



Control Number: 43931



Item Number: 1

Addendum StartPage: 0

**PUC DOCKET NO.**

<b>APPEAL OF M.E.N. WATER</b>	<b>§</b>	<b>BEFORE THE</b>
<b>SUPPLY CORPORATION, ANGUS</b>	<b>§</b>	
<b>WATER SUPPLY CORPORATION,</b>	<b>§</b>	
<b>CHATFIELD WATER SUPPLY</b>	<b>§</b>	
<b>CORPORATION, CORBET WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SUPPLY CORPORATION, AND</b>	<b>§</b>	
<b>CITY OF KERENS TO REVIEW</b>	<b>§</b>	
<b>THE 2014 WHOLESALE WATER</b>	<b>§</b>	
<b>RATE INCREASE OF THE CITY OF</b>	<b>§</b>	
<b>CORSICANA, TEXAS</b>	<b>§</b>	<b>OF TEXAS</b>

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**NAVARRO COUNTY WHOLESALE RATEPAYERS' PETITION  
TO APPEAL WATER RATES AND REQUEST FOR INTERIM RATES**

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NOW COMES M.E.N. Water Supply Corporation, Angus Water Supply Corporation, Chatfield Water Supply Corporation, Corbet Water Supply Corporation, and the City of Kerens, Texas (the "Ratepayers"), Petitioners, and file this Petition challenging the City of Corsicana, Texas' ("Corsicana" or the "City") latest increase to its wholesale water rates, effective in late 2014. The Ratepayers protest Corsicana's latest wholesale rate increase pursuant to TEX. WATER CODE § 13.043(f), and request that the Public Utility Commission establish interim rates to be in effect until a final decision is made, pursuant to TEX. WATER CODE § 13.043(h), 16 TEX. ADMIN. CODE § 24.29, and 16 TEX. ADMIN. CODE § 24.41. In support of this Petition and request for interim rates, the Ratepayers respectfully show as follows:

**I. Parties**

1. The Ratepayers include:

- (1) M.E.N. Water Supply Corporation (Certificate of Convenience and Necessity ("CCN") No. 10748, Public Water System Identification ("PWS ID") No. 1750015);
- (2) Angus Water Supply Corporation (CCN No. 11171; PWS ID No. 1750010);

- (3) Chatfield Water Supply Corporation (CCN No. 11086; PWS ID No. 1750012);
  - (4) Corbet Water Supply Corporation (CCN No. 12278; PWS ID No. 1750013);
  - (5) City of Kerens (CCN No. 10995; PWS ID No. 1750005); and
2. Corsicana is a home rule city, and is a political subdivision of the State of Texas.

## **II. Background**

3. The Ratepayers, comprised of 4 water supply corporations and 1 municipality, are wholesale customers of Corsicana and have received state-owned surface water from Corsicana pursuant to various wholesale water supply contracts with Corsicana. However, the rates Corsicana charges its wholesale contract customers were not set pursuant to terms included in those contracts even though those same contracts stipulate that purchasers may not acquire water from any other source without substantial penalty. *See Exhibit A.*

4. Corsicana receives its water through a contract with the Trinity River Authority (“TRA”) which supplies surface water from Navarro Mills Reservoir, and also has surface water rights in Lake Halbert and the Richland Chambers Reservoir. The City’s original contract with TRA was executed on June 30, 1959 and was modified on January 3, 1961 and August 17, 1965. *See Exhibit B*, TRA contracts with the City.

5. Corsicana sells the water it receives from TRA to retail customers located within its city limits, and to wholesale customers located in Navarro County. Corsicana’s original contracts with its wholesale customers provided for declining block rates, where the unit price goes down as the amount of water purchased increases. Then, Corsicana began charging a flat volumetric rate for water to both its retail and wholesale customers, and did so until 2008.

6. In 2009, Corsicana unilaterally implemented an inclining block rate structure modeled on a typical residential customer’s consumption profile. That rate increase provided rates of \$3 per

1,000 gallons for usage from 1,000 to 10,000 gallons, \$3.15 per 1,000 gallons from 10,000 to 25,000 gallons, and \$3.25 per 1,000 gallons for usage above 25,000 gallons. The Ratepayers each purchase over 1,000,000 gallons of water per month from Corsicana. That means that the Ratepayers pay the highest rate, or \$3.25 per 1,000 gallons, on over 99% of the water they buy. Conversely, Corsicana's average residential customers use 6,000 gallons per month and therefore pay only the lowest rate, or \$3 per 1,000 gallons. Thus, this rate structure effectively results in separate rates for Corsicana's low volume customers, who pay the lowest rate for the vast majority of the water they buy, and Corsicana's high volume customers like the Ratepayers, who pay the highest rate for almost all of the water they buy.

7. Moreover, the standard contract between the Ratepayers and Corsicana requires that while Corsicana has the right to revise its rates, Corsicana may only charge the "minimum inside city retail water rate" to the Ratepayers. However, under the 2009 Rate Increase, the Ratepayers pay the maximum inside city retail water rate on more than 99% of the water they buy.

8. Therefore, the Ratepayers appealed the 2009 Rate Increase. That appeal is currently pending at the First Court of Appeals.

9. Pursuant to a letter dated September 9, 2014, the Ratepayers received notice of Corsicana's intent to increase its municipal water rates. The version of that letter sent to M.E.N. Water Supply Corporation is attached hereto as **Exhibit C**. It reflects that on September 8, 2014, at a Corsicana City Council meeting, the Corsicana City Council adopted another unilateral wholesale water rate increase (the "2014 Rate Increase"). A copy of the schedule of fees and costs for the 2014 Rate Increase is attached hereto as **Exhibit D**. Like the 2009 Rate Increase, the 2014 Rate Increase provides for inclining block rates modeled on the residential consumption profile. The 2014 Rate Increase provides for volumetric rates of \$3.45 per 1,000 gallons from 1,000 to 10,000

gallons of usage in a month, \$3.60 per 1,000 gallons for usage between 10,000 and 25,000 gallons per month, and \$3.70 per 1,000 gallons for usage above 25,000 gallons.

10. Thus, the 2014 Rate Increase is not only a discriminatory rate increase that forces the high volume wholesale customers to pay rates higher than Corsicana's retail customers, but also violates the standard contract between the parties that requires the Ratepayers to be charged the "minimum inside city retail water rate."

11. Corsicana's City Council revises wholesale water rates by ordinance. The Ratepayers with contracts to purchase wholesale water from Corsicana are subject to the rates set by City Council. The Ratepayers have no practical alternative source of water due to insufficient alternative water supplies, and have no economically feasible recourse to purchase water elsewhere, even if it were available, because of the penalties Corsicana would impose.

### **III. Jurisdiction**

12. The Ratepayers invoke the Public Utility Commission of Texas' (the "Commission" or "PUC") wholesale rate-review jurisdiction pursuant to Texas Water Code Chapter 13. The increased rates that the City of Corsicana is now charging its wholesale water customers pursuant to their respective contracts are not just or reasonable, are discriminatory to the wholesale customers and preferential to Corsicana's residential customers, and adversely affect the public interest.

13. The Ratepayers challenge Corsicana's "Wholesale Contract Customers" water rates pursuant to TEX. WATER CODE § 13.043(f), because the Public Utility Commission possesses the authority to adjust wholesale water rates charged by political subdivisions of the state to other retail public utilities.

14. The Ratepayers, who are all retail public utilities, have timely challenged Corsicana's decision affecting the amount they pay for water. A petitioner must institute a rate challenge under TEX. WATER CODE § 13.043(f) within 90 days after the date of receipt of notice of the decision

affecting rates is received from the provider of water. The Ratepayers received notice of Corsicana's decision affecting the wholesale contract customer rate after Corsicana mailed a notice letter dated September 9, 2014. *See Exhibit C.*

**A. Referral to SOAH**

15. The Ratepayers request referral to the State Office of Administrative Hearings ("SOAH") under Texas Water Code Chapter 13. The Ratepayers further request referral directly to a cost-of-service ratemaking proceeding as required by 16 TEX. ADMIN. CODE § 24.131.

**B. No Public Interest Hearing is Required**

16. The rules for wholesale rate appeals are set forth in 16 TEX. ADMIN. CODE §§ 24.128-24.138 ("Rate Appeal Rules"). Those rules set up two tracks for petitions challenging wholesale water rates. *See*, 16 TEX. ADMIN. CODE §§ 24.131(b)-(d). The two-track rate appeal rules were intended to square a state agency's authority to review and set wholesale water and sewer rates "with the argument that commission review interferes with a constitutional right of contract," protected by TEX. CONST. art. I, § 16.<sup>1</sup>

17. Under the Rate Appeal Rules, petitions to review contractual rates — rates set by the terms of parties' agreement — are referred to SOAH for a preliminary "evidentiary hearing on public interest." 16 TEX. ADMIN. CODE § 24.131(b). The requirement of a public interest hearing in such cases is intended to prevent the unconstitutional impairment of the parties' contract, where the rate is an agreed-upon element of their agreement.

18. Appeals of non-contractual rates — rates not set by the parties' agreement — are referred directly to SOAH for "an evidentiary hearing on the rate." 16 TEX. ADMIN. CODE § 24.131(c).

19. Corsicana's wholesale commercial contract rate under the 2014 Rate Increase (and

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<sup>1</sup> 19 Tex. Reg. 6227.

under the 2009 Rate Increase) is not a rate set by the Ratepayers' contracts with Corsicana. It is, instead, a non-contractual municipal utility rate. It is the product of Corsicana's authority to set rates as granted by its Code of Ordinances. Moreover, the Ratepayers' contracts with Corsicana require Corsicana to charge the "minimum inside city retail water rate" to the Ratepayers. *See Exhibit A.* But under the 2014 Rate Increase, Corsicana is charging the *maximum* inside city retail water rate for almost all of the water purchased by the Ratepayers.

20. As a result, Corsicana's wholesale commercial contract rate is not subject to the requirement of a public interest hearing under the Rate Appeal Rules.

21. Because Corsicana's wholesale commercial contract rate is not set by contract, 16 TEX. ADMIN. CODE § 24.131(c) requires that this case be referred to SOAH for "an evidentiary hearing on the rate."

#### **IV. The Rate Increase Adversely Affects the Public Interest and the Rates Charged are not Just and Reasonable and are Discriminatory**

22. If the Commission determines that a public interest hearing is required, then the Ratepayers will show that Corsicana's rate increase adversely affects the public interest. Corsicana's "Wholesale Contract Customers" water rates are an abuse of monopoly power, unreasonably preferential, prejudicial, or discriminatory, inequitable and inconsistent in application, and not just and reasonable.

23. The Ratepayers are required by contract with Corsicana to pay wholesale water rates set by the City Council, which by contract is required to be the same as the "minimum inside city retail water rate." However, the 2014 Rate Increase is an inclining block volumetric rate, creating a situation where wholesale purchasers actually pay *more* than all (or substantially all) of the City's retail customers, which is the opposite of ordinary retail/wholesale pricing.

24. The 2014 Rate Increase is a discriminatory rate increase because it results in — and

was intentionally designed by Corsicana to result in — its own residents paying lower rates and the out of city wholesale customers paying higher rates without any valid justification.

25. Corsicana transfers revenue from its water utilities fund to a Utility Fund, which Corsicana uses to operate both its water and wastewater utilities. The Ratepayers do not receive any wastewater service from Corsicana. Therefore, any water revenues used to make up budget shortfalls in Corsicana's sewer utility result in the Ratepayers paying Corsicana for a service they do not receive. With its tiered, volumetric rate charging wholesale customers a higher water rate than its retail customers, out-of-city wholesale customers are funding Corsicana's wastewater utility via the City's water utility.

26. Because the rates are set by the unilateral action of City Council, wholesale water customers have no option but to pay the increases that Corsicana mandates, thereby subsidizing the City's wastewater utility.

27. The 2014 Rate Increase reflects Corsicana's abuse of monopoly power. The Ratepayers are required to receive 100% of their water needs from Corsicana, and are unable to obtain water from the Trinity River Authority (the major water supplier in the area) because of Corsicana's interference. Corsicana's water supply contracts with wholesale purchasers require that the City must be their sole water provider or else pay substantial penalties. That contractual provision and the actual lack of an alternative source of water gives Corsicana disparate bargaining power over the Ratepayers.

28. Corsicana's abuse of monopoly power is further demonstrated by its failure to reasonably identify the changed conditions that are the basis for its latest rate increase. Even if the cost to operate Corsicana's water utility have increased (and Corsicana has not demonstrated that they have), increased costs systemwide do not justify a discriminatory rate increase that charges



wholesale customers more than retail customers.

29. The 2009 Rate Increase changed the computation of Corsicana's rates from a flat rate to an inclining block rate. The 2009 Rate Increase is still on appeal and thus has not been finally upheld as a just, reasonable and nondiscriminatory rate increase. The 2014 Rate Increase continues the same discriminatory inclining block rate structure.

30. An inclining block rate structure based on a residential consumption profile, with break points at 10,000 and 25,000 gallons per month, does not encourage water conservation by wholesale customers who buy millions of gallons per month. It is impossible for the wholesale customers to conserve enough water to avoid paying the highest tier rate charged for consumption over 25,000 gallons per month.

31. Corsicana has abused its monopoly power because the Ratepayers' retail water rates to their customers will far exceed those of Corsicana's retail water rates to its own customers, as the Ratepayers pay more than Corsicana's retail water rates before having to add their own overhead costs.

32. Corsicana's water rates are: unreasonably preferential, prejudicial, or discriminatory, inequitable and inconsistent in application, and not just and reasonable. They require Commission review.

33. As a designated regional water supplier in Region C, Corsicana is obligated to respect the interests of all persons who receive water through their water system, including those living outside their city limits who cannot vote for city council members.

34. The Texas Water Code and the Rate Appeal Rules authorize the Public Utility Commission to establish interim rates to be in effect until a final decision is made. TEX. WATER CODE. § 13.043(h); 16 TEX. ADMIN. CODE §§ 24.29, 24.41. The substantial and unjustified rate


increase imposed by Corsicana without a proper cost of service study has resulted in unjust and unreasonable rates, an unreasonable economic hardship on the Ratepayers, and an unreasonable economic hardship on the customers of the Ratepayers. Therefore, to alleviate this burden during the pendency of this case, the Ratepayers request that the Commission establish interim rates at an appropriate non-discriminatory rate. 16 TEX. ADMIN. CODE § 24.29(e)(1).

**V. Prayer**

WHEREFORE, PREMISES CONSIDERED, the Ratepayers pray that the Public Utility Commission enter an Order vacating Corsicana's unjust, unreasonable, prejudicial, preferential, and discriminatory wholesale water rates, establish interim rates until a final decision is made, and set final non-preferential, non-prejudicial, non-discriminatory, just and reasonable wholesale water rates to be charged by Corsicana for the wholesale of state-owned water under its control. Further, the Ratepayers pray for any such other and further relief to which they may show themselves legally or equitably entitled.

**Respectfully submitted,**

**THE TERRILL FIRM, P.C.**

By:   
Paul M. Terrill, III  
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**ATTORNEYS FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2014, a true and correct copy of the foregoing *Navarro County Wholesale Ratepayers' Petition to Appeal Water Rate and Request for Interim Rates*, was delivered, as specified below, to the following parties of record:

Mayor Chuck McClanahan  
City of Corsicana  
200 North 12<sup>th</sup> Street  
Corsicana, TX 75110

**via CM/RRR # 7108 1853 1570 0000 0286**

  
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Schuyler B. Marshall

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**RESOLUTION NO. 2043**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORSICANA, TEXAS AUTHORIZING A NEW WATER PURCHASE CONTRACT WITH M.E.N. WATER SUPPLY CORPORATION.**

**WHEREAS**, on the 19th day of March 1963, the City of Corsicana entered into a fifty (50) year contract for the sale and purchase of treated water with M.E.N. Water Supply Corporation; and

**WHEREAS**, M.E.N. Water Supply Corporation has deemed that the purchase of additional water is necessary in order to comply with Texas Commission on Environmental Quality requirements; and

**WHEREAS**, M.E.N. Water Supply Corporation desires to enter into a new Water Purchase Contract for a term of thirty-eight and three-fourths (38 3/4) years and for the purchase of a volume not to exceed 40,000,000 gallons per month.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORSICANA, TEXAS**, that the City of Corsicana is hereby authorized to enter into a contract with M.E.N. Water Supply Corporation for the purchase of additional water with a new contract term of thirty-eight and three-fourths (38 3/4) years, thus expiring March 19, 2043.

**PASSED and APPROVED** majority vote of the City Council of the City of Corsicana, Texas this 20<sup>th</sup> day of July, 2004.



C. L. Brown, Mayor

**ATTEST:**

  
Cathy McMullan, City Secretary

**APPROVED AS TO FORM:**

  
City Attorney

## WATER SUPPLY CONTRACT

This Water Supply Contract (the "Contract") is entered into as of the 20<sup>th</sup> day of July, 2004 (the "Effective Date"), between the CITY OF CORSICANA, Texas ("Seller") and M.E.N. WATER SUPPLY CORPORATION ("Purchaser").

### RECITALS

WHEREAS, Seller and Purchaser have heretofore entered into that certain "Water Supply Contract" dated March 19, 1963, as amended by documents dated December 26, 1979 and October 21, 1980 and December 6, 1984 and July 2, 1985 (collectively, the "Prior Contract"); and

WHEREAS, Purchaser has requested that the Prior Contract be amended to purchase additional water from seller; and

WHEREAS, Seller has numerous wholesale purchaser of water, including Purchaser, under various contracts and Seller desires to begin implementing a system-wide consistent rate making methodology for fair and non-discriminatory treatment of its wholesale customers, including Purchaser, using accepted rate making principles to recover the cost of providing service to said wholesale customers and;

WHEREAS, Seller and Purchaser desire to effect amendment of the Prior Contract as set forth herein and - to completely restate herein the entire agreement between the parties;

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, covenants and agreements expressed herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller agrees to furnish and Purchaser agrees to pay for potable water service upon the following terms and conditions:

### I.

#### DEFINITIONS

**Section 1.01. Definitions.** The following terms shall have the meaning assigned to them below wherever they are used in this Contract, unless the context clearly requires otherwise:

"Additional Wholesale Customers" means any persons or entities, other than Purchaser, receiving wholesale water service from Seller as provided in Section 2.08.

"Contract" means this Water Supply Contract between Seller and Purchaser.

"Delivery Points" means the mutually agreeable points, more fully described in Section 2.04, at which Seller will deliver potable water to Purchaser.

"Effective Date" means the date on which this Contract is made, as reflected in the first sentence on the first page of this Contract.

"Parties" means the Parties to this Contract, the Seller and Purchaser.

"Prior Contract" means the prior agreement, as amended, between Seller and Purchaser as described in the Recitals of this Contract.

"Purchaser" means M.E.N. Water Supply Corporation.

"Purchaser's Service Area" means the treated water service area, as designated in Purchaser's certificate of convenience and necessity (CCN).

"*Purchaser's System*" means the potable water storage and distribution facilities of Purchaser used by Purchaser to deliver the potable water to Purchaser's customers.

"*Rate Schedule*" means the rates stipulated for customers, including Purchaser, in the City of Corsicana's Schedule of Rates, as amended or revised by Seller's city council from time to time, but no more frequently than annually.

"*Seller*" means the City of Corsicana.

"*Seller's System*" means the property and facilities owned or used by Seller to supply, store, divert, treat, transport and deliver water to Purchaser and Additional Customers and all related property interests, rights, facilities, equipment and materials including (without limitation) any appurtenances, extensions, improvements, or additions thereto and replacements thereof.

"*TCEQ*" means the Texas Commission on Environmental Quality or any of its predecessor or successor agencies which perform substantially the same function(s).

**Section 1.02. Prior Contract.** The Prior Contract is terminated except as noted and superseded by this Contract.

## II. WATER SALES AND DELIVERY

**Section 2.01. Water Delivery.** Subject to the terms and conditions of this Contract, Seller agrees to sell and deliver potable water meeting the minimum applicable standards for drinking water for human consumption to Purchaser at the Delivery Points for municipal use within Purchaser's Service Area, in an amount sufficient to meet Purchaser's volume and demand requirements, but not to exceed 1,500,000 gallons per day or 40,000,000 gallons per month.

**Section 2.02. Availability and Deliverability.** Seller's duty to deliver potable water under this Contract is subject to and limited by the availability, as determined by Seller, of Seller's water supply and Seller's ability to process and deliver the potable water to Purchaser through Seller's System. Such delivery will not be unreasonably withheld. Seller will impose any curtailments in potable water service equitably and in a non-discriminatory fashion to itself and all its retail and wholesale customers.

**Section 2.03. Use of Water.** The usufructory right to the water sold to Purchaser shall remain in Seller until it passes through the metering equipment located at the Delivery Points, at which time such usufructory right shall transfer to Purchaser. Then, to the extent the reuse of return flows is allowed by law, the usufructory right to the water shall revert back to Seller as soon as Purchaser discharges the water into any State stream or watercourse. Purchaser agrees that it shall acquire no rights or title for the use of water other than those rights explicitly set forth in this Contract. Nothing in this Contract, however, shall be construed as imposing any duty or liability on Seller regarding the quality of water discharged by Purchaser from Purchaser's System and all such duties and obligations shall be, and remain, those of Purchaser.

**Section 2.04. Delivery Points.** Initially, the Delivery Points are as follows: i) from a four inch (4") meter located in a meter vault approximately 150 feet southeast of the City of Corsicana's Lake Halbert Water Treatment Plant; and ii) from an eight inch (8") meter located at the southeast corner of the intersection of FM 739 and Navarro Road, this meter shall be billed at the rate for a three inch (3") meter until usage exceeds that recommended for a three inch (3") meter by AWWA Standards at which time billing will be set at the next standard meter size recommended for the rate of use; and iii) from a one inch (1") meter located at FM 637 and U.S. Hwy 287. In the future, Purchaser may request additional delivery points for the delivery of potable water under this contract, which shall be deemed to be a part of this Contract (thereby amending this Section 2.04) if approved by Seller in writing.

**Section 2.05. Water Pressure.** The Parties acknowledge and agree that Seller is not responsible for providing water at a pressure greater than what is normally maintained at the point of connection(s) to the Seller's system. The Parties also acknowledge and agree that the Purchaser may utilize whatever pressure is normally

maintained in the Seller's system, at the points of connection, for the movement of water herein contracted to the first reservoir of the Purchaser. Purchaser agrees to construct water storage, pumping, pressure maintenance or other facilities, as required, to accommodate and provide for Purchaser's pressure requirements. Such facilities shall be part of Purchaser's System and constructed, operated, and maintained at Purchaser's expense.

**Section 2.06. Termination, Discontinuance and Curtailment of Service; Modification of Contract.** Notwithstanding any other provision herein to the contrary, it is specifically understood and agreed between the parties that the obligation of Seller to provide potable water to the Purchaser during the term of this Contract is neither superior nor inferior to the obligation of Seller to provide similarly situated customers with water and to its Additional Customers or any future Additional Customers of Seller's System. Pursuant to such understanding, the parties hereby agree that if it is ever reasonably determined by Seller during the term of this Contract that it is unable to adequately provide water to its customers because of an emergency or shortage of water supply, production, treatment, storage or transportation capability in the Seller's System, or if Seller needs to cause repairs to be made to the Seller's System to repair, replace or improve the level of water service to its customers, then Seller shall have the right, after reasonable notice to the Purchaser and opportunity for consultation, to curtail or limit service to the Purchaser and all other customers of Seller on a reasonable, non-discriminatory basis so that all similarly situated customers are treated equally, fairly and uniformly. The Purchaser further agrees, in times of such emergency or shortage or the need for repair, replacement or improvement of the Seller's System, to take appropriate action to curtail or limit all usage by the Purchaser so that all users of the water from both entities will be equally and uniformly restricted and protected. Any such measures taken by the Purchaser will be at least as stringent as those adopted by Seller for the Seller. Notwithstanding anything herein to the contrary, if it is ever determined by any governmental or regulatory authority that provision of potable water by Seller under this Contract or curtailment or limitation of water by Seller to any of its customers is in violation of applicable law, regulation or order, then Seller, after reasonable notice to the Purchaser and opportunity for consultation, may take such action as will best effectuate this Contract and comply with applicable law.

**Section 2.07. R resale.** Purchaser agrees not to convey water purchased from Seller to any person or entity outside Purchaser's Service Area, unless approved by the appropriate state or federal agency. For purposes of this provision, "convey" means to sell, trade, donate, exchange, transfer title, or contract therefor.

**Section 2.08. Additional Customers.** Seller shall have the right to supply water to its retail customers and to enter into written treated water supply contracts with additional wholesale customers ("Additional Wholesale Customers"); provided, however, Seller agrees that it will not provide retail water utility service within Purchaser's Service Area except to the extent that Purchaser's Service Area is within Seller's Service Area. In areas of dual certification the Seller and Purchaser, by developing additional written agreements, may agree to levels of service for existing and future residential and industrial customers. Other wholesale customers will be charged for water at rates established from time to time by Seller's city council. Seller reserves the right to establish different rates for customers taking water at different points of delivery or under pre-existing contracts as of the Effective Date; provided, however, the rates charged by Seller shall fairly allocate costs among all of Seller's customers, subject to such pre-existing contracts as of the Effective Date.

**Section 2.09. Conservation Plan.** Within 120 days of the Effective Date of this Contract, Purchaser shall develop, if it has not done so already, a water conservation plan which incorporates loss reduction measures and demand management practices designed to ensure that the potable water delivered under this Contract is used in an economically efficient and environmentally sensitive manner. Purchaser's conservation plan must comply with all requirements imposed by law, including (without limitation) any applicable rules of the TCEQ, and it shall be updated as necessary to remain compliant with such requirements. Upon request, Purchaser shall furnish a copy of its conservation plan to Seller.

### **III. METERING**

**Section 3.01. Installation; O&M.** Seller shall design, construct, install, operate and maintain any meter vault(s), metering equipment, and associated appurtenances as determined by Seller, in its sole discretion, to be necessary to properly measure and control the quantity of water delivered to Purchaser under this Contract. Such

metering equipment shall remain the property of Seller. Purchaser shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment of such metering equipment shall be conducted only by the employees or agents of Seller. Any metering equipment used under this Contract shall measure flow rate within an accuracy of  $\pm 2\%$ .

**Section 3.02. Books and Records.** For purposes of this Contract, the original record or reading of the meter shall be in a journal or other permanent record of Seller in its office. Upon written request of Purchaser, Seller will give Purchaser a copy of such journal or record, or permit Purchaser to have access thereto during reasonable business hours in the office of Seller wherein such records are customarily kept.

**Section 3.03. Calibration.** At least once each calendar year, Seller shall test the calibration of the metering equipment Seller installs pursuant to this Contract. By giving written notification to Seller, Purchaser may request one additional calibration test per year to be paid for solely by Purchaser. When such an additional calibration test is requested, the additional calibration test shall be conducted in the presence of an authorized representative of Purchaser as soon as possible after the Seller receives the requests. Purchaser shall have the right to have a representative present at any calibration test conducted under this Contract, and Seller shall give Purchaser at least forty-eight (48) hours advanced notice before each calibration. If a representative of Purchaser is not present at the time set in Seller's notice, Seller may proceed with calibration test and any adjustment(s) in the absence of any representative of Purchaser. After each calibration test, Seller shall provide Purchaser with the test results.

**Section 3.04. Inaccuracy; Down Time.** If any calibration test reveals that the percentage of inaccuracy of any metering equipment used under this contract is in excess of two percent (2%), registration of such metering equipment shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then the registration shall be corrected for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If for any reason any metering equipment is out of service or out of repair so that the actual amount of water delivered during such period cannot be ascertained or computed, the amount of water delivered during such period cannot be ascertained or computed, the amount of water delivered during such period may be estimated: (i) by correcting the error, if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or (ii) by estimating the quantity of water delivered by deliveries during the preceding period under similar conditions when the meter or meters were registering accurately.

**Section 3.05. Ingress and Egress.** Purchaser agrees to provide ingress and egress for Seller's employees and agents to install, operate, inspect, test, and maintain facilities owned or maintained by Seller on Purchaser's premises.

#### IV. BILLING AND PAYMENT

**Section 4.01. Payments for Service.** Purchaser shall pay Seller monthly for water delivered pursuant to this Contract at prevailing rates established in Seller's Rate Schedule. Seller's duty to fix just, reasonable and non-discriminatory rates is subject to Seller's obligations under any other water sale contracts existing as of the Effective Date.

**Section 4.02. Initial Rates.** At the time of the execution of this Contract, the prevailing rates under Seller's Rate Schedule applicable to water delivered pursuant to this Contract is a base rate of \$ 198.70 for a four inch (4") meter and \$ 119.50 for an eight inch (8") compound meter, (bill as a three inch (3") as in Section 2.04), plus a volume charge of \$ 2.14 per 1,000 gallons for all water used above the base volume allowance, which is Seller's minimum inside-city retail water rate. In addition, a charge of \$ 2.70 per 1,000 gallons used per month shall be charged when the water usage is in excess of the maximum amount agreed to be furnished by the Seller. The Parties acknowledge and agree that these stated rates, while prevailing as of the execution of this Contract, may be changed or modified from time to time by Seller in accordance with Section 4.03 of this Contract during the time it remains in effect.



**Section 4.03. Rate Revision.** a. Purchaser acknowledges and agrees that Seller's city council has the right to revise by ordinance, from time to time and as needed, the rates charged hereunder to cover all reasonable, actual, and expected costs incurred by Seller to provide the potable water supply service to Seller's customers. Except as provided in Subsection b. below, if, during the term of this contract, Seller revises its minimum inside city retail water rate, then such revised rate shall likewise apply to water usage by Purchaser under this Contract.

b. Notwithstanding Subsection a., Seller may, upon giving three (3) months prior written notice to Purchaser, fix a wholesale rate for water usage by Purchaser under this contract. Seller shall give Purchaser a minimum of 90 days notice of any rate revision(s). Purchaser further agrees to give Seller a minimum of ten (10) days written notice of intent to protest rates or any other condition of service.

c. The Parties expressly contemplate, as a material element of this Contract, that Purchaser, following notice of any rate revision (s) and in addition to all other remedies provided by law, shall have the right to seek a review of any such rate revision (s) under Section 13.043, Texas Water Code, and any successor statute.

d. Except during emergencies when Seller is unable to meet all of Purchaser's water supply needs, Purchaser agrees to use as its sole source of water supply only water purchased from Seller under this Contract to meet all of the needs of Purchaser's customers. If in any calendar year during this Contract Purchaser obtains water from another source other than for said emergency purposes, then Purchaser shall in any event pay Seller during said calendar year for a minimum amount of water equal to the greater of the amount of water actually delivered by Seller to Purchaser during each monthly billing cycle during said year calculated at fifty percent (50%) of the past three (3) years average usage.

**Section 4.04. Connection Fee.** Purchaser shall pay to Seller, as an agreed cost, a separate fee to connect ("connection fee") Purchaser's delivery and distribution system to Seller's Delivery System (this fee applies to new or upgraded connections). The connection fee shall be determined by the size of the tap, meter, meter vault and other appurtenances as required.

**Section 4.05. Billing Procedure.** Seller will render bills for the payments required by Section 4.01 on or before the tenth (10<sup>th</sup>) day of each month. Such bills shall be due and payable on or before the fifth (5<sup>th</sup>) day of the succeeding month or twenty-five (25) days after such bill is deposited in the United States mail, properly stamped and addressed, whichever is later. Bills shall be deemed paid when payment actually has been received by Seller. A late charge of ten percent (10%) shall be applied to any bill not paid on or before the due date. Seller may from time to time, by forty-five (45) days written notice, change the monthly date on which it shall render bills and the corresponding due dates.

**Section 4.06. Disputed Bills.** If Purchaser disputes the amount of a bill rendered by Seller pursuant to this Contract, Purchaser shall nevertheless pay such bill in accordance with Section 4.04. If it is subsequently determined by agreement or a final, unappealable court order that the amount of the disputed bill should have been less (or more), the amount of the bill shall be promptly and appropriately adjusted, and the amount of any reimbursement (or additional payment) that is due after the adjustment shall be paid by the owing Party within ten (10) days of such agreement or court order. If not paid when due, such amounts shall bear interest at the rate of ten percent (10%) per annum from the due date until paid. Provided, however, interest may be waived by the Party to whom the amount is owed.

## V. STANDARDS

**Section 5.01. Plumbing Regulations.** To the extent Seller and Purchaser have the authority, both covenant and agree to adopt and enforce adequate plumbing regulations with provisions for the proper enforcement thereof, to ensure that neither cross-connection or other undesirable plumbing practices are permitted, including an agreement with each of their respective water customers that allows the retail provider to said customer to inspect individual water facilities prior to providing service to ensure that no substandard materials are used and to prevent cross-connection and other undesirable plumbing practices.

**Section 5.02. Air Gaps; Backflow Preventers.** All points of delivery shall have backflow prevention devices acceptable to the City of Corsicana.

## **VI.**

### **TERMINATION; REMEDIES; VENUE; FORCE MAJEURE**

**Section 6.01. Termination Due to Illegality or Impossibility.** Seller may terminate this Contract if it becomes illegal or impossible for Seller to perform its obligations hereunder due to the occurrence of any one or more of the following:

- (A) the cancellation, amendment, or other limitation by any local, state, or federal agency of any permit(s), amendment(s), license(s), or authorization(s) required for Seller to appropriate for municipal use and/or sell the water to be furnished to Purchaser under this Contract or to operate and maintain Seller's System to deliver such water; or
- (B) the final adoption or issuance of any order, rule, regulation or determination by a court or governmental agency rendering this Contract unenforceable. Seller will vigorously defend against any such order, rule, regulation or determination, including the timely filing and diligent prosecution of any appeal necessary to ensure Seller's delivery of water under the provisions of this Contract. Seller shall not consent to the adoption or issuance of any order, rule, regulation or court or governmental agency determination rendering Seller's service to Purchaser illegal or impossible.

If Seller desires to terminate this Contract by reason of any of these events, Seller shall, within three (3) months after it acquires knowledge of such event, deliver to Purchaser a written notice stating such desire, describing the event, and specifying the date on which this Contract is to terminate and become null and void, which date shall be at least six (6) months from the date of such notice.

**Section 6.02. Termination for Non-Payment.** If Seller determines Purchaser has not paid the full amount owed for any payment due to Seller under this Contract within the time provided therefor, Seller shall give written notice to Purchaser stating the amount Seller has determined is due and unpaid. If the Seller gives notice as provided herein and Purchaser fails to pay within thirty (30) days the amounts claimed in such notice to be due and unpaid, Seller may, at its sole option and upon giving ten (10) days written notice to Purchaser, terminate service. If Purchaser should dispute its obligation to pay all or any part of the amount stated in any statement or notice, Purchaser may, in addition to all other rights that Purchaser may have under law, pay such amount under protest, in which case such amount shall be deposited by Seller in an interest bearing account mutually acceptable to both Seller and Purchaser pending final resolution of such dispute. Seller may not terminate this Contract for failure to pay the amount stated in any statement or notice if Purchaser pays such amount under protest. In the event Purchaser timely appeals any change in rates under Section 13.043(f), Texas Water Code, as provided at Section 4.03 of this contract, the disposition of any disputed amount may be determined otherwise by the TCEQ.

**Section 6.03. Termination Due to Default.** Except as provided in section 6.02 or as otherwise provided herein, if either Party defaults in the observance or performance of any of the material provisions, agreements, or conditions to be observed or performed on its part under this Contract, the other Party may give written notice to the Party in default of its intention to terminate this Contract, specifying the material failure or default relied upon. Upon the expiration of forty-five (45) days after the giving of such notice, this Contract shall terminate without recourse, unless, within such forty-five (45) day period, or such longer period as may be specified in such notice or any amendment of or supplement to such notice, the default specified in such notice shall have been fully cured.

**Section 6.04. Waiver.** No rights under this Contract may be waived except by written amendment executed by the both Parties.

**Section 6.05. Remedies Not Exclusive.** The remedies expressly set forth in this Contract shall not be considered exclusive.

**Section 6.06. Venue.** The Parties acknowledge and agree that this Contract's place of performance is Navarro County, Texas. Any legal proceeding brought to enforce this Contract or any provision hereof shall be brought in Navarro County, Texas.

**Section 6.07. Damage to Systems.** Neither Party shall be liable in damages for damage to the other Party's System resulting from actions of the Parties in compliance with this Contract, unless such damage is due to the Party's negligence or willful misconduct.

**Section 6.08. Chemical and Bacteriological Content.** Purchaser agrees to hold Seller whole and harmless from any claims or damages arising as a result of the chemical or bacteriological content of the water provided to Purchaser under this Contract, unless such claims or damages are caused by the Seller's negligence or willful misconduct.

**Section 6.09. Specific Performance.** Recognizing that the Parties' undertakings in this Contract are obligations, the failure in the performance of which cannot be adequately compensated in money damages, the Parties agree that, in the event of any default, the non-defaulting Party shall have available to it the equitable remedy of specific performance in addition to other legal or equitable remedies which may be available.

**Section 6.10. Force Majeure.** If by reason of force majeure, either Party shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, and if such Party gives notice and full particulars of such force majeure, in writing, to the other Party within a reasonable time after occurrence of the event or cause relied on; the obligations of the Party giving such notice (other than obligations for the payment of money), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed, including a reasonable time for removal of the effect thereof. The term "force majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States, or of any state thereof, or of any agency of the United States or any state, or any other civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or accidents to machinery, equipment, transmission pipes, canals or similar facilities, shortages of labor, materials, supplies or transportation, or any other cause not reasonably within the control of the Party claiming such inability. The Parties shall use their best efforts to remove the cause of any force majeure. The requirement that any force majeure shall be reasonably beyond the control of the Party shall be deemed to be fulfilled even though the existing or impending strike, lockout or other industrial disturbance may not be settled but could have been settled by acceding to the demand of the opposing person or persons.

**Section 6.11. Indemnity.** Purchaser shall indemnify Seller and hold Seller harmless for any loss or payment made on any claim or liability for injury or damage to Seller or Seller's equipment or facilities caused by the negligence of Purchaser, its employees, agents or assigns.

## **VII.** **GENERAL PROVISIONS**

**Section 7.01. Term and Renewal.** This Contract shall be effective as of the Effective Date, and, unless sooner terminated as provided herein, shall remain in effect until for approximately a period of thirty-eight and three-fourths (38 ¾) years (March 19, 2043 the "Initial Term"). Upon expiration of the Initial Term, this Contract may be renewed or extended for such term(s) as may be agreed upon by Seller and Purchaser.

**Section 7.02. No Third Party Beneficiary.** The Parties hereto are entering into this Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege, or benefit on any person or entity other than the Parties hereto and their successor(s) or assign(s).

**Section 7.03. Assignment.** Purchaser, without the necessity of obtaining Seller's consent, may assign or pledge this Contract as security for any financing by Purchaser. Purchaser also may assign this Contract, without the necessity of Seller's prior consent, to any tax exempt entity succeeding to Purchaser's Service Area obligations. Purchaser may not otherwise transfer, sell, hypothecate or assign this Contract or Purchaser's rights and duties

hereunder, without the express written consent of Seller. This provision shall in no way restrict the right of Purchaser to sell the water furnished by Seller under this Contract to any of Purchaser's customers.

**Section 7.04. Notices.** All notice, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by first-class mail, postage prepaid, addressed:

if to Seller:

Mayor, City of Corsicana  
200 North 12<sup>th</sup> Street  
Corsicana, Texas 75110

if to Purchaser:

M.E.N. Water Supply Corporation  
P. O. Box 3019  
Corsicana, Texas 75151-3019

or, in each case, at such other address in the State of Texas as may hereafter have been designated most recently in writing by the addressee to the addressor.

**Section 7.05. Severability.** In the event that any clause or provision of this Contract shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof. Each Party may specifically, but only in writing as provided in Section 6.04, waive any breach of this Contract by the other Party, but no such waiver shall be deemed to constitute a waiver of similar or other breaches by such other Party.

**Section 7.06. Entire Agreement.** This Contract contains the entire agreement of the Parties regarding the subject matter hereof, and no verbal or written agreement(s) or commitment(s) shall have any force or effect if not contained herein.

**Section 7.07. Modification.** This Contract may be modified or amended only by an instrument signed by the duly authorized representative of each of Party.

**Section 7.08. Multiple Counterparts.** This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

**Section 7.09. Caption Headings; Interpretation.** The caption headings of this Contract are for reference purposes only and shall not affect its interpretation in any respect. This Contract and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Contract.

IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in three (3) counterparts, each of which shall constitute an original.

SELLER:

CITY OF CORSICANA

By:

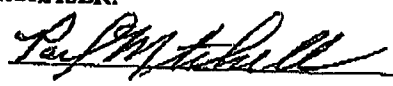
  
Mayor

ATTEST:

  
City Secretary

PURCHASER:

By:



RESOLUTION NO. 3434

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
CORSICANA, TEXAS AUTHORIZING A NEW WATER  
PURCHASE CONTRACT WITH THE CITY OF ANGUS.**

WHEREAS, on the 18<sup>th</sup> day of May, 1971 the City of Corsicana entered into a contract for the sale and purchase of treated water with the City of Angus with subsequent amendments to that contract on April 15, 1975 and October 16, 2001; and

WHEREAS, the City of Angus has deemed that the purchase of additional water is necessary in order to comply with Texas Commission in Environmental Quality requirements; and

WHEREAS, the City of Angus desires to enter into a new Water Contract for the purchase of a volume not to exceed 11,563,200 gallons per month.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Corsicana, Texas, that the City of Corsicana is hereby authorized to enter into a new contract with the City of Angus for the purchase of additional water as detailed above; and

BE IT FURTHER RESOLVED that said Water Purchase Contract shall remain in effect until October 1, 2046 at which time it may be renewed or extended for such term(s) as may be agreed upon between the City of Corsicana and the City of Angus.

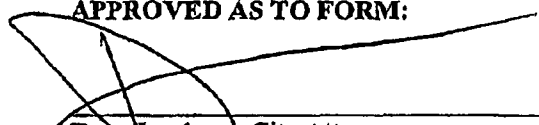
PASSED and APPROVED by majority vote of the City Council on this the 7<sup>th</sup> day of December, 2010.

  
C. L. Brown, Mayor

ATTEST:

  
Virginia Richardson, City Secretary

APPROVED AS TO FORM:

  
Terry Jacobson, City Attorney



## CITY OF CORSICANA, TEXAS

November 9, 2010

Mr. Jay Mertz  
Angus Water Supply Corp.  
6010 I-45 West  
Corsicana, TX 75151

Re: Water Supply Contract between  
City of Corsicana and Angus Water Supply Corp.

Dear Mr. Mertz:

Please find attached a copy of the proposed water supply contract between the City of Corsicana and the Angus Water Supply Corp. for your review. As you requested, the contract for additional water to be purchased has been increased to meet the Texas Commission on Environmental Quality (TCEQ) requirements, with a 20% increase for growth. The contract will be placed on the City's council agenda for approval on December 7, 2010 unless you contact us by Wednesday, December 1, 2010.

Should you have any questions or concerns, please feel free to contact me at (903)654-4803.

Sincerely,

A handwritten signature in cursive script that reads "Connie Standridge".

Connie Standridge  
City Manager

CS:pkg

Attachment

## WATER SUPPLY CONTRACT

This Water Supply Contract (the "Contract") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2010 (the "Effective Date"), between the CITY OF CORSICANA, Texas ("Seller") and ANGUS WATER SUPPLY CORPORATION ("Purchaser").

### RECITALS

WHEREAS, Seller and Purchaser have heretofore entered into that certain "Water Supply Contract" dated May 18, 1971, as amended by documents dated April 15, 1975 and October 16, 2001 (collectively, the "Prior Contract"); and

WHEREAS, Purchaser has requested that the Prior Contract be amended to purchase additional water from Seller; and

WHEREAS, Seller has numerous wholesale purchasers of water, including Purchaser, under various contracts, and Seller desires to begin implementing a system-wide consistent rate making methodology for fair and non-discriminatory treatment of its wholesale customers, including Purchaser, using accepted rate making principles to recover the cost of providing service to said wholesale customers; and

WHEREAS, Seller and Purchaser desire to effect amendment of the Prior Contract as set forth herein and to completely restate herein the entire agreement between the parties;

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, covenants and agreements expressed herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller agrees to furnish and Purchaser agrees to pay for potable water service upon the following terms and conditions:

### I. DEFINITIONS

Section 1.01. Definitions. The following terms shall have the meaning assigned to them below wherever they are used in this Contract, unless the context clearly requires otherwise:

"*Additional Wholesale Customers*" means any persons or entities, other than Purchaser, receiving wholesale water service from Seller as provided in Section 2.08.

"*Contract*" means this Water Supply Contract between Seller and Purchaser.

"*Delivery Points*" means the mutually agreeable points, more fully described in Section 2.04, at which Seller will deliver potable water to Purchaser.

"*Effective Date*" means the date on which this Contract is made, as reflected in the first sentence on the first page of this Contract.

"*Parties*" means the Parties to this Contract, the Seller and Purchaser.

"*Prior Contract*" means the prior agreement, as amended, between Seller and Purchaser as described in the Recitals of this Contract.

"*Purchaser*" means Angus Water Supply Corporation.

"*Purchaser's Service Area*" means the treated water service area, as currently designated in Purchaser's certificate of convenience and necessity (CCN).



"*Purchaser's System*" means the potable water storage and distribution facilities of Purchaser used by Purchaser to deliver the potable water to Purchaser's retail customers.

"*Rate Schedule*" means the rates stipulated for customers, including Purchaser, in the City of Corsicana's Schedule of Rates, as amended or revised by Seller's city council from time to time, but no more frequently than annually.

"*Seller*" means the City of Corsicana.

"*Seller's System*" means the property and facilities owned or used by Seller to supply, store, divert, treat, transport and deliver water to Purchaser and Additional Customers and all related property interests, rights, facilities, equipment and materials including (without limitation) any appurtenances, extensions, improvements, or additions thereto and replacements thereof.

"*TCEQ*" means the Texas Commission on Environmental Quality or any of its predecessor or successor agencies which perform substantially the same function(s).

**Section 1.02. Prior Contract.** The Prior Contract is terminated and superseded by this Contract.

## II. WATER SALES AND DELIVERY

**Section 2.01. Water Delivery.** Subject to the terms and conditions of this Contract, Seller agrees to sell and deliver potable water meeting the minimum applicable standards for drinking water for human consumption to Purchaser at the Delivery Points for municipal use within Purchaser's Service Area, in an amount sufficient to meet Purchaser's volume and demand requirements, but not to exceed 880,160 gallons per day or 11,563,200 gallons per month.

**Section 2.02. Availability and Deliverability.** Seller's duty to deliver potable water under this Contract is subject to and limited by the availability, as determined by Seller, of Seller's water supply and Seller's ability to process and deliver the potable water to Purchaser through Seller's System. Such delivery will not be unreasonably withheld. Seller will impose any curtailments in potable water service equitably and in a non-discriminatory fashion to itself and all its retail and wholesale customers.

**Section 2.03. Use of Water.** The usufructory right to the water sold to Purchaser shall remain in Seller until it passes through the metering equipment located at the Delivery Points, at which time such usufructory right shall transfer to Purchaser. Then, to the extent the reuse of return flows is allowed by law, the usufructory right to the water shall revert back to Seller as soon as Purchaser discharges the water into any State stream or watercourse. Purchaser agrees that it shall acquire no rights or title for the use of water other than those rights explicitly set forth in this Contract. Nothing in this Contract, however, shall be construed as imposing any duty or liability on Seller regarding the quality of water discharged by Purchaser from Purchaser's System and all such duties and obligations shall be, and remain, those of Purchaser.

**Section 2.04. Delivery Points.** Initially, the Delivery Points are as follows: i) a four inch (4") meter at a point located at the Southwest corner of the intersection of FM 739 and Navarro Road; and ii) a two inch (2") meter at a point located on the East side of I-45, North of Vitters Tractor. In the future, Purchaser may request additional or a change in delivery points for the delivery of potable water under this contract, which shall be deemed to be a part of this Contract (thereby amending this Section 2.04) if approved by Seller in writing.

**Section 2.05. Water Pressure.** The Parties acknowledge and agree that Seller is not responsible for the pressure at which potable water is supplied to Purchaser under this Contract at the Delivery Point(s) and is not obligated to maintain a pressure of any particular amount. In the event pressures in Seller's System are determined to be not in compliance with minimum standards set by the governing state and federal regulatory agencies of meeting Purchaser's potable water requirements, Purchaser agrees to construct water storage, pumping, pressure maintenance or other facilities, as required, to accommodate and provide for Purchaser's pressure requirements. Such facilities shall be part of Purchaser's System and constructed, operated, and maintained at Purchaser's expense.

**Section 2.06. Termination, Discontinuance and Curtailment of Service; Modification of Contract.**

Notwithstanding any other provision herein to the contrary, it is specifically understood and agreed between the parties that the obligation of Seller to provide potable water to the Purchaser during the term of this Contract is neither superior nor inferior to the obligation of Seller to provide similarly situated customers with water and to its Additional Customers or any future Additional Customers of Seller's System. Pursuant to such understanding, the parties hereby agree that if it is ever reasonably determined by Seller during the term of this Contract that it is unable to adequately provide water to its customers because of an emergency or shortage of water supply, production, treatment, storage or transportation capability in the Seller's System, or if Seller needs to cause repairs to be made to the Seller's System to repair, replace or improve the level of water service to its customers, then Seller shall have the right, after reasonable notice to the Purchaser and opportunity for consultation, to curtail or limit service to the Purchaser and all other customers of Seller on a reasonable, non-discriminatory basis so that all similarly situated customers are treated equally, fairly and uniformly. The Purchaser further agrees, in times of such emergency or shortage or the need for repair, replacement or improvement of the Seller's System, to take appropriate action to curtail or limit all usage by the Purchaser so that all users of the water from both entities will be equally and uniformly restricted and protected. Any such measures taken by the Purchaser will be at least as stringent as those adopted by Seller for the Seller. Notwithstanding anything herein to the contrary, if it is ever determined by any governmental or regulatory authority that provision of potable water by Seller under this Contract or curtailment or limitation of water by Seller to any of its customers is in violation of applicable law, regulation or order, then Seller, after reasonable notice to the Purchaser and opportunity for consultation, may take such action as will best effectuate this Contract and comply with applicable law.

**Section 2.07. Resale.** Purchaser agrees not to convey water purchased from Seller to any person or entity outside Purchaser's Service Area, unless Purchaser has received prior written approval from Seller, which approval may be granted or denied at Seller's sole discretion. For purposes of this provision, "convey" means to sell, trade, donate, exchange, transfer title, or contract therefor.

**Section 2.08. Additional Customers.** Seller shall have the right to supply water to its retail customers and to enter into written treated water supply contracts with additional wholesale customers ("Additional Wholesale Customers"); provided, however, Seller agrees that it will not provide retail water utility service within Purchaser's Service Area without Purchaser's written consent unless there are areas of overlapping service areas. Additional customers will be charged for water at rates established from time to time by Seller's city council. Seller reserves the right to establish different rates for customers taking water at different points of delivery or under pre-existing contracts as of the Effective Date; provided, however, the rates charged by Seller shall fairly allocate costs among all of Seller's customers, subject to such pre-existing contracts as of the Effective Date.

**Section 2.09. Conservation Plan.** Within 120 days of the Effective Date of this Contract, Purchaser shall develop, if it has not done so already, a water conservation plan which incorporates loss reduction measures and demand management practices designed to ensure that the potable water delivered under this Contract is used in an economically efficient and environmentally sensitive manner. Purchaser's conservation plan must comply with all requirements imposed by law, including (without limitation) any applicable rules of the TCEQ, and it shall be updated as necessary to remain compliant with such requirements. Upon request, Purchaser shall furnish a copy of its conservation plan to Seller.

### **III. METERING**

**Section 3.01. Installation; O&M.** Seller shall design, construct, install, operate and maintain any meter vault(s), metering equipment, and associated appurtenances as determined by Seller, in its sole discretion, to be necessary to properly measure and control the quantity of water delivered to Purchaser under this Contract. Such metering equipment shall remain the property of Seller. Purchaser shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment of such metering equipment shall be conducted only by the employees or agents of Seller. Any metering equipment used under this Contract shall measure flow rate within an accuracy of  $\pm 2\%$ .

**Section 3.02. Books and Records.** For purposes of this Contract, the original record or reading of the meter shall be in a journal or other permanent record of Seller in its office. Upon written request of Purchaser, Seller

will give Purchaser a copy of such journal or record, or permit Purchaser to have access thereto during reasonable business hours in the office of Seller wherein such records are customarily kept.

**Section 3.03. Calibration.** At least once each calendar year, Seller shall test the calibration of the metering equipment Seller installs pursuant to this Contract. By giving written notification to Seller, Purchaser may request one additional calibration test per year to be paid for solely by Purchaser. When such an additional calibration test is requested, the additional calibration test shall be conducted in the presence of an authorized representative of Purchaser as soon as possible after the Seller receives the requests. Purchaser shall have the right to have a representative present at any calibration test conducted under this Contract, and Seller shall give Purchaser at least forty-eight (48) hours advanced notice before each calibration. If a representative of Purchaser is not present at the time set in Seller's notice, Seller may proceed with calibration test and any adjusment(s) in the absence of any representative of Purchaser. After each calibration test, Seller shall provide Purchaser with the test results.

**Section 3.04. Inaccuracy; Down Time.** If any calibration test reveals that the percentage of inaccuracy of any metering equipment used under this contract is in excess of two percent (2%), registration of such metering equipment shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then the registration shall be corrected for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If for any reason any metering equipment is out of service or out of repair so that the actual amount of water delivered during such period cannot be ascertained or computed, the amount of water delivered during such period cannot be ascertained or computed, the amount of water delivered during such period may be estimated: (i) by correcting the error, if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or (ii) by estimating the quantity of water delivered by deliveries during the preceding period under similar conditions when the meter or meters were registering accurately.

**Section 3.05. Ingress and Egress.** Purchaser agrees to provide ingress and egress for Seller's employees and agents to install, operate, inspect, test, and maintain facilities owned or maintained by Seller on Purchaser's premises.

#### **IV.** **BILLING AND PAYMENT**

**Section 4.01. Payments for Service.** Purchaser shall pay Seller monthly for water delivered pursuant to this Contract at prevailing rates established in Seller's Rate Schedule. Sellers' duty to fix just, reasonable and non-discriminatory rates is subject to Seller's obligations under any other water sale contracts existing as of the Effective Date.

**Section 4.02. Initial Rates.** At the time of the execution of this Contract, the prevailing rates under Seller's Rate Schedule applicable to water delivered pursuant to this Contract is a base rate of \$ 93.47 for a two inch (2") meter and a base rate of \$ 292.55 for a four inch (4") meter plus a volume charge of \$ 3.00 to \$3.25 (based on volume used) per 1,000 gallons for all water used above the base volume allowance, which is Seller's minimum inside-city retail water rate. In addition, a charge of \$ 3.76 per 1,000 gallons used per month shall be charged when the water usage is in excess of the maximum amount agreed to be furnished by the Seller. The Parties acknowledge and agree that these stated rates, while prevailing as of the execution of this Contract, may be changed or modified from time to time by Seller in accordance with Section 4.03 of this Contract during the time it remains in effect.

**Section 4.03. Rate Revision.** a. Purchaser acknowledges and agrees that Seller's city council has the right to revise by ordinance, from time to time and as needed, the rates charged hereunder to cover all reasonable, actual, and expected costs incurred by Seller to provide the potable water supply service to Seller's customers. Except as provided in Subsection b. below, if, during the term of this contract, Seller revises its minimum inside city retail water rate, then such revised rate shall likewise apply to water usage by Purchaser under this Contract. Purchaser shall be given thirty (30) days written notice prior to an increase in rates.

b. Notwithstanding Subsection a., Seller may, upon giving three (3) months prior written notice to Purchaser, fix a rate for water usage by Purchaser under this contract consistent with the methodology described in Exhibit A. Once Seller has begun utilizing the methodology described in Exhibit A to fix the wholesale rate for Purchaser, then

Seller shall give Purchaser a minimum of thirty (30) days written notice of any rate revision(s). Purchaser further agrees to give Seller a minimum of ten (10) days written notice of intent to protest rates or any other condition of service.

c. Following notice of any rate revision(s), Purchaser, in addition to all other remedies provided by law, shall have the right to seek a review of said rate revision under Section 13.043, Texas Water Code.

d. Except during emergencies when Seller is unable to meet all of Purchaser's water supply needs, Purchaser agrees to use as its sole source of water supply only water purchased from Seller under this Contract to meet all of the needs of Purchaser's customers. If in any calendar year during this Contract Purchaser obtains water from another source other than for said emergency purposes, then Purchaser shall in any event pay Seller during said calendar year for a minimum amount of water equal to the greater of the amount of water actually delivered by Seller to Purchaser during each monthly billing cycle or 575,000 gallons per monthly billing cycle during said year. (Minimum bill was calculated at approximately fifty percent (50%) of the past three (3) years average usage).

**Section 4.04. Connection Fee.** Purchaser shall pay to Seller, as an agreed cost, a separate fee to connect ("connection fee") Purchaser's delivery and distribution system to Seller's Delivery System. The connection fee shall be determined by the size of the tap, meter and meter vault and associated appurtenances required. Currently a three inch (3") tap connection and meter will be placed for a fee not to exceed \$12,000.00. Connection fees shall be excluded from Seller's rate base for purposes establishing rates under Seller's Rate Schedule.

**Section 4.05. Billing Procedure.** Seller will render bills for the payments required by Section 4.01 on or before the tenth (10<sup>th</sup>) day of each month. Such bills shall be due and payable on or before the fifth (5<sup>th</sup>) day of the succeeding month or twenty-five (25) days after such bill is deposited in the United States mail, properly stamped and addressed, whichever is later. Bills shall be deemed paid when payment actually has been received by Seller. A late charge of ten percent (10%) shall be applied to any bill not paid on or before the due date. Seller may from time to time, by forty-five (45) days written notice, change the monthly date on which it shall render bills and the corresponding due dates.

**Section 4.06. Disputed Bills.** If Purchaser disputes the amount of a bill rendered by Seller pursuant to this Contract, Purchaser shall nevertheless pay such bill in accordance with Section 4.04. If it is subsequently determined by agreement or a final, unappealable court order that the amount of the disputed bill should have been less (or more), the amount of the bill shall be promptly and appropriately adjusted, and the amount of any reimbursement (or additional payment) that is due after the adjustment shall be paid by the owing Party within ten (10) days of such agreement or court order. If not paid when due, such amounts shall bear interest at the rate of ten percent (10%) per annum from the due date until paid. Provided, however, interest may be waived by the Party to whom the amount is owed.

## V. STANDARDS

**Section 5.01. Plumbing Regulations.** To the extent Seller and Purchaser have the authority, both covenant and agree to adopt and enforce adequate plumbing regulations with provisions for the proper enforcement thereof, to ensure that neither cross-connection or other undesirable plumbing practices are permitted, including an agreement with each of their respective water customers that allows the retail provider to said customer to inspect individual water facilities prior to providing service to ensure that no substandard materials are used and to prevent cross-connection and other undesirable plumbing practices.

**Section 5.02. Air Gaps; Backflow Preventers.** Purchaser shall provide air gaps for any ground storage and backflow preventers for any elevated storage.

## VI.

### TERMINATION; REMEDIES; VENUE; FORCE MAJEURE

**Section 6.01. Termination Due to Illegality or Impossibility.** Seller may terminate this Contract if it becomes illegal or impossible for Seller to perform its obligations hereunder due to the occurrence of any one or more of the following:

- (1) the cancellation, amendment, or other limitation by any local, state, or federal agency of any permit(s), amendment(s), license(s), or authorization(s) required for Seller to appropriate for municipal use and/or sell the water to be furnished to Purchaser under this Contract or to operate and maintain Seller's System to deliver such water; or
- (2) the final adoption or issuance of any order, rule, regulation or determination by a court or governmental agency rendering this Contract unenforceable. Seller will vigorously defend against any such order, rule, regulation or determination, including the timely filing and diligent prosecution of any appeal necessary to ensure Seller's delivery of water under the provisions of this Contract. Seller shall not consent to the adoption or issuance of any order, rule, regulation or court or governmental agency determination rendering Seller's service to Purchaser illegal or impossible.

If Seller desires to terminate this Contract by reason of any of these events, Seller shall, within three (3) months after it acquires knowledge of such event, deliver to Purchaser a written notice stating such desire, describing the event, and specifying the date on which this Contract is to terminate and become null and void, which date shall be at least six (6) months from the date of such notice.

**Section 6.02. Termination for Non-Payment.** If Seller determines Purchaser has not paid the full amount owed for any payment due to Seller under this Contract within the time provided therefor, Seller shall give written notice to Purchaser stating the amount Seller has determined is due and unpaid. If the Seller gives notice as provided herein and Purchaser fails to pay within thirty (30) days the amounts claimed in such notice to be due and unpaid, Seller may, at its sole option and upon giving ten (10) days written notice to Purchaser, terminate this Contract without recourse. If Purchaser should dispute its obligation to pay all or any part of the amount stated in any statement or notice, Purchaser may, in addition to all other rights that Purchaser may have under law, pay such amount under protest, in which case such amount shall be deposited by Seller in an interest bearing account mutually acceptable to both Seller and Purchaser pending final resolution of such dispute. Seller may not terminate this Contract for failure to pay the amount stated in any statement or notice if Purchaser pays such amount under protest. In the event Purchaser timely appeals any change in rates under Section 13.043(f), Texas Water Code, as provided at Section 4.03 of this contract, the disposition of any disputed amount may be determined otherwise by the TCEQ.

**Section 6.03. Termination Due to Default.** Except as otherwise provided herein, if either Party defaults in the observance or performance of any of the material provisions, agreements, or conditions to be observed or performed on its part under this Contract, the other Party may give written notice to the Party in default of its intention to terminate this Contract, specifying the material failure or default relied upon. Upon the expiration of forty-five (45) days after the giving of such notice, this Contract shall terminate without recourse, unless, within such forty-five (45) day period, or such longer period as may be specified in such notice or any amendment of or supplement to such notice, the default specified in such notice shall have been fully cured.

**Section 6.04. Waiver.** No rights under this Contract may be waived except by written amendment executed by the both Parties.

**Section 6.05. Remedies Not Exclusive.** The remedies expressly set forth in this Contract shall not be considered exclusive.

**Section 6.06. Venue.** The Parties acknowledge and agree that this Contract's place of performance is Navarro County, Texas. Any legal proceeding brought to enforce this Contract or any provision hereof shall be brought in Navarro County, Texas.

Section 6.07. Damage to Systems. Neither Party shall not be liable in damages for damage to the other Party's System resulting from actions of the Parties in compliance with this Contract, unless such damage is due to the Party's negligence or willful misconduct.

Section 6.08. Chemical and Bacteriological Content. Purchaser agrees to hold Seller whole and harmless from any claims or damages arising as a result of the chemical or bacteriological content of the water provided to Purchaser under this Contract, unless such claims or damages are caused by the Seller's negligence or willful misconduct.

Section 6.09. Specific Performance. Recognizing that the Parties' undertakings in this Contract are obligations, the failure in the performance of which cannot be adequately compensated in money damages, the Parties agree that, in the event of any default, the non-defaulting Party shall have available to it the equitable remedy of specific performance in addition to other legal or equitable remedies which may be available.

Section 6.10. Force Majeure. If by reason of force majeure, either Party shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, and if such Party gives notice and full particulars of such force majeure, in writing, to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligations of the Party giving such notice (other than obligations for the payment of money), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed, including a reasonable time for removal of the effect thereof. The term "force majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States, or of any state thereof, or of any agency of the United States or any state, or any other civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or accidents to machinery, equipment, transmission pipes, canals or similar facilities, shortages of labor, materials, supplies or transportation, or any other cause not reasonably within the control of the Party claiming such inability. The Parties shall use their best efforts to remove the cause of any force majeure. The requirement that any force majeure shall be reasonably beyond the control of the Party shall be deemed to be fulfilled even though the existing or impending strike, lockout or other industrial disturbance may not be settled but could have been settled by acceding to the demand of the opposing person or persons.

Section 6.11. Indemnity. Purchaser shall indemnify Seller and hold Seller harmless for any loss or payment made on any claim or liability for injury or damage to Seller or Seller's equipment or facilities caused by the negligence of Purchaser, its employees, agents or assigns.

## VII. GENERAL PROVISIONS

Section 7.01. Term and Renewal. This Contract shall be effective as of the Effective Date, and, unless sooner terminated as provided herein, shall remain in effect until October 16, 2046 (the "Initial Term"). Upon expiration of the Initial Term, this Contract may be renewed or extended for such term(s) as may be agreed upon by Seller and Purchaser.

Section 7.02. No Third Party Beneficiary. The Parties hereto are entering into this Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege, or benefit on any person or entity other than the Parties hereto and their successor(s) or assign(s).

Section 7.03. Assignment. Purchaser, without the necessity of obtaining Seller's consent, may assign this Contract to the United States of America, acting by and through the Department of Agriculture Rural and Economic Development and its successors and assigns, as security for any loan to be made by the United States Department of Agriculture Rural and Economic Development to Purchaser. However, Purchaser may not otherwise transfer, sell, hypothecate or assign this Contract or Purchaser's rights and duties hereunder, without the express written consent of Seller. This provision shall in no way restrict the right of Purchaser to sell the water furnished by Seller under this Contract to any of Purchaser's customers.

Section 7.04. Notices. All notice, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by first-class mail, postage prepaid, addressed:

if to Seller:

Mayor, City of Corsicana  
200 North 12<sup>th</sup> Street  
Corsicana, Texas 75110

if to Purchaser:

President, Angus Water Supply Corporation  
6010 I-15 West  
Corsicana, Texas 75110

or, in each case, at such other address in the State of Texas as may hereafter have been designated most recently in writing by the addressee to the addressor.

Section 7.05. Severability. In the event that any clause or provision of this Contract shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof. Each Party may specifically, but only in writing as provided in Section 6.04, waive any breach of this Contract by the other Party, but no such waiver shall be deemed to constitute a waiver of similar or other breaches by such other Party.

Section 7.06. Entire Agreement. This Contract contains the entire agreement of the Parties regarding the subject matter hereof, and no verbal or written agreement(s) or commitment(s) shall have any force or effect if not contained herein.

Section 7.07. Modification. This Contract may be modified or amended only by an instrument signed by the duly authorized representative of each of Party.

Section 7.08. Multiple Counterparts. This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

Section 7.09. Caption Headings; Interpretation. The caption headings of this Contract are for reference purposes only and shall not affect its interpretation in any respect. This Contract and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Contract.

IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in three (3) counterparts, each of which shall constitute an original.

SELLER:  
CITY OF CORSIKANA

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

PURCHASER:  
ANGUS WATER SUPPLY CORPORATION

By:  \_\_\_\_\_

## WATER SUPPLY CONTRACT

This Water Supply Contract (the "Contract") is entered into as of the 21<sup>st</sup> day of October, 2008 (the "Effective Date"), between the CITY OF CORSICANA, Texas ("Seller") and CORBET WATER SUPPLY CORPORATION (Purchaser).

### RECITALS

WHEREAS, Seller and Purchaser have heretofore entered into that certain "Water Supply Contract" dated September 5, 1967, as amended by documents dated December 26, 1979 and August 20, 1996 (collectively, the "Prior Contract"); and

WHEREAS, Purchaser has requested that the Prior Contract be amended to purchase additional water from Seller; and

WHEREAS, Seller has numerous wholesale purchasers of water, including Purchaser, under various contracts, and Seller desires to begin implementing a system-wide consistent rate making methodology for fair and non-discriminatory treatment of its wholesale customers, including Purchaser, using accepted rate making principles to recover the cost of providing service to said wholesale customers; and

WHEREAS, Seller and Purchaser desire to effect amendment of the Prior Contract as set forth herein and to completely restate herein the entire agreement between the parties;

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, covenants and agreements expressed herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller agrees to furnish and Purchaser agrees to pay for potable water service upon the following terms and conditions:

### I. DEFINITIONS

Section 1.01. Definitions. The following terms shall have the meaning assigned to them below wherever they are used in this Contract, unless the context clearly requires otherwise:

*"Additional Wholesale Customers"* means any persons or entities, other than Purchaser, receiving wholesale water service from Seller as provided in Section 2.08.

*"Contract"* means this Water Supply Contract between Seller and Purchaser.

*"Delivery Points"* means the mutually agreeable points, more fully described in Section 2.04, at which Seller will deliver potable water to Purchaser.

*"Effective Date"* means the date on which this Contract is made, as reflected in the first sentence on the first page of this Contract.

*"Parties"* means the Parties to this Contract, the Seller and Purchaser.

*"Prior Contract"* means the prior agreement, as amended, between Seller and Purchaser as described in the Recitals of this Contract.

*"Purchaser"* means Corbet Water Supply Corporation.

*"Purchaser's Service Area"* means the treated water service area, as currently designated in Purchaser's certificate of convenience and necessity (CCN).

*"Purchaser's System"* means the potable water storage and distribution facilities of Purchaser used by Purchaser to deliver the potable water to Purchaser's retail customers.



*"Rate Schedule"* means the rates stipulated for customers, including Purchaser, in the City of Corsicana's Schedule of Rates, as amended or revised by Seller's city council from time to time, but no more frequently than annually.

*"Seller"* means the City of Corsicana.

*"Seller's System"* means the property and facilities owned or used by Seller to supply, store, divert, treat, transport and deliver water to Purchaser and Additional Customers and all related property interests, rights, facilities, equipment and materials including (without limitation) any appurtenances, extensions, improvements, or additions thereto and replacements thereof.

*"TCEQ"* means the Texas Commission on Environmental Quality or any of its predecessor or successor agencies which perform substantially the same function(s).

Section 1.02. Prior Contract. The Prior Contract is terminated and superseded by this Contract.

## II. WATER SALES AND DELIVERY

Section 2.01. Water Delivery. Subject to the terms and conditions of this Contract, Seller agrees to sell and deliver potable water meeting the minimum applicable standards for drinking water for human consumption to Purchaser at the Delivery Points for municipal use within Purchaser's Service Area, in an amount sufficient to meet Purchaser's volume and demand requirements, but not to exceed 1,000,000 gallons per day or 30,000,000 gallons per month.

Section 2.02. Availability and Deliverability. Sellers' duty to deliver potable water under this Contract is subject to and limited by the availability, as determined by Seller, of Seller's water supply and Seller's ability to process and deliver the potable water to Purchaser through Seller's System. Such delivery will not be unreasonably withheld. Seller will impose any curtailments in potable water service equitably and in a non-discriminatory fashion to itself and all its retail and wholesale customers.

Section 2.03. Use of Water. The usufructory right to the water sold to Purchaser shall remain in Seller until it passes through the metering equipment located at the Delivery Points, at which time such usufructory right shall transfer to Purchaser. Then, to the extent the reuse of return flows is allowed by law, the usufructory right to the water shall revert back to Seller as soon as Purchaser discharges the water into any State stream or watercourse. Purchaser agrees that it shall acquire no rights or title for the use of water other than those rights explicitly set forth in this Contract. Nothing in this Contract, however, shall be construed as imposing any duty or liability on Seller regarding the quality of water discharged by Purchaser from Purchaser's System and all such duties and obligations shall be, and remain, those of Purchaser.

Section 2.04. Delivery Points. Initially, the Delivery Points are as follows: i) from an existing three inch (3") meter (installed in September, 1967) near the intersection of State Highway 31 and FM Road 642; and ii) from an existing three inch (3") meter (installed in December, 1983) near the intersection of West Park Row and Liberty Drive in Corsicana, Texas. In the future, Purchaser may request additional delivery points for the delivery of potable water under this contract, which shall be deemed to be a part of this Contract (thereby amending this Section 2.04) if approved by Seller in writing.

Section 2.05. Water Pressure. The Parties acknowledge and agree that Seller is not responsible for the pressure at which potable water is supplied to Purchaser under this Contract at the Delivery Point(s) and is not obligated to maintain a pressure of any particular amount. In the event pressures in Seller's System are determined to be not in compliance with minimum standards set by the governing state and federal regulatory agencies of meeting Purchaser's potable water requirements, Purchaser agrees to construct water storage, pumping, pressure maintenance or other facilities, as required, to accommodate and provide for Purchaser's pressure requirements. Such facilities shall be part of Purchaser's System and constructed, operated, and maintained at Purchaser's expense.

**Section 2.06. Termination, Discontinuance and Curtailment of Service; Modification of Contract.** Notwithstanding any other provision herein to the contrary, it is specifically understood and agreed between the parties that the obligation of Seller to provide potable water to the Purchaser during the term of this Contract is neither superior nor inferior to the obligation of Seller to provide similarly situated customers with water and to its Additional Customers or any future Additional Customers of Seller's System. Pursuant to such understanding, the parties hereby agree that if it is ever reasonably determined by Seller during the term of this Contract that it is unable to adequately provide water to its customers because of an emergency or shortage of water supply, production, treatment, storage or transportation capability in the Seller's System, or if Seller needs to cause repairs to be made to the Seller's System to repair, replace or improve the level of water service to its customers, then Seller shall have the right, after reasonable notice to the Purchaser and opportunity for consultation, to curtail or limit service to the Purchaser and all other customers of Seller on a reasonable, non-discriminatory basis so that all similarly situated customers are treated equally, fairly and uniformly. The Purchaser further agrees, in times of such emergency or shortage or the need for repair, replacement or improvement of the Seller's System, to take appropriate action to curtail or limit all usage by the Purchaser so that all users of the water from both entities will be equally and uniformly restricted and protected. Any such measures taken by the Purchaser will be at least as stringent as those adopted by Seller for the Seller. Notwithstanding anything herein to the contrary, if it is ever determined by any governmental or regulatory authority that provision of potable water by Seller under this Contract or curtailment or limitation of water by Seller to any of its customers is in violation of applicable law, regulation or order, then Seller, after reasonable notice to the Purchaser and opportunity for consultation, may take such action as will best effectuate this Contract and comply with applicable law.

**Section 2.07. Resale.** Purchaser agrees not to convey water purchased from Seller to any person or entity outside Purchaser's Service Area, unless Purchaser has received prior written approval from Seller, which approval may be granted or denied at Seller's sole discretion. For purposes of this provision, "convey" means to sell, trade, donate, exchange, transfer title, or contract therefor.

**Section 2.08. Additional Customers.** Seller shall have the right to supply water to its retail customers and to enter into written treated water supply contracts with additional wholesale customers ("Additional Wholesale Customers"); provided, however, Seller agrees that it will not provide retail water utility service within Purchaser's Service Area ~~unless Purchaser's Service Area is within Seller's Service Area~~. Additional customers will be charged for water at rates established from time to time by Seller's city council. Seller reserves the right to establish different rates for customers taking water at different points of delivery or under pre-existing contracts as of the Effective Date; provided, however, the rates charged by Seller shall fairly allocate costs among all of Seller's customers, subject to such pre-existing contracts as of the Effective Date.

**Section 2.09. Conservation Plan.** Within 120 days of the Effective Date of this Contract, Purchaser shall develop, if it has not done so already, a water conservation plan which incorporates loss reduction measures and demand management practices designed to ensure that the potable water delivered under this Contract is used in an economically efficient and environmentally sensitive manner. Purchasers' conservation plan must comply with all requirements imposed by law, including (without limitation) any applicable rules of the TCEQ, and it shall be updated as necessary to remain compliant with such requirements. Upon request, Purchaser shall furnish a copy of its conservation plan to Seller.

### **III. METERING**

**Section 3.01. Installation; O&M.** Seller shall design, construct, install, operate and maintain any meter vault(s), metering equipment, and associated appurtenances as determined by Seller, in its sole discretion, to be necessary to properly measure and control the quantity of water delivered to Purchaser under this Contract. Such metering equipment shall remain the property of Seller. Purchaser shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment of such metering equipment shall be conducted only by the employees or agents of Seller. Any metering equipment used under this Contract shall measure flow rate within an accuracy of  $\pm 2\%$ .

**Section 3.02. Books and Records.** For purposes of this Contract, the original record or reading of the meter shall be in a journal or other permanent record of Seller in its office. Upon written request of Purchaser, Seller will give Purchaser a copy of such journal or record, or permit Purchaser to have access thereto during reasonable business hours in the office of Seller wherein such records are customarily kept.

**Section 3.03. Calibration.** At least once each calendar year, Seller shall test the calibration of the metering equipment Seller installs pursuant to this Contract. By giving written notification to Seller, Purchaser may request one additional calibration test per year to be paid for solely by Purchaser. When such an additional calibration test is requested, the additional calibration test shall be conducted in the presence of an authorized representative of Purchaser as soon as possible after the Seller receives the requests. Purchaser shall have the right to have a representative present at any calibration test conducted under this Contract, and Seller shall give Purchaser at least forty-eight (48) hours advanced notice before each calibration. If a representative of Purchaser is not present at the time set in Seller's notice, Seller may proceed with calibration test and any adjustment(s) in the absence of any representative of Purchaser. After each calibration test, Seller shall provide Purchaser with the test results.

**Section 3.04. Inaccuracy; Down Time.** If any calibration test reveals that the percentage of inaccuracy of any metering equipment used under this contract is in excess of two percent (2%), registration of such metering equipment shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then the registration shall be corrected for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If for any reason any metering equipment is out of service or out of repair so that the actual amount of water delivered during such period cannot be ascertained or computed, the amount of water delivered during such period cannot be ascertained or computed, the amount of water delivered during such period may be estimated: (i) by correcting the error, if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or (ii) by estimating the quantity of water delivered by deliveries during the preceding period under similar conditions when the meter or meters were registering accurately.

**Section 3.05. Ingress and Egress.** Purchaser agrees to provide ingress and egress for Seller's employees and agents to install, operate, inspect, test, and maintain facilities owned or maintained by Seller on Purchaser's premises.

#### IV. BILLING AND PAYMENT

**Section 4.01. Payments for Service.** Purchaser shall pay Seller monthly for water delivered pursuant to this Contract at prevailing rates established in Seller's Rate Schedule. Sellers' duty to fix just, reasonable and non-discriminatory rates is subject to Seller's obligations under any other water sale contracts existing as of the Effective Date.

**Section 4.02. Initial Rates.** At the time of the execution of this Contract, the prevailing rates under Seller's Rate Schedule applicable to water delivered pursuant to this Contract is a base rate of \$ 119.50 per each three inch (3") meter plus a volume charge of \$ 2.14 per 1,000 gallons for all water used above the base volume allowance, which is Seller's minimum inside-city retail water rate. In addition, a charge of \$ 2.70 per 1,000 gallons used per month shall be charged when the water usage is in excess of the maximum amount agreed to be furnished by the Seller. The Parties acknowledge and agree that these stated rates, while prevailing as of the execution of this Contract, may be changed or modified from time to time by Seller in accordance with Section 4.03 of this Contract during the time it remains in effect.

**Section 4.03. Rate Revision.** a. Purchaser acknowledges and agrees that Seller's city council has the right to revise by ordinance, from time to time and as needed, the rates charged hereunder to cover all reasonable, actual, and expected costs incurred by Seller to provide the potable water supply service to Seller's customers. Except as provided in Subsection b. below, if, during the term of this contract, Seller revises its minimum inside city retail water rate, then such revised rate shall likewise apply to water usage by Purchaser under this Contract.

b. Notwithstanding Subsection a., Seller may, upon giving three (3) months prior written notice to Purchaser, fix a rate for water usage by Purchaser under this contract consistent with the methodology described in Exhibit A. Once Seller has begun utilizing the methodology described in Exhibit A to fix the wholesale rate for Purchaser, then Seller shall give Purchaser a minimum of one month's notice of any rate revision(s). Purchaser further agrees to give Seller a minimum of ten (10) days written notice of intent to protest rates or any other condition of service.

c. Following notice of any rate revision(s), Purchaser, in addition to all other remedies provided by law, shall have the right to seek a review of said rate revision under Section 13.043, Texas Water Code.

d. Except during emergencies when Seller is unable to meet all of Purchaser's water supply needs, Purchaser agrees to use as its sole source of water supply only water purchased from Seller under this Contract to meet all of the needs of Purchaser's customers. If in any calendar year during this Contract Purchaser obtains water from another source other than for said emergency purposes, then Purchaser shall in any event pay Seller during said calendar year for a minimum amount of water equal to the greater of the amount of water actually delivered by Seller to Purchaser during each monthly billing cycle or 8,000,000 gallons per monthly billing cycle during said year. (Minimum bill was calculated at approximately fifty percent (50%) of the past three (3) years average usage).

**Section 4.04. Connection Fee.** Purchaser shall pay to Seller, as an agreed cost, a separate fee to connect ("connection fee") Purchaser's delivery and distribution system to Seller's Delivery System (This fee applies to new or upgraded connections). The connection fee shall be determined by the size of the tap, meter and meter vault and associated appurtenances required. Currently a three-inch (3") tap connection and meter will be placed for a fee not to exceed \$ 12,000.00. Connection fees shall be excluded from Seller's rate base for purposes establishing rates under Seller's Rate Schedule.

**Section 4.05. Billing Procedure.** Seller will render bills for the payments required by Section 4.01 on or before the tenth (10<sup>th</sup>) day of each month. Such bills shall be due and payable on or before the fifth (5<sup>th</sup>) day of the succeeding month or twenty-five (25) days after such bill is deposited in the United States mail, properly stamped and addressed, whichever is later. Bills shall be deemed paid when payment actually has been received by Seller. A late charge of ten percent (10%) shall be applied to any bill not paid on or before the due date. Seller may from time to time, by forty-five (45) days written notice, change the monthly date on which it shall render bills and the corresponding due dates.

**Section 4.06. Disputed Bills.** If Purchaser disputes the amount of a bill rendered by Seller pursuant to this Contract, Purchaser shall nevertheless pay such bill in accordance with Section 4.04. If it is subsequently determined by agreement or a final, unappealable court order that the amount of the disputed bill should have been less (or more), the amount of the bill shall be promptly and appropriately adjusted, and the amount of any reimbursement (or additional payment) that is due after the adjustment shall be paid by the owing Party within ten (10) days of such agreement or court order. If not paid when due, such amounts shall bear interest at the rate of ten percent (10%) per annum from the due date until paid. Provided, however, interest may be waived by the Party to whom the amount is owed.

## V. STANDARDS

**Section 5.01. Plumbing Regulations.** To the extent Seller and Purchaser have the authority, both covenant and agree to adopt and enforce adequate plumbing regulations with provisions for the proper enforcement thereof, to ensure that neither cross-connection or other undesirable plumbing practices are permitted, including an agreement with each of their respective water customers that allows the retail provider to said customer to inspect individual water facilities prior to providing service to ensure that no substandard materials are used and to prevent cross-connection and other undesirable plumbing practices.

**Section 5.02. Air Gaps; Backflow Preventers.** Purchaser shall provide air gaps for any ground storage and backflow preventers for any elevated storage.

## VI. TERMINATION; REMEDIES; VENUE; FORCE MAJEURE

**Section 6.01. Termination Due to Illegality or Impossibility.** Seller may terminate this Contract if it becomes illegal or impossible for Seller to perform its obligations hereunder due to the occurrence of any one or more of the following:

- (1) the cancellation, amendment, or other limitation by any local, state, or federal agency of any permit(s), amendment(s), license(s), or authorization(s) required for Seller to appropriate for municipal use and/or sell the water to be furnished to Purchaser under this Contract or to operate and maintain Seller's System to deliver such water; or

- (2) the final adoption or issuance of any order, rule, regulation or determination by a court or governmental agency rendering this Contract unenforceable. Seller will vigorously defend against any such order, rule, regulation or determination, including the timely filing and diligent prosecution of any appeal necessary to ensure Seller's delivery of water under the provisions of this Contract. Seller shall not consent to the adoption or issuance of any order, rule, regulation or court or governmental agency determination rendering Seller's service to Purchaser illegal or impossible.

If Seller desires to terminate this Contract by reason of any of these events, Seller shall, within three (3) months after it acquires knowledge of such event, deliver to Purchaser a written notice stating such desire, describing the event, and specifying the date on which this Contract is to terminate and become null and void, which date shall be at least six (6) months from the date of such notice.

**Section 6.02. Termination for Non-Payment.** If Seller determines Purchaser has not paid the full amount owed for any payment due to Seller under this Contract within the time provided therefor, Seller shall give written notice to Purchaser stating the amount Seller has determined is due and unpaid. If the Seller gives notice as provided herein and Purchaser fails to pay within thirty (30) days the amounts claimed in such notice to be due and unpaid, Seller may, at its sole option and upon giving ten (10) days written notice to Purchaser, terminate this Contract without recourse. If Purchaser should dispute its obligation to pay all or any part of the amount stated in any statement or notice, Purchaser may, in addition to all other rights that Purchaser may have under law, pay such amount under protest, in which case such amount shall be deposited by Seller in an interest bearing account mutually acceptable to both Seller and Purchaser pending final resolution of such dispute. Seller may not terminate this Contract for failure to pay the amount stated in any statement or notice if Purchaser pays such amount under protest. In the event Purchaser timely appeals any change in rates under Section 18.043(f), Texas Water Code, as provided at Section 4.03 of this contract, the disposition of any disputed amount may be determined otherwise by the TCEQ.

**Section 6.03. Termination Due to Default.** Except as otherwise provided herein, if either Party defaults in the observance or performance of any of the material provisions, agreements, or conditions to be observed or performed on its part under this Contract, the other Party may give written notice to the Party in default of its intention to terminate this Contract, specifying the material failure or default relied upon. Upon the expiration of forty-five (45) days after the giving of such notice, this Contract shall terminate without recourse, unless, within such forty-five (45) day period, or such longer period as may be specified in such notice or any amendment of or supplement to such notice, the default specified in such notice shall have been fully cured.

**Section 6.04. Waiver.** No rights under this Contract may be waived except by written amendment executed by the both Parties.

**Section 6.05. Remedies Not Exclusive.** The remedies expressly set forth in this Contract shall not be considered exclusive.

**Section 6.06. Venue.** The Parties acknowledge and agree that this Contract's place of performance is Navarro County, Texas. Any legal proceeding brought to enforce this Contract or any provision hereof shall be brought in Navarro County, Texas.

**Section 6.07. Damage to Systems.** Neither Party shall not be liable in damages for damage to the other Party's System resulting from actions of the Parties in compliance with this Contract, unless such damage is due to the Party's negligence or willful misconduct.

**Section 6.08. Chemical and Bacteriological Content.** Purchaser agrees to hold Seller whole and harmless from any claims or damages arising as a result of the chemical or bacteriological content of the water provided to Purchaser under this Contract, unless such claims or damages are caused by the Seller's negligence or willful misconduct.

**Section 6.09. Specific Performance.** Recognizing that the Parties' undertakings in this Contract are obligations, the failure in the performance of which cannot be adequately compensated in money damages, the Parties agree that, in the event of any default, the non-defaulting Party shall have available to it the equitable remedy of specific performance in addition to other legal or equitable remedies which may be available.

Section 6.10. Force Majeure. If by reason of force majeure, either Party shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, and if such Party gives notice and full particulars of such force majeure, in writing, to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligations of the Party giving such notice (other than obligations for the payment of money), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed, including a reasonable time for removal of the effect thereof. The term "force majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States, or of any state thereof, or of any agency of the United States or any state, or any other civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or accidents to machinery, equipment, transmission pipes, canals or similar facilities, shortages of labor, materials, supplies or transportation, or any other cause not reasonably within the control of the Party claiming such inability. The Parties shall use their best efforts to remove the cause of any force majeure. The requirement that any force majeure shall be reasonably beyond the control of the Party shall be deemed to be fulfilled even though the existing or impending strike, lockout or other industrial disturbance may not be settled but could have been settled by acceding to the demand of the opposing person or persons.

Section 6.11. Indemnity. Purchaser shall indemnify Seller and hold Seller harmless for any loss or payment made on any claim or liability for injury or damage to Seller or Seller's equipment or facilities caused by the negligence of Purchaser, its employees, agents or assigns.

## VII.

### GENERAL PROVISIONS

Section 7.01. Term and Renewal. This Contract shall be effective as of the Effective Date, and, unless sooner terminated as provided herein, shall remain in effect for a period of thirty-four (34) years (September 5, 2037 the "Initial Term"). Upon expiration of the Initial Term, this Contract may be renewed or extended for such term(s) as may be agreed upon by Seller and Purchaser.

Section 7.02. No Third Party Beneficiary. The Parties hereto are entering into this Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege, or benefit on any person or entity other than the Parties hereto and their successor(s) or assign(s).

Section 7.03. Assignment. Purchaser, without the necessity of obtaining Seller's consent, may assign this Contract to the United States of America, acting by and through the Department of Agriculture Rural and Economic Development and its successors and assigns, as security for any loan to be made by the United States Department of Agriculture Rural and Economic Development to Purchaser. However, Purchaser may not otherwise transfer, sell, hypothecate or assign this Contract or Purchaser's rights and duties hereunder, without the express written consent of Seller. This provision shall in no way restrict the right of Purchaser to sell the water furnished by Seller under this Contract to any of Purchaser's customers.

Section 7.04. Notices. All notice, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by first-class mail, postage prepaid, addressed:

if to Seller:

Mayor, City of Corsicana  
200 North 12<sup>th</sup> Street  
Corsicana, Texas 75110

if to Purchaser:

President, Corbet Water Supply Corporation  
159 FM Rd 2452  
Corsicana, Texas 75151-0730

or, in each case, at such other address in the State of Texas as may hereafter have been designated most recently in writing by the addressee to the addressor.

Section 7.05. Severability. In the event that any clause or provision of this Contract shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof. Each Party may specifically, but only in writing as provided in Section 6.04, waive any breach of this Contract by the other Party, but no such waiver shall be deemed to constitute a waiver of similar or other breaches by such other Party.

Section 7.06. Entire Agreement. This Contract contains the entire agreement of the Parties regarding the subject matter hereof, and no verbal or written agreement(s) or commitment(s) shall have any force or effect if not contained herein.

Section 7.07. Modification. This Contract may be modified or amended only by an instrument signed by the duly authorized representative of each of Party.

Section 7.08. Multiple Counterparts. This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

Section 7.09. Caption Headings; Interpretation. The caption headings of this Contract are for reference purposes only and shall not affect its interpretation in any respect. This Contract and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Contract.


IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in three (3) counterparts, each of which shall constitute an original.

SELLER:

CITY OF CORSICANA

By:  Mayor

ATTEST:

  
Cathy McDullon  
City Secretary

PURCHASER:

CORBET WATER SUPPLY CORPORATION

By: 

**RESOLUTION NO. 2027**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF CORSICANA, TEXAS AUTHORIZING A NEW WATER  
PURCHASE CONTRACT WITH CHATFIELD WATER SUPPLY  
CORPORATION.**

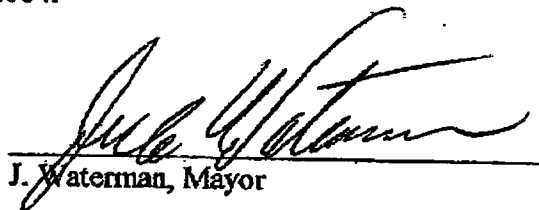
**WHEREAS**, on the 5<sup>th</sup> day of September 1967, the City of Corsicana entered into a fifty (50) year contract for the sale and purchase of treated water with Chatfield Water Supply Corporation; and

**WHEREAS**, Chatfield Water Supply Corporation has deemed that the purchase of additional water is necessary in order to comply with Texas Commission on Environmental Quality requirements; and

**WHEREAS**, Chatfield Water Supply Corporation desires to enter into a new Water Purchase Contract for the purchase of a volume not to exceed 60,000,000 gallons per month.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORSICANA, TEXAS**, that the City of Corsicana is hereby authorized to enter into a contract with Chatfield Water Supply Corporation for the purchase of additional water with a new contract term of thirty-eight and one-half (38 1/2) years, thus expiring September 5, 2042.

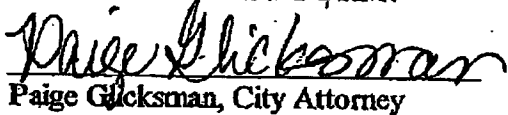
**PASSED and APPROVED** majority vote of the City Council of the City of Corsicana, Texas this 20<sup>th</sup> day of April, 2004.

  
J. Waterman, Mayor

**ATTEST:**

  
Cathy McMullan  
City Secretary

**APPROVED AS TO FORM:**

  
Paige Glicksman, City Attorney



## WATER SUPPLY CONTRACT

This Water Supply Contract (the "Contract") is entered into as of the ~~20<sup>th</sup>~~ day of ~~April~~, 2004 (the "Effective Date"), between the CITY OF CORSICANA, Texas ("Seller") and CHATFIELD WATER SUPPLY CORP ("Purchaser").

### RECITALS

WHEREAS, Seller and Purchaser have heretofore entered into that certain "Water Supply Contract" dated September 5, 1967, as amended by documents dated February 5, 1970 and December 26, 1979 and January 5, 1982 and November 28, 1995 and November 20, 2000 (collectively, the "Prior Contract"); and

WHEREAS, Purchaser has requested that the Prior Contract be amended to purchase additional water from seller; and

WHEREAS, Seller has numerous wholesale purchaser of water, including Purchaser, under various contracts and Seller desires to begin implementing a system-wide consistent rate making methodology for fair and non-discriminatory treatment of its wholesale customers, including Purchaser, using accepted rate making principles to recover the cost of providing service to said wholesale customers and;

WHEREAS, Seller and Purchaser desire to effect amendment of the Prior Contract as set forth herein and to completely restate herein the entire agreement between the parties;

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, covenants and agreements expressed herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller agrees to furnish and Purchaser agrees to pay for potable water service upon the following terms and conditions:

### I.

#### DEFINITIONS

**Section 1.01. Definitions.** The following terms shall have the meaning assigned to them below wherever they are used in this Contract, unless the context clearly requires otherwise:

*"Additional Wholesale Customers"* means any persons or entities, other than Purchaser, receiving wholesale water service from Seller as provided in Section 2.08.

*"Contract"* means this Water Supply Contract between Seller and Purchaser.

*"Delivery Points"* means the mutually agreeable points, more fully described in Section 2.04, at which Seller will deliver potable water to Purchaser.

*"Effective Date"* means the date on which this Contract is made, as reflected in the first sentence on the first page of this Contract.

*"Parties"* means the Parties to this Contract, the Seller and Purchaser.

*"Prior Contract"* means the prior agreement, as amended, between Seller and Purchaser as described in the Recitals of this Contract.

*"Purchaser"* means Chatfield Water Supply Corporation.

*"Purchaser's Service Area"* means the treated water service area, as currently designated in Purchaser's certificate of convenience and necessity (CCN).

"Purchaser's System" means the potable water storage and distribution facilities of Purchaser used by Purchaser to deliver the potable water to Purchaser's retail customers.

"Rate Schedule" means the rates stipulated for customers, including Purchaser, in the City of Corsicana's Schedule of Rates, as amended or revised by Seller's city council from time to time, but no more frequently than annually.

"Seller" means the City of Corsicana.

"Seller's System" means the property and facilities owned or used by Seller to supply, store, divert, treat, transport and deliver water to Purchaser and Additional Customers and all related property interests, rights, facilities, equipment and materials including (without limitation) any appurtenances, extensions, improvements, or additions thereto and replacements thereof.

"TCEQ" means the Texas Commission on Environmental Quality or any of its predecessor or successor agencies which perform substantially the same function(s).

**Section 1.02. Prior Contract.** The Prior Contract is terminated and superseded by this Contract.

## **II. WATER SALES AND DELIVERY**

**Section 2.01. Water Delivery.** Subject to the terms and conditions of this Contract, Seller agrees to sell and deliver potable water meeting the minimum applicable standards for drinking water for human consumption to Purchaser at the Delivery Points for municipal use within Purchaser's Service Area, in an amount sufficient to meet Purchaser's volume and demand requirements, but not to exceed 2,000,000 gallons per day or 60,000,000 gallons per month.

**Section 2.02. Availability and Deliverability.** Seller's duty to deliver potable water under this Contract is subject to and limited by the availability, as determined by Seller, of Seller's water supply and Seller's ability to process and deliver the potable water to Purchaser through Seller's System. Such delivery will not be unreasonably withheld. Seller will impose any curtailments in potable water service equitably and in a non-discriminatory fashion to itself and all its retail and wholesale customers.

**Section 2.03. Use of Water.** The usufructory right to the water sold to Purchaser shall remain in Seller until it passes through the metering equipment located at the Delivery Points, at which time such usufructory right shall transfer to Purchaser. Then, to the extent the reuse of return flows is allowed by law, the usufructory right to the water shall revert back to Seller as soon as Purchaser discharges the water into any State stream or watercourse. Purchaser agrees that it shall acquire no rights or title for the use of water other than those rights explicitly set forth in this Contract. Nothing in this Contract, however, shall be construed as imposing any duty or liability on Seller regarding the quality of water discharged by Purchaser from Purchaser's System and all such duties and obligations shall be, and remain, those of Purchaser.

**Section 2.04. Delivery Points.** Initially, the Delivery Points are as follows: i) from an existing six inch (6") meter on the South side of West Highway 31, East of True Serve Distribution Center; and ii) from an existing two inch (2") meter on the North side of West Highway 31, East of Jeld-Wen Windows; and iii) from an existing two inch (2") meter on the North side of West Highway 31, West of Corsicana Bedding. In the future, Purchaser may request additional delivery points for the delivery of potable water under this contract, which shall be deemed to be a part of this Contract (thereby amending this Section 2.04) if approved by Seller in writing.

**Section 2.05. Water Pressure.** The Parties acknowledge and agree that Seller is not responsible for providing water at a pressure greater than what is normally maintained at the point of connection(s) to the Seller's system. The Parties also acknowledge and agree that the Purchaser may utilize whatever pressure is normally maintained in the Seller's system, at the points of connection, for the movement of water herein contracted to the first reservoir of the Purchaser. Purchaser agrees to construct water storage, pumping, pressure maintenance or other

facilities, as required, to accommodate and provide for Purchaser's pressure requirements. Such facilities shall be part of Purchaser's System and constructed, operated, and maintained at Purchaser's expense.

**Section 2.06. Termination, Discontinuance and Curtailment of Service; Modification of Contract.**

Notwithstanding any other provision herein to the contrary, it is specifically understood and agreed between the parties that the obligation of Seller to provide potable water to the Purchaser during the term of this Contract is neither superior nor inferior to the obligation of Seller to provide similarly situated customers with water and to its Additional Customers or any future Additional Customers of Seller's System. Pursuant to such understanding, the parties hereby agree that if it is ever reasonably determined by Seller during the term of this Contract that it is unable to adequately provide water to its customers because of an emergency or shortage of water supply, production, treatment, storage or transportation capability in the Seller's System, or if Seller needs to cause repairs to be made to the Seller's System to repair, replace or improve the level of water service to its customers, then Seller shall have the right, after reasonable notice to the Purchaser and opportunity for consultation, to curtail or limit service to the Purchaser and all other customers of Seller on a reasonable, non-discriminatory basis so that all similarly situated customers are treated equally, fairly and uniformly. The Purchaser further agrees, in times of such emergency or shortage or the need for repair, replacement or improvement of the Seller's System, to take appropriate action to curtail or limit all usage by the Purchaser so that all users of the water from both entities will be equally and uniformly restricted and protected. Any such measures taken by the Purchaser will be at least as stringent as those adopted by Seller for the Seller. Notwithstanding anything herein to the contrary, if it is ever determined by any governmental or regulatory authority that provision of potable water by Seller under this Contract or curtailment or limitation of water by Seller to any of its customers is in violation of applicable law, regulation or order, then Seller, after reasonable notice to the Purchaser and opportunity for consultation, may take such action as will best effectuate this Contract and comply with applicable law.

**Section 2.07. Resale.** Purchaser agrees not to convey water purchased from Seller to any person or entity outside Purchaser's Service Area, unless approved by the appropriate state or federal agency. For purposes of this provision, "convey" means to sell, trade, donate, exchange, transfer title, or contract therefor.

**Section 2.08. Additional Customers.** Seller shall have the right to supply water to its retail customers and to enter into written treated water supply contracts with additional wholesale customers ("Additional Wholesale Customers"); provided, however, Seller agrees that it will not provide retail water utility service within Purchaser's Service Area unless Purchaser's Service Area is within Seller's Service Area. In areas of dual certification the Seller and Purchaser, by developing additional written agreements, may agree to levels of service for existing and future residential and industrial customers. Additional customers will be charged for water at rates established from time to time by Seller's city council. Seller reserves the right to establish different rates for customers taking water at different points of delivery or under pre-existing contracts as of the Effective Date; provided, however, the rates charged by Seller shall fairly allocate costs among all of Seller's customers, subject to such pre-existing contracts as of the Effective Date.

**Section 2.09. Conservation Plan.** Within 120 days of the Effective Date of this Contract, Purchaser shall develop, if it has not done so already, a water conservation plan which incorporates loss reduction measures and demand management practices designed to ensure that the potable water delivered under this Contract is used in an economically efficient and environmentally sensitive manner. Purchaser's conservation plan must comply with all requirements imposed by law, including (without limitation) any applicable rules of the TNRCC, and it shall be updated as necessary to remain compliant with such requirements. Upon request, Purchaser shall furnish a copy of its conservation plan to Seller.

### **III.** **METERING**

**Section 3.01. Installation; O&M.** Seller shall design, construct, install, operate and maintain any meter vault(s), metering equipment, and associated appurtenances as determined by Seller, in its sole discretion, to be necessary to properly measure and control the quantity of water delivered to Purchaser under this Contract. Such metering equipment shall remain the property of Seller. Purchaser shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment of such metering equipment shall be conducted

only by the employees or agents of Seller. Any metering equipment used under this Contract shall measure flow rate within an accuracy of  $\pm 2\%$ .

**Section 3.02. Books and Records.** For purposes of this Contract, the original record or reading of the meter shall be in a journal or other permanent record of Seller in its office. Upon written request of Purchaser, Seller will give Purchaser a copy of such journal or record, or permit Purchaser to have access thereto during reasonable business hours in the office of Seller wherein such records are customarily kept.

**Section 3.03. Calibration.** At least once each calendar year, Seller shall test the calibration of the metering equipment Seller installs pursuant to this Contract. By giving written notification to Seller, Purchaser may request one additional calibration test per year to be paid for solely by Purchaser. When such an additional calibration test is requested, the additional calibration test shall be conducted in the presence of an authorized representative of Purchaser as soon as possible after the Seller receives the requests. Purchaser shall have the right to have a representative present at any calibration test conducted under this Contract, and Seller shall give Purchaser at least forty-eight (48) hours advanced notice before each calibration. If a representative of Purchaser is not present at the time set in Seller's notice, Seller may proceed with calibration test and any adjustment(s) in the absence of any representative of Purchaser. After each calibration test, Seller shall provide Purchaser with the test results.

**Section 3.04. Inaccuracy; Down Time.** If any calibration test reveals that the percentage of inaccuracy of any metering equipment used under this contract is in excess of two percent (2%), registration of such metering equipment shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then the registration shall be corrected for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If for any reason any metering equipment is out of service or out of repair so that the actual amount of water delivered during such period cannot be ascertained or computed, the amount of water delivered during such period cannot be ascertained or computed, the amount of water delivered during such period may be estimated: (i) by correcting the error, if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or (ii) by estimating the quantity of water delivered by deliveries during the preceding period under similar conditions when the meter or meters were registering accurately.

**Section 3.05. Ingress and Egress.** Purchaser agrees to provide ingress and egress for Seller's employees and agents to install, operate, inspect, test, and maintain facilities owned or maintained by Seller on Purchaser's premises.

#### IV. **BILLING AND PAYMENT**

**Section 4.01. Payments for Service.** Purchaser shall pay Seller monthly for water delivered pursuant to this Contract at prevailing rates established in Seller's Rate Schedule. Seller's duty to fix just, reasonable and non-discriminatory rates is subject to Seller's obligations under any other water sale contracts existing as of the Effective Date.

**Section 4.02. Initial Rates.** At the time of the execution of this Contract, the prevailing rates under Seller's Rate Schedule applicable to water delivered pursuant to this Contract is a base rate of \$ 397.10 for a six inch (6") meter and \$ 63.50 for a two inch (2") meter plus a volume charge of \$ 2.14 per 1,000 gallons for all water used above the base volume allowance, which is Seller's minimum inside-city retail water rate. In addition, a charge of \$ 2.70 per 1,000 gallons used per month shall be charged when the water usage is in excess of the maximum amount agreed to be furnished by the Seller. The Parties acknowledge and agree that these stated rates, while prevailing as of the execution of this Contract, may be changed or modified from time to time by Seller in accordance with Section 4.03 of this Contract during the time it remains in effect.

**Section 4.03. Rate Revision.** a. Purchaser acknowledges and agrees that Seller's city council has the right to revise by ordinance, from time to time and as needed, the rates charged hereunder to cover all reasonable, actual, and expected costs incurred by Seller to provide the potable water supply service to Seller's customers.

Except as provided in Subsection b. below, if, during the term of this contract, Seller revises its minimum inside city retail water rate, then such revised rate shall likewise apply to water usage by Purchaser under this Contract.

b. Notwithstanding Subsection a., Seller may, upon giving three (3) months prior written notice to Purchaser, fix a rate for water usage by Purchaser under this contract consistent with the methodology described in Exhibit A. Once Seller has begun utilizing the methodology described in Exhibit A to fix the wholesale rate for Purchaser, then Seller shall give Purchaser a minimum of 1 month notice of any rate revision(s). Purchaser further agrees to give Seller a minimum of ten (10) days written notice of intent to protest rates or any other condition of service.

c. Following notice of any rate revision(s), Purchaser, in addition to all other remedies provided by law, shall have the right to seek a review of said rate revision under Section 13.043, Texas Water Code.

d. Except during emergencies when Seller is unable to meet all of Purchaser's water supply needs, Purchaser agrees to use as its sole source of water supply only water purchased from Seller under this Contract to meet all of the needs of Purchaser's customers. If in any calendar year during this Contract Purchaser obtains water from another source other than for said emergency purposes, then Purchaser shall in any event pay Seller during said calendar year for a minimum amount of water equal to the greater of the amount of water actually delivered by Seller to Purchaser during each monthly billing cycle during said year or 5,000,000 gallons per monthly billing cycle during said year. (Minimum bill was calculated at approximately fifty percent (50%) of the past three (3) years average usage).

**Section 4.04. Connection Fee.** Purchaser shall pay to Seller, as an agreed cost, a separate fee to connect ("connection fee") Purchaser's delivery and distribution system to Seller's Delivery System (this fee applies to new or upgraded connections). The connection fee shall be determined by the size of the tap, meter, meter vault and other appurtenances as required.

**Section 4.05. Billing Procedure.** Seller will render bills for the payments required by Section 4.01 on or before the tenth (10<sup>th</sup>) day of each month. Such bills shall be due and payable on or before the fifth (5<sup>th</sup>) day of the succeeding month or twenty-five (25) days after such bill is deposited in the United States mail, properly stamped and addressed, whichever is later. Bills shall be deemed paid when payment actually has been received by Seller. A late charge of ten percent (10%) shall be applied to any bill not paid on or before the due date. Seller may from time to time, by forty-five (45) days written notice, change the monthly date on which it shall render bills and the corresponding due dates.

**Section 4.06. Disputed Bills.** If Purchaser disputes the amount of a bill rendered by Seller pursuant to this Contract, Purchaser shall nevertheless pay such bill in accordance with Section 4.04. If it is subsequently determined by agreement or a final, unappealable court order that the amount of the disputed bill should have been less (or more), the amount of the bill shall be promptly and appropriately adjusted, and the amount of any reimbursement (or additional payment) that is due after the adjustment shall be paid by the owing Party within ten (10) days of such agreement or court order. If not paid when due, such amounts shall bear interest at the rate of ten percent (10%) per annum from the due date until paid. Provided, however, interest may be waived by the Party to whom the amount is owed.

## **V. STANDARDS**

**Section 5.01. Plumbing Regulations.** To the extent Seller and Purchaser have the authority, both covenant and agree to adopt and enforce adequate plumbing regulations with provisions for the proper enforcement thereof, to ensure that neither cross-connection or other undesirable plumbing practices are permitted, including an agreement with each of their respective water customers that allows the retail provider to said customer to inspect individual water facilities prior to providing service to ensure that no substandard materials are used and to prevent cross-connection and other undesirable plumbing practices.

**Section 5.02. Air Gaps; Backflow Preventers.** Purchaser shall provide air gaps for the first ground storage and backflow preventers for the first elevated storage from the point of connection(s) to the Seller's system.

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**TERMINATION; REMEDIES; VENUE; FORCE MAJEURE**

**Section 6.01. Termination Due to Illegality or Impossibility.** Seller may terminate this Contract if it becomes illegal or impossible for Seller to perform its obligations hereunder due to the occurrence of any one or more of the following:

- (A) the cancellation, amendment, or other limitation by any local, state, or federal agency of any permit(s), amendment(s), license(s), or authorization(s) required for Seller to appropriate for municipal use and/or sell the water to be furnished to Purchaser under this Contract or to operate and maintain Seller's System to deliver such water; or
- (B) the final adoption or issuance of any order, rule, regulation or determination by a court or governmental agency rendering this Contract unenforceable. Seller will vigorously defend against any such order, rule, regulation or determination, including the timely filing and diligent prosecution of any appeal necessary to ensure Seller's delivery of water under the provisions of this Contract. Seller shall not consent to the adoption or issuance of any order, rule, regulation or court or governmental agency determination rendering Seller's service to Purchaser illegal or impossible.

If Seller desires to terminate this Contract by reason of any of these events, Seller shall, within three (3) months after it acquires knowledge of such event, deliver to Purchaser a written notice stating such desire, describing the event, and specifying the date on which this Contract is to terminate and become null and void, which date shall be at least six (6) months from the date of such notice.

**Section 6.02. Termination for Non-Payment.** If Seller determines Purchaser has not paid the full amount owed for any payment due to Seller under this Contract within the time provided therefor, Seller shall give written notice to Purchaser stating the amount Seller has determined is due and unpaid. If the Seller gives notice as provided herein and Purchaser fails to pay within thirty (30) days the amounts claimed in such notice to be due and unpaid, Seller may, at its sole option and upon giving ten (10) days written notice to Purchaser, terminate this Contract without recourse. If Purchaser should dispute its obligation to pay all or any part of the amount stated in any statement or notice, Purchaser may, in addition to all other rights that Purchaser may have under law, pay such amount under protest, in which case such amount shall be deposited by Seller in an interest bearing account mutually acceptable to both Seller and Purchaser pending final resolution of such dispute. Seller may not terminate this Contract for failure to pay the amount stated in any statement or notice if Purchaser pays such amount under protest. In the event Purchaser timely appeals any change in rates under Section 13.043(f), Texas Water Code, as provided at Section 4.03 of this contract, the disposition of any disputed amount may be determined otherwise by the TNRCC.

**Section 6.03. Termination Due to Default.** Except as otherwise provided herein, if either Party defaults in the observance or performance of any of the material provisions, agreements, or conditions to be observed or performed on its part under this Contract, the other Party may give written notice to the Party in default of its intention to terminate this Contract, specifying the material failure or default relied upon. Upon the expiration of forty-five (45) days after the giving of such notice, this Contract shall terminate without recourse, unless, within such forty-five (45) day period, or such longer period as may be specified in such notice or any amendment of or supplement to such notice, the default specified in such notice shall have been fully cured.

**Section 6.04. Waiver.** No rights under this Contract may be waived except by written amendment executed by the both Parties.

**Section 6.05. Remedies Not Exclusive.** The remedies expressly set forth in this Contract shall not be considered exclusive.

**Section 6.06. Venue.** The Parties acknowledge and agree that this Contract's place of performance is Navarro County, Texas. Any legal proceeding brought to enforce this Contract or any provision hereof shall be brought in Navarro County, Texas.

**Section 6.07. Damage to Systems.** Neither Party shall not be liable in damages for damage to the other Party's System resulting from actions of the Parties in compliance with this Contract, unless such damage is due to the Party's negligence or willful misconduct.

**Section 6.08. Chemical and Bacteriological Content.** Purchaser agrees to hold Seller whole and harmless from any claims or damages arising as a result of the chemical or bacteriological content of the water provided to Purchaser under this Contract, unless such claims or damages are caused by the Seller's negligence or willful misconduct.

**Section 6.09. Specific Performance.** Recognizing that the Parties' undertakings in this Contract are obligations, the failure in the performance of which cannot be adequately compensated in money damages, the Parties agree that, in the event of any default, the non-defaulting Party shall have available to it the equitable remedy of specific performance in addition to other legal or equitable remedies which may be available.

**Section 6.10. Force Majeure.** If by reason of force majeure, either Party shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, and if such Party gives notice and full particulars of such force majeure, in writing, to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligations of the Party giving such notice (other than obligations for the payment of money), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed, including a reasonable time for removal of the effect thereof. The term "force majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States, or of any state thereof, or of any agency of the United States or any state, or any other civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or accidents to machinery, equipment, transmission pipes, canals or similar facilities, shortages of labor, materials, supplies or transportation, or any other cause not reasonably within the control of the Party claiming such inability. The Parties shall use their best efforts to remove the cause of any force majeure. The requirement that any force majeure shall be reasonably beyond the control of the Party shall be deemed to be fulfilled even though the existing or impending strike, lockout or other industrial disturbance may not be settled but could have been settled by acceding to the demand of the opposing person or persons.

**Section 6.11. Indemnity.** Purchaser shall indemnify Seller and hold Seller harmless for any loss or payment made on any claim or liability for injury or damage to Seller or Seller's equipment or facilities caused by the negligence of Purchaser, its employees, agents or assigns.

## **VII.**

### **GENERAL PROVISIONS**

**Section 7.01. Term and Renewal.** This Contract shall be effective as of the Effective Date, and, unless sooner terminated as provided herein, shall remain in effect until for a period of thirty eight and one-half (38 ½) years (September 5, 2042 the "Initial Term"). Upon expiration of the Initial Term, this Contract may be renewed or extended for such term(s) as may be agreed upon by Seller and Purchaser.

**Section 7.02. No Third Party Beneficiary.** The Parties hereto are entering into this Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege, or benefit on any person or entity other than the Parties hereto and their successor(s) or assign(s).

**Section 7.03. Assignment.** Purchaser, without the necessity of obtaining Seller's consent, may assign this Contract to the United States of America, acting by and through the Department of Agriculture Rural Development Administration and its successors and assigns, as security for any loan to be made by the United States Department

of Agriculture Rural Development Administration to Purchaser. However, Purchaser may not otherwise transfer, sell, hypothecate or assign this Contract or Purchaser's rights and duties hereunder, without the express written consent of Seller. This provision shall in no way restrict the right of Purchaser to sell the water furnished by Seller under this Contract to any of Purchaser's customers.

**Section 7.04. Notices.** All notice, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by first-class mail, postage prepaid, addressed:

**If to Seller:**

Mayor, City of Corsicana  
200 North 12<sup>th</sup> Street  
Corsicana, Texas 75110

**If to Purchaser:**

Chatfield Water Supply Corporation  
P. O. Box 158  
Powell, Texas 75153-0158

or, in each case, at such other address in the State of Texas as may hereafter have been designated most recently in writing by the addressee to the addressor.

**Section 7.05. Severability.** In the event that any clause or provision of this Contract shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof. Each Party may specifically, but only in writing as provided in Section 6.04, waive any breach of this Contract by the other Party, but no such waiver shall be deemed to constitute a waiver of similar or other breaches by such other Party.

**Section 7.06. Entire Agreement.** This Contract contains the entire agreement of the Parties regarding the subject matter hereof, and no verbal or written agreement(s) or commitment(s) shall have any force or effect if not contained herein.

**Section 7.07. Modification.** This Contract may be modified or amended only by an instrument signed by the duly authorized representative of each of Party.

**Section 7.08. Multiple Counterparts.** This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

**Section 7.09. Caption Headings; Interpretation.** The caption headings of this Contract are for reference purposes only and shall not affect its interpretation in any respect. This Contract and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Contract.

IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in three (3) counterparts, each of which shall constitute an original.

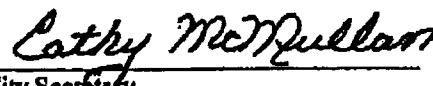


SELLER:  
CITY OF CORSICANA

By:

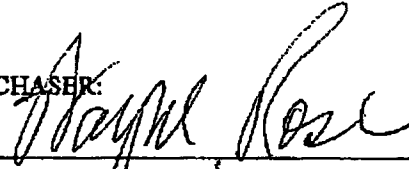
  
Mayor

ATTEST:

  
City Secretary

PURCHASER:

By:

  
President, Board of Directors  
Chatfield Water Supply Corporation

## WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into as of the 6th day of September, 1994, between the CITY OF CORSICANA, Corsicana, Texas hereinafter referred to as the "Seller" and the CITY OF KERENS hereinafter referred to as the "Purchaser".

### WITNESSETH:

WHEREAS, the Purchaser is organized and established under the provisions of a general law city in the State of Texas for the purpose of constructing and operating a water supply distribution system serving water users within the area described in plans now on file in the office of the Purchaser and to accomplish this purpose, the Purchaser will require a supply of treated water; and

WHEREAS, the Seller owns and operates a water supply distribution system with a capacity currently capable of serving the present customers of the Seller's system and the estimated number of water users to be served by said Purchaser as shown in the plans of the system now on file in the office of the Purchaser; and

WHEREAS, by City Commission approval of the Contract on the 6th day of September, 1994, by the Seller, the sale of water to the Purchaser in accordance with the provisions of the said contract was approved, and the execution of this contract by the Mayor and attested by the City Secretary carries out the said action of the City Commission; and

WHEREAS, by Resolution of the City Council of the Purchaser, enacted on the 6th day of September, 1994, the purchase of water from the Seller in accordance with the terms set forth in the said Resolution was approved, and the execution of this contract by the Mayor and attested by the City Secretary was duly authorized.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, the Seller agrees:

1. **Quality and Quantity.** To furnish the Purchaser at the point of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the Texas Natural Resources Conservation Commission in such quantity as may be required by the Purchaser not to exceed ten million (10,000,000) gallons per month.