

**RESOLUTION NO. 104-20**

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT FOR INTERCONNECTION OF MUNICIPAL WATER SYSTEMS BETWEEN THE CITIES OF TONTITOWN AND SPRINGDALE, ARKANSAS.**

**WHEREAS**, Springdale is a city of the first class organized and operating under the laws of the State of Arkansas;

**WHEREAS**, Springdale owns and operates municipal water system and operates its water system through the Springdale Water Utilities Commission ("the Commission") which is the governing body for the municipal water and sewer utility for the City of Springdale;

**WHEREAS**, Tontitown is a city of the first class organized and operating under the laws of the State of Arkansas;

**WHEREAS**, Tontitown owns a municipal water system and operates its water system through its Water and Sewer Utilities Department;

**WHEREAS**, Springdale and Tontitown desire to operate and maintain certain existing interconnections between their respective water systems, and to provide a mechanism for construction of any needed additional interconnections, for the purposes of providing water from one water system to the other in cases of emergency or when maintenance activities with respect to a system would require a water system to be temporarily placed out of service, and for other lawful purposes;

**WHEREAS**, ensuring adequate provision of water supply needs during such periods of shortage or outage is prudent and in the best interests of each city;

**WHEREAS**, Springdale and Tontitown desire to enter into an Agreement in accordance with Ark Code. Ann. §14-54-101(4), Ark Code. Ann. §14-234-108, Ark. Code Ann. §25-20-104(h), and other applicable law, setting forth their respective obligations and responsibilities with regard to construction, operation and maintenance of the interconnections.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the Mayor and City Clerk are hereby authorized to execute the Agreement for Interconnection of Municipal Water Systems (attached hereto as Exhibit "A") between the City of Springdale, Arkansas, and the City of Tontitown, and said agreement is approved upon ratification of said agreement by the City of Tontitown and the Springdale Water & Sewer Commission.

**PASSED AND APPROVED** this 25<sup>th</sup> day of August, 2020.

ATTEST:

  
Denise Pearce, City Clerk

APPROVED:

  
Ernest B. Cate, City Attorney

  
Doug Sproule, Mayor

**AGREEMENT FOR  
INTERCONNECTION OF MUNICIPAL WATER SYSTEMS**

This Agreement for Interconnection of Municipal Water Systems (“this Agreement”) is entered into by and between the City of Springdale, Arkansas, by and through the Springdale Water Utilities Commission of the City of Springdale, Arkansas (hereinafter “Springdale”), and the City of Tontitown, Arkansas, (hereinafter “Tontitown”). Springdale and Tontitown are each referred to herein individually as a “party” and collectively as the “parties” to this Agreement.

**Recitals**

WHEREAS, Springdale is a city of the first class organized and operating under the laws of the State of Arkansas; and

WHEREAS, Springdale owns and operates municipal water system and operates its water system through the Springdale Water Utilities Commission (“the Commission”) which is the governing body for the municipal water and sewer utility for the City of Springdale; and

WHEREAS, Tontitown is a city of the first class organized and operating under the laws of the State of Arkansas; and

WHEREAS, Tontitown owns a municipal water system and operates its water system through its Water and Sewer Utilities Department; and

WHEREAS, Springdale and Tontitown desire to operate and maintain certain existing interconnections between their respective water systems, and to provide a mechanism for construction of any needed additional interconnections, for the purposes of providing water from one water system to the other in cases of emergency or when maintenance activities with respect to a system would require a water system to be temporarily placed out of service, and for other lawful purposes; and

WHEREAS, ensuring adequate provision of water supply needs during such periods of shortage or outage is prudent and in the best interests of each city; and

WHEREAS, Springdale and Tontitown are authorized to enter into this Agreement in accordance with Ark Code. Ann. § 14-54-101(4), Ark Code. Ann. § 14-234-108, Ark. Code Ann. § 25-20-104(h), and other applicable law; and

WHEREAS, Springdale and Tontitown desire to enter into this Agreement setting forth their respective obligations and responsibilities with regard to construction, operation and maintenance of the interconnections.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual agreements and covenants of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

1. **Recitals Incorporated.** The above recitals are material and incorporated into this Agreement.
2. **Definitions.** As used in this Agreement, the following terms have the following meanings, except where the context clearly indicates a different meaning.

*Interconnection* shall mean any water main from each party's water system exclusively serving the metering facility including (but not limited to) valves, flow meters, ancillary piping, gauges, and sensors as well as equipment housing including (but not limited to) vaults, buildings, heaters, pumps, electrical systems, controls, and telecommunications which shall connect the water system of Springdale and the water system of Tontitown and shall provide for the supply of water between the two systems. The terms "interconnection" or "interconnections" shall refer to any interconnection subject to this Agreement.

*Emergency* shall mean an unexpected condition related to or impacting a water system which affects the ability of the water system to deliver adequate quantities of safe water to its customers or to fulfill needs. Examples of such emergencies include, but are not limited to, loss of pressure in the distribution system, loss of electricity, line breaks or other damage, pump failures, catastrophic infrastructure failure, failure of the source or treatment facility or parts thereof, voluntary or mandatory water conservation efforts, or the known or suspected introduction of any contaminant into the water system.

*Maintenance* shall mean any scheduled action reasonably necessary or desirable to ensure the efficient and economical operation and use of a municipal water system.

*Period of Maintenance* shall mean that period of time during which a water system facility must be temporarily placed out of service in order to conduct any maintenance activity.

*Water system* shall mean and include the water mains, hydrants, meters, pumps, valves, stand pipes, storage tanks, pumping tanks, intakes, reservoirs, booster stations, purification plants, treatment facilities or other equipment, facilities, or materials of whatsoever kind or nature required to obtain and provide a supply of water for human consumption or needs.

### **3. Existing Interconnections**

As of the date of this Agreement, there exist three (3) interconnection(s) between the Springdale water system and the Tontitown water system:

- a. Master meter located at Highway 412 and Jones Road.
- b. Master meter located on Highway 112 and Kissinger Road.
- c. Master meter located on Highway 112 and Barrington Road.

These existing interconnections are hereby made subject to this Agreement.

#### **4. Maintenance and Interconnection of Water Systems**

4.1 Springdale and Tontitown shall jointly develop a schedule of regular inspections, testing, and maintenance of the interconnections, which shall occur not less than every six months.

4.2 If during the term of this Agreement, any interconnection is not functioning properly or is otherwise in need of maintenance and/or repair, the parties may, by mutual agreement, repair the interconnection to ensure that the interconnection is in good working order and there is no interruption in use. All such maintenance, repair or replacement shall be made by and under the supervision of the parties' authorized representatives.

4.3 Springdale and Tontitown shall equally share all costs of the continuity, care, conservation, preservation, and operation and maintenance of the interconnections, including but not limited to the testing, inspections, maintenance, repair or replacement of their portions of the interconnections.

4.4 Springdale shall be responsible for the maintenance and operation of its water system to the point of any interconnection in accordance with the requirements of the Arkansas Department of Health and any other governmental agency with jurisdiction over such water system.

4.5 Tontitown shall be responsible for the maintenance and operation of its water system to the point of any interconnection in accordance with the requirements of the Arkansas Department of Health and any other governmental agency with jurisdiction over such water system.

4.6 Springdale and Tontitown shall test the accuracy of the meters provided hereunder every year or at such other interval as agreed by the parties. If any meter does not test within the accuracy parameters established by the manufacturer, the meter shall be repaired or replaced. Costs of testing and meter repair or replacement shall be shared equally between the parties.

4.7 Only authorized representatives of each party shall have access to the interconnections. Each party shall provide to the other a list of individuals authorized to have access to the interconnections.

#### **5. Use of Interconnections**

##### *Emergency Use*

5.1 In the event of an emergency affecting the water system of either party hereto, the party experiencing the emergency may use one or more of the interconnections upon notice to the other party as described below. Neither party shall declare an emergency on the basis of "voluntary or mandatory water conservation efforts" if the conditions causing the "voluntary or mandatory water conservation efforts" are being experienced by both parties (for example, water

rationing by the Beaver Water District with resulting curtailment of water to both parties to this Agreement).

5.2 *Declaration of Emergency by Springdale.* In the event of an emergency occurring in the Springdale Water System that will necessitate use of any interconnections, the Executive Director of the Springdale Water Utilities or the duly authorized representative will immediately inform the Mayor of Springdale who may declare an emergency. The Mayor of Springdale or the Mayor's duly authorized representative shall inform the Mayor of Tontitown of the emergency and that the provisions of this Paragraph 5 are being invoked. Upon declaration of an emergency by the Mayor of Springdale, the Executive Director of the Springdale Water Utilities or the duly authorized representatives will notify the Water Utilities Director of the City of Tontitown by telephone and email of the emergency and will specify the interconnection or interconnections to be used. Notice to Tontitown shall be made to:

Public Works Director  
City of Tontitown  
P.O. Box 305, Tontitown, Arkansas 72770  
Phone: (479)361-2700  
E-mail: [pwdirector@tontitownar.gov](mailto:pwdirector@tontitownar.gov)

or such other person or contact information as may be specified from time to time by Tontitown. In the event of failures of telephone, electronic mail, or other regular methods of communication, notice shall be made by emergency radio transmission, including through the Arkansas Wireless Information Network (AWIN) system, or written hand delivery.

5.3 *Declaration of Emergency by Tontitown.* In the event of an emergency occurring in Tontitown's water system that will necessitate use of any interconnections, the Public Works Director of the City of Tontitown or the Director's duly authorized representative will immediately inform the Mayor of Tontitown who may declare an emergency. The Mayor of Tontitown or the Mayor's duly authorized representative shall inform the Mayor of Springdale of the emergency and that the provisions of this Paragraph 5 are being invoked. Upon Declaration of an emergency by the Mayor of Tontitown, the Public Works Director of the City of Tontitown or the Director's duly authorized representatives shall notify the Executive Director of the Springdale Water Utilities by telephone and email of the emergency and will specify the interconnection or interconnections to be used. Notice to Tontitown shall be made to:

Executive Director  
Springdale Water Utilities  
P.O. Box 769  
Springdale, Arkansas 72765  
Phone: (479) 751-5751  
E-mail: [hward@springdalewater.com](mailto:hward@springdalewater.com)

or such other person or contact information as may be specified from time to time by Springdale. In the event of failures of telephone, electronic mail, or other regular methods of communication,

notice shall be made by emergency radio transmission including through the Arkansas Wireless Information Network (AWIN) system, or written hand delivery.

*Use for Maintenance under Emergency Conditions*

5.4 Whenever a party may be required to provide maintenance to its water system or any part thereof and such maintenance requires the water system or part thereof to be taken out of service, that party is authorized to use the interconnections to make a temporary connection to the water system of the other party and to use of the other party's water system for the period of maintenance as authorized by this Agreement.

5.5 (i) The party desiring to use the interconnections during a period of maintenance shall provide at least thirty (30) days written notice to the other party of its intent to use the interconnections. Such notice shall state the maintenance that will be performed, the name and address of the contractor who will be performing such maintenance, the anticipated length of the period of maintenance, the interconnections to be used, and the date upon which the temporary connections to the other party's water system will be made. The party receiving the notice shall promptly acknowledge receipt of the notice. The party desiring to use the interconnection during a period of maintenance shall not use the interconnections until it confirms that its notice has been received by the other party.

(ii) The party receiving the notice may reject the notice and notify the party desiring to use the interconnections during a period of maintenance that use of the interconnections during the time frame specified in the notice will result in an adverse impact upon the operations of the party receiving the notice or the ability of the party receiving the notice to supply water to its own customers. In such event, the party desiring to use the interconnections during a period of maintenance will not use the interconnections. However, the party receiving the notice will specify another time period during which the interconnections can be used.

*Other Conditions for Use of the Interconnections*

5.6 Except as otherwise provided herein, no temporary connection to the water system of the other party shall be made unless authorized representatives of both parties are present at the time of the temporary connection. Authorized representatives of each party shall read the interconnection meter at the time of temporary connection and at the time of shut off of the temporary connection.

5.7 Use of the interconnection shall be allowed for only so long as may be absolutely necessary to allow the party using the interconnection to complete the necessary maintenance, or, in the case of an emergency, to promptly restore service to its water system.

5.8 Each party shall use its best efforts to supply the other party with the amount of water necessary during the maintenance or emergency. Under no circumstances, however, shall either party be required to supply water or the use of its water facilities if such action would have an adverse impact upon its operations or the ability to supply water to its own customers. Neither

Party shall be liable for any damages to the other resulting from the failure to supply water or for any interruption of the water supply through an interconnection.

5.9 The interconnections shall be operated and maintained in such a manner that neither party is placed in jeopardy of failing to meet the regulations of any agency or governmental authority having jurisdiction over the operation of a public water system.

## **6. Water Usage and Metering**

6.1. The parties shall maintain a flow meter at each interconnection for purposes of measuring the amount of water provided to the other party under this Agreement. Each meter will be of such a type that permits flow and metering in both directions to each party's water system. The party providing water to the other party pursuant to this Agreement shall invoice the other party within thirty (30) days of providing water pursuant to this Agreement and shall invoice the other party no less than every thirty (30) days if water continues to be provided pursuant to this Agreement. The party providing water through this Agreement shall bill the other party at the wholesale rate per thousand gallons that the providing party paid for the water the providing parties wholesale provider, either the Beaver Water District, the Benton-Washington County Regional Public Water Authority or successor.

## **7. Term and Termination**

7.1 *Term of Agreement.* The term of this Agreement begins when it is signed by both parties hereto ("effective date") and, unless otherwise terminated in accordance with other provisions of this Agreement, this Agreement shall remain in full force and effect for a term of ten (10) years from and after the effective date, and shall thereafter be renewed for successive five (5) year terms unless either party gives the other party written notice of termination not less than ninety (90) days prior to the end of the then current term.

7.2 *Termination of Agreement for Cause.* This Agreement may be terminated by either party in the event the other party fails to perform its obligations under this Agreement. Prior to termination for cause, the party asserting a breach shall give the other party written notice describing the other party's breaches. The party against whom a breach is asserted shall then have thirty (30) days to cure all breaches. If that party's breaches are not cured within this time limit, then the party asserting the breach may proceed to terminate this Agreement by giving written notice of termination to the other party. Termination is not a party's exclusive remedy and either party may further seek all other legal and equitable remedies available to it arising from the other party's breach.

7.3. *Termination of Agreement to Comply with Law or Obligations.* This Agreement may be terminated by either party at any time in the event that party determines, in its sole discretion, that this Agreement will violate any applicable law or regulation, or constitute or cause a condition of default or breach on the part of that party, its commissions, boards, or other public bodies, under any other contracts or agreements.

## 8. Additional Provisions

8.1 The parties may extend the deadlines and timelines specified in this Agreement by mutual agreement expressed in writing in a document signed by both parties hereto.

8.2 Each party agrees to comply with all State of Arkansas water conservation regulations and to implement a water conservation program during the time that any interconnection is in use.

8.3 The water delivered by each party to the other under this Agreement shall be of such quality as to meet or exceed any water quality standards enacted or promulgated by the Department of Health of the State of Arkansas, the Environmental Protection Agency, the Arkansas Department of Environmental Quality (ADEQ) or such other state or federal agency or agencies that have jurisdiction over such matters.

8.4 Each party shall take adequate measures to ensure the security of the interconnections. Should any damage occur to an interconnection due to a failure of a party to ensure such security, that party shall be liable for the cost of repairing any damages occurring to the interconnection due to such failure.

8.5 *Tort Immunity.* Nothing in this Agreement shall operate as, or be construed as, a waiver, limit, modification, nullification, or alteration, of the tort immunity and other rights and immunities granted to the parties pursuant to Ark. Code. Ann. §21-9-301 and other applicable law.

8.6 *No Joint Venture; No Third-Party Beneficiaries.* This Agreement is made at arm's length between independent contracting parties. Nothing in this Agreement shall be deemed to create a joint venture, partnership, tenancy in common, joint tenancy, or any similar relationship between the parties or require either party to engage in further business relationships between the parties. The parties further agree that there are no third-party beneficiaries of this Agreement and that no person or entity, other than the parties hereto shall have standing to enforce the terms of this Agreement.

8.7 *Certification of Compliance with Ark. Code. Ann. § 25-1-503.* Pursuant to Ark. Code. Ann. § 25-1-503, each of the parties hereto certifies that it is not currently engaged in a boycott of Israel. Each party further agrees for the duration of the Agreement not to engage in a boycott of Israel.

8.8 *No Assignment of Rights or Delegation of Duties.* Neither party shall assign its rights under this Agreement without the express written permission of the other party. Nor shall either party delegate its duties under this Agreement without the express written permission of the other party.

8.9 *Compliance with Law.* Each of the parties hereto is responsible for securing whatever permits, licenses, permissions, certificates, etc. required for the activities undertaken by that party pursuant to this Agreement. Each of the parties hereto states that it will at all times operate in compliance with all applicable, local, state and federal laws and/or regulations and



will not act under this Agreement to cause the other party to violate any applicable local, state or federal laws or regulations.

8.10 *Notices*. Any notice or communication required or permitted (other than routine communications between the parties' representatives for coordination, scheduling, and the like, which may be sent by electronic mail or made by telephone) to be given shall be in writing and shall be deemed to have been given (i) when received if personally delivered; (ii) three (3) days after being sent by certified mail, return receipt requested, postage prepaid; or (iii) one (1) day by express courier (e.g. FedEx), if receipt is confirmed by the delivery agent, at the following addresses (or such other address as may be designated).

If given to Springdale, notice shall be sent to:

Mayor, City of Springdale, Arkansas  
201 Spring Street  
Springdale, Arkansas 72764

with copy to:

Executive Director  
Springdale Water Utilities  
P.O. Box 769  
Springdale, Arkansas 72765

If given to Tontitown, notice shall be sent to:

Mayor, City of Tontitown, Arkansas  
P.O. Box 305  
Tontitown, Arkansas 72770

with copy to

Public Works Director  
City of Tontitown  
P.O. Box 305  
Tontitown, Arkansas 72770

Emergency Notifications shall be sent as described in Paragraph 5 above.

8.11 *Choice of Law and Venue*. This Agreement shall be governed by the laws of the State of Arkansas without regard to its principles of conflict of laws. Venue for any action concerning this Agreement shall be the state or federal courts embracing Washington County, Arkansas.

8.12 *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.

8.13 *Complete Agreement.* This Agreement constitutes the entire agreement between the parties, and it 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 concerning this subject matter are hereby rescinded.

8.14 *Severability.* If any phrase, clause, sentence or paragraph of this Agreement 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 Agreement.

8.15 *Each Party Relying on its Own Counsel.* Each party hereby represents and warrants that it has received the advice of its own legal counsel in connection with the negotiation and preparation of this Agreement (or that it has had the opportunity to do so) and that it is not relying upon the other party or the other party's counsel in reaching its decision to enter into this Agreement.

8.16 *Each Party Deemed a Drafter of the Agreement.* Each party hereby represents that they have cooperated in drafting and preparing this Agreement, and/or have had the opportunity to do so. Hence, no party will construe against any other party any ambiguity in this Agreement. Each party to this Agreement represents to the other that it has not relied upon any statement of any other party in executing this Agreement, except as expressly stated in this Agreement.

8.17 *Multiple Counterparts.* This Agreement may be executed in two counterparts, each of which shall be an original and which together constitute one and the same instrument.

8.18 *Annual Review.* The parties will conduct a review of this Agreement during each year this Agreement is in effect in order to familiarize each party's personnel with the contents of this Agreement, and to update administrative information such as contact information, addresses, and personnel involved in implementing the Agreement.

[Signatures on the following page]

IN WITNESS WHEREOF, the parties hereto have executed these presents by their respective authorized representatives, having been authorized to do so by appropriate authorizing resolution.

**CITY OF SPRINGDALE, ARKANSAS**

By: Doug Sprouse  
Doug Sprouse, Mayor  
CITY OF SPRINGDALE

Attest: Denise Pearce  
Denise Pearce, City Clerk

Date: August 25, 2020

**THE SPRINGDALE WATER UTILITIES, CITY OF SPRINGDALE ARKANSAS**

By: \_\_\_\_\_,  
Chairman

Attest: \_\_\_\_\_,  
Secretary

Date: \_\_\_\_\_

**CITY OF TONTITOWN, ARKANSAS**

By: \_\_\_\_\_  
Paul Colvin, Jr., Mayor

Attest: \_\_\_\_\_  
Rhonda Ardemagni, City Clerk-Treasurer

Date: \_\_\_\_\_