

ORDINANCE NO. 257-89

AN ORDINANCE GRANTING TO EGA, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO BUILD AND OPERATE A SANITARY SEWER SYSTEM FOR THE PURPOSE OF COLLECTING AND TREATING DOMESTIC SEWERAGE AND OTHER TYPES OF WASTE ORIGINATING IN AND ABOUT THE CITY OF WILLOW PARK, PARKER COUNTY, TEXAS, UNDER CERTAIN TERMS, DUTIES AND RESTRICTIONS, AND TO USE THE PRESENT AND FUTURE HIGHWAYS, STREETS, AVENUES, ALLEYS, AND ALL OTHER PUBLIC PLACES OF THE CITY OF WILLOW PARK, PARKER COUNTY, TEXAS, FOR THE OPERATION OF THE SANITARY SEWER SYSTEM, AND PROVIDING FOR REPEAL AND EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILLOW PARK, PARKER COUNTY, TEXAS:

Section I. Franchise.

EGA, INC., a Texas Corporation, its successors and assigns, Grantee herein, is hereby GRANTED by the City of Willow Park, Texas, a Municipal Corporation, Grantor herein, the Right, Consent, Power, Authority, Privilege and Franchise, in and around such City and in the City's extra-territorial jurisdiction, to Conduct and Engage in the business of building, installing, maintaining, replacing, repairing, operating, conducting, laying, constructing, erecting and running a sanitary sewer service and system for public and private use for the inhabitants of the City of Willow Park, Texas and its environs; and, the Right, Consent, Power, Authority, Privilege and Franchise to lay, construct, erect, install, place, maintain, use and operate pipes, mains, conduits, manholes, laterals, lift stations, service lines, treatment plants, and all necessary and proper connections, collection devices, treating devices and appurtenances thereof and thereto, under, along, across, and within all of the present and future streets, avenues, highways, alleys, and all other public lands, places and grounds in and of said City; together with the full Right, Power and Authority at all times, to maintain, replace and repair same, with full and unrestricted rights of access thereto at all reasonable times, for the above purposes and, generally to use and occupy the present and future streets, avenues, highways, alleys and all other public lands, places and grounds of the City of Willow Park, Texas, for all objects and purposes herein set forth; and, as well, the full Right, Power, Privilege and Authority to provide, sell and deliver sanitary sewer services to and for its customers. Grantee's GRANT and FRANCHISE shall extend to the City of Willow Park, its extraterritorial jurisdiction, and to all areas annexed by the City of Willow Park during the term of this GRANT and FRANCHISE.

Section II. Term.

The term of this GRANT and FRANCHISE is and shall be for a period of forty ~~(40)~~ (20) years from the date hereof, and, at the end of which time, that is to say, on the 5th day of September, A.D. 2029, the rights granted shall terminate, unless renewed as provided herein. The term of this GRANT and FRANCHISE may be renewed and extended by Grantee herein for an additional forty ~~(40)~~ (20) year term until the 5th day of September, 2069, by giving the City of Willow Park written notice addressed to the City Manager of the City of Willow Park of its intention to exercise its renewal and extension option, and such notice will be considered to have been properly given to the City if it is sent and addressed to the City Manager of the City of Willow Park by depositing such notice in the United States mail by certified mail, postage prepaid on or before the 5th day of March, 2029.

Section III. Fee.

Grantee, its successors or assigns, shall pay to the City of Willow Park, Texas, a sum equal to 2% of the gross revenues received for the furnishing of sanitary sewer services to customers within the corporate limits of said City of Willow Park, Texas, which payment shall be in full payment for the privileges granted herein, including the privilege of using and occupying the streets, highways, easements, alleys, parks and other public places in the City of Willow Park, Texas, whether as rental, supervision or inspection charges or otherwise. This payment shall be in lieu of any other tax or increased rate of tax, or other imposition, assessment, or charges, except ad valorem taxes, and the term "gross revenue" as used herein does not include any membership or tap on fees, nor late charges or any other fees collected by Grantee herein.

The City of Willow Park shall collect the sewer service charges of Grantee from Grantee's customers within the corporate limits of the City of Willow Park through the use of the City's system for collecting charges for water and other City services, and shall remit to Grantee the full amount collected, save and except, that the City may deduct from such amounts the 2% sum described above plus an amount equal to not more than 10% of such gross revenues to defray the City's cost of collection. The City shall promptly pay to Grantee all amounts owed, less the deductions set forth herein, on the tenth (10th) day after the deadline for collection as to each customer. The City shall also provide the Grantee a sworn monthly report showing the gross receipts received from the furnishing of sanitary sewer service within the corporate city limits of the City of Willow Park, the dates of receipt of such sums, the amounts retained or deducted by the City, and the amounts paid to Grantee. A designated representative of Grantee may examine the books and records of the City at any mutually agreeable place or time to verify the correctness of the sworn reports furnished to Grantee. The City shall also provide for the discontinuance of water services to any customer who fails or refuses to pay the sewer service charges contemplated herein under the same terms and conditions as are applicable to customers who fail or refuse to pay charges for water services.

Section IV. Installation and Maintenance.

The installation, maintenance, construction, operation and replacement of Grantee's pipes, mains, laterals, service lines, and other equipment of the Grantee, its successors and assigns, shall be placed, erected and maintained in conformity with good engineering and business practices and shall comply with all present or future laws pertaining to the construction, operation and maintenance of sanitary sewer systems within the State of Texas; provided, however, that the initial tariff of the Texas Water Commission establishing the rules, regulations and rates for the system shall be submitted to the City of Willow Park for informational purposes at least ninety (90) days prior to commencement of the operation of the sewer collection and treatment facilities.

The surface of any highway, street, alley or public place disturbed by the Grantee in erecting, building, constructing, extending or maintaining its sanitary sewer system and appurtenances thereto, shall be restored within a reasonable time after the completion of the work to substantially as good a condition as before the commencement of the work. No highway, street, alley, or public place shall be encumbered for a longer period than shall be necessary to execute the work.

Section V. Assignment.

This GRANT and FRANCHISE shall be assignable by Grantee only upon approval by the Texas Water Commission, provided, however, that this GRANT and FRANCHISE may be assigned to a lender by Grantee as security for any loans made or to be made to Grantee for the installation, operation or maintenance of the sanitary sewer system.

Section VI. Non-Exclusive Franchise.

This GRANT and FRANCHISE is not exclusive, and nothing herein shall be so construed as to prevent the City of Willow Park, Texas from granting other like or similar privileges to any other person, firm or corporation.

Section VII. Services and Rates.

The Grantee shall furnish sewer service under the conditions herein prescribed to all applicants not in arrears for prior water or sewer bills for service, pipe or other materials, provided such applicants own or occupy premises, abutting on streets, highways, or other public places in which sewer lines are laid.

Grantee shall furnish adequate service to the public at reasonable rates and charges and may make and enforce reasonable rules and regulations in the conduct of its business, and may require before furnishing any service the execution of a contract therefor. All such rates and charges shall be subject to

appropriate approvals as provided in the laws of the State of Texas.

All business and commercial units within the City of Willow Park currently platted or platted hereafter shall be required to exclusively use the sanitary sewer service of Grantee described herein and the City's water service, but residential lots previously platted or platted hereafter may choose to use such services or refrain from doing so, unless otherwise required to do so by the City Council of the City of Willow Park. All business and commercial units within the City must be connected to the sanitary sewer service of Grantee no later than sixty (60) days after Grantee notifies the City that Grantee's sewer plant is operational, and all future business and commercial units within the City shall be required to be connected to Grantee's sanitary sewer system before a certificate of occupancy will be issued thereto.

Section VIII. Line Extension.

Should a customer whose premises are not abutting on a street, highway, avenue or alley in which sewer lines are laid desire service, the customer shall pay all costs involved in extending a sewer line to such customer's premises. The rate per foot charges for these extensions shall be a fair and reasonable price, and Grantee shall have no obligation to extend the sewer line to such customer until all such charges have been paid to Grantee in full by such customer. If a customer is required to pay for the extension of a sewer line as set forth herein and other customers thereafter tap into such sewer line extension, the customer who originally paid for such extension shall be reimbursed a portion of the original costs of extending the sewer line under a cost reimbursement policy to be promulgated by Grantee herein. Similarly, if a customer is required to install a sewer line that is larger in size than is needed to provide service to such customer, because of the possibility of future "upstream" users, such customer shall also be entitled to reimbursement of any excess costs under such cost reimbursement policy.

Section IX. Breach.

In the event that Grantee shall breach any of the terms and conditions of this GRANT and FRANCHISE, the City of Willow Park, Texas, shall give written notice thereof pointing out the particular terms and conditions alleged to have been breached. Grantee, its successors or assigns, shall have ninety (90) days (or until final Texas water Commission action is taken in the event of an appeal to such Commission) after receipt of the notice in which to commence correcting the default. Should Grantee fail to correct the default or not be in the process of correcting the default within the said ninety (90) days (or until final Texas Water Commission action is taken in the event of an appeal to such Commission), then the City of Willow Park, Texas, may terminate this GRANT and FRANCHISE without any liability on the part of the said City of Willow Park, Texas.

Section X. Acceptance.

The Grantee shall file with the City Manager of the City of Willow Park its written acceptance of this GRANT and and FRANCHISE within sixty (60) days from and after its passage and approval by executing this ordinance in the space provided below.

Section XI. Indemnification.

Grantee hereunder shall indemnify and hold the City harmless from all expenses or liability for any negligent act of Grantee.

Section XII. Repeal of Conflicting Ordinances.

Each and every provision of any ordinance previously passed by the Town or City of Willow Park, Texas which cannot be construed to be consistent with the provisions expressly set out herein, is hereby repealed.

Section XIII. Severability.

If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged and held unconstitutional, the same shall not effect the validity of this ordinance as a whole or any part or provision thereof, other than the part(s) so decided to be invalid.

Section XIV. Effective Date.

This ordinance shall be in full force and effect upon acceptance by EGA, INC., as shown on the date of the written acceptance as provided in Section X above.

Section XV. Emergency.

The fact that the City of Willow Park, Texas, is a town containing a growing population, and is wholly without any public sewer system, creates an emergency and an imperative public necessity that provisions be made for the construction of such sewer system within the City of Willow Park, Texas, as soon as possible, and the rule requiring the reading of this ordinance on three successive meeting dates is hereby suspended, and this ordinance is put upon its third and final reading and finally passed at the meeting on this date, and it shall take effect and be in full force from and after its passage and approval by the Mayor and the acceptance in writing, as hereinabove provided.

PASSED AND APPROVED on this the 5th day of September, A. D. 1989.

J. Mark Bumpas

Mayor, City of Willow Park, Texas

ATTEST:

Aref Hassan

City Secretary
City of Willow Park, Texas

ACCEPTED:

EGA, INC.
A Texas Corporation

Doyle Hanley

By: Doyle Hanley
President

ATTEST:

Secretary
EGA, INC.