

AN ORDINANCE GRANTING TOBY SMITH WATER CO. THE RIGHT, PRIVILEGE, AND FRANCHISE FOR A PERIOD OF TWENTY YEARS TO CONSTRUCT, LAY, MAINTAIN, OPERATE, EXTEND, REMOVE, REPLACE AND REPAIR A SYSTEM OF PIPELINES, WATER MAINS, LATERALS AND ATTACHMENTS, AND ALL DESIRABLE INSTRUMENTALITIES IN, UNDER, OVER, ACROSS AND ALONG ANY AND ALL OTHER PUBLIC PLACES IN THE TOWN OF MAGNOLIA, MONTGOMERY COUNTY, TEXAS, FOR THE PURPOSES OF TRANSPORTING, DISTRIBUTING, SUPPLYING AND SELLING WATER FOR DOMESTIC AND INDUSTRIAL CONSUMPTION AND FOR ALL OTHER PURPOSES FOR WHICH WATER MAY BE USED, TO THE MUNICIPALITY OF SAID TOWN OF MAGNOLIA, TEXAS, AND ITS INHABITANTS AND OTHERS, PROVIDING CONDITIONS CONTROLLING THE USE OF PUBLIC THOROUGHFARES AND EXTENSIONS THEREIN, ESTABLISHING STANDARDS OF SERVICE, PROVIDING A SEVERABILITY CLAUSE, PROVIDING FOR FORFEITURE, MAKING MISCELLANEOUS PROVISIONS, AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF MAGNOLIA.

Section 1. Town of Magnolia, Montgomery County, Texas, herein called "Grantor", does hereby grant unto Toby Smith Water Co., herein called "Grantee", the right, privilege, and franchise to construct, lay, maintain, operate, use, extend, remove, replace and repair, in, under, over, across and along any and all of the present and future streets, avenues, parkways, squares, alleys, thoroughfares, roads, highways, sidewalks, viaducts, bridges, streams, public grounds, public properties, and other streams, public places of Grantor, and in all tracts, territories and areas hereafter annexed to or acquired by and placed within the corporate boundaries of Grantor, a system of pipes, pipelines, water mains, laterals, conduits, feeders, regulators, meters, fixtures, connections, and attachments, and other desirable instrumentalities and appurtenances necessary or proper for the purpose of transporting, distributing, supplying and selling water for domestic and industrial consumption and for any other purposes for which water may now or hereafter be used, to said Grantor and its inhabitants or any other person or persons within or without the corporate boundaries of Grantor.

Section 2. Grantee's property shall be so constructed and maintained as not to interfere unreasonably with traffic over the public thoroughfares of Grantor, and provided that whatever the streets, alleys, roads and public ways are cut or opened by Grantee or are damaged by reason of operation of the system through breakage, bursting, leakage of mains and the like, the same shall be placed in their original state of repair at Grantee's expense without undue delay.

Section 3. Grantee shall not be required to run or extend any main, service line or other part of its distributing system to any person, firm, association, individual or corporation applying for or demanding water or water service and/or additional water or water service unless the probably expected use of such water or water service by such person, firm, association, individual or corporation will provide to Grantee a reasonable and compensatory return or income on the value of the additional main, service line and other equipment which must necessarily be installed to comply with such application or demand, provided that such customer may be required to bear the cost of such extension or such part thereof as is provided by Grantee's customary main extension contract.

Section 4. Grantee shall hold Grantor harmless from all expense of liability for any unlawful or negligent act of Grantee hereunder.

Section 5. Nothing herein contained shall ever be held or considered as conferring upon Grantee and its successors and assigns any exclusive rights or privileges of any nature whatsoever, but any similar and like franchise which may be hereafter granted to any other person, firm or corporation shall provide that such party, firm or corporation shall run its lines, of the same size, or larger, and material as those used by Grantee, parallel to any lines owned by Grantee, and not merely a portion thereof.

Section 6. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 7. This franchise shall take effect and continue and remain in effect for a period of Twenty (20) years from and after the date this ordinance is passed and adopted, provided Grantee files a written acceptance of this franchise with Grantor, within sixty (60) days after such passage and adoption.

Section 8. In the operation of the Grantee's water system, Grantee, without discrimination between customer and applicant, existing or future, shall operate the same to insure an efficient water supply and distribution system and will supply and install standard meters to all customers making its usual charges therefor and standard equipment manufactured for the purposes of constructing, maintaining and operating a water supply and distribution system.

Section 9. It is agreed by and between the parties hereto that nothing herein is intended to relieve Grantee or its successors or assigns of any conditions, restrictions, or requirements hereby to waive any power of regulation that is now held by Grantor; it is specifically understood and agreed that any change in rates for water service shall be effective only with approval of the governing body of Grantor, but subject to applicable legal review of any disapproval by Grantor of a rate of increase.

Section 10. That on or before the 15th of January of each and every year, beginning January 15, 1970, Grantee shall, as a condition to further occupancy of the streets, highways, easements, and other public places enumerated in Paragraph number one hereof, pay to the City annually for such privilege a rental for Grantee's prior fiscal year beginning with the fiscal year running from November 1, 1969, to October 31, 1970, of two per cent (2%) of the gross receipts received by Grantee from its business conducted in the incorporated limits of the town for the preceding year, which sums shall be paid to the Town of Magnolia, Texas.

Section 11. If any provisions, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void, or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent of the Grantor in adopting this Ordinance that no portion hereof, or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to this end, all provisions of the Ordinance are declared to be severable.

Section 12. Grantor may at any reasonable time through duly designated representatives inspect Grantee's books of account which shall be kept in accordance with accepted utility accounting practices. Grantee shall procure a permit of the Mayor and Board of Aldermen, before drilling any water well within the limits of said City, which shall not be unreasonably refused.

Section 13. The Grantee shall at all times after March 1, 1970, and except for temporary breakdowns or emergencies, maintain a main pressure at each customer's water connection of not less than twenty-five (25) pounds per square inch at any location in the Town of Magnolia. The maximum system shall not exceed eighty (80) pounds per square inch at any location in the Town of Magnolia, except at or near well-heads or in mains connected directly to the wells.

Section 14. At any time after March 1, 1970, that Grantee is unable to maintain the minimum pressures and supply of potable

water, as provided herein due to the inadequacy, restrictions or limitations of any of its mains, Grantee shall replace such mains; all such replacements shall be with pipe designed and manufactured for water distribution purposes and shall be of a size adequate to maintain a pressure of twenty-five (25) pounds per square inch and an adequate volume of water to all customers of Grantee, and shall be buried twenty (20) inches below ground level.

Section 15. Grantee shall at all times maintain a minimum total supply to the system of not less than one (1) gallon per minute per dwelling unit at the Company's meter.

Section 16. The Grantee agrees the system shall at all times after March 1, 1970, be operated in accordance with the State Department of Health rules and regulations, and laws, after a state sewerage system has been installed in the City of Magnolia. All future construction shall be in accordance with rules and regulations of the Texas State Department of Health. The system shall be operated by a water works operator holding a valid C operators certificate of competency issued under the direction of the Texas State Department of Health not later than August 1, 1970. Periodic samples shall be submitted to the State Department of Health for bacteriological and chemical analysis. Provisions shall be made by Grantee not later than August 1, 1970, to maintain within the system at all times a minimum chlorine residual of 2/10 to 5/10 parts per million. Within a reasonable time after August 1, 1970, and after the Grantor has installed a state approved sewerage system the Grantee herein will do everything humanly possible to obtain a "State Approved Water Supply" for the City of Magnolia, and Grantee shall operate the system and supply water in such manner to obtain and maintain the rating and qualifications of "State Approved Water Supply" in the Town of Magnolia.

Section 17. Grantee shall provide facilities to eliminate sand and other deleterious material from entering the distribution system.

Section 18. Grantor may cancel and terminate this franchise and rights granted herein to Grantee by giving Grantee written notice upon or after the happening of any of the following events:

A. After it has been determined by two state licensed B operators, and their names have been furnished to Grantee, that a deficiency exists in the quality of, or the manner of delivery of water, Grantee shall have a period not to exceed one hundred twenty (120) days after he has received written notice from Grantor pointing out any deficiency, or default, in which to correct the same. No waiver of default by Grantor of any of the obligations to be performed by Grantee shall be construed to be or act as a waiver of any subsequent default.

Section 19. In the event of a sale of the water system by Grantee, the City of Magnolia shall have the first option to purchase, at market price, as agreed on by both parties at time of the sale. The City of Magnolia shall have one hundred twenty (120) days to exercise this option after it has been advised in writing that Grantee's system is for sale.

Read in full and passed and adopted at a regular meeting on the 13th day of October, 1970, A.D., and approved by the Mayor.

ATTEST:

Mary Fudge
City Secretary

G. L. Bankston
Mayor

To Magnolia, Texas:

The Company for itself, its successors and assigns, hereby accepts the above and foregoing ordinance and agrees to be bound by all of its terms and provisions.

TOBY SMITH WATER CO.

By Toby Smith

Toby Smith, President

Dated the 10th day of November, 1970.