

RESOLUTION NO. 2019- 866R

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

A RESOLUTION APPROVING THE WATER PURCHASE CONTRACT BY AND BETWEEN THE BENTON/WASHINGTON REGIONAL PUBLIC WATER AUTHORITY OF THE STATE OF ARKANSAS AND THE CITY OF TONTITOWN FOR THE CITY OF TONTITOWN, ARKANSAS

WHEREAS, the City of Tontitown, Arkansas desires to enter into a Water Purchase Contract with the Benton /Washington Regional Public Water Authority of the State of Arkansas; 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

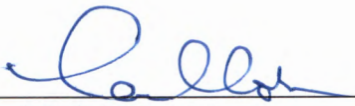
WHEREAS, the Mayor and the City Council have reviewed the Water Purchase Contract and believe the proposed Contract should approved.

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 "A" by and between the Benton /Washington Regional Public Water Authority of the State of Arkansas and the City of Tontitown.

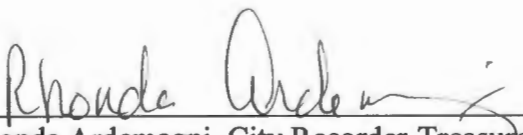
PASSED AND APPROVED THIS 5th **DAY OF** November, 2019

APPROVED:



Paul Colvin, Jr., Mayor

ATTEST:



Rhonda Ardemagni, City Recorder-Treasurer
(SEAL)

Exhibit A

BWRPWA – City of TONTITOWN Water Purchase Contract

This contract for the sale and purchase of water is entered into as of the _____ day of _____, 20____, between the Benton / Washington Regional Public Water Authority of the State of Arkansas, hereinafter referred to as the "Seller" and the City of Tontitown Arkansas hereinafter referred to as the "Purchaser".

WITNESSETH:

WHEREAS, the Purchaser is a Municipality , organized and existing under the laws of the State of Arkansas , and owns and operates a water system and has a need for a supply of treated water; and

WHEREAS, the Seller owns and operates a water treatment plant, transmission and storage system (the "System") with a capacity currently capable of serving the present customers of Seller's System and the estimated number of water users connected to the Purchaser's water system and served by the Purchaser; and

WHEREAS, by Minute Action of the _____ day of _____, 20____, by the Seller,[or by resolution adopted by the Board of Directors of the Seller on the _____ day of _____, 20____ the sale of water to the Purchaser in accordance with the provisions of said Minute Action [or Resolution] was approved, and the execution of this contract carrying out the said water service by Board Chairman, and attested by the Secretary, of the Seller was duly authorized by the Minute Action [or Resolution] by the Seller's Board of Directors; and

WHEREAS, by ordinance or resolution of the governing body of the Purchaser, adopted on the _____ day of _____, 20____, the purchase of water from the Seller in accordance to the terms set forth in the said ordinance or resolution was approved, and the execution of this contract by officers of the Purchaser was duly authorized.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreement hereinafter set forth;

A. The Seller Agrees:

1. **Quantity and Quality** 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. As measured at the point of delivery, Seller is responsible for the consistent delivery of water meeting the currently applicable as well as applicable future water quality standards of United States Environmental Protection Agency and Arkansas Department of Health in such quantities as may be required by the Purchaser up to the maximum amount as specified in §B.1.c of this contract.

2. **Points of Delivery** That water will be furnished at a point of delivery, namely, the master meter(s) located at:

a.) Meter B-37 located at Chambers Springs Road just south of the Illinois River

Emergency failures of pressure or supply due to water transmission line breaks, power failure, flood, fire, or use of water to fight fire, earthquake, or other catastrophe shall excuse the Seller from this provision for such reasonable time as may be necessary to restore service. If greater pressure than that normally available at the delivery point is required by the Purchaser, all costs of providing such greater pressure shall be borne by the Purchaser. The Purchaser also agrees to maintain and replace as needed the required battery pack for the B-37 Mag Meter.

3. **Billing Procedure** To furnish the Purchaser at its designated address, not later than 3 days after the final day of each month, with an itemized statement of the water furnished the Purchaser during the previous billing cycle. Billing cycles occur from a month to month period and are described as follows. The meter read for billing purposes is at the Seller's discretion and can be done by the Seller's or Purchaser's personnel. Billing meter reads will occur on the final day of each month unless this day falls on a Seller's recognized holiday or on a Saturday or Sunday. The Seller or their designee will complete the meter reads one (1) to two (2) days before or after the final day of each month to accommodate these instances

B. The Purchaser Agrees:

1. **Rates and Payment Due** To pay the Seller, not later than the 17th day of each month, for the water delivered in accordance with the following schedule of rates:
 - a. \$2.34 per one thousand (1000) gallons purchased.
 - b. Purchaser understands that payments made after the 17th day of each month will have a 10% penalty, based on the total amount, current and/or past due, imposed on them.
 - c. On July 1, 2010, the Seller's Board of Directors implemented a \$1.50 per active meter assessment on each Purchaser. The assessment designated for Bond payments and Capital improvements will remain in place until the Seller's Board of Directors modifies or rescinds the assessment through Board of Director's action under provision B.e. of this Contract.
 - d. The maximum purchase amount of this contract is Sixty four million five hundred thousand gallons (64.5 MG) per month. Increases in the maximum purchase amount may be completed by amendment and with the approval of a majority of the Seller's Board of Directors.
 - e. Water Purchase Rates will be reviewed by the Seller's Board of Directors from time to time and will be determined by the cost of service to provide potable water to all persons who purchase water on a wholesale basis from the Seller as an aggregate usage and be uniform for each customer class. Cost of service is defined as the Total System Costs including all debt service, the purchase of storage rights from the U.S. Army Corp of engineers, payment of actual operation and maintenance costs, maintenance of all reserves and compliance with all rate covenants required by bonds or other interest bearing indebtedness issued or incurred from time to time by the Seller, and maintenance of other reserves as may be established by the Seller for equipment depreciation, emergencies, and capital expansion.
2. **Additional Connection Points:** For requested connections, new or additional, must be requested to and approved by a majority vote of the Seller's Board of Directors. In addition,

the Purchaser is responsible for all costs associated with the construction of the connection and all construction shall be done according to the Seller specifications. Upon completion of the connection, final written approval of the Seller must be obtained by the Purchaser before placing the new connection point in service. It is further understood that all appurtenances prior to and including the master meters; as well as the vault itself, become the property of the Seller upon approval.

C. It is further mutually agreed between the Seller and the Purchaser as follows:

- 1. Term of Contract** This contract shall extend for a term of 30 years from the date shown on this contract. This contract and its extensions may thereafter be renewed or extended for such term or terms as may be agreed upon between the Seller and Purchaser.
- 2. [For new customers only] Initial Delivery of Water for New Customers.** That thirty (30) days prior to the estimated date of completion of construction of the Purchaser's water distribution system, the Purchaser will notify the Seller in writing of Purchaser's intended date for acceptance of water from Seller.
- 3. Water for Testing for New Connections** When requested by the Purchaser, the Seller will make available to the Purchaser at a specified point of delivery water sufficient for flushing, testing, and other construction purposes in the distribution system of the Purchaser during construction and at a rate set forth in Section B.1.a. for the then adopted rates.
- 4. Inadequacy of Supply** In the event of an extended shortage of water from Beaver Lake, Seller's members and customers shall be reduced or diminished in the same ratio or proportion as the Beaver Lake supply is reduced or diminished to Seller.
- 5. Operation and Maintenance of the System.** The Seller will, at all times, operate and maintain its system in an efficient manner and will take action as necessary to furnish Purchaser with quantities of water required by the Purchaser.
- 6. Service Interruptions – Unscheduled outages,** including inadequate pressure, transmission line leaks, connector line breaks upstream of a master meter, power failure, flood, fire, earthquake, or other catastrophe shall excuse Seller from the contractual provisions set forth herein so long as they shall not result from Seller negligence, and, provided that Seller shall commence reasonable remedial actions on the treatment, transmission, or storage components with timely and effective responses.
- 7. Service Interruptions – Scheduled outages** shall be announced to the Directors of the Seller and customers by Seller no less than five (5) days prior to such outage, and the affected customers shall be fully advised prior to the initiation of the scheduled outage as to

need, means to be utilized, and their respective roles in assisting in ending such outages. Once the scheduled outage has commenced, date and time of actual interruptions in water service, or the treatment plant being "off-line", will be provided to the customers of Seller not less than three (3) hours prior to the interruption or "off-line" condition and notification of return to service shall be within two (2) hours of returning to service. Notification prior to the interruption and upon return to service shall be by voice, electronic means, or facsimile as may be appropriate.

- 8. Modification of Contract** The provisions of this contract pertaining to the schedule of rates to be paid by the Purchaser for water delivered are subject to modification as deemed necessary by the Seller's Board of Directors and enacted by majority vote of the Seller's Board of Directors. Rates must be sufficient at all times to meet the Total System Costs requirements specified in §B.1.d.. Purchaser will be given a minimum of thirty (30) days prior notice of the Seller's impending action with regards to rate increases or decreases
- 9. Successor to the Purchaser** In the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor to the Purchaser, whether the result of legal process, assignment or otherwise, shall succeed to the rights of the Purchaser hereunder
- 10. Expansion of Purchaser's Water Service Area.** Purchaser agrees, as evidenced by the execution of this contract, that prior to expanding its water service into a water service area inconsistent with the applicable service map, Purchaser shall first obtain the approval of those customers of the Seller that are currently serving water in the proposed expanded area. Additionally, Purchaser agrees to obtain the approval of all Seller customers whose water service borders that of Purchaser. Finally, Purchaser agrees, in addition to the other required approvals as set out herein, but also a majority vote of the Board Directors of the Seller in the affirmative to change the Service Area.
- 11. Events of Default.** Each of the following shall constitute an "Event of Default" hereunder:
 - a. The Purchaser's failure to make any required payment to the Seller as required by the provisions of this contract;
 - b. Should any party fail to materially perform or comply with an covenant or agreement contained in the contract or any other exhibit or attachment hereto or any other agreement of whatever nature existing between the Purchaser and the Seller; and / or
 - c. Should any party file for or otherwise seek bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation or seek other

relief from creditors including applying for, consenting to or acquiescing in the appointment of a trustee, receiver, or other custodian for it or any of its property.

12. Remedies to Seller upon Occurrence of Event of Default. Upon the occurrence of Event of Default, and after the delivery of water to Purchaser. Seller shall possess the immediate right to exercise each and all of the following remedies:

- a. To initiate litigation against the Purchaser in order to collect those sums of money owed and outstanding by the Purchaser to the Seller or the Seller's assigns;
- b. To demand the continued payment on a monthly basis of amounts required to be paid during the remaining term of this contract; and / or
- c. To exercise all other remedies of every nature which may be available to the Seller either at law or in equity which may arise as a result of the Purchaser's default hereunder.

13. Limited Obligation of Purchaser [for Cities] Notwithstanding anything herein to the contrary, the payment obligation of the Purchaser under this contract shall be limited to revenues derived from the Purchaser's water system. The contract shall not be interpreted in any manner to be a guarantee of any indebtedness of the Seller.

14. Counterparts. This contract may be executed in any number of counterparts with each executed counterpart constituting an original but all of which together shall constitute one and the same instrument.

15. Contract Supersedes all Prior Agreements This contract replaces any and all such previous contracts between the Seller and the Purchaser.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed.

SELLER

Benton Washington Regional Public
Water Authority of the State of Arkansas

BY _____

Title: Chairman

Attest: _____

Secretary

PURCHASER

City of Tontitown

BY _____

Title:

Attest: _____

Title: