

THE STATE OF TEXAS)

COUNTY OF DALLAS)

THIS MEMORANDUM OF AGREEMENT made this day by and between SABINE RIVER AUTHORITY OF TEXAS, a governmental agency of the State of Texas, acting by and through its duly authorized President and attested by its Secretary, hereinafter referred to as "Authority", and the CITY OF DALLAS, TEXAS, a municipal corporation of the State of Texas, acting by and through its duly authorized City Manager and attested by the City Secretary, hereinafter referred to as "Dallas", for the purpose of constructing that certain dam and reservoir known as Iron Bridge, located between Rains and Van Zandt Counties on the Sabine River and embracing lands within Rains, Van Zandt and Hunt Counties, do hereby agree as follows:

WITNESSETH:

GENERAL

I.

Dallas shall make possible the financing of the entire dam and reservoir cost either by contract under the terms of which the Authority can issue revenue bonds in the amount necessary for construction of the Project and the acquisition of the necessary lands, or by any other lawful method acceptable to Dallas.

II.

The Authority shall acquire and own in its name, all land and flowage easements required for said reservoir and dam and for the operation thereof, shall construct and own the dam, spillway and outlet works, all of which land, flowage easements and properties collectively being known as the "Project."

III.

Dallas shall construct and own the intake and pump station, together with the pipeline facilities connecting the intake with the pump station, all to be used for withdrawal of its share of the stored water, collectively

known as "Dallas-owned Facilities." In this connection Dallas will likewise be granted by Authority any needed rights-of-way for pipe lines, power lines, communication lines, and other installations to be made over and across the property of the Authority. Dallas shall have the right to determine the location and size of the site on which shall be located the Dallas-owned Facilities which shall be adequate for the purposes intended and shall provide for reasonable future expansion. Dallas may improve the site to meet its needs, enclose it for protection, and maintain and operate the site and such improvements thereon as it may deem necessary. Likewise, adequate means of ingress and egress shall be made available to both parties over the entire property constituting a part of the Project. The Authority will convey to Dallas the land required for the Dallas-owned Facilities and execute proper easements and rights-of-way for pipe lines, power lines, communication lines, and other facilities that Dallas may install, together with necessary roads for means of ingress and egress, which roads shall be constructed of material to serve as all-weather roads, and said roads will be maintained by the Authority. The Authority shall have the right of entry to the Dallas-owned Facilities at all reasonable times for purposes of inspection.

IV.

In the matter of providing means of financing the cost of the Project, Dallas shall not be required to pay any part of the cost at any time of intakes and pumping facilities needed for the withdrawal of water for other municipalities or water users with which the Authority may make contracts for a part of the water which belongs to the Authority under this contract. As provided in the definition in Section II the outlet works shall be considered a part of the dam and a part of the "Project", the cost of which is a part of the Project cost.

V.

~~Dallas shall have the permanent right to utilize an undivided eighty (80%) percent of the storage space in the reservoir, and likewise shall have permanent rights to eighty (80%) percent of the water impounded.~~

~~and withdrawn from the reservoir. The Authority shall have permanent~~
~~rights to the remaining undivided twenty (20%) per cent of the storage~~
~~space and the water impounded and withdrawn for such purposes as the~~
~~Authority may deem advisable.~~ All water withdrawn from the reservoir
by Dallas and the Authority, or other parties to whom either might
assign a portion of its water rights, shall be accurately measured by
the withdrawing parties and records of withdrawals shall be available to
both Dallas and the Authority. [For the purpose of measuring water re-
leased or withdrawn from the reservoir, the Authority and Dallas shall
employ the most modern and accurate measuring devices generally utilized
for such purposes, and as mutually agreed upon by Dallas and the Authority.
Measuring devices shall be provided at any intake structure or other point
along the reservoir shore where water is withdrawn directly from the
reservoir. The party making such withdrawal shall install and bear the
expense of the measuring devices. Any gages necessary to measure
inflow to the reservoir, reservoir level, and outflow from the reservoir
shall be established during construction. The cost of installing such gages
shall be considered a part of the cost of the Project. Operation of the
gages and the analysis of their records shall be considered a maintenance
and operation expense of the Project and paid as provided in Section XX
of this contract.]

VI.

~~The parties recognize their respective obligations under the~~
~~Sabine River Compact between the States of Texas and Louisiana. To the~~
~~extent that water is to be released from the reservoir to satisfy the re-~~
~~quirements of the Compact, eighty (80%) per cent of such released water~~
~~shall be charged against that owned by Dallas and twenty (20%) per cent~~
~~against that owned by the Authority.~~

VII.

~~Withdrawn water from the reservoir by either Dallas or the~~
~~Authority shall be limited to such amount and made in such manner as to~~
~~never encroach upon or reduce the rightful share of the water of the other.~~

partly upon completion of certain engineering studies now in progress, the withdrawal rights of Dallas and the Authority both as to amount and time will be set forth in detail and shall be the subject of a separate agreement between the parties, and such agreement shall be supplemental to and a part of this contract.

VIII.

mindful of the fact that while Dallas has the perpetual right to use 80% of the water yielded by the reservoirs there will be times when a part of the water thus owned by Dallas will be surplus to its needs. On any such occasion within the sole determination of Dallas it may advise the Authority as to the amount of water belonging to Dallas which at the moment is surplus to its needs. Thereupon Authority is authorized to negotiate the sale of the designated part of the water then available which has been declared surplus by Dallas. Subject to the approval by Dallas of the time and price of the sale of such waters the Authority may deliver the same to the purchasers. The money to be received by the Authority from the sale of such water is to be paid by it to Dallas after compensating Authority for the special expenses incurred by it in connection with such sale. It is expressly agreed that every such sale by the Authority of Dallas water shall be denominated as an emergency transaction under temporary permission effective only for the time and the transaction specified in Dallas authorization. The right of the Authority to utilize water belonging to Dallas can be exercised only pursuant to this provision and the use of such water under such circumstances shall create no continuing right in the purchaser or users. Parties are cognizant of the fact that Dallas has made the official determination that during the term of this contract it will need and will be utilizing all of the water allotted to it under this contract.

IX.

If Authority desires to use any of Dallas-owned Facilities or transmission pipe lines for delivery of water to Authority's other customers,

whether municipalities or others, suitable arrangements and proper compensation shall be made to be determined by mutual agreement.

X.

The Project shall be operated and maintained by the Authority, the expense thereof to be paid in accordance with the provisions of Section XX of this contract. The Dallas-owned Facilities shall be owned, operated and maintained by Dallas.

XI.

The Authority shall make rules and regulations governing the use of the reservoir and adjacent lands owned by the Authority and such rules shall prohibit any use of the water and lands that would result in pollution and contamination of the water which would render it unsafe for domestic and municipal purposes. The Authority will properly police the reservoir property. All such powers shall be exercised and such duties shall be performed by the Authority in accordance with the applicable provisions of law which are found in Section 26 of the Act creating Authority.

XII.

The execution of this contract has been duly authorized in accordance with law at an election held in the City of Dallas on the 31st day of January, 1956. The parties hereto recognize the possibility that in order to implement the prompt completion of the Project, supplemental contracts may be necessary from time to time which, of course, must be within the perimeter of the law creating the Authority, and laws amendatory thereof, and within the legal powers of Dallas. Any such supplemental contract will be subject to negotiation between the parties.

ACQUISITION OF LAND AND CONSTRUCTION

XIII.

Authority has selected its consulting engineers to design and supervise construction of the Project, viz: Forrest & Cotton, Dallas, Texas. A separate contract between the Authority and Forrest & Cotton as engineers, executed on the 6th day of May 1956, is hereby confirmed and approved by Dallas.

XIV.

Authority has selected Byron Tinsley of Orange, Texas, as attorney to perform legal work in connection with this Project. A separate contract between the Authority and said attorney, bearing even date herewith, is hereby confirmed and approved by Dallas.

XV.

Inasmuch as the Authority has already selected and appointed a General Manager for the Sabine River Authority of Texas, it is agreed that such Manager will also serve as General Manager of the Iron Bridge Division of the said Sabine River Authority of Texas. In the event such position of General Manager should become vacant for any cause whatsoever, the Authority will appoint a suitable person to perform that service. The Authority has defined the duties of the General Manager to be performed by him in connection with the land acquisition and construction phase of this Project and if additional duties are assigned to him or such duties are modified, then the same will be evidenced by a resolution of the Board of the Authority.

XVI.

For the land acquisition and construction phase of this Project, Authority shall prepare and submit to Dallas for its approval a mode of procedure, listing personnel, proposed salaries and other financial requirements for engineering services and land acquisition. The financial requirements for personnel, overhead, salaries, engineering expense and land acquisition shall set out a time schedule, which shall be divided into three phases, viz:

(a) Proposed expenditures that will be necessary up until the time of the awarding of the construction contract for the erection of the dam;

(b) Schedule of financial needs for the above purposes following the time after the contract for the construction of the dam is let; and

(c) Any contracts or expenditures not otherwise provided for elsewhere in this contract or under (a) and/or (b) above and same will be subject to the approval of Dallas.

XVII.

The acquisition of land, rights-of-way, road and utility relocations and/or flowage easements for the Project of necessity must be the primary responsibility of Authority. To facilitate the land acquisition program, Dallas reserves the right, at its option, to have the City Attorney provide one of his assistants, or otherwise, who will cooperate with the attorneys who shall be selected by the Authority for the land acquisition program. The compensation for such attorney shall be paid by the Authority as a part of the land acquisition costs, provided, however, that if only part of his time is taken up with this service, then only such part thereof will be charged as may be properly apportioned thereto. Before any land or easements are acquired, they shall first be appraised by competent appraisers selected by Authority, the compensation to be approved by Dallas. All lists of appraisals shall be submitted to Dallas for comments and suggestions and after such comments and suggestions shall have been considered by Authority and reconciled, Authority will undertake to acquire such properties within the appraisal figure in each instance. If condemnation proceedings are necessary the figure finally fixed by the Courts shall be effective as to that property. Property to be acquired, other than through condemnation, must be within the appraisal limits unless Dallas shall approve the payment of a figure higher than the appraised figure. Dallas shall have the right to review any proposed condemnation proceedings prior to their filing. Approval or disapproval by Dallas shall not be unreasonably withheld.

XVIII.

Prior to advertising any phase of the construction program, all plans in connection therewith prepared by the engineers shall be submitted to and approved by the duly authorized representatives of Dallas.

All construction work of any kind whatsoever, and including clearing and grubbing of certain portions of the reservoir area, shall be done only after such work has been duly advertised, as required by law, and after sealed bids have been received, opened and read at such place as shall be agreed upon between Authority and Dallas. Construction contracts shall be awarded by the Authority to the lowest and best bidder on the several phases of construction and approved by the City Council of Dallas. Following the award, a formal contract will be duly executed between the Authority and the successful bidder, and the form of such contract shall be approved by Dallas.

The plan and supporting budget shall include the cost of relocation of all roads, power lines, telephone lines, pipe lines, cemeteries and other utility adjustments within the legal liability of the Authority, and shall be subject to the approval of Dallas.

In order to properly and expeditiously conduct the direction of said Project, the Authority shall establish an office at Greenville, Texas, and sub-offices, if necessary, at such place or places as may be deemed necessary, and maintain said office or offices until the construction program has been completed and acquisition of all lands has been consummated. Authority shall provide office space for representatives of Dallas, such as the City Auditor, City Attorney and Water Department. Authority shall prepare an operational plan and budget for this office, which plan and budget shall be subject to approval by Dallas. The salaries and necessary traveling expense of the representatives of the City Auditor, City Attorney and Water Department shall be chargeable as part of the cost of the Project and if any of the above serve only part time on this Project, then their salaries shall be properly apportioned as the case may be. After the Project becomes operational, the Authority will maintain an office at a location to be agreed upon by the parties and the expense thereof will be determined in accordance with Section XX hereof.

TEMPORARY AND PERMANENT FINANCING
DURING CONSTRUCTION PHASE

XIX.

- (A) To facilitate the early acquisition of land necessary for the dam

site and to make possible the payment of engineering expenses incurred by Authority and the payment of other expenses incident to setting up offices, obtaining personnel and related items, Dallas will advance to Authority out of its waterworks and sewer revenues such money as will be needed for item (a) of Section XVI, in accordance with the procedures prescribed in Section XVI. Dallas reserves the option, if it has funds available and if it so elects, to advance to Authority out of its waterworks and sewer revenues additional money to be utilized for purposes set forth in items (b) and (c) or for either of said items of Section XVI. Dallas, however, reserves the further right and option to:

(a) Fund the amount of such advances if it issues its own revenue bonds for permanent financing of the improvements, or

(b) Request and require the Authority to fund the amount thus advanced if the Authority does the permanent financing.

(B) Under the present law, the Authority is authorized to issue revenue bonds for the Project covered by this contract, and the qualified voters of Dallas did, on January 31, 1956, authorize Dallas to enter into this contract. In the event the next Legislature should enact necessary legislation prior to April 1, 1957, which would authorize Dallas to issue and sell its own revenue bonds or any other means of financing is provided, to defray the cost of the Project, then the funds obtained through such sale or financing will be paid out as needed to the Authority, to finance legal commitments, such as contracts, land acquisition and other legitimate expenses in connection therewith as provided in this contract.

(C) In the event no legislation is enacted by the 1957 Legislature by April 1, 1957, authorizing Dallas to issue its own revenue bonds, then Dallas will request the Authority to proceed with the issuance and sale of its revenue bonds to finance the Project upon such terms and conditions as may be written in the bond indenture.

In the event legislation is enacted by the 1957 Legislature, authorizing Dallas to issue its own revenue bonds, Dallas nonetheless shall have

the right to request Authority to proceed with the issuance and sale of its revenue bonds to finance the Project upon such terms and conditions as may be written in the bond indenture.

(D) In the event the Authority issues its revenue bonds for the financing of the Project, Dallas will accumulate the amount of money required to make the payments to meet the requirements of the maturing bonds and interest which said funds shall remain in the hands of the City Treasurer and Dallas reserves the right to make such payments direct to the paying agent or agents in sufficient time for such funds to be available and in the hands of the agent or agents when such maturing bonds and/or maturing interest coupons are presented for payment on due date. Dallas reserves the right to set up any fund or reserve for coverage of such bonds, but such fund or reserve will remain under the control and custody of Dallas. It is, however, expressly understood that Dallas shall not be required to set up such fund or reserve for coverage unless it elects to do so and shall have the right to determine the amount thereof if it elects to set up a fund or reserve.

(E) The proceeds from the issuance and sale of the revenue bonds of the Authority will be deposited in such institution or institutions as the law authorizes and as prescribed in the indenture. The Authority will cause the investment to be made of said funds temporarily not needed to fill its commitments for land purchase or in the construction program upon the request of Dallas, and such investments shall be made in securities authorized by the law applicable to the Authority. No investment of such construction funds will be made until they shall have been approved by Dallas. The interest resulting from such investments shall be credited to the corpus of the bond proceeds becoming a part of the construction fund. Money remaining in the construction fund after completion of the Project shall be credited to the sinking fund as may be provided in the indenture. Before Authority finally executes the indenture it must first have been approved by Dallas.

(F) In the event any lands or property acquired for the Project are sold or temporarily leased or rented, any revenue derived therefrom

or from the sale of any improvements located on said lands or from the sale of any timber, crops or from any other source whatsoever, shall be credited to the construction fund and utilized for said purpose and if not needed, then to the sinking fund.

(G) For the convenience of the construction phase of this contract, regardless of whether Authority or Dallas issues the bonds necessary for the financing of the Project, sufficient funds will be made available at a depository or depositories convenient to the Project to be selected by the Authority and approved by Dallas.

(H) Every authorized expenditure of funds advanced by Dallas, or from proceeds from bonds issued shall constitute a commitment and encumbrance against said funds. Payments out of said funds shall be made on vouchers and warrants or checks duly drawn and signed by the proper officers or agents of the Authority designated by a resolution. All vouchers supporting expenditures of said funds shall be preaudited by the City Auditor or his authorized representative prior to the drawing of warrants or checks for payment, provided the City Auditor or his authorized representative is available at the office of the Authority in Greenville, Texas, or at the Project during all regular business hours for this purpose. In the event the City Auditor or his authorized representative is not present in the office of the Authority in Greenville, Texas, or at the Project during all regular business hours, warrants and checks may be issued without such preaudit.

The depository or depositories where any of the funds are deposited will be furnished the names of the officers or agents of the Authority whose names will be required to appear on said warrants or checks calling for payment of these funds. This provision of this contract shall likewise become part of the contract between the Authority and such depository or depositories.

All officers or agents of the Authority who will be charged with the writing and/or signing of vouchers, warrants or checks will be under faithful performance and Fidelity Bonds acceptable to Dallas.

(I) The Authority will furnish a copy of its annual audit of this Project to Dallas and Dallas reserves the right to audit annually, in conformity with its Charter and laws applicable to the Authority, any and all expenditures made for this Project, and financed through the issuance and sale of the bonds by the Authority. In order to prevent duplication of auditing expense, the parties may agree upon an auditor to perform this service.

(J) All obligations of Dallas under this contract shall be payable out of the waterworks and sewer system revenues of Dallas and shall not constitute any obligation against its taxing power.

(K) The Authority agrees that if it is requested to issue and sell its revenue bonds to finance the Project, that no sale of revenue bonds for this purpose will be made save and except upon sealed bids to be publicly opened and award made to the lowest and best bidder. No fees or charges or any kind will be charged to the Project cost in connection with the sale of such revenue bonds without the consent of Dallas.

PROCEDURE WHEN PROJECT BECOMES OPERATIONAL

XX.

On or before the 30th day prior to the date on which the Project is to be operated by Authority, it shall file with Dallas a proposed budget for the remainder of the then calendar year or the balance of the fiscal year of Dallas. Within fifteen (15) days after receiving the proposed budget, Dallas will file with the Authority its approval, exceptions or changes to said proposed budget, as the case may be. Unless Authority accedes to the suggested changes and the exceptions, a conference shall be held within ten (10) days thereafter at a place to be agreed upon between authorized representatives of the Authority and authorized representatives of Dallas to reconcile differences. Dallas will appropriate sufficient funds for the first operating budget, either for the balance of the calendar year or the balance of the fiscal year of Dallas, as the case may be, and thereafter the annual budget will be provided and determined in the same manner

above stated, The Authority shall submit its estimate of operating and maintenance cost by July 1st of each year thereafter so that the City Manager may include the necessary funds in the annual budget which must be submitted to the City Council by August 15th, which budget when approved shall provide funds for its fiscal year beginning October 1st and ending September 30th next.

The budget thus finally approved shall be effective for the period for which it will be intended, if during the effective period of any approved budget, unscheduled expenditures become necessary because of damage to the properties of the Project, or for other reasons which may be termed by the Authority as calling for emergency expenditures, the budget may be amended upon concurrence between Dallas and the Authority and in the event of disagreement the question in disagreement may be resolved at a conference between the parties.

The parties hereto being cognizant of the following:

That Dallas has the absolute obligation of paying 80% of the cost of the operation and maintenance of the Project as reflected in the budget to be effective under the terms of this section, and that Authority has the absolute obligation of paying 20% of such cost of operation and maintenance as reflected in the effective budget adopted under this section.

That the ability of Authority to pay its part of such expense is limited to the revenues it will realize from the Project, and the necessity of making adequate provision for the payment of maintenance and operation expenses so that the availability of money for such purposes will not be dependent upon the net revenues to be earned by Authority, parties stipulate:

(a) That the period of time remaining in the current calendar year or fiscal year of Dallas, as the case may be in which the Project is to be placed in operation, shall be considered a fractional calendar year or fiscal year, as the case may be, and when said amount of operational and maintenance cost is determined and agreed upon by the

by the parties. Dallas will remit to the Authority the necessary amount of money for the fractional part of the calendar or fiscal year, as the case may be. Thereafter Dallas will remit to the Authority quarterly an amount of money agreed upon to pay the operational and maintenance cost.

(b) The amount to be remitted by Dallas shall be credited with any amount of money on deposit in said maintenance and operation fund which has been placed in said fund theretofore by the Authority, or any unexpended advancement made by Dallas.

(c) That Authority is obligated to deposit in the operation and maintenance fund when received, all moneys realized from the sale or use of its 20% of the waters to be stored at the Project, all net revenues received by Authority from recreational uses of the reservoir and all other net revenues received by the Authority because of its operation and maintenance of the reservoir; provided, however, that when Authority shall have deposited of said net revenues an amount equivalent to 20% of the sum total of all maintenance and operational expenses as reflected in the current effective budget, no additional deposits need be made by Authority for the current budget year.

(d) The funds budgeted for the maintenance and operation of the Project after it becomes operational shall be audited annually by the Authority and a copy thereof furnished to Dallas, and Dallas reserves the right to make an independent audit.

(e) It is understood that the net revenues of the Authority for a period of three years after completion of the Project may be insufficient to meet its 20% of the maintenance and operational expense and in that event then Subsections (a), (b), (c) and (d) above shall be modified to the extent that Dallas will pay the entire cost of maintenance and operation, if necessary, less such amounts of money that the Authority may have

available from the sale of water, recreational facilities or from whatever other source or sources from the operation of the Project. If at the end of the three-year period the income of the Authority is still insufficient to pay its 20% of the operation and maintenance cost, then the Authority and Dallas will review the method of financing the operation and maintenance of the Project and determine a proper division of such cost, which shall be operative until the Authority will have sufficient revenues to meet its 20% of the operation and maintenance cost, and at that time the provisions of Section XX, Subsections (a), (b), (c) and (d) shall become operative and the procedures set forth therein will be followed.

For further clarification of the obligations of the parties to this contract, the following shall govern:

OPERATION AND MAINTENANCE

Under the terms of the contract between the Authority and Dallas, Dallas will be obligated to pay the costs of operation and maintenance. When the Authority starts receiving revenues from the sale of its share of water or from revenues from recreational facilities, it will be obligated to pay up to 20% of operation and maintenance costs.

In order to establish by definition just what operation and maintenance costs shall be borne by Dallas (and the Authority, after revenues are forthcoming) the following points are established:

OPERATIONS

1. Operating costs are actual costs of administrative and operational functions including personnel and equipment, repairs to buildings, etc., of the Authority, which apply solely to reservoir operation required to supply Dallas with its 80% of the water.

2. Authority revenues from recreational features will be net revenues (after deducting cost of operations and maintenance chargeable solely to Authority).

3. Costs of roads, fences, repairs to buildings, etc., which may be required at Dallas Pumping Station but which is performed by the Authority, will be chargeable 100% to Dallas.

4. In case of dual capacity personnel, equipment or facilities, pro-rated costs will be established by mutual agreement.

MAINTENANCE

1. Maintenance costs will apply, insofar as Dallas is concerned, only to buildings, structures, equipment, roads, fences, etc, actually required by the Authority to supply Dallas with its 80% share of water.

2. Maintenance requirements related to recreation, patrolling, etc., will be chargeable solely to the Authority and will be deducted prior to determining the Authority's net revenues.

3. Maintenance functions at the Dallas Pumping Plant, including roads and fences leading thereto, which the Authority may be required to perform for Dallas will be chargeable 100% to Dallas.

In the event of dual purpose maintenance equipment and personnel, pro-rated costs will be established by mutual agreement.

Any tax or charge hereafter lawfully levied by the State of Texas or any other authorized taxing agency for the impoundment and storage of water shall be deemed to be an operation expense to be shared ratably as provided in this section.

XXI.

While this contract is in effect, at any time when Authority shall be fully current in its obligations to provide for the payment of 20% of the maintenance and operation expenses of the Project as set forth in Section XX, all moneys received by Authority from the Project shall be

the property of the Authority and may be used by it for any lawful purpose, including the further development of the Sabine River and its tributaries. Any money which Authority may have received because of the sale or surplus water belonging to Dallas shall not be considered as the property of Authority but shall be remitted to Dallas promptly, less any special expenses incurred by Authority in connection with such sale, as provided in Section VIII above.

XXII.

When all of the bonds, whether issued by the Authority or Dallas, have been fully paid, the only obligations of the parties will be confined to the payment of 80% by Dallas and 20% by the Authority for the cost of maintenance and operation. Authority will continue to own and operate the Project. In the event of the necessity for major reconstruction or repairs the money therefor shall be provided by the parties likewise on the basis of 80% by Dallas and 20% by the Authority, as provided in Section XX of this contract.

Both parties hereto shall have rights and interests in the Project which shall constitute insurable interests to protect adequately both parties from any insurable loss. After payment has been made for the Project as provided in this section, the provisions of Section XX as to preparation of budget, approval of budget, and as to maintenance and operations shall remain effective.

XXIII.

It is agreed by and between the parties that the estimated cost of this Project is approximately \$20, 000, 000, 00.

XXIV

It is expressly understood by and between the parties that the provisions of this contract are subject to applicable provisions of the Constitution, laws of the State of Texas, and the Charter of the City of Dallas, and any amendment thereof which shall not have the effect of violating or voiding any obligations under the contract.

The foregoing eighteen pages, including this page, represent the entire agreement between the Authority and Dallas with reference to the subject matter covered by this agreement, but may be supplemented as provided for in Section XII above.

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THIS AGREEMENT is executed in octuplicate this the 14th day of

July A. D. 1956.

ATTEST:

D. Bessley
Secretary
PRO-TEM

APPROVED AS TO FORM:

Byron R. Finley
General Counsel of Sabine River
Authority of Texas

ATTEST:

Harold G. Shank
Harold G. Shank, City Secretary

COUNTERSIGNED:

E. Lyph Crossley
E. Lyph Crossley, City Auditor

SABINE RIVER AUTHORITY OF TEXAS

By *L. L. Rowman Jr.*
President

APPROVED:

John W. Simmons
General Manager

CITY OF DALLAS

By *Elgin E. Crull*
Elgin E. Crull, City Manager

APPROVED AS TO FORM:

H. P. Kucera
H. P. Kucera, City Attorney

APPROPRIATE PUBLIC WATERS
OF THE
STATE OF TEXAS

No. 1792

WHEREAS, the SABINE RIVER AUTHORITY OF TEXAS, whose address is P. O. Box 569, Orange, Texas, on the 12th day of September, 1955, filed with the Board of Water Engineers of the State of Texas Application No. 1933 for a permit to appropriate annually ~~230,750 acre feet~~ and impound 926,000 acre feet of the public waters of the State of Texas; and

WHEREAS, on the 14th day of November, 1955, after due notice the Board of Water Engineers held a public hearing at its office in Austin, Texas, as prescribed by law, and after hearing and considering all the evidence affecting said application took the same under advisement and continued the hearing from day to day, and on the 16th day of December, 1955 did grant said Application No. 1933.

NOW, THEREFORE, THE BOARD OF WATER ENGINEERS OF THE STATE OF TEXAS DOES BY THESE PRESENTS GRANT THIS PERMIT unto the said Sabine River Authority of Texas to appropriate, divert and use certain public waters of the State, to consist of the storm and flood waters of the Sabine River, ~~not to exceed 230,750 acre feet of water~~ ~~as follows:~~

~~184,600 acre feet of water for the purpose of municipal use;~~
~~23,075 acre feet of water for the purpose of industrial use;~~
~~23,075 acre feet of water for the purpose of irrigation, and~~

~~or so much thereof as may be necessary when beneficially used, for the enumerated purposes.~~

The lands authorized to be irrigated shall not exceed 12,000 acres of land lying within the boundaries of the Sabine River Authority of Texas as described and delineated heretofore by the State Board of Water Engineers; provided, however, that before the permittee shall divert and use any water for irrigation purposes, it shall file with this Board a statement fully explaining the proposed project and a map complying substantially with Board Rules 225.2, 225.3 and 225.4 (1955 Revision) and obtain Board approval thereof. No land shall be considered as lying within the area authorized to be irrigated by this permit until the foregoing has been fully satisfied. The amount of water for irrigation which the said permittee may divert and appropriate in any one year shall not exceed two (2) acre feet of water for each acre of land actually irrigated.

~~The water herein authorized to be diverted by the permittee for municipal and industrial purposes may be transported beyond the boundaries of the Sabine River watershed for beneficial use outside of said boundaries. A portion of such trans-watershed diversion is contemplated by virtue of a contract heretofore executed between the permittee and the City of Dallas.~~

To store the water to be appropriated, the permittee is authorized to construct and, before acquiring any right to divert water hereunder, shall construct an on-channel dam with its outlet located at a point which bears S. 63° 47' 45" 8867.8 feet from the most Westerly corner of the J. Terry Survey, Abstract No. 852, in Van Zandt County, Texas, distant in a Northeasterly direction from Wills Point, Texas, nine miles, and impound in the reservoir thereby created 926,000 acre feet of water, such dam being more fully described in the plans filed by the permittee with the application, to which reference is made for all purposes.

~~The permittee shall store only storm and flood waters of said stream, subject to all the rights of prior appropriators and lawful diverters below. Whenever the Board finds that the permittee is storing any water other than flood water, or any flood waters to which downstream appropriators and lawful diverters are entitled, the permittee shall release same to said appropriators or lawful diverters on the order of the Board. By accepting this permit, permittee agrees to abide by and comply with~~

any such order of the Board without delay. Failure to comply with any such order shall constitute grounds for forfeiture and cancellation.

The permittee shall construct a sluiceway in said dam, at the lowest point in the channel of the stream, having an opening of not less than 40 square feet and equipped with a regulating gate or gates for the purpose of permitting the free passage of the normal flow through the dam at all times, and the passage of those flood waters to which lower appropriators may be entitled.

The permittee is authorized to install a pump station at a point which bears N. 68° 15' 20" 7079.4 feet from the Southeast corner of the W. K. Revier Survey in Hunt County, Texas, for the purpose of diverting the water to the place of intended use. Before the permittee shall establish other diversion points, it shall present to this Board the plans and specifications of the same and obtain Board approval.

All construction work shall be done in accordance with the plans approved by this Board and any changes or alterations made in said plans shall be filed with the Board and its approval obtained before construction.

The permittee shall install a measuring device at each diversion point which will accurately record the amount of water diverted. Each measuring device and its installation shall be approved by the Board. The permittee will also make daily determinations of water surface elevations in the reservoir by means of a gage set to U. S. Geological Survey or U. S. Coast and Geodetic Survey datum, and the Board of Water Engineers shall be furnished complete records of such determinations.

Any surplus water shall be returned to the stream at the point and in the manner shown on the plans filed by the permittee with the application.

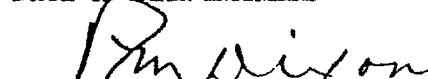
Construction of the works herein authorized shall be begun within two (2) years from the date hereof and shall be prosecuted to completion with reasonable diligence unless otherwise ordered by the Board. Failure to begin such construction within such time limitation shall cause this permit to lapse and be of no further force and effect and will be forfeited forthwith unless an extension of time is applied for by the permittee within the above time limitation and granted by the Board.


Within ten (10) days after beginning actual construction of said project, the permittee shall file a statement with the Board showing that such work was begun within the time limit allowed and the extent of the work done, and shall file thereafter monthly statements until final completion showing the progress of such construction.

This permit is granted with the reservation and upon the condition that the permittee will fully comply with the terms, conditions and provisions hereof which are not in conflict with the laws of this State; by the acceptance of this permit, the permittee agrees to be bound by such lawful terms, conditions and provisions. Failure on the part of the permittee to comply with such terms, conditions and provisions will subject this permit to forfeiture and cancellation, to which the permittee agrees by acceptance of the permit. ~~The permittee shall expressly comply with section (3) of Article V. of the Sabine River Compact by releasing from storage its pro rata share of Sabine River waters necessary to provide a minimum flow at the Stateline of 36 cubic feet per second. The permittee shall also fully comply with other applicable provisions of the Sabine River Compact, codified as Article 7466i, Vernon's Civil Statutes of Texas, and any amendments thereto. It is also expressly provided that the permittee, its successors and assigns, and any beneficiary hereunder shall comply with all other laws and all the rules, regulations and orders of the Board of Water Engineers formulated by it pursuant to law.~~

Given under the hand and seal of the Board of Water Engineers of the State of Texas, this the 20th day of December, 1955.

BOARD OF WATER ENGINEERS


R. M. Dixon, Chairman


H. A. Backwith, Member


G. F. Dent, Member

ATTEST:


B. R. Pullington, Secretary

July 18, 1955

WHEREAS, heretofore on June 1, 1953, the City Council appointed a committee of citizens to be known as the Dallas Water Survey Committee to study the long-range water problem of the City of Dallas, composed of:

W. G. Vollmer	- Chairman
Austin F. Allen	- Vice Chairman
Frank I. Brinegar	- Member
Roland L. Pelt	- Member
W. W. Overton, Jr.	- Member
J. L. Latimer	- Member
John E. Mitchell, Jr.	- Member
Karl F. Hoefle	- Member

and

WHEREAS the City Council likewise employed Forrest & Cotton as Consulting Engineers to make an engineering study of possible sources of water for the City of Dallas from a long-range standpoint and the feasibility of development of such sources, which said Consultants have worked with said Dallas Water Survey Committee, and

WHEREAS various sites have been studied by said Engineers and Committee and as a possible source of water, the Iron Bridge Site on the Sabine River received considerable study and conferences were had with the Sabine River Authority of Texas which is charged with the responsibility under the State law to develop said water resources, and

WHEREAS the Consulting Engineers, Forrest & Cotton, have filed an Interim Report addressed to the City Manager of the City of Dallas, dated July 11, 1955, in which they recommended that the City of Dallas give first priority to the possible development of the Iron Bridge Site as a source of water for the City of Dallas and recommended that the City of Dallas enter into some contractual relationship with the Sabine River Authority of Texas with reference to said project, and

WHEREAS as a result of numerous conferences with the officials and directors of the Sabine River Authority of Texas and the Consulting Engineers and from personal inspections of the Iron Bridge Site, the

Dallas Water Survey Committee is now of the opinion, as evidenced by a letter signed by the Committee members, dated July 12, 1955, addressed to Elgin E. Crull, City Manager of the City of Dallas, that the City of Dallas should execute the tendered contract by the Sabine River Authority of Texas, and

WHEREAS the City Council of the City of Dallas, after studying the proposal and the results of the investigation and studies made by the Dallas Water Survey Committee and the Consulting Engineers, are of the opinion that said proposed contract is satisfactory to the City of Dallas and that it should be accepted and executed by the City of Dallas in the best interest of the future growth of the City of Dallas in order to provide for the water needs in the not too distant future of the City of Dallas, NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the proposed contract submitted herewith between the Sabine River Authority of Texas and the City of Dallas for the erection and development of a water reservoir at the Iron Bridge Site, under the terms of which the City of Dallas will have perpetual ownership of eighty (80%) per cent of the water and the Sabine River Authority of Texas will have twenty (20%) per cent of the water at its disposal, the method of financing to be according to a plan agreeable to the City of Dallas, and under which proposed contract the City of Dallas will defray the entire cost of the construction of the dam and the acquisition of necessary lands therefor, and which said proposed contract provides that such necessary supplemental agreements will be executed between the parties as the time and occasion arise therefor, be and the same is hereby approved and the City Manager, Elgin E. Crull, is hereby authorized to execute the same on behalf of the City of Dallas and the City Secretary, Harold G. Shank, is hereby directed to attest the same under the seal of the City of Dallas.

SECTION 2. That the City Secretary is hereby directed to spread on the Minutes of the City Council the letter of transmittal, dated July 9.

1955, addressed to the Honorable Mayor and the City Council of the City of Dallas, signed by John W. Simmons, President of the Sabine River Authority of Texas, in which said letter the President of the Authority advises the City Council that on July 8, 1955, the Board of Directors officially approved the said proposed agreement between the City of Dallas and the Sabine River Authority of Texas with reference to the construction and erection of a reservoir at the Iron Bridge Site, the contract itself; likewise the official Resolution No. 25 adopted by the Board of Directors of the Sabine River Authority of Texas, approving said proposed contract, and the letter dated July 12, 1955, addressed to Elgin E. Crull, City Manager, giving a report and recommendation of the Dallas Water Survey Committee, of which W. G. Vollmer is Chairman, in which letter they recommend approval by the City of Dallas of the proposed contract, together with the above mentioned documents were transmitted to the City Council.

That these documents above mentioned shall become official records of the City of Dallas and copies of these instruments, together with the minutes shall be preserved as permanent records of the City of Dallas.

That the Interim Report of Forrest & Cotton, Consulting Engineer, dated July 11, 1955, addressed to the City of Dallas, its Water Committee and the City Manager, giving a report of the studies made by said Consulting Engineers and their recommendation that the City of Dallas give No. 1 priority to the construction of the Iron Bridge Site as a source of water for the City of Dallas in the future and its surrounding area, be ordered filed and made an official record of the City of Dallas and securely kept for that purpose.

SECTION 3. That this Resolution shall take effect from and after its passage as in the Charter in such cases is made and provided

APPROVED BY
CITY COUNCIL

JUL 11 1955

THE STATE OF TEXAS)

COUNTY OF DALLAS)

THIS FIRST SUPPLEMENTAL MEMORANDUM OF AGREEMENT made this day by and between **SABINE RIVER AUTHORITY OF TEXAS**, a governmental agency of the State of Texas, acting by and through its duly authorized President of the Board of Directors, and its General Manager and attested by the Secretary of its Board of Directors, hereinafter referred to as "Authority", and the **CITY OF DALLAS, TEXAS**, a municipal corporation of the State of Texas, acting by and through its duly authorized City Manager and attested by the City Secretary, hereinafter referred to as "Dallas", for the purpose of constructing that certain dam and reservoir known as Iron Bridge, located between Rains and Van Zandt Counties on the Sabine River and embracing lands within Rains, Van Zandt and Hunt Counties:

WITNESSETH:

Authority and Dallas do hereby mutually agree that:

I.

Except as amended by the terms and conditions hereof, the **MEMORANDUM OF AGREEMENT** heretofore executed between Authority and Dallas on the 14th day of July, 1956, hereinafter referred to as the "Original Memorandum", shall remain in full force and effect, but in the event of any conflict expressed or implied, the terms hereof shall govern.

II.

Section XV of the Original Memorandum is hereby rescinded. The "Project" (as defined in said Original Memorandum) with all appurtenant installations (but excluding "Dallas-owned Facilities" as defined in said Original Memorandum) constitute the Iron Bridge Division of the Sabine River Authority of Texas. Full authority in the management and operation of said Iron Bridge Division of the Sabine River Authority in both the construction and operational phases is recognized as a function of

the Board of Directors of the Sabine River Authority of Texas acting through its General Manager pursuant to statutory authority and subject only to its orders.

III.

Authority shall proceed in accordance with the law at its discretion, to issue, sell and deliver the initial \$5,000,000.00 of revenue bonds, the proceeds of which shall be used for the acquisition of lands, flowage rights, construction of the dam spillway, outlet works and all other cost incidental to the issuance and sale of the bonds, engineering fees as per contract, and reasonable legal and fiscal fees, which will be approved by both parties. The revenue bonds hereinabove mentioned shall be publicly advertised for sale and shall be sold upon sealed bids to be publicly opened and awarded to the lowest and best responsible bidders. Disbursement of such funds shall be made in accordance with the Original Memorandum heretofore entered into between the parties hereto.

IV.

The revenue bonds shall be issued and sold in accordance with a trust indenture to be prepared by Bond Counsel retained by the Authority, the terms and conditions thereof to be determined at the time said Bond Indenture is approved by the Authority and Dallas. However, it is understood that said Bond Indenture will include such terms as will make such bonds attractive and salable and be sold at the best rate of interest possible.

V.

Dallas will then provide by any legal method of financing the next \$15,000,000.00, or so much thereof up to that amount if \$15,000,000.00 is not needed, and make such funds available to the Authority as provided for in the Original Memorandum.

VI.

In the event the initial issue of \$5,000,000.00 by the Authority and the \$15,000,000.00 financed by Dallas is not sufficient to finish the Project, then the Authority will issue and sell whatever balance of revenue bonds that may be necessary to finish and complete the Project and make it operative.

VII.

It is expressly understood that the provisions of this First Supplemental Memorandum of Agreement are subject to applicable provisions of the Constitution and laws of the State of Texas, and the Charter of Dallas and any amendment thereof which shall not have the effect of violating or voiding any obligations hereunder.

VIII.

In addition to this First Supplemental Memorandum of Agreement, it is recognized that other and further supplemental agreements may be necessary from time to time, which, of course, must be within the perimeter of the law creating Authority, and laws amendatory thereof, and within the legal powers of Dallas. Any such other and further supplemental agreements will be subject to negotiation between Authority and Dallas.

THIS FIRST SUPPLEMENTAL MEMORANDUM OF AGREEMENT

executed in octuplicate this the 4th day of MARCH A. D. 1957.

ATTEST:

Secretary

APPROVED AS TO FORM:

General Counsel of Sabine River Authority of Texas

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

SABINE RIVER AUTHORITY OF TEXAS

By L. H. ...
President

By John W. Simmons
General Manager

CITY OF DALLAS

By Edwin E. Cull
City Manager

COUNTERSIGNED:

City Auditor

STATE
APPLICANT
PROTESTANT

EXHIBIT NO. 409

UPPER NECHES RIVER MUNICIPAL WATER AUTHORITY - 4/5/

CITY OF DALLAS, TEXAS

WATER SUPPLY AND STORAGE CONTRACT

THIS AGREEMENT made and entered into as of the 28th day of February, 1972, between UPPER NECHES RIVER MUNICIPAL WATER AUTHORITY (the "Authority"), a conservation district and political subdivision of the State of Texas, and the CITY OF DALLAS, a municipal corporation of the County of Dallas, State of Texas (the "City"), duly created and existing under the Constitution and laws of the State of Texas and operating pursuant to its Home Rule Charter,

W I T N E S S E T H :

WHEREAS, City desires to contract with Authority for a supply of raw water which may be made available by Authority from its reservoir known as Lake Palestine pursuant to the terms of this contract; and

WHEREAS, City, acting through its City Council, is empowered to enter into the contractual arrangements herein set forth and is vested with all necessary authority for the accomplishment thereof under the Constitution and laws of the State of Texas; and

WHEREAS, Authority is empowered to contract with other cities for the purpose of supplying and selling them water for all useful purposes permitted by law with such contracts to be made upon such terms and conditions and for such time as the parties may agree; and

WHEREAS, City recognizes that the State of Texas, through its agent, the Texas Water Development Board, possesses certain interests in the conservation storage space of Lake Palestine and certain interests in the Authority's permit authorizing the diversion and appropriation of public water therein impounded, which interests must be repossessed by Authority in order that it may fulfill its commitments hereunder; and

WHEREAS, City further recognizes that the Authority's resolution authorizing its Combination Tax and Revenue Bonds, Series 1960 ("Series 1960 Bonds"), now outstanding in the principal sum of \$1,530,000, pledges net revenues growing out of the ownership and operation of the Authority's facilities, such as the revenues which are to be derived pursuant to this contract, for payment of said Series 1960 Bonds, and that it is therefore necessary and appropriate that suitable provisions be made in this contract to satisfy these obligations as well as those herein otherwise expressly incurred, including especially those with respect to the security and payment of the bonds which are to be issued by Authority ("Series 1972 Revenue Bonds") for the purpose of providing City the water which it is contractually obligated to supply under the terms hereof; and

WHEREAS, the parties consider that it will
their mutual benefits and advantages to contract in
with the provisions hereof;

NOW, THEREFORE, AND IN CONSIDERATION of th
covenants and undertakings herein set forth, the par
hereby agree and bind themselves as follows:

SECTION 1: Quantity Of Raw Water Contract
execution of this contract and subject to its provis
agrees that City shall have the right to take annual
from Authority's Lake Palestine reservoir raw water
equal to approximately 53.73% of the amount calculat
annual dependable yield of the reservoir, which is e
mated at 114,337 acre-feet per annum, or an average
102.07 million gallons of raw water per day. City
that the delivery and taking of water as herein prov
subject to all limitations prescribed by Permit No.
amended, issued by the Texas Board of Water Engineer
Water Rights Commission) to the Upper Neches River
Water Authority and to such limitations as may be p
by a contractual permit which City will be required
from the Texas Water Rights Commission in connectio
diversion and appropriation of the water herein con
including permission for the trans-watershed divers
as required by the rules and regulations of the Tex
Rights Commission.

SECTION 2: Point Of Diversion - Faciliti
sion And Transportation. It is understood that the
water to City herein contemplated is the sale of wa
in the Lake Palestine reservoir; that all facilitie
for the withdrawal and diversion of such water and
portation thereof as well as the operation and main
thereof are to be provided as the responsibility an
expense of City; and that the point of diversion an
and specifications of all facilities to be construc
purpose are to be approved by Authority as well as
Water Rights Commission prior to any construction.
shall also have the right to approve the plans and
tions of any other facilities required by City whic
constructed on Authority's property. It is provide
that should City desire that Authority finance and
facilities for the withdrawal and diversion of City
under this contract or for the transportation there
beyond the Lake, the arrangements therefor shall be
of negotiations, and any mutually agreeable conclus
regard shall be evidenced by written agreements sep
apart from those herein contained.

SECTION 3: Land And Easements. Authorit
make available to City without cost such land as is
owned by Authority and to the extent reasonably rec
City for a suitable pump station location at the r
Further, Authority shall also grant City without co
of ingress and egress and such rights of way in, or
easements or property held by Authority for the pu
viding City's facilities herein anticipated and in
of all such facilities and equipment as are reason
for City's operations in taking and transporting i
Lake Palestine.

SECTION 4: Contract Term - City's Rights At End Of Term. This contract and the obligation of City to promptly make all prescribed payments hereunder shall continue for the period that any of Authority's Series 1972 Bonds supported by payments herein provided are outstanding and unpaid. At the end of said term and when all such Bonds and interest have been paid and discharged, Authority agrees that it will transfer, convey and assign to City a continuing and perpetual right to approximately 53.73% of the dependable raw water yield which will be annually offered by Lake Palestine. It is clearly understood that this provision for transfer of a portion of the annual raw water yield of Lake Palestine will not carry with it a transfer of or any interest in any of Authority's water impounding or related facilities of a physical nature. At the end of the initial term of this contract as above provided, City shall be obligated to continue its payment of the reasonable cost of operating and maintaining the Authority's dam and reservoir facilities as provided in Section 6(b) hereof, and these continuing obligations shall be in force until such time as these agreements may be modified pursuant to the provisions of Section 13 hereof.

SECTION 5: Revenue Bonds. Upon execution of this contract Authority will proceed under applicable law with the issuance of its Series 1972 Revenue Bonds in total principal amount arrived at as follows:

(a) That amount which will constitute proper consideration, under the provisions of Section 11.356 of the Texas Water Code, for the repurchase by the Authority of the conservation storage space of Lake Palestine and interest in the Authority's water permit now possessed by the Texas Water Development Board, being approximately 53.73% of said storage space and a like interest in said water permit.

(b) The amount of \$500,000 for the purpose of (i) providing the sum of \$325,000 as a Contingency Fund under the provisions of the resolution authorizing the Series 1972 Revenue Bonds for such repairs, replacements and betterments to the Lake Palestine reservoir properties, excluding intake structures, as the City's Director of Water Utilities may determine are necessary to assure that the integrity of those properties will be maintained and (ii) providing the sum of \$175,000 for expenses incident to the authorization, issuance and delivery of the Series 1972 Revenue Bonds including, without limitation, printing, financial and legal. It is agreed that any balance remaining in the Contingency Fund at the time of the maturity of the last maturing principal and interest on the Bonds shall be applied thereto.

Said Series 1972 Revenue Bonds are to be issued on a parity with the Series 1960 Bonds, and both series of Bonds and any refunding bonds issued in lieu thereof are to be secured by pledge of the income designated as a demand charge under this contract, all being on a parity as regards the pledge of said income. The Series 1972 Revenue Bonds and any refunding bonds issued in lieu thereof shall provide an option of redemption agreeable to the parties and Authority agrees that it will

exercise the option of redeeming either the Series Bonds or the Series 1960 Bonds or both on any redemption requested by City provided City has made appropriate arrangements for the amounts required for redemption purposes. By its approval and execution hereof, City agrees that under the provisions hereof contractual arrangements result between Authority and the purchasers of the Revenue Bonds; that the demand charges constituting the proceeds of this contract will be pledged by Authority in support of all said Bonds; and that, accordingly, Authority shall possess a beneficial interest therein.

SECTION 6: Payments By City To Authority
In consideration of Authority's undertakings, City agrees to the following payments:

(a) Demand Charge. Notwithstanding the occurrence of any event which may result in the termination of this contract, City agrees that as a separate and independent obligation and so long as there remain outstanding any Bonds referred to in Section 5 hereof City shall be obligated to Authority all amounts of principal and interest due to become due on said Bonds. Attached hereto as "Exhibit A" is a compilation of said interest and principal payments pertaining to each of the two series of Bonds involved, reflecting also the maturity of interest and principal. With regard to the Series 1960 Bonds, Authority will give City credit on the amount of interest falling due January 10, 1973 for the amount by Authority as accrued interest to the date of maturity of the Bonds. As regards payments relative to the Series 1960 Bonds, City shall be entitled to a credit of \$3,000 per month (\$36,000 per year) commencing January 1, 1972 and ending February, 1995 (which sum represents an amount which will be derived as revenue income from the City's Water Supply Contract with the City of Dallas, Texas). Authority shall submit to City a statement of billing of all amounts required to pay each series of Bonds including also the amount of interest and principal with relation to each such payment, such as the fee incident to each such payment, such as the fee of the Paying Agents. Such statements or bills shall be issued so as to reach City at least twenty days prior to each such payment date. City agrees to remit to Authority amounts so billed within fifteen days after receipt of the aforementioned statement. All provisions hereof regarding payment of the Series Revenue Bonds and the Series 1960 Bonds shall apply to any refunding bonds issued in lieu of Bonds of any series. Payments of the demand charge herein provided shall be considered capital expenditures pursuant to the authority granted under the provisions of Section 1581h, R.C.S. of Texas.

(b) Operation And Maintenance Charge. Authority agrees to pay Authority the amounts required for operation and maintenance of the Lake Park reservoir properties. Operation and maintenance charges as herein contemplated shall include actual

general administration and operation of Authority's reservoir properties which relate to the Lake Palestine operations including maintenance of insurance, personnel, equipment, ordinary repairs to buildings and equipment which relate only to reservoir operations exclusive of recreation. Should personnel or equipment be employed in other capacities than those related to reservoir operation and maintenance, the costs shall be prorated by mutual agreement. In the event taxes of any nature, including use, sales or other taxes or assessments, be imposed by the United States, the State of Texas, or any political subdivision of the State of Texas, City agrees that same shall be considered as part of Authority's operation and maintenance charges. In calculating payments for annual reservoir operation and maintenance, City shall be entitled to credit each year for the following:

(1) Those annual amounts derived from payments received from the Cities of Tyler and Palestine under their contracts with the Authority which are allocated for operation and maintenance expense of the reservoir;

(2) An amount equal to the earnings derived by Authority from investments of a Contingency Fund in the amount of \$325,000 to be initially established from the proceeds of the sale of the Authority's Series 1972 Revenue Bonds to be used solely for extraordinary repairs, replacements and betterments to the reservoir;

(3) An amount equal to the earnings derived by Authority from investments of the Reserve Fund heretofore established (\$470,000) in connection with the combined three series of Authority's bonds, to wit: the Series 1965 Bonds dated October 10, 1965; the Series 1970 Bonds dated January 10, 1970; and the Series 1971 Bonds dated April 10, 1971, or any refunding bonds issued in lieu thereof.

A summary of the foregoing credits, identified as estimates where appropriate, are shown on the instrument styled "Schedule of Estimated Operation and Maintenance Credits" and hereto attached as "Exhibit B". City shall not be obligated for any part of the operation and maintenance of any facilities which are constructed especially for serving any of Authority's other customers. Authority agrees and covenants that it will operate and maintain the reservoir properties as economically as is consistent with good operational practices. Operation and maintenance payments to be made for the balance of Authority's 1971-1972 fiscal year (ending September 30, 1972) shall be in the sum of \$7,500 per month, all such payments to be made on or before the 10th day of each month commencing in April, 1972, and ending in September, 1972. For these initial payments City will appropriate sufficient funds from those on hand available for the purpose and unappropriated to any other purpose. On or before July 1, 1972, and on or before July

of each year thereafter, Authority will submit a budget containing the reservoir operation and maintenance expense proposed for the succeeding fiscal year and a statement of the estimated credits to which City will be entitled during such succeeding fiscal year. Within fifteen (15) days after receipt thereof, City will advise Authority of its approval or of any exceptions or modifications for change which it may consider meritorious. If exceptions or suggested changes are submitted and are acceptable to Authority, they shall be incorporated in the budget prior to its adoption by Authority's Board of Directors. If City shall be so notified. On the other hand, if exceptions or suggested changes are submitted but are not acceptable to Authority, the parties shall arrange a meeting within ten (10) days from Authority's indication of its disagreement. The exact time and place of such meeting shall be agreed upon by the parties. It is understood that Authority's fiscal year coincides with City's (from October 1 to September 30) and that by virtue of the aforesaid arrangement, City will be able to include in its annual budget submitted to the City Council on or before August 1 of each year the funds necessary to make the monthly payments provided for Authority's reservoir operation and maintenance requirements during the ensuing fiscal year. At quarterly intervals the Authority shall furnish to the City a statement of actual expenditures experienced for the quarter to date. Should it appear that expenditures run in excess of the approved budget, the Authority shall submit a supplemental budget and justification therefor, which supplemental budget shall be handled in the same manner as above provided for as regards the approval of the budget. At the end of each fiscal year Authority will compute the actual operation and maintenance costs during that year and shall give City credit in its annual budget for any payments made in excess of the budget. City shall pay Authority any deficit remaining at the end of the fiscal year. Authority agrees that during the term of this contract shall remain in force it will each year submit to City a copy of its annual audit report within twenty (20) days of its availability. If, during any fiscal year, extraordinary expenditures become necessary in that year because of necessary repairs, replacements and betterments to the reservoir properties exceed funds in the Maintenance Fund of the Authority, the budget may be amended to provide for the additional requirements upon agreement of the parties.

On or before the 1st day of October, or before the 1st day of each month thereafter, Authority shall submit City a statement or billing of the amount of operation and maintenance expense to be paid by City each month. Such statement or billing shall reflect the amount (1/12th) of the net amount of reservoir operation and maintenance expense budgeted for that current fiscal year in accordance with the aforesaid arrangements. On or before the 10th day of each month for which a statement is rendered, City shall forward Authority payment of the amount therein presented. City agrees that all payments under this subsection (b) shall be made out of the operating and income of its combined waterworks and sanitation system, charged thereto as operating expense.

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SECTION 7: Arbitration. Should the parties fail to agree upon any suggested budget changes under Section 6(b) hereof including those with relation to additional requirements occasioned by an inadequate Contingency Fund, each shall, within fifteen days thereafter appoint a registered professional engineer to act as arbitrator of the question or questions so raised. Should the two arbitrators so chosen fail to agree, they shall choose a third party who may or may not be a registered professional engineer to act with them and render a decision upon the question or questions. Their decision shall be made and communicated to the parties within fifteen days from the date of the appointment of the first two arbitrators. The parties agree promptly to accept and execute the terms and conditions of the decision. Should Authority fail to choose an arbitrator as above within fifteen days, it shall adopt the budget changes suggested by City, and should City so fail, Authority may proceed without regard to City's suggestions. It is provided, however, that during the arbitration period City shall pay all amounts which may be billed by Authority under a question of operation and maintenance budget requirement with the understanding that City shall be reimbursed for any amounts which arbitration indicates as in excess of those which should have been billed. The City is requested to pay a disproportionate share of the cost of repairs, improvements or betterments as a result of arbitration when, and in that event, the Authority agrees to exercise all of its rights against the other owners of water rights in the reservoir to make their proportionate payments.

SECTION 8: Force Majeure. Should the ability of the Authority to comply with its obligations hereunder or City's ability to take or use the water contracted to it hereunder be prevented, impaired, curtailed or delayed by reason of fire, wind, storm, strike, riot, civil commotion or act of God, or any other similar cause or reason beyond the control of the parties, it is understood and agreed that neither party shall be liable to the other for a direct or consequential damages caused by, resulting from or attributable to such inability. It is expressly provided, however, that the foregoing provisions shall not relieve City of its obligation to make payment of the charges provided under Section 6 hereof, but that otherwise they are not intended as any impairment or waiver of any right or cause of action to which either party might lawfully be entitled by reason of any loss or damage sustained by such party by reason of willful or intentional breach of a material provision of this agreement or a wrongful refusal on the part of the other party to perform its several obligations hereunder.

SECTION 9: Warranty. The parties hereto stipulate that no representation or warranty has been made or undertaken by Authority as to the exact quantity or quality of water which City may take and receive pursuant to this agreement or that same is suitable for any particular use intended by City, provided, however, Authority undertakes to use all reasonable means to avoid any deterioration in the quality of water which may be utilized by City hereunder which may result from direct acts of Authority. Authority's obligation to make water available under this agreement, both as to quantity and quality, is conditioned only upon the amount of water which City is entitled to as represented by the percent of the annual dependable yield of the Lak Palestine reservoir contracted to City, and City recognizes Authority's obligation to others who have or may have water

contracts with Authority and agrees that should all water be required under conditions of drought or conditions which may make the available water supply inadequate to supply City and all customers the amounts entitled to, the amount to be allowed each customer according to the supply and their respective interest

SECTION 10: Water Measurement. City shall cost install such devices as are appropriate to measure by means of recognized commercially acceptable meters the quantity of water taken by City from Lake Palestine. City shall have access to such measuring equipment at all times for inspection and examination, but the reading and adjustment thereof shall be done by employees of City. All readings and records of quantities of water by City shall be entered upon proper books of record available to Authority upon request, and it shall permit inspection the calibration of such equipment and make adjustments as are found necessary to maintain the accuracy. Such inspection shall be made at such time as Authority or other regulatory agency having jurisdiction may require. Authority, at its option, may have a representative inspect such times as the equipment is inspected, calibrated. If upon any test the percentage of inaccuracy of any equipment is found to be in excess of 2%, registration shall be corrected for a period of time extending back when such inaccuracy began, if such time is ascertainable; if such time is not ascertainable, then for a period of one-half of the time elapsed since the date of the registration but in no event further back than a period of one year. If for any reason any metering equipment is out of service or out of repair so that the amount of water cannot be ascertained from a reading thereof, the amount of water for the period such equipment was out of service or out of repair shall be estimated and agreed upon by the parties on the basis of the best data available.

SECTION 11: Default. In the event of breach by City of any of its obligations under the terms of this agreement, Authority shall give City notice thereof and the time otherwise provided in this agreement, City shall have ten days thereafter in which to cure and rectify such breach. Should City fail or refuse to cure or rectify such breach, Authority, at its option, may declare City's contract null and void and utilize water contracted for under this agreement. Provided, however, forfeiture of such rights shall not release City of any of its obligations under this agreement. Authority shall be given credit for all amounts which Authority may receive from the sale to others of the water which City would be obligated to hereunder to the extent such amounts are not previously committed to other purposes.

SECTION 12: Succession Of Interest. The obligations of this agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of Authority and City but no such succession or assignment shall relieve Authority or City of their respective responsibilities hereunder without the express written consent of the other party hereto. It is further agreed that so long as there remain outstanding amounts not paid under the provisions of this agreement, no success

or assignment shall be valid or binding without the prior consent of the holders of at least 75% in value of the then outstanding Bonds so secured. Nothing herein stated shall be construed in a manner as to interfere with City's complete discretion in the resale of water to which it is entitled hereunder.

SECTION 13: Modification. This contract may be changed and modified only with the consent of the governing bodies of both the Authority and City. Such modification may be requested by either party upon the giving of thirty (30) days' written notice stating the changes or modifications requested and to be considered, at which time bona fide negotiations shall be undertaken as to modifications or changes submitted. All agreed changes or modifications shall be by written amendment or supplement to this agreement, but no change or modification shall be made which will affect adversely the amounts which shall be required to be paid by City as demand charges under the terms of subparagraph (a) of Section 6 (except as may result from a change in the initial payment dates), and no such change will be effective which affects adversely or causes a violation of any of the provisions of the resolutions authorizing the issuance of Authority's Bonds which are secured under the provisions of this agreement, and no such change shall be effective which will affect adversely the right of others who may contract with Authority.

SECTION 14: Notices. Unless and until either of the parties hereto is notified to the contrary in writing, any notice required by the provisions of this agreement shall be deemed effectively served, delivered and received if mailed by registered or certified mail with postage prepaid as follows:

To Authority: General Manager
Upper Neches River Municipal Water Authority
Palestine, Texas 75801

To City: City Manager
City Hall
Dallas, Texas 75201

SECTION 15: Regulatory Provisions. This agreement shall be subject to all valid rules, regulations and laws applicable thereto as promulgated by the United States of America, the State of Texas or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency any of them.

SECTION 16: Title To Water. Title to all water to which City is entitled hereunder while impounded in Lake Palestine shall remain in Authority, but when diverted from said reservoir by City or released by Authority as requested by City, and by whatever means, title shall pass to City. Each party hereto agrees to save and hold the other harmless from all claims, demands and causes of action which may be asserted by anyone on account of the transportation, delivery and disposal of such water while title remains in such party.

SECTION 17: Sale Of Surplus Water. Authority agrees it will not divert any portion of the dependable yield of the reservoir contracted to City hereunder without City's written

permission and that in no event shall such portion dependable yield be placed in position where it may be gered or violated by excess diversions to others. provided, however, upon City's written permission s conditions therefor, any surplus water which repres pro rata part of the safe yield may be sold by Auth agent for City and payment therefor shall be credit in such manner as the parties may agree upon at the

SECTION 18: City's Obligation - Not Paya Taxation. City shall be obligated to make all paym vided for in Section 6 hereof only from revenues ar its combined waterworks and sanitary sewer system a shall never have the right to demand payment of thi out of funds raised or to be raised by City taxatic

SECTION 19: City To Fix Adequate Rates. agrees to fix and collect such rates and charges fo sewer services to be supplied by its waterworks and sewer system as will, in contemplation of any other available and reasonably assured for the purpose, n the prompt payment of all expenses of operating and its waterworks and sanitary sewer system and all p: tracted hereunder and the prompt payment of principl interest on its obligations payable wholly or parti the revenues of its combined waterworks and sanitai tem.

SECTION 20: City Of Dallas Endorsement. the Revenue Bonds issued by Authority secured under sions of this contract there shall be made to appe: ment over the facsimile signature of the City Audit City of Dallas, as follows:

"By virtue of a Water Supply And Sto: Contract between the Upper Neches River Munic Water Authority and the City of Dallas, Texas referred to in this bond, the City of Dallas unconditionally obligated to provide the Auth: out of revenues and income of its combined wa works and sanitary sewer system, all money re: to pay interest on this bond as it accrues and principal thereof at maturity, such money so: to be used solely for such purposes.

"EXECUTED pursuant to Ordinance No. passed by the City Council of the City of Dal Texas, _____, 1972.

"City Auditor, City of Dall

SECTION 21: Severability. The parties that if any of the provisions of this contract con be held invalid under the laws of this State, such invalidate the whole agreement, but it shall be cc

though not containing that particular provision and the rights and obligations of the parties shall be construed and in force accordingly.

SECTION 22: Pledge. It is recognized that income derived by Authority pursuant to the provisions of this agreement may be pledged by Authority under resolutions passed and executed with regard to the issuance of revenue-supported Bond as provided for in Section 5 hereof so as to make available to City the water contracted by it under the provisions of this agreement.

SECTION 23: Contract Effective. It is agreed that the obligations of the parties hereunder shall become effective only upon the occurrence of all the following conditions precedent, but not necessarily in the order of their listing, to wit:

(a) That a Reservoir Storage Repurchase Agreement between the Upper Neches River Municipal Water Authority and the Texas Water Development Board has received the approval as to legality of the Attorney General of the State of Texas required under the provisions of Section 11.024 of the Texas Water Code.

(b) The Series 1972 Revenue Bonds hereinabove referred to have been issued and delivered.

(c) The Texas Water Development Board, acting on behalf of the State of Texas and as its agent under authority of the provisions of Subchapter I of Chapter 11 of the Texas Water Code, has reconveyed to Authority all the State's interest in the conservation storage space afforded by Lake Palestine heretofore acquired by the Board from the Authority and has reassigned to Authority all the State's interest in Permit No. 1832, as amended, acquired in like manner.

(d) The City has obtained a contractual permit from the Texas Water Rights Commission authorizing a diversion and appropriation of the water herein contracted for, reciting also permission for the trans-watershed diversion of such water.

SECTION 24: Substitution Of Contract. This contract is to be substituted for and shall stand in lieu of the contract of like nature executed by the parties as of the 1st day of November, 1971, which is hereby rescinded by mutual consent.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused

this contract to be duly executed in several counties each of which shall constitute an original, all as of the date and year first above written.

UPPER NECHES RIVER MUNICIPAL AUTHORITY

By *W. S. Matthews*
WRIGHT MATTHEWS,

ATTEST:

Roy Douglas
ROY DOUGLAS, Secretary

(Seal)

CITY OF DALLAS, TEXAS

By *W. S. McDonald*
W. S. McDONALD, C

ATTEST:

Harold G. Shank
HAROLD G. SHANK, City Secretary

COUNTERSIGNED:

E. Lynn Crossley
E. LYNN CROSSLEY, City Auditor

APPROVED AS TO FORM:

N. ALEX BICKLEY, City

By *N. Alex Bickley*

(Seal)

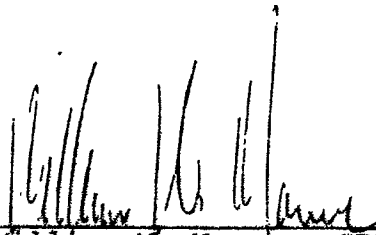
P110A

THE STATE OF TEXAS)
COUNTY OF TRAVIS)

As the official custodian of the files and records of the Texas Water Commission, I hereby certify that the attached Water Supply and Storage Contract between Dallas + Upper Neck R. m. is a true, accurate, and complete copy of an instrument or record in the official records of the Commission as that instrument or record is reflected therein.

I further certify that as the official custodian of the files and records of the Texas Water Commission, I have legal custody of the instrument or record so copied.

WITNESS MY HAND, and the Seal of the Texas Water Commission, this 6th day of September, 1988.



William W. Monroe, CPA, Director of Finance and Administration

FOR

ALLEN BEINKE, EXECUTIVE DIRECTOR
TEXAS WATER COMMISSION

(SEAL)



SOAH DOCKET NO. 473-15-1149.WS
PUC DOCKET NO.43674

PETITION OF THE CITY OF DALLAS	§	BEFORE THE STATE OFFICE
FOR REVIEW OF A DECISION BY	§	
THE SABINE RIVER WATER	§	OF
AUTHORITY	§	
	§	ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 8 ESTABLISHING INTERIM RATES

A Prehearing Conference was held on Thursday, April 2, 2015 by telephone conference call to consider interim rates. The parties, the City of Dallas (“the City,” or “Dallas”) and Sabine River Authority of Texas (“SRA,” or “the Authority”) were advised that, pursuant to the Order on Appeal of Order No. 5, wherein the Public Utility Commission (“Commission” or “PUC”) determined that it did have jurisdiction to set interim rates in this case despite 16 Texas Administrative Code § 24.131(d), and remanded this matter to the administrative law judge (“ALJ”) to give the ALJ an opportunity to consider whether interim rates should be established. The parties were allowed to file documents by April 1, 2015 and to present oral arguments at the prehearing conference regarding interim rates.

A. Procedural History

This case involves a rate dispute regarding raw water authorized to be used by the City from Lake Fork reservoir (“Lake Fork”). Lake Fork reservoir is permitted by the Texas Commission on Environmental Quality and/or its predecessor agencies under Certificate of Adjudication (“Permit”) No. 05-4669. Dallas and the SRA entered into the Water Supply Contract and Conveyance dated October 1, 1981, as amended by the First Supplement to Water Supply Contract and Conveyance dated July 30, 1986 (“the Agreement”). Under the Agreement, Dallas assumed responsibility for 100% of the principal and interest on the bonds issued to finance the construction of Lake Fork. In return, Dallas obtained 74% of the estimated firm yield of the reservoir. Dallas’ water right is also recognized on the face of Permit No. 05-4669. SRA, for its part, became the record owner of the reservoir, responsible for operating and maintaining Lake Fork, and received Permit No. 05-4669 in its name. SRA obtained 26% of the estimated

yield of the Lake Fork for its use. Dallas and SRA share the annual operations and maintenance expenses (the "Service Charge") of Lake Fork in accordance with their 74%/26% yield shares as designated in the Agreement. Although the Agreement was for an initial forty (40) year term which ended as of November 1, 2014, it is undisputed that the Agreement between Dallas and SRA continues through November 1, 2054 under Permit No. 05-4669, as well as under the Agreement and its automatic renewal terms.

Additionally, the Agreement includes terms and conditions for the compensation to be received by SRA from Dallas in any renewal term:

Section 6.02. The amount of compensation that the Authority shall be entitled to receive during any renewal term (exclusive of the City's pro rata share of the Service Charge) shall be determined by mutual agreement between the City and the Authority, taking into account such price as is prevailing in the general area at the time for like contract sales of water of similar quality, quantity and contract period. The City and the Authority agree to commence negotiations to determine the amount of such compensation at least one year prior to the expiration of the initial period and each successive forty (40) year term thereafter. In the event that the City and the Authority are unable to agree upon the amount of such compensation prior to the expiration of each such term, the Texas Water Commission may establish interim compensation to be paid by the City to the Authority. It is understood and agreed by the City and the Authority that the amount of compensation finally determined for each renewal term shall be applicable from and after the commencement of the then current term; if the interim compensation is greater than the amount of compensation finally determined, the Authority agrees to pay the City such overage within ninety (90) days after such determination, and if the interim compensation is less than the amount of compensation finally determined, the City agrees to pay to the Authority such underage within ninety (90) days after such determination.

It is undisputed that the parties did begin negotiations at least one year prior to the expiration of the initial 40 year term. It is also undisputed that the parties were unable to reach agreement. In light of the parties' continuing inability to reach agreement regarding the rate for Dallas during the first renewal term, the SRA Board of Directors took action establishing a rate at its board meeting on October 9, 2014. By letter dated October 13, 2014, SRA informed Dallas:

Effective November 2, 2014, the City of Dallas' compensation payment will be based on \$0.5613 per 1,000 gallons payable on a "take or pay" basis on 131,860 acre-feet /year.

The rate is equal to over \$24.1 million per year, whereas Dallas had previously paid an average of less than \$3.1 million per year as the Service Charge. Dallas' Service Charge for Fiscal Year 2015 was stated to be \$3,022,023.00 under the SRA approved budget.

Dallas filed this rate appeal on October 30, 2014, under Texas Water Code ("TWC") §12.013 and TWC §13.043(f). A prehearing conference was held on January 6, 2015, following which the ALJ found jurisdiction under TWC §12.013, reserving the question of jurisdiction under TWC §13.043. A second prehearing conference for further consideration of jurisdictional issues and to consider interim rates was scheduled for January 22, 2015. In the interim, however, SRA filed a motion to abate to address its contention that the complained of rates were set pursuant to contract, and the contested case hearing was abated under State Office of Administrative Hearings ("SOAH") Order No. 5. Dallas appealed SOAH Order No. 5, and the Commission granted its appeal. After due consideration, the Commission remanded the matter of interim rates to the ALJ for further consideration, consistent with its finding that interim rates could be established before a case is abated even if there was a question of whether the rates were set pursuant to contract and a party moves to abate pending resolution of that question. Dallas filed a declaratory judgement action in Travis County District Court on January 30, 2015, seeking a determination that "the rates set by SRA in its actions of October 9, 2014 were not rates set pursuant to a contract."

B. Consideration of Interim Rates for Dallas' Lake Fork Water

After due consideration of the arguments and authorities of the parties, the ALJ finds it appropriate to suspend the abatement ordered under SOAH Order No. 5 to establish interim rates in this case, considering the Commission's Order on Appeal of Order No. 5, and considering 16 Texas Administrative Code §24.29. Specifically, the ALJ finds in this case that Dallas has met the requirements of showing, under 16 Texas Administrative Code §24.29, that the SRA adopted rate for Dallas' Lake Fork water is "unjust or unreasonable," and that, therefore, allowing that rate to remain in effect during the pendency of this rate dispute would provide an unreasonable