

RESOLUTION NO. 2016-11-605R

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

**A RESOLUTION APPROVING THE WATER PURCHASE CONTRACT
BY AND BETWEEN THE CITY OF SPRINGDALE AND TONTITOWN
FOR THE CITY OF TONTITOWN, ARKANSAS**

WHEREAS, the City of Tontitown, Arkansas desires to enter into a Water Purchase Contract with the City of Springdale, Arkansas through its Water and Sewer Commission; and

WHEREAS, the Mayor and the City Council agree that it is in the best interest of the City of Tontitown and its citizens to approve and adopt the Water Purchase Contract; and

WHEREAS, the Mayor and the City Council have reviewed the Water Purchase Contract and believe the proposed Contract should approved.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the city of Tontitown, Arkansas:


Section 1: That the City Council of the City of Tontitown, Arkansas approves the Water Purchase Contract attached hereto as Exhibit "1" by and between the City of Springdale, Arkansas acting through its Water and Sewer Commission and the City of Tontitown.

PASSED AND APPROVED THIS 1st **DAY OF** November **2016**



Paul Colvin, Jr., Mayor

ATTEST:



Rhonda Ardemagni, City Recorder-Treasurer

WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into this _____ day of _____, 2016, by and between the City of Springdale, Arkansas, a municipal corporation acting through its Water and Sewer Commission, hereinafter referred to as the "Seller", and the City of Tontitown, Arkansas, a municipal corporation acting through its Water and Sewer Commission, hereinafter referred to as the "Purchaser":

WITNESSETH:

WHEREAS, the Seller owns and operates a water distribution system with a capacity capable of meeting the current needs of its users; and,

WHEREAS, the Purchaser owns and operates a water distribution system that requires a supply of treated water; and,

WHEREAS, the parties have previously entered into water purchase contracts in 1971, 1973, 1987, 1989, 1998, 2009, 2010 and the most recent version executed on September 13, 2011; and,

WHEREAS, the term of said water purchase contract is set to expire on September 13, 2016 and the parties desire to enter into a new contract establishing terms and provisions allowing Purchaser to continue purchasing potable water from Seller;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREINAFTER SET FORTH, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, SELLER AND PURCHASER HERETO MUTUALLY AGREE AS FOLLOWS:

(1) QUANTITY: Seller agrees to furnish the Purchaser, at points of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable water meeting applicable purity standards of the Arkansas Department of Health in such quantity as may be required by the Purchaser not to exceed a maximum of 18.6 million gallons of water per month nor 600,000 gallons per day. Instantaneous flow shall not exceed 1000 gallons per minute. These maximums may be mechanically restricted. Any conservation measures required during times of peak flows or emergency situations will be left to the discretion of Purchaser. If the daily maximum flow or the instantaneous flow is exceeded, even with a mechanical restriction in place, a warning shall be issued upon the first occurrence. If there is an additional occurrence, Purchaser shall pay a fine of Two Thousand Dollars (\$2000.00). If there are additional occurrences within a rolling thirty (30) day period of each other, Purchaser shall pay a fine of Five Thousand Dollars (\$5000.00) per occurrence thereafter. The exception is any ISO testing or planned flow testing or other activity that is coordinated by the Tontitown Public Works Director or his representative with authorities at Springdale Water Utilities at least 72 hours in advance excluding holidays. The activity shall be mutually agreed upon.

Schedule A:

The base monthly price for water supplied to Purchaser is established at a rate per thousand gallons that shall be determined by Seller's annual cost to produce and deliver water. Such costs shall be determined by a certified public account in the preparation of Seller's annual audit. Should the Seller incur a rate increase in the cost per thousand gallons of water purchased from Beaver Water District, which increase is not reflected in the most recent annual audit, the Seller shall have the right to collect an additional rate per thousand gallons from the Purchaser equal to the increase incurred from the Beaver Water District. The Seller shall be empowered to charge Purchaser, in the base monthly price for water, the additional rate simultaneous with the time Seller is required to pay the Beaver Water District for the increased amount.

Schedule B:

A fixed rate of twenty-two percent (22%) of the base monthly price, as determined above in Schedule A. Once a storage tank is built and placed into service, as provided in Paragraph 16, the fixed rate shall be reduced to nineteen percent (19%). Exhibit A is attached to show the monetary impact per 1000 and how it is calculated.

Purchaser and Seller hereby agree that the Purchaser shall continue to purchase water from Seller at the current price of \$3.07 per thousand gallons until January 1, 2017. Thereafter, the price of water shall be adjusted commensurate with the price provisions set forth above.

(7) **CONDITIONS OF SELLER'S PERFORMANCE:** The Seller agrees to operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the Purchaser with quantities of water set forth herein. Emergency failures of system pressure or supply due to water supply line breaks, power failures, floods, fires, earthquakes, or other catastrophes shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service. Temporary or partial failure to deliver water shall be remedied with all possible dispatch. Seller reserves the right to reduce flow to Purchaser, if there is a public health issue in either party's system.

(8) **COVENANTS OF PURCHASER:** The Purchaser covenants and agrees that it will not interconnect its facilities to any other source of water or permit its customers to interconnect a well, or wells, public or private, to be interconnected with the distribution system while connected to and using water from the Seller's system. All facilities constructed by the Purchaser which are connected to the Seller's water system shall be constructed in accordance with the rules and regulations of the Arkansas Department of Health, and the Purchaser will operate its water system in accordance with the rules and regulations of the Arkansas Department of Health. Purchaser shall adopt and enforce the State Plumbing Code. In the event Seller cannot furnish treated water meeting EPA safe drinking water requirements at the points of delivery, specifically including disinfection/disinfection by-products requirements, then Purchaser may purchase treated water from another source meeting such requirements. When Purchaser begins purchasing water from another source, the Parties agree this agreement shall thereupon be terminated and Purchaser shall thereafter obtain all water from another source other than Seller. In such event, except for payment by Seller for any outstanding charges for water previously purchased, neither party shall

(13) **TERM:** Seller and Purchaser hereby agree that the term of this contract shall be for a period of five (5) years from the date of this contract and shall automatically terminate at such time, subject only to the renewal provisions contained herein.

(14) **RENEWAL:** The Purchaser shall have the option to renew this contract upon terms and conditions as may be negotiated by the Seller and Purchaser by giving not less than six (6) months of written notice in advance of the termination date of this contract.

(15) **NOTICES:** It is understood and agreed that the Seller is acting through its Water and Sewer Commission and that Purchaser is acting through its City Council. Any notice required by either party under this contract shall be given by placing in the United States mail a certified letter with return receipt requested with postage prepaid and addressed to the presiding officer of the party to be notified within the time required as set forth above. Nothing, herein, shall preclude giving actual written notice by placing such notice in the hands of the party to whom it is intended. If the City of Tontitown elects to use another water supplier, they must notify Springdale Water Utilities of their intent sixty (60) days in advance.

(16) **TANK REQUIRED:** The parties agree that purchaser shall be required to install a water tank within four (4) years of the execution of this Agreement. If the Purchaser fails to erect a tank within four years, then until such time as the tank is erected and accepted into service Purchaser shall (i) initiate a building moratorium within the corporate limits of the City of Tontitown; (ii) not allow new customers to hook on to the water system; and (iii) pay a monthly amount of Ten Thousand Dollars (\$10,000.00) per month. The design of the water tank must be approved by Seller and meet all Seller's specifications.

(17) **WAIVER:** Failure of either party hereto to exercise any options herein contained upon breach by the other shall not constitute a waiver of that party's right to exercise such options upon future breach.

(18) **COMPLETE AGREEMENT:** It is agreed that neither party hereto is relying upon any oral or written information or representations made by the other prior to the signing of this contract unless expressly provided herein, and that this contract constitutes the entire agreement between the parties and same shall not be hereafter amended or modified unless reduced to writing and signed by the parties hereto. It is further agreed that all earlier agreements of the parties are hereby rescinded.

(19) **SEVERABILITY:** If any phrase, clause, sentence, or paragraph of this contract shall be declared invalid by the judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining sentences, paragraphs, or clauses of this contract.

**City of Springdale, Arkansas
Water and Sewer Commission**
A Component Unit of the City of Springdale, Arkansas
Water Fund – Schedule of Cost of Water Sold
Years Ended September 30, 2009 through 2015

	2009	2010	2011	2012	2013	2014	2015
Water purchased (in thousand gallons)	5,043,300	5,196,910	5,391,150	5,585,270	5,300,470	5,306,179	5,316,328
Water sales	\$ 12,673,500	\$ 13,573,168	\$ 13,963,077	\$ 14,747,304	\$ 13,836,106	\$ 14,056,176	\$ 14,160,521
Per thousand gallons	\$ 2,4387	\$ 2,6177	\$ 2,5000	\$ 2,6404	\$ 2,6104	\$ 2,6490	\$ 2,6647
Operating cost							
Supply and treatment	\$ 6,027,945	\$ 6,236,295	\$ 6,577,214	\$ 6,925,737	\$ 6,678,525	\$ 6,885,786	\$ 6,698,574
Per thousand gallons	1,1952	1,2000	1,2200	1,2400	1,2600	1,2900	1,2600
Transmission, distribution system and meter	1,052,004	4,251,661	4,499,899	4,697,217	4,959,375	5,165,695	5,301,556
Per thousand gallons	0,2034	0,8181	0,8347	0,8410	0,9356	0,9735	0,9972
General and administrative	1,293,462	1,315,325	1,267,617	1,295,358	1,430,338	1,691,700	1,807,920
Per thousand gallons	0,2565	0,2531	0,2351	0,2319	0,2699	0,3188	0,3401
Bad debts	31,191	59,447	31,611	28,595	44,878	36,058	17,606
Per thousand gallons	0,0062	0,0076	0,0059	0,0051	0,0085	0,0068	0,0033
Total operating cost	\$ 11,404,602	\$ 11,842,728	\$ 12,376,341	\$ 12,946,907	\$ 13,113,186	\$ 13,579,239	\$ 13,825,656
Cost per thousand gallons	\$ 2,2613	\$ 2,2788	\$ 2,2957	\$ 2,3180	\$ 2,4740	\$ 2,5591	\$ 2,6006

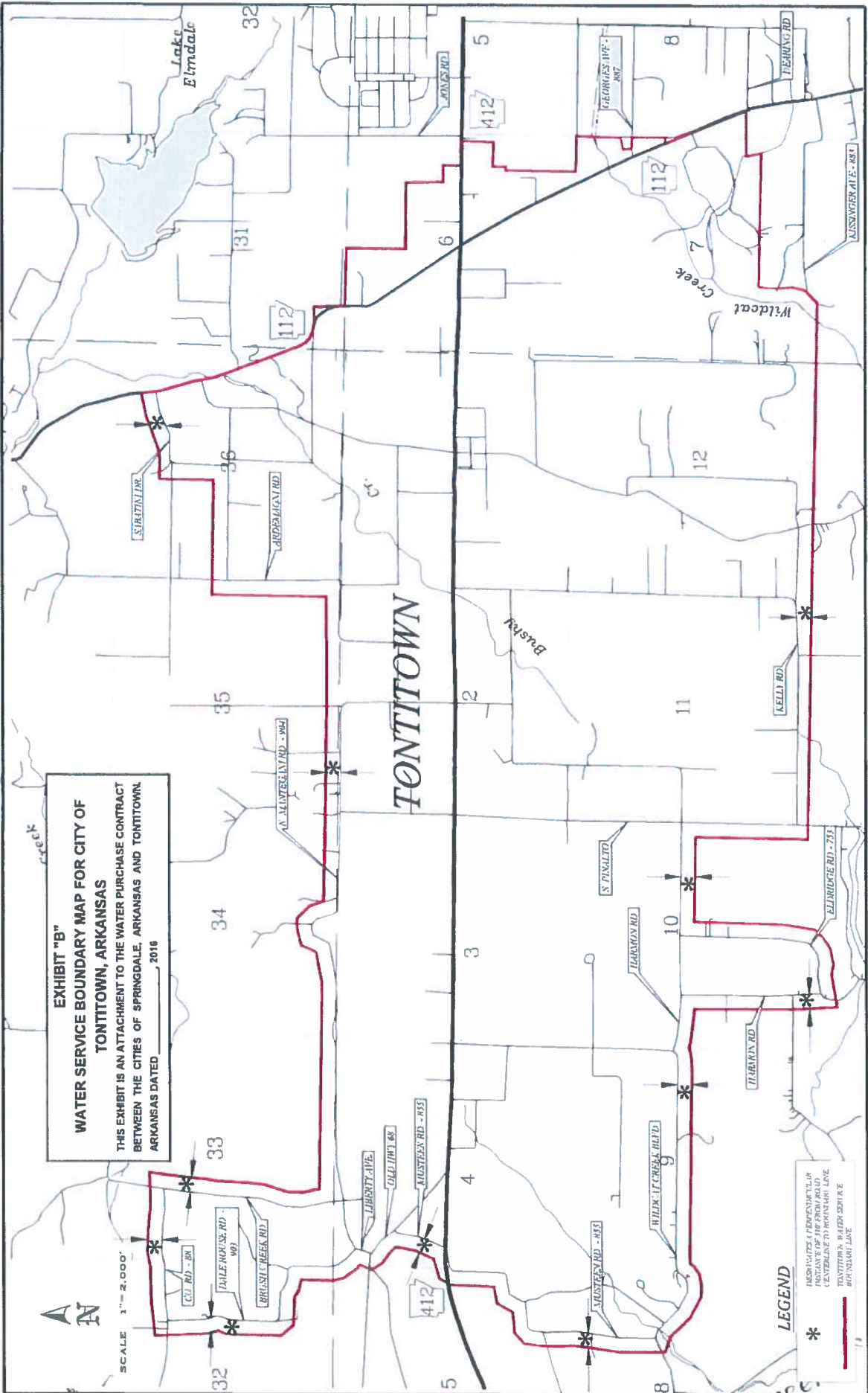
The above schedule is included in SWU's annual audit report. Each category of costs has been audited by our independent auditors. The Total Operating Cost is divided by the gallons purchased from BWD (\$13,825,656 / 5,316,328 gallons = \$2.6006 per 1000 gallons) to calculate SWU's Cost Per Thousand Gallons.

+ 2.6006 Cost/1000 Gallons	+ 2.6006 Cost/1000 Gallons
* 1.17 Add 17%	* 1.19 Add 19%
-----	-----
+ 3.04 Base Rate	+ 3.09 Base Rate
+ 0.03 BWD Rate Increase	+ 0.03 BWD Rate Increase
-----	-----
3.07 Current Rate	3.12 Rate @ 19%
+ 2.6006 Cost/1000 Gallons	
* 1.22 Add 22%	

+ 3.17 Base Rate	
+ 0.03 BWD Rate Increase	

3.20 Rate @ 22%	

The above calculations are only an example of how the rates are calculated. All future rates will be based on the Contract, future audit reports, and rate increases from BWD.



"Exhibit C"

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION

TONTITOWN WATER &
SEWER COMMISSION

VS.

Case No. CV 09-1256-2

WASHINGTON COUNTY RURAL
DEVELOPMENT AUTHORITY and
WASHINGTON WATER AUTHORITY

WASHINGTON COUNTY RURAL
DEVELOPMENT AUTHORITY and
WASHINGTON WATER AUTHORITY

V.

TONTITOWN WATER &
SEWER COMMISSION and
CITY OF TONTITOWN, ARKANSAS

TONTITOWN WATER &
SEWER COMMISSION and
CITY OF TONTITOWN, ARKANSAS

V.

JOSH MOORE

CHARLES AND LINDA HARWELL

HUGH AND NICOLE JARRATT

PLAINTIFF
WASHINGTON COUNTY
CIRCUIT COURT
DEFENDANTS
FILED
10 MAR -3 AM 9:26
RECORD

COUNTER PLAINTIFFS

COUNTER DEFENDANTS

PLAINTIFF

THIRD PARTY DEFENDANT

INTERVENORS

INTERVENORS

MEDIATION SETTLEMENT AGREEMENT

The undersigned parties participated in a mediation of the above styled cause on December 14, 2009, resulting in a settlement agreement. This Mediation Settlement Agreement is the settlement agreement of the parties reached and entered into by and between Tontitown Water & Sewer Commission ("Commission") and City of Tontitown ("City") (Commission and

then Tontitown will advise the Applicant that Washington Water possesses the first right of refusal to provide water service to the Applicant, and the Applicant shall be required to request or apply for water service from Washington Water. Upon receipt of a water service application, Washington Water shall have a 45 day period of time to exercise its first right of refusal. Should Washington Water not exercise its first right of refusal with regard to said Applicant within 45 days, then Tontitown will be free to provide water service to said Applicant (a "Released Customer").

5. Should any person or business own or occupy real property that is located both within the Tontitown and the Washington Water service areas as identified in the Boundary Agreement, and should the End Use (defined below) of the contemplated water service be located within the Washington Water service area as identified in the Boundary Agreement, then Washington Water shall possess the first right of refusal to provide water service to such person or business. If the End Use is located inside Tontitown's Service Area, Tontitown shall have the exclusive right to provide water service. As used herein, the term "End Use" shall mean the residence, structure or point at which the property owner or business consumes or utilizes water, without regard to the location of the related water meter.
6. In consideration for Washington Water's waiver of rights set forth in the Boundary Agreement and for other valuable consideration, each Released Customer who receives water service from Tontitown and their successors in title shall pay to Washington Water a monthly recurring charge equal to Twenty-Five

Water agrees that it will release its first rights of refusal with regard to the Jarrett Tract should Washington Water be unable to obtain an easement to provide water service thereto. If said easement is not obtained, then the Jarrett Tract shall be released from Washington Water's service area.

10. The parties who have asserted claims in this matter agree to dismiss any pending lawsuit and all claims which exist against each other or their respective board members, commissioners, officers, agents, employees or contractors, including Josh Moore and Mick Wagner, with prejudice and to execute any release documents required by any party hereto or their attorneys. The parties hereto agree to cooperate in executing such other release and settlement documents required by the parties being released.
11. This agreement has been approved by the Boards governing the entities involved.
12. This Agreed Order is a compromise of a doubtful and disputed claim and shall not be construed as an admission of liability on the part of anyone hereby released, all of whom deny liability and wish only to buy their peace. Each party shall be responsible for their own costs and attorneys fees incurred herein.
13. The Circuit Court in and for Washington County, Arkansas which has possessed jurisdiction over the subject litigation shall retain such jurisdiction in the future for the purpose of enforcing this Agreement and the rights, remedies and obligations of the parties hereto.
14. Each party hereto shall be responsible for their respective legal fees and costs related to this litigation.

DECEMBER 31, 2009

TONTITOWN CUSTOMERS IN WWA SERVICE AREA

ACCOUNT NUMBER	LAST NAME OR ENTITY	FIRST NAME	SERVICE ADDRESS	Date Service Initiated
1	2081220 SHATZER	JAMES	1440 ARDEMAGNI ROAD	3/25/1997
2	2082680 SABATINI	LARRY	1345 ARDEMAGNI ROAD	3/25/1997
3	2082880 VAUGHAN	SARAH	1277 ARDEMAGNI ROAD	3/28/2008
4	2083000 TROJUNGER	BRIAN & DARLA	1415 ARDEMAGNI ROAD	5/17/2006
5	2083380 GREEN	JOSEPHINE	1677 ARDEMAGNI ROAD	5/10/2004
6	2084200 GREEN	JOHNNIE J.	1793 ARDEMAGNI ROAD	5/10/2004
7	3118000 HENSON	BLAKE	1673 S. BARRINGTON ROAD	3/21/1997
8	3118400 ALSTON	JOHN D.	1819 S. BARRINGTON ROAD	3/21/1997
9	2046200 FARMER	CAROLINE	855 DALE ROUSE ROAD	4/8/2004
10	3001990 BILDERBACK	MIKE	1284 ELDRIDGE ROAD	3/21/1997
11	3023100 DUTTON	LARRY	1562 ELDRIDGE ROAD	6/1/1999
12	3024700 ATWOOD	DANIEL	1617 ELDRIDGE ROAD	8/23/2007
13	3025500 ATWOOD	DANIEL	1671 ELDRIDGE ROAD	4/4/2003
14	2102400 SLAUGHTER	KEVIN	846 FOSTER LANE	1/31/2007
15	2104200 DANIEL	MISTY	952 FOSTER LANE	3/15/1997
16	3016000 KOSTELECKY	RANDY	1399 HARMON ROAD	10/11/2001
17	3016800 WILSON	ROBERT & DONNA	1455 HARMON ROAD	3/21/1997
18	3016700 KING	LELON & BARBARA	1477 HARMON ROAD	6/17/2002
19	3015500 SUCHIL	MARK	2534 HOPE LANE	3/15/1997
20	3015600 RODGERS	BARNEY	2561 HOPE LANE	3/11/2002
21	3015700 HODEL	MARK & KATHY	2562 HOPE LANE	12/9/2001
22	3015800 LEE	PATRICK & MARLA	2591 HOPE LANE	7/21/2005
23	3015900 LAWRENCE	MELISSA	2592 HOPE LANE	3/25/1997
24	2085100 GREENLEE	TOMMY	748 JAVELLO ROAD	6/1/2007
25	2085300 GREENLEE	BILLIE	801 JAVELLO ROAD	6/1/2007
26	2085400 KIMREY	HAROLD	871 JAVELLO ROAD	11/1/2001
27	2085500 KIMREY	N.C.	873 JAVELLO ROAD	11/5/2007
28	2095600 BETTENCOURT	B.F.	861 JAVELLO ROAD	3/25/1997
29	2095800 SABATINI	GARY	863 JAVELLO ROAD	3/25/1997
30	2096500 MANTEGANI	IRVIN L -	770 JAVELLO ROAD	8/1/2003
31	2096600 PIERCE	DIANNA	853-B JAVELLO ROAD	8/24/2004
32	2096600 KELSO	RICHARD	883-A JAVELLO ROAD	3/25/1997
33	3118800 MCKIM	MARILYN	706 KELLY AVENUE	3/21/1997

DECEMBER 31, 2009

TONTITOWN CUSTOMERS IN WWA SERVICE AREA

70	305140	NICHOLS	RODNEY	3217	WILDCAT CREEK	6/14/2008
71	305610	EDDLEMAN	KEN	3457	WILDCAT CREEK	1/11/2008
72	305660	REYNOLDS	JERRY	3733	WILDCAT CREEK	4/29/2005
73	305700	COFFMAN	ROD	3737	WILDCAT CREEK	9/15/2008
74	305740	HEISGER	AMY	3739	WILDCAT CREEK	1/3/2005
75	305780	MCDANIEL	TJ & HEATHER	3743	WILDCAT CREEK	8/25/2005
76	305820	SNELGROVE	ROGER & LORI	3741	WILDCAT CREEK	11/3/2008
77	307160	DELOZIER	MIKE	1905	WILDCAT CREEK	3/21/1997

DECEMBER 31, 2009

WASHINGTON WATER AUTHORITY CUSTOMERS

ACCOUNT NUMBER	LAST NAME OR ENTITY	FIRST NAME	SERVICE ADDRESS	MAILING ADDRESS	Date Service Initiated	Date Service Terminated
1 14-00850-00	PETERSOM	BRUCE	21408 DALE ROUSE RD	21408 DALE ROUSE RD, SPRINGDALE, AR, 72762	6/30/2000	
2 14-00850-00	CHETTEL	CHETTEL	20370 DALE ROUSE RD	20370 DALE ROUSE RD, SPRINGDALE, AR, 72762	1/31/2005	
3 14-14253-00	BRUNAS	JIMMY	14310 OSAGE CREEK	14310 OSAGE CREEK, SPRINGDALE, AR, 72762	3/9/2005	
4 14-14259-00	BRUSH CREEK BROTHERS		13836 OSAGE CREEK	PO 34074 PO DRAWER 200, SPRINGDALE, AR, 72765-7080	11/24/2004	
5 14-14255-00	GEORGE, INC		13785 OSAGE CREEK	PO DRAWER 6, SPRINGDALE, AR, 72765	3/15/2001	3/17/2006
6 14-00800-00	BRUSH CREEK BULLETS		13725 OSAGE CREEK	1355 BRUSH CREEK RD, SPRINGDALE, AR, 72762	7/10/2000	
7 14-00800-00	BRUSH CREEK BAPTIST CHURCH #1		1365 BRUSH CREEK	1365 BRUSH CREEK RD, SPRINGDALE, AR, 72762	7/10/2000	
8 14-00800-00	BRUSH CREEK BAPTIST CHURCH #2		1359 BURDIDGE	1778 BURDIDGE, FAYETTEVILLE, AR, 72704	6/17/2001	
9 00-00860-00	SMITH	JAMES	1750 BURDIDGE	1750 BURDIDGE, FAYETTEVILLE, AR, 72704	10/25/2000	
10 00-00860-00	PERDICH	GAUL	1750 HARMON	1750 HARMON, FAYETTEVILLE, AR, 72704	3/7/2005	
11 00-00870-00	HEADROCK	MELISSA	1755 HARMON	1755 HARMON, FAYETTEVILLE, AR, 72704	9/1/2001	
12 00-00850-00	WILKIN	CHARLES				

EXHIBIT D

Hugh Jarrett Legal Description

We acknowledge that neither the mediator nor ADR, Inc. has given us legal advice. We further acknowledge that we have had the right to consult with an attorney at any time and to have an attorney review the terms of this agreement before signing it.

IT IS SO AGREED the 14th day of December, 2009

TONTTOWN WATER & SEWER COMMISSION

By: _____

WASHINGTON WATER AUTHORITY

By: _____

WASHINGTON COUNTY RURAL DEVELOPMENT AUTHORITY

By: _____

JOSH MOORE

HUGH AND NICOLE JARRATT, INTERVENOR

By:  _____

CHARLES AND LINDA HARWELL, INTERVENORS

By:  _____

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IT IS SO AGREED the 14th day of December, 2009.

TONTICOMM WATER & SEWER COMMISSION

By:  _____

WASHINGTON WATER AUTHORITY

By: _____

WASHINGTON COUNTY RURAL DEVELOPMENT AUTHORITY

By: _____

JOSH MOORE

HUGH AND NICOLE JARRATT, INTERVENOR

By: _____

CHARLES AND LINDA HARWELL, INTERVENORS

By: _____