

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GREENVILLE, TEXAS, AUTHORIZING ENTRY INTO AN AGREEMENT BETWEEN THE SAID CITY AND SHADY GROVE WATER SUPPLY CORPORATION FOR THE PURCHASE OF WATER FROM SAID CITY BY SAID CORPORATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE, TEXAS:

SECTION 1. That the Mayor of the City of Greenville, Texas, be and he is hereby authorized and directed to execute, and the City Clerk of said City be, and she is hereby, authorized and directed to attest, for and on behalf of said City, a certain contract and agreement by and between said City and Shady Grove Water Supply Corporation, which said contract relates to the purchase of water from the City of Greenville by the Shady Grove Water Supply Corporation, a copy of which said contract and agreement being attached hereto marked Exhibit "A," and reference to which being here made for all purposes as if the same were copied in its entirety herein.

SECTION 2. This ordinance shall take effect and be in full force immediately upon its passage and approval, and it is so ordained.

PASSED AND APPROVED, this the 22nd day of September, 1981.

William F. Edkins  
Mayor

ATTEST:

Mrs. Wilson  
City Clerk

APPROVED AS TO FORM:

Alma Adams  
City Attorney

EXHIBIT "A"

AGREEMENT FOR THE PURCHASE OF WATER

THE STATE OF TEXAS )  
                          )  
COUNTY OF HUNT )

THIS CONTRACT, made and entered into as of this 22nd day of October, 1981, by and between the CITY OF GREENVILLE, TEXAS, a municipal corporation, in Hunt County, Texas, acting under the laws of the State of Texas, hereinafter called "City," and the SHADY GROVE WATER SUPPLY CORPORATION, in Hunt County, Texas, hereinafter called "Corporation":

W I T N E S S E T H:

WHEREAS, on the 1st day of August, 1964, City and Corporation having entered into a certain contract relating to the furnishing by City of certain quantities of treated water to Corporation for its use in supplying treated water to its customers, which was amended August 9, 1976; and,

WHEREAS, Corporation is desirous of obtaining from City additional and supplemental quantities of treated water to be supplied to its customers through its water distribution system and water supply facilities; and,

WHEREAS, Corporation is surrendering none of its rights to the ownership and operation of its water distribution system and water supply facilities by the execution of this contract; and,

WHEREAS, City is willing to undertake such additional and supplemental supply of treated water to Corporation to the extent only as hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants and agreements 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:

1. QUANTITY. Subject to the further provisions hereof, City shall, during the period this contract shall remain in force and effect, tender and make available to Corporation for the uses aforesaid,

and at the point of delivery hereinafter specified, treated water in the volume required by Corporation, provided that the maximum amount of water so required shall not exceed Three Hundred Thousand (300,000) gallons per day, with City reserving and having the right to limit the delivery of such water to a rate not exceeding Six Hundred (600) gallons per minute. In the event drouth or other unforeseen condition or circumstance creates a shortage of water so that there shall be an insufficient quantity thereof to meet the needs of its own customers, including but not limited to the Cash Water Supply Corporation, Kingston-Kellogg Water Supply Corporation, Jacobia Water Supply Corporation, Floyd Water Supply Corporation, Dixon Water Supply Corporation, Concord Water Supply Corporation, City of Commerce, Texas, and Corporation, then and in such event, City shall have the right and privilege of discontinuing the supply of water to Corporation as provided for herein, or reducing the quantity thereof to be supplied to Corporation, and for such duration as City shall deem advisable under the circumstances, and may exercise such right and privilege by the notification of Corporation of such intention in writing as hereinafter provided. City shall be the sole and exclusive judge in making the determination when any such insufficiency exists and the period of any such discontinuance or reduction.

2. QUALITY. The water to be supplied to Corporation hereunder shall be of the same quality as that normally supplied to the other customers of City. Title to, possession and control of such water shall remain in City to the point of delivery as hereinafter specified where title to, possession and control of the same shall pass from City to Corporation, and Corporation shall take such title, possession control of such water at the point of delivery. As between the parties hereto, City shall be in exclusive control and possession of such water deliverable hereunder and solely responsible for any damage or injury caused thereby until the same shall have been delivered to Corporation at such point of delivery, at which point Corporation shall be in exclusive control and possession thereof and solely

responsible for any injury or damage caused thereby. City makes no warranty, express or implied, as to the suitability or quality of the water to be supplied under the terms hereof and assumes no responsibility in respect thereof.

3. POINT OF DELIVERY. The two points for delivery of water to be supplied hereunder by the City from the City's system shall be from an existing eight (8") inch cast iron main supply line, one at a point located approximately 1,000 feet East of the East right-of-way line of Lamar Street and near the South right-of-way line of Interstate Highway 30, the other on F.M. 499 on the East side of Wolfe Creek, said points being hereafter called "point of delivery". City shall deliver such water at the pressure normally maintained at such point in its water distribution system and any additional pressure required to transmit such water through the system of Corporation shall be provided by Corporation.

4. MEASURING EQUIPMENT. Corporation shall furnish and install and the City shall 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 contract. 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 (2%) 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.

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

6. PRICE AND TERMS. The service to be performed under this contract by City consists of the readiness of City to deliver to Corporation, upon its demand, 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 said 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:

First 1,500 gallons	\$4.24
Next 3,500 gallons @1.34 per thousand	4.69
Next 5,000 gallons @1.23 per thousand	6.15
Next 5,000 gallons @1.10 per thousand	5.50
Next 5,000 gallons @ .98 per thousand	4.90

All additional - 98¢ per thousand gallons

Payment of the monthly service charge listed above shall be made each 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. Should Corporation fail to tender payment of any amount which is legally due City under the term of this agreement and such failure continues for 30 days after notice in writing to Corporation of such default, City may suspend diversion of water; however, the exercise of such right shall be in addition to any other remedy available to City.

It is hereby mutually agreed that commencing on October 1, 1982, and on the same date every two (2) years thereafter during the term of this agreement, the rates for water as provided herein may be changed and adjusted by City. City shall submit a schedule of the new rates in writing to Corporation at least three (3) months prior to the effective date of such adjustment.

7. 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 contract, 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, earthquake, fires, hurricanes, storms, washouts, droughts, 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.

8. TERM OF CONTRACT. This contract shall continue in force and effect for the period commencing on the 22nd day of October, 1981, and ending on the 30th day of September, 2022, unless sooner terminated as herein provided.

9. ASSIGNMENT. This contract may be assigned by Corporation to the United States of America, acting by and through the Farmers Home Administration, its successors or assigns, as security for a certain loan to be made by the Farmers Home Administration to Corporation, but not otherwise without the consent of City in writing.

10. MODIFICATION. This contract may be changed or modified by consent of the governing bodies of both City and Corporation. Such modification may be requested in writing by either of the parties and if agreed upon, may be made a part of this contract. No such modification may be made which will adversely affect the prompt payment when due of all monies required to be paid by Corporation under the terms herein.

11. REGULATORY BODIES. This contract shall be subject to all valid rules, regulations and laws applicable hereto, passed or promulgated by the United States of America, the State of Texas, or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

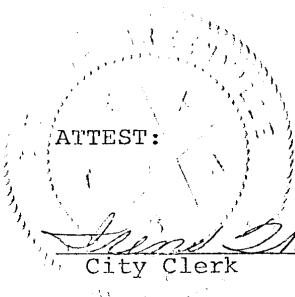
12. NOTICES. All notices or communications provided for herein shall be in writing and shall be either delivered to an officer of Corporation or City Manager or City Clerk of City, or, if mailed, shall be sent by certified mail, postage prepaid, addressed to Shady Grove Water Supply Corporation, Route 2, Greenville, Texas 75401, or, until otherwise specified by City in writing, to City Manager, City of Greenville, P.O. Box 1049, Greenville, Texas 75401.

IN WITNESS WHEREOF, the parties hereto, acting under authority in 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.

CITY OF GREENVILLE

By: William F. Perkins  
Mayor

ATTEST:

  
Ann Skelton  
City Clerk

SHADY GROVE WATER SUPPLY CORPORATION

By: Mark L. Mankin  
President

ATTEST:

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Secretary