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AN ORDINANCE PRESCRIBING THE FORM AND SUBSTANCE OF AN AMENDED CONTRACT TO BE ENTERED INTO WITH UPPER LEON RIVER MUNICIPAL WATER DISTRICT FOR THE PURPOSE OF SUPPLYING WATER TO THE CITY OF DE LEON, AND DECLARING AN EMERGENCY.

THE STATE OF TEXAS :
COUNTY OF COMANCHE :
CITY OF DE LEON :

WHEREAS, pursuant to the election held on the 16th day of May, 1964, the City now has authority to pass an ordinance prescribing the form and substance of a contract to be entered into with Upper Leon River Municipal Water District for the purpose of supplying water to the City of De Leon; and

WHEREAS, by ordinance passed on the 23rd of June, 1964, the City of De Leon entered into a contract with Upper Leon River Municipal Water District as authorized; and

WHEREAS, it is now determined that it will be for the mutual benefit of the City and the District that such contract be amended;

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DE LEON:

1. That an amended contract shall be entered into between this City and Upper Leon River Municipal Water District in substantially the form of Exhibit A attached hereto and made a part hereof.
 2. That the Mayor and City Secretary are hereby authorized and directed to execute such amended contract on behalf of the City of De Leon, and to take all other actions appropriate or necessary to implement its terms.
 3. That the immediate preservation of the public peace, property, and health and safety require the passage of this ordinance, and the necessity therefor creates an emergency, and this ordinance is hereby declared an emergency measure, and the Charter provision requiring that the Ordinance be read at two meetings of this City Commission is hereby dispensed with.
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WATER CONTRACT

THE STATE OF TEXAS:

UPPER LEON RIVER MUNICIPAL WATER DISTRICT:

THIS CONTRACT (hereinafter called the "Contract") made and entered into as of the ___ day of _____, 1965, by and between Upper Leon River Municipal Water District (hereinafter called "District"), a Conservation and Reclamation District, created by Chapter 405, Acts 1961, 57th Legislature, Regular Session (hereinafter called the "Act"), pursuant to Article XVI, Section 59 of the Constitution, and the City of De Leon, Texas, (hereinafter called the "City"), a municipal corporation in Comanche County, Texas, and situated within the District:

W I T N E S S E T H :

WHEREAS, the City owns its water distribution system and a water supply; and

WHEREAS, the City is desirous of obtaining a more adequate and dependable water supply; and

WHEREAS, the United States Government, acting through the Corps of Engineers, United States Army (hereinafter called the "Government") has constructed a multi-purpose reservoir on the Leon River near Proctor, Comanche County, Texas, known as Proctor Reservoir"; and

WHEREAS, Brazos River Authority, an agency of the State of Texas (hereinafter called the "Authority"), is duly authorized to control, store, preserve, use, distribute, and sell the waters of the Brazos River and its tributaries, including the aforementioned Leon River, for such uses and purposes as set forth in the act of the Texas Legislature creating such Authority and acts amendatory thereto; and

WHEREAS, the Government is authorized by the Water Supply Act of 1958 (Title 111 of the Act approved 3 July 1958, Public Law 85-500, 85th Congress, 2nd Session) to include storage in any reservoir project to be constructed by the Corps of Engineers to impound water for present or anticipated future demand or need for municipal or industrial water; and

WHEREAS, storage space has been included in the Project for municipal and industrial water below elevation 1162.0 feet above mean sea level; and

WHEREAS, the Authority and the Government have entered into an agreement dated December 21, 1961, (hereinafter called the "Storage Agreement") whereby the Authority has acquired the right to utilize the storage space in Proctor Reservoir below elevation 1162.0 feet above mean sea level for storage of industrial or municipal water; and

WHEREAS, the District has in turn contracted with the Authority whereby District has agreed to purchase its water requirements from the Authority, and the District proposes to construct an intake structure in Proctor Reservoir, a water treatment plant or plants and other facilities, including water supply lines from Proctor Reservoir for the principal purpose of supplying water to the Cities of Comanche, De Leon, Dublin and Gorman; and

WHEREAS, the District intends to issue its bonds in one or more series to obtain funds to construct said facilities; and

WHEREAS, payment of District's bonds and the interest thereon will be secured by the terms of a trust indenture, which among other provisions, will pledge the payments made under contracts between the District and the said Cities; and

WHEREAS, under Chapter 342, Acts of the Regular Session of the 51st Legislature (hereinafter called "Chapter 342"), the City is authorized to enter into this Contract for the purchase

of water from District when authorized by a majority vote at an election held within the City in accordance with such law; and

WHEREAS, the required authorizing election has been duly held on the 16th day of May, 1964, resulting favorably to the execution of this Contract by a vote of 362 for and 9 against the making of the Contract; and

WHEREAS, the District expects to have available water in quantities sufficient for the needs of the City; and

WHEREAS, it is recognized by both parties that the District will use income from this Contract to pay District's operating expenses, and to pay the principal of and interest on its bonds issued to build said facilities; and

WHEREAS, the City recognizes the fact that the District may make similar contracts with cities in the District in addition to those heretofore named, and that the District may elect to supply water to other water users;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District agrees to sell and the City agrees to buy water, upon and subject to the following terms, provisions and conditions, to-wit:

1. DEFINITIONS:

(a) "Board of Directors" means the Board of Directors of the District.

(b) "Bonds" means the bonds to be issued by the District for the construction of the Project, whether one or more issues, and includes any bonds which might be issued later for completion of the Project, or to refund any of said bonds.

(c) "Bond Date" means the date of the first issue of Bonds.

(d) "Contracting Cities" means the cities of Comanche, De Leon, Dublin and Gorman.

(e) "Fiscal Year" means the accounting year hereafter established by the Board.

(f) "Interest Payment Date" means each date on which interest or interest and principal becomes due on the Bonds.

(g) "Month" means calendar month.

(h) "Project" means the intake structure, the water treatment plant or plants and related facilities, the water supply lines and other facilities constructed to provide a water supply from Proctor Reservoir to the Contracting Cities.

(i) "Trustee" means the corporate trustee named in the Trust Indenture.

(j) "Trust Indenture" means the trust indenture to be authorized and executed by the District securing the Bonds and providing for the payment of the Bonds and the interest thereon, and any amendments or supplements thereto.

2. QUANTITY. Except as hereinafter provided in Section 10, District agrees to sell and to deliver to the City at its existing storage tank or tanks, and City agrees to purchase and take at its existing storage tank or tanks all water required by City during the period of this agreement for its own use and for distribution to all of the customers served by the City's distribution system. Neither party to this agreement is in position to estimate the maximum or the minimum amount of water which may be required by the City for any day during the term of this Contract. The District will use its best effort to remain in position to furnish water sufficient for the reasonable demands of City, but its obligations shall be limited to the amount of water purchased by the District from the Authority, and the capacities of its treatment plant and

supply mains, having due regard for the equitable interests of other Contracting Cities which may be then taking water from the District. The City agrees to take the water at a uniform rate over any calendar day.

3. QUALITY. The water to be delivered by District and received by City shall be clarified, filtered and chlorinated water from Proctor Reservoir. The City has satisfied itself that such treated water will be suited for its municipal and industrial needs. If mutually satisfactory to the parties hereto, raw water may also be delivered hereunder by the District and received by the City.

4. POINT OF DELIVERY. For the purposes hereinafter mentioned the "point of delivery" of water from District to City shall be the site of District's meter.

5. MEASURING EQUIPMENT. (a) District shall furnish, install, operate and maintain at its own expense the necessary equipment and devices of standard type for measuring properly the quantity of water delivered under this Contract, such main meter or meters shall be located on District's supply main at locations to be designated by District. Such main meter or meters and other equipment so installed shall remain the property of District. City shall have access to such main metering equipment at all reasonable times, but the reading, calibration and adjustment thereof shall be done only by the

employees or agents of the District. For the purpose of this Contract, the original record or reading of the main meter or meters shall be the journal or other record book of District in its office in which the records of the employees or agents of District who take the reading are or may be transcribed. Upon written request of City the District will give City a copy of such journal or record book, or permit City to have access to the same in the office of the District during reasonable business hours.

(b) Not more than once in each calendar year, on a date as near the end of such calendar year as practical, the District shall calibrate its main meter or meters if requested in writing by City to do so, in the presence of a representative of City, and the parties shall jointly observe any adjustments which are made to the meter or meters in case any adjustments shall be necessary, and if the check meter hereinafter provided for has been installed, the same shall also be calibrated by City in the presence of a representative of District and the parties shall jointly observe any adjustment in case any adjustment is necessary. If City shall in writing request District to calibrate its meters and District shall give City notice of the time when any such calibration is to be made and a representative of City is not present at the time set, District may proceed with calibration and adjustment in the absence of any representative of City.

(c) If either party at any time observes a variation between the main delivery meter or meters and the check meter, if any such check meter shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the same meter shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours' notice of the time of any test of meter so that the other party may conveniently have a representative present.

(d) If, upon any test, the percentage of inaccuracy of metering equipment is found to be in excess of two per cent (2%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then 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 a main meter or meters are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meter or meters are out of service or out of repair shall be estimated and agreed upon by the parties thereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter if the same has been installed and is accurately registering. Otherwise, the amount of water delivered during such period may be

estimated (i) by correcting the error if the percentage of error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

(e) City may, at its option and its own expense, install and operate a check meter to check any meter installed by District, but the measurement of water for the purpose of this agreement shall be solely by the District's meter, except in the cases hereinabove specifically provided to the contrary. Such check meter shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the District, but the reading, calibration and adjustment thereof shall be made only by the City, except during any period when a check meter may be used under the provisions hereof for measuring the amount of water delivered, in which case the reading, calibration and adjustment thereof shall be made by District with like effect as if such check meter had been furnished or installed by District.

6. UNITS OF MEASUREMENTS. The unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U.S. Standard Liquid Measure.

7. DELIVERY PRESSURE. The water shall be delivered by District at the point of delivery at a pressure sufficient to transmit the water into elevated storage tank or tanks provided by City.

8. PRICE AND TERMS. (a) The only resources which District will have for the payment of its operating expenses,

including the cost of water purchased by it pursuant to the agreement between the Authority and the District, and the principal of and interest on its Bonds will be the income from the sale of water. Initially such income will be under this Contract and under similar contracts between the District and other Contracting Cities.

(b) Unless and until other sources of income are available, the amounts to be paid by City and other Contracting Cities must be not less than an amount sufficient:

- (1) To pay the cost of water purchased by the District from the Authority;
- (2) To pay the other operation and maintenance expenses of the District;
- (3) To pay the principal of and the interest on the Bonds as such principal and interest become due, less interest to be paid out of Bond proceeds as may be permitted by the Trust Indenture securing Bonds;
- (4) To provide during each fiscal year the proportionate part of a reserve fund or funds as is required to be accumulated and maintained by the provisions of the Trust Indenture.
- (5) To provide amounts in addition thereto sufficient to restore any deficiency in any of the funds or accounts required to be accumulated and maintained by the provisions of the Trust Indenture.

(c) Money for the payment of interest to accrue on the Bonds during the eighteen months following the Bond Date will be set aside out of the proceeds from the sale of the Bonds. Thereafter, debt and reserve requirements must be accumulated by the District by the 20th day of the month immediately preceding each Interest Payment date. Accordingly, each of the Contracting Cities, including the City will pay a rate per 1,000 gallons of water monthly as delivered to City and semi-annually an additional amount, if required, to make up the minimum payment stated below. Therefore, City will pay the District:

(A) On the 20th day of each month a rate per 1,000 gallons (herein called the "Gallonge Rate") of treated water delivered to City during the preceding month.

(B) Beginning with the 20th day of the twenty-third month after the Bond Date and on the 20th day of each sixth month thereafter, the difference between the amount of the payments made during the preceding six months pursuant to (A) of this Paragraph (c) and the "Minimum Payment" (hereinafter defined) if such payments under (A) aggregate less than the Minimum Payment.

(d) Initially and until changed by the Board of Directors pursuant to Paragraph (e) of Section 8, the Gallonge Rate shall be 33¢ per 1,000 gallons and the Minimum Payment shall be \$15,959.63.

(e) Within thirty days following the beginning of each Fiscal Year, the Board of Directors shall determine the amount of money required during that Fiscal Year for the purposes shown in Paragraph (b) of this Section 8 and subtract therefrom the amount of money definitely expected to be received from sources other than the Contracting Cities and applied to the purposes shown in Paragraph (b) of this Section 8. The remainder shall constitute

the minimum charge to be allocated among the Contracting Cities. The Board shall also ascertain the amount of water delivered at the Gallonage Rate into the distribution system of each Contracting City in the Fiscal Year just completed from District's source of supply and from the City's source of supply, and the total amount of water thus delivered into the distribution systems of all Contracting Cities in said preceding fiscal year. The minimum charge, determined as above provided, shall be allocated to each Contracting City in proportion to the total amount of such water thus delivered into the City's distribution system in the Fiscal Year just completed. The Board shall specify the portion of the minimum charge (Minimum Payment) which the City shall pay semi-annually on the 20th day of the month immediately preceding each Interest Payment Date. The Gallonage Rate will be uniform with respect to each Contracting City and will be computed concurrently with the computation of the Minimum Payment by dividing the Minimum Payment thus computed by the total number of gallons of water delivered at the Gallonage Rate into the distribution systems of all of the Contracting Cities in the Fiscal Year just completed.

(f) The parties hereto recognize the statutory and contractual duty of the District to fix and from time to time revise (if and when necessary) the rates of compensation for water sold and services rendered by the District to the City under this Contract so that the Revenues of the District will at all times be sufficient to enable the District to pay its operation and maintenance expenses including the cost of water purchased from the Authority, and to pay the principal of and interest on the District's Bonds, and to meet the requirements for reserves as required in the Trust Indenture and the parties expressly assume and agree to perform such obligations as imposed by the law and by the Trust Indenture.

(g) The District shall bill City for the amounts due the District under this Contract, which bill shall disclose the quantity of water, if any, delivered during such month and each such bill shall be paid by the City for the account of the District at the depository of the District designated in the Trust Indenture to hold the Revenue Fund on or before the 20th day of the calendar month in which it is received. In the event that the City shall fail to make such payment within the time herein specified, interest on such amount shall accrue at the rate of five per cent (5%) per annum from the date that such payment becomes due until paid in full with interest as above specified. In the event such payment is not made within sixty (60) days from the date such payment becomes due, the District may, at its option, discontinue the delivery of water to the City until the amount then due the District is paid in full with interest as above specified. The remedy granted to the District under this paragraph (g) is to be exercised by the District in the event of failure of the City to make timely payments hereunder shall not be exclusive.

(h) If, in addition to the amount initially issued, the District issues bonds secured wholly or partially by revenues, for the purpose of completing the Project, the amount to be paid to District by City shall be increased by the amount necessary to pay the principal of and interest on such completion bonds and create and establish the funds as required by the Trust Indenture or the resolution authorizing such bonds.

9. DECLARATION OF POLICY. This declaration of policy shall be effective between the District and the City and between the District and other cities within the District which execute a similar contract. It shall also become effective as to any other city which may become a part of the District and which may execute a contract similar to this. The declaration follows:

- (a) When the bonds issued by the District for the purpose of constructing District's Water Supply System and all bonds, if any, issued to refund said bonds, shall have been paid, it is contemplated that this Contract will be renewed or rewritten so that so long as there shall be no outstanding bonds the consideration to be paid by the City for the delivery of water shall be its fair and proportionate share of the District's operating expenses and costs.
- (b) To the extent that the charges for water paid by the City include money to be used by the District for sinking fund purposes or for reserves of any kind, or for the redemption of bonds prior to their maturity, such money will, in effect, be acquiring for the City benefits equivalent to ownership of the properties owned by the District.
- (c) The District agrees that it will not sell water to any customer now being served by the City or reasonably capable of being served by City's distribution system, except by the express written consent of the City.

10. SPECIAL CONDITIONS. (a) District agrees to proceed promptly with the construction of the Project, however, District shall not be liable to the City for any damages occasioned by delay in the commencement of water service to the City.

(b) Title to all water supplied hereunder shall remain in the District through the Point of Delivery, and upon passing through the Point of Delivery, such title to the water shall pass to the City. Each of the parties hereto agrees to save and hold the other party harmless from all claims, demands and causes of action which may be asserted by anyone on account of the transportation, delivery and disposal of said water while title remains in such party.

(c) It is expressly understood and agreed that any obligations on the part of the District to build and complete the Project is conditioned upon District's ability to obtain all necessary material, labor and equipment and upon the ability of District to finance the cost of such construction through the actual sale of District's Bonds.

(d) District shall never have the right to demand payment by the City of any obligations assumed by it or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxes levied by the City. The City's obligations under this Contract shall never be construed to be a debt of the City of such kind as to require it under the law of this State to levy and collect a tax to discharge such obligation, it being expressly understood by the parties hereto that all payments due by the City hereunder are to be made from water revenues received by the City.

(e) The City represents and covenants that all payments to be made hereunder by it shall constitute "Operating Expenses" of its waterworks system as defined in Article 1113 of the Revised Civil Statutes of Texas, as amended, and that all such payments will constitute operating expenses under any and all revenue bond issues of said City, with the effect that the City's obligation to make payments from its water revenues under this Contract has priority over its obligation to make payments of the principal of and interest on any and all of its water revenue bonds now or hereafter outstanding.

(f) The City agrees to fix and collect such rates and charges for water and services to be supplied by its waterworks system as will produce net revenues in an amount equal to at least the Minimum Payments due under this Contract and to comply with provisions of ordinances authorizing its outstanding revenue bonds.

(g) The City shall not obtain water from any source other than its own source of supply (as provided in Section 11) and the District's except to the extent that the District is unable to supply water to the City, in which event the City shall first furnish to the District a written opinion of a recognized independent engineer showing the extent to which the City needs water that the District is unable to supply.

(h) Any contract made by the District to supply water to others than cities within the District shall be subordinate to the obligations of the District to supply cities within the District.

11. OPERATION OF CITY'S WATER SUPPLY. To the extent that this Section does not impair the obligations of City under the provisions of any of its presently outstanding Revenue Bonds or the Ordinances or Deeds of Trust authorizing and securing such Revenue Bonds, City and District agree for the term of this Contract that the City's water production, water supply and water supply facilities will be operated and maintained in the manner and with the effect as follows:

(a) The City's water production, water supply and water supply facilities will be operated in such manner that the water will be measured and delivered into the City's distribution system, and District will install at its cost any necessary measuring equipment.

(b) City's water production, water supply and water supply facilities or units thereof shall be operated by the City when and as directed by the District so that the two systems of supply may be coordinated as directed by the District, particularly for peaking purposes and for purposes of keeping wells in usable condition, or when an area within or without the City cannot economically be furnished water from District's facilities. The District shall pay City for all of City's reasonable operating expenses incurred for, and during the period of such operation, and City will pay to the District the same price per one thousand (1,000) gallons for water furnished from City's water production, water supply and water supply facilities, that City is required to pay for water furnished from the District's Project. City's water production, water supply and water supply facilities at all times will be maintained by the District. The

City shall be entitled to supply water to land owners from its source of supply to the extent required for compliance with contracts heretofore made between City and landowners for easements and water rights, without payment to District for such water and without including the amount of such water in determining the minimum charge as provided in Section 8 (e).

12. TERM OF CONTRACT. This agreement shall continue in force and effect for a period of forty (40) years from the Bond Date and thereafter shall continue in effect until the District's Bonds and all refunding bonds issued in lieu of such Bonds are paid. After provisions have been made for the payment of all such Bonds, the District agrees that this Contract may be renewed or rewritten in accordance with the Declaration of Policy hereinabove expressed.

13. MODIFICATION. No change or modification of this Contract may be made which will affect adversely the prompt payment when due of all moneys required to be paid by the City under the terms of this Contract and no such change shall be effective which would cause a violation of any provisions of the Trust Indenture.

14. NOTICES. All notices or communications provided for herein shall be in writing and shall be either delivered to City or District, or, if mailed, shall be sent by registered mail, postage prepaid, addressed to the City or District at their respective addresses.

15. PROVISION SEVERABLE. If any obligation or covenant of either party hereto shall ever be held to be invalid, the remaining provisions of this Contract shall continue to be binding and enforceable.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written.

UPPER LEON RIVER MUNICIPAL WATER DISTRICT

By _____
President

ATTEST:

Secretary

CITY OF DE LEON, TEXAS

By _____
Mayor

ATTEST:

City Secretary