend the four (4) year period for any additional period or periods, retaining the right to terminate this contract at the end of any such extended period until such time as Authority may complete the first stage of its facilities and begins taking treated water.

If Authority's need for water from City should cease for a period of at least thirty (30) days then in such event Authority may, by giving thirty (30) days written notice to City by registered mail, cancel and terminate this contract in its entirety. If Authority should elect to give and actually gives City said written notice, then after the expiration of thirty (30) days from the date said notice is mailed to City as above provided, this contract and all of its provisions shall become null and void.

23. Force Majeure: If City should be prevented, wholly or in part, from fulfilling its obligations under this contract by reason of any act of God, unavoidable accident, acts of enemy, strikes, fires, floods, conservation of water for those with superior and legal rights to such water, governmental restraint or regulation, or other causes of force majeure, or by reason of circumstances reasonably beyond its control, then the obligations of City to deliver water to Authority, as hereinabove provided, shall be temporarily suspended during continuation of such force majeure. No damage shall be recoverable by Authority from City by reason of the temporary suspension of deliveries of water due to any of the causes above mentioned. If City's obligation should be affected by any such causes, City shall promptly notify Authority in writing, giving full particulars of such force majeure as soon as possible after the occurrence of the cause or causes relied upon.

If Authority should be prevented, wholly or in part, from fulfilling its obligations under this contract by reason of any act of God, unavoidable accident, acts of enemy, strikes, fires, floods, conservation of water for those with superior and legal rights to such water, governmental restraint or regulation, or other causes of force majeure, or by reason of circumstances reasonably beyond its control, then the obligations of the Authority to take water from City, as hereinabove provided, shall be temporarily suspended during continuation of such force majeure. No damage shall be recoverable by City from Authority by reason of the temporary cessation of the taking of water due to any of the causes above mentioned. If Authority's obligation

should be affected by any such causes, Authority shall promptly notify City in writing, giving full particulars of such force majeure as soon as possible after the occurrence of the cause or causes relied upon.

24. Assignability: This contract may be assigned by Authority only with the written prior consent of the governing body of City, but if assigned, this contract shall be binding upon parties hereto as well as their successors and assigns.

25. Term of Agreement: When this agreement shall have been approved by the parties hereto, the obligations of the parties hereto shall be binding and shall extend for a period of forty (40) years commencing with the date of first taking of treated water, subject to the termination provisions herein contained. Upon request of either party an extension of the term of this agreement will be the subject of negotiation between the parties and extended upon such terms as are agreed upon by the parties at that time, provided such request for negotiation is communicated in writing at least two (2) years prior to the termination of this agreement.

26. Authority to Execute: In order to make this contract fully binding, each of the parties has been duly authorized hereunto and in the execution hereof by proper ordinance or resolution of the respective governing body, and certified copies furnished by each party to the other party for attachments hereto.

27. All Agreement Contained in this Written Instrument: It is agreed by the parties hereto that this instrument contains in writing all of the agreements between the parties hereto and that nothing (except those things required by law) not incorporated herein or by reference shall be binding on the parties.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in several counterparts, each copy of which so executed shall be

considered as an original, by their respective duly authorized representatives,
this the 14 day of OCTOBER, 1980.

ATTEST:

CITY OF CORPUS CHRISTI, TEXAS

Bill H. Reed
City Secretary

By R. Marvin Townsend
R. Marvin Townsend, City Manager

APPROVED:
10 DAY OF October, 1980:

J. BRUCE AYCOCK, CITY ATTORNEY

By RW Coffey
Assistant City Attorney

ATTEST:

Dwight H. Sackett

SOUTH TEXAS WATER AUTHORITY

By Clayton M. Coker

Ord. 15749 AUTHORIZED
BY COUNCIL 9-10-80
B. J. R.
SECRETARY