

CONTRACT # _____
ORDINANCE # 090997
EFFECTIVE DATE _____

WATER PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 12th day of Jan, ²⁰¹⁰~~2008~~ by and between the PUBLIC WATER SUPPLY DISTRICT NO. 8 OF CLAY COUNTY, MISSOURI, a political subdivision of the State of Missouri, hereinafter referred to as "BUYER", and KANSAS CITY, MISSOURI, a municipal corporation of the State of Missouri, hereinafter referred to as "CITY",

WITNESSETH:

WHEREAS, BUYER desires to purchase water and CITY is willing to deliver and sell water to the BUYER in accordance with the terms and condition set forth herein; and

WHEREAS, BUYER desires to contract for a maximum quantity of 0.3 million gallons per day (MGD); and

WHEREAS, CITY does not have sufficient water facilities at or near BUYER necessary to deliver and sell water to BUYER; and

WHEREAS, BUYER is willing to construct at BUYER's expense all necessary water facilities to allow for delivery of water from CITY's system; and

WHEREAS, BUYER is willing to construct at BUYER's expense a metering / regulating facility to purchase water from CITY; and

WHEREAS, CITY is willing to deliver and sell water to BUYER in accordance with the terms and conditions set forth herein;

NOW THEREFORE:

For and consideration of the mutual covenants, agreements, and conditions contained herein, it is agreed by and between BUYER and CITY as follows:

ARTICLE I GENERAL CONDITIONS

1. **Applicable Law:** This is a cooperative Agreement authorized by Missouri Revised Statutes Section 70.210 et seq (1994). This Agreement shall be governed by and construed according to the laws of the state of Missouri
2. **Construction Records:** BUYER agrees to furnish to CITY one (1) set of BUYER'S

maps of its existing distribution system within thirty (30) days following the effective date of this Agreement. BUYER agrees to furnish to CITY one (1) set of updated maps of its distribution system whenever there are major modifications made to the system or upon request by CITY.

3. **Term of Contract:** This Water Purchase Agreement shall continue in full force and effect, except as otherwise provided herein, for a period of Twenty (20) years from and after its effective date.
4. **Contract Binding:** This Agreement shall be binding upon the parties hereto, their successors and assigns, whether the result of legal process, assignment, or otherwise, when finally executed and fully approved.
5. **Director Defined:** References herein to CITY'S Director of Water Services ("Director") and to CITY'S Water Services Department ("WSD") shall be construed to mean that person and department and/or any successor CITY title holder and CITY department name.
6. **Assignment:** Neither CITY nor BUYER shall sell, assign, transfer, or otherwise convey any of their rights under this Agreement without the prior and expressed written consent of the other party. Each party may, in its sole discretion, refuse to consent to any proposed sale, assignment, transfer, or other conveyance.

ARTICLE II POINTS OF SERVICE

1. **Locations:** BUYER will purchase water from CITY, in accordance with the provisions of this agreement, at the following metering facilities:
 - a. NE 140th Street and Rhodus Road, Clay County, Missouri
 - b. Other locations as may be mutually agreed upon by BUYER and CITY.
2. **Repurchase Locations:** CITY and BUYER agree that CITY may repurchase water from BUYER at locations as may be mutually agreed upon by CITY and BUYER.
3. **Emergency Connections:** BUYER may purchase water from other sources during an emergency or planned outage of CITY source. An emergency is defined as a short- or long-term service interruption or curtailment in available supply. Emergency connections are with the following:
 - a. City of Kearney, MO 64060

BUYER agrees to provide notice to CITY of future emergency connections within thirty (30) days of establishing such connections.

ARTICLE III

SERVICE CONDITIONS

1. **Water Delivery:** CITY agrees, subject to the following conditions, to deliver water to BUYER in such quantities as necessary to satisfy the provisions of this contract:
 - a. **Water Quantity Purchased:** BUYER and CITY understand and agree that the amount of water delivery and purchase referred to herein shall be based on the combined total of water delivered through the metering facilities at the locations defined in Article II herein. CITY agrees to deliver water at a maximum quantity on any day of 0.3 MGD, subject to the conditions in this Article.
 - b. **Delivery Obligation:** The extent of CITY'S obligation to deliver water to BUYER shall not exceed the capacity of the facilities of CITY at any point of service or the provisions of this Article. The total quantity of water delivered to BUYER shall be limited to meet these criteria by regulatory devices at or near the points of service to BUYER. The settings of said regulatory devices shall be determined by the Director in a manner consistent with this Article.
 - c. **Curtailment:** During any shortage of water, CITY may apportion the sale of water among its wholesale customers and for this purpose may adjust accordingly the aforesaid regulatory devices at or near the points of service.
 - d. **Control System:** BUYER agrees to install a control system which varies the flow rate in incremental steps, to maintain sufficient equalizing storage, and to minimize large changes in flow rate which are detrimental to the efficient operation of CITY's Water System and may adversely affect other customers as well as the customers of BUYER. The control system must be able to reduce the flow rate to zero during specific hours of the day coincident with peak demands on the CITY's system. The CITY has the discretion to require that the flow be reduced or discontinued during the period from 5:00 P.M. to 11:00 P.M. during peak demand periods. If, at the discretion of CITY, the flow rate is reduced to zero (0), the maximum rate of delivery shall be increased to allow for delivery of the maximum quantity per day.
 - e. **Operating Records:** BUYER agrees to provide, upon written request from CITY, any operations records needed to establish that said system is being operated to minimize flow rate fluctuations.
2. **Meter Readings:** The frequency of meter readings for each of the metering facilities shall be determined by the CITY. The billing periods for each metering facility shall be monthly. CITY shall submit a separate monthly bill to BUYER for water purchased through each of the aforesaid metering facilities.
3. **Payment Delinquency:** BUYER agrees to be bound by all the ordinances of the CITY pertaining to the purchase and use of water and, in particular, authorizes CITY to shut off the supply of water to BUYER for any delinquency of more than sixty (60) days in the payment of any bill for water furnished to BUYER.

- 4. Sole Source:** BUYER and CITY agree that CITY shall be the sole source of water for the BUYER. BUYER may use other sources of supply during an emergency or any planned outage of the CITY source.
- 5. Storage:** BUYER agrees that during normal and peak operating periods, storage facilities shall be available and used to the fullest extent for the purpose of offsetting peak demands.
- b. Emergency Storage:** BUYER understands and agrees that BUYER is responsible for constructing and maintaining emergency storage equal to an average day's consumption during the term of this contract. An average day's consumption is defined as the total consumption for the previous calendar year divided by the number of days in that year.
- b. Existing Storage:** BUYER has existing, effective storage of 250,000 gallons. If such storage is maintained, BUYER will qualify for the Suburban Meter Rate/Wholesale Customer/Unrestricted schedule, subject to paragraph 6 of this Article.
- c. Equalizing Storage:** BUYER acknowledges that in addition to meeting the requirements of the sections above, an additional amount of storage equal to a minimum of one-half (1/2) of average day consumption (*i.e.*, "equalizing storage") is required to qualify sole source customers for the Suburban Meter Rate/Wholesale Customer/Restricted schedule, subject to paragraph 6 of this Article.
- 6. Water Rate:** It is understood that water rates are established by Chapter 78 of the Code of Ordinances of CITY and may be amended from time to time by the Council of the CITY. CITY shall provide BUYER prior written notice of such increase or decrease.
- 7. Water Usage:** BUYER agrees that the water purchased under the terms of this Agreement shall be used solely within the boundaries now served by BUYER, or as they may be extended in the future, or as provided in paragraph 8 herein.
- 8. Water Usage Resale:** Any resale of water from CITY to customers outside BUYER's boundaries shall require the prior written notification to the Director, except that BUYER may sell such water to those individual residences which are situated in such a manner that they are contiguous to BUYER'S boundaries and provided they are outside the corporate limits of the CITY. BUYER may sell such water to those individual residences situated within the corporate limits of CITY which are situated in such a manner that they are also contiguous to BUYER'S boundaries, subject to the prior written approval of the Director.
- 9. Contract Termination – CITY.** BUYER understands and agrees that if it fails to keep and perform every covenant, condition and obligation in this contract, including timely payment of any water purchase bill, and BUYER has not cured such violation within thirty (30) days of written notification of such violation, CITY may terminate this Agreement upon sixty (60) days written notification to BUYER, unless BUYER

has cured its violation within that period. The CITY may terminate this agreement for convenience after one (1) year written notification to the BUYER.

10. Contract Termination – BUYER: BUYER and CITY agree that BUYER may cease its purchase of water through any, but not all, of the points of service provided for in Article II herein after one (1) year written notification to the Director without contract termination. BUYER may terminate this agreement after one (1) year written notification to the Director.

11. Water Quality Requirements – CITY: CITY agrees that the water delivered to BUYER at the aforesaid metering facilities shall meet or exceed the minimum water quality standards of the Missouri Department of Natural Resources. BUYER agrees to hold CITY harmless to the extent permitted by the laws of the State of Missouri from any and all claims which may arise due to the physical, chemical, or biological quality of water in BUYER'S system and further agrees to hold CITY harmless for damages or injuries sustained arising out of any operation connected with its water system.

12. Access to Water Quality Analyses: CITY agrees to provide BUYER with the results of any water quality analyses required by applicable Federal or Missouri state statutes or regulations.

13. Water Quality Requirements – BUYER: BUYER agrees and understands that BUYER is solely responsible for performing all water quality testing and related testing within BUYER'S system as presently required by regulatory authorities or as required anytime in the future. BUYER understands that CITY will have no obligation whatsoever regarding the above testing and agrees to hold CITY harmless to the extent permitted by the laws of the State of Missouri from any and all claims which may arise due to said testing unless it can be proved that such is due to the negligence or fault of CITY.

14. Repurchase: CITY shall have the right during the term of this Agreement to purchase water from BUYER at points of service as set forth in Article II herein. CITY agrees to pay for water purchased under this Agreement in accordance with that part of BUYER'S rules and regulations governing the sale of water. It is understood that the cost of water and related charges may be amended from time to time by BUYER and that CITY recognizes the validity of these changes. In the event BUYER has no rules or regulations governing the sale of water, CITY agrees to pay BUYER for its purchase of water at the then-current restricted rate.

15. Repurchase – Water Quality: BUYER agrees that water delivered to CITY at the aforesaid points of service shall be of the same quality as that which is furnished to BUYER'S individual customers.

16. Repurchase – Access to Water Quality Analyses: If BUYER sells water to CITY, BUYER agrees to provide CITY with the results of any water quality analyses required by applicable Federal or Missouri state statutes or regulations, if requested by CITY.

- 17. Water Quality Testing:** CITY is solely responsible for performing all water quality testing and related testing within CITY'S system as presently required by regulatory authorities or as required anytime in the future.

ARTICLE IV SYSTEM IMPROVEMENTS / CLAY COUNTY TRANSMISSION MAIN

- 1. General:** BUYER and CITY agree that specific system improvements were necessary to transport water from CITY's existing system to the BUYER's point of service at NE 140th Street and Rhodus Road. CITY will reserve capacity in the Clay County Transmission Main ("Main") to serve BUYER. BUYER shall pay capacity charge to reserve capacity in the main as specified in Article VI.
- 2. Easements / Property:** BUYER agrees to be solely responsible for the acquisition of all easements, permits or land necessary to accommodate construction of all infrastructure to be owned by BUYER. BUYER also agrees to pay all costs related to said easement and permit acquisitions for such infrastructure. BUYER agrees to grant CITY no-cost encroachment and easement rights upon BUYER's easements or properties. CITY will provide the forms to BUYER for signature to grant these rights.
- 3. BUYER's Exclusive Costs:** BUYER agrees to be solely responsible for the design and construction costs of any metering facility and appurtenance thereto, the costs for any mains constructed by BUYER to connect to CITY's Main including all piping, fittings and valves necessary for the connection, and the costs of obtaining property or easements for any metering facility or connection to the Main. There is no existing outlet on the Main at the BUYER's proposed metering location.

ARTICLE V METERING & REGULATING FACILITIES

- 1. Specifications:** BUYER agrees to have Metering Facilities at the points of service identified in Article II designed and constructed in complete accordance with WSD's "Specifications for Water Main Extensions and Relocations" dated September, 2006 and "Regulations of the Water Services Department" dated May, 2008, including any supplements to or revisions thereof, and any other requirements of the WSD. The drawings and specifications for these Metering Facilities shall be submitted by BUYER to CITY for review and approval in writing by the Director prior to the start of any construction. Except for the meter and regulators as provided in Paragraph 5 below, BUYER shall maintain existing Metering Facilities in accordance with WSD's Specifications and Regulations, including any supplements or revisions thereto, and any other requirements of the WSD.
- 2. Easements, Rights-of-Way or Leases:** BUYER agrees to be solely responsible for the acquisition of the easements or land necessary to accommodate these Metering Facilities, including provisions for CITY's permanent access to them. Said easements or land, and maintenance of such, shall reside with BUYER.

3. **Construction Records:** BUYER agrees that, following CITY's approval of the drawings and specifications for construction of a Metering Facility, BUYER will provide to CITY reproducible Mylar drawings and either Microstation or DXF files, on 3 1/2" magnetic disk media, which have been verified to contain all of the elements of the original drawings. BUYER further agrees that the aforesaid materials shall become and remain the property of CITY.
4. **Construction:** BUYER agrees that, upon issuance of a Water Service Permit by the WSD, BUYER shall proceed to construct the Metering Facilities complete with valves, fittings, meters, pressure regulators, power supply, and all other appurtenant items, including access to the site, and understands that BUYER will pay all costs related to said construction including, but not limited to, land and all rights-of-way, engineering, procurement and processing of permits required by any governmental body, actual construction costs, and all inspection costs. BUYER recognizes that CITY shall have no financial obligation therefore, except issuance of the aforesaid Water Service Permit, which shall be issued to BUYER without payment of any permit fee.
5. **Ownership, Repair, Adjustments:** BUYER agrees that any meters and regulators to be installed in any Metering Facility shall be of a size and type to be determined by Director. BUYER understands and agrees that, upon acceptance by CITY, the meters and regulators in these Metering Facilities shall become, and shall remain the property of CITY, and CITY shall have the right to remove, inspect, test, repair, or replace any meter or regulator at any time. When such inspection indicates that any meter or regulator is measuring inaccurately and when this discrepancy can be corrected by repair, then CITY shall repair the defective meter or regulator and shall bear the cost thereof. In the event that accuracy cannot be restored by repair, then CITY shall replace the meter or regulator at its expense. BUYER shall also have the right to request removal and testing of any meter or regulator by an independent expert, at the expense of BUYER, in order to determine the accuracy of the meter or regulator. If a meter test shows that the meter is measuring with an accuracy of $\pm 1.5\%$, no billing adjustment shall be made. If the meter accuracy is determined to be less accurate than $\pm 1.5\%$, any credits or debits to previous bills shall be estimated based upon the facts of the situation. In no case shall such billing adjustments be made to bills prior to six months before the inaccuracy was discovered.
6. **Inspection:** BUYER agrees that all work in constructing the Metering Facility shall be open to inspection by CITY.
7. **Facility Maintenance:** BUYER understands and agrees that, upon completion and upon CITY's acceptance of the Metering Facility, BUYER shall be solely responsible for the maintenance of said facility, including the site, access to the site, power supply, and all other appurtenances thereto, with the exception that CITY shall be solely responsible for the maintenance of the meters and regulators.
8. **Facility Access:** BUYER agrees to provide CITY access at all times, to the Metering Facilities described herein, for the maintenance of CITY's meters, regulators, and associated equipment.

9. **Telemetry / Regulating Systems:** It is understood BUYER shall be solely responsible for the installation costs and maintenance of all telemetry/regulating equipment necessary at each connection point for control and monitoring systems, pressure and flow regulating devices, unauthorized-intrusion alarms, and data transmission systems such as radio. BUYER agrees to provide separate equipment and systems necessary for CITY's monitoring of pressures, flow, consumption, control valve position, and unauthorized-intrusion at each of its Metering Facilities, including PLC with I/O interface modules, data transmission systems, radio, tower, antenna, backup power supply, and all programming and configuration.. BUYER shall provide electric power at each Metering Facility for all telemetry/regulating equipment necessary for BUYER's operation and CITY's monitoring.

**ARTICLE VI
FINANCIAL CONSIDERATIONS
CLAY COUNTY TRANSMISSION MAIN**

1. **Capital Cost (Main):** BUYER reserves a right to 0.3 MGD of the capacity in the Clay County Transmission Main for the term of this agreement.
2. **Total Costs:** BUYER's total capacity charge for the Clay County Transmission Main to the point of outlet at the intersection of NE 140th Street and Rhodus Road for a maximum consumption rate of 0.3 MGD is \$300,000.
3. **Reimbursement by BUYER:** The reimbursement by BUYER of its capacity charge for the Clay County Transmission Main in accordance with the terms of this Agreement shall be made in one lump sum payment within 90 days after the effective date of this Agreement.

**ARTICLE VII
EXECUTION**

This Agreement shall become effective only after it has been authorized by the governing body of BUYER by a resolution, and signed by BUYER's Board President, and authorized by an Ordinance of CITY and signed by Director; certified copies of said Resolution and Ordinance being attached hereto and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective representatives, thereunto duly authorized, as of the day and year first above written.

(SEAL)

**PUBLIC WATER SUPPLY DISTRICT
No. 8 of CLAY COUNTY, MISSOURI**

BY: *Ray J. Freeman*
President, Board of Directors

ATTEST:

Ron D. Foote
Secretary

Approved as to form

Billy C. Galt
Board's Counselor

(SEAL)

CITY OF KANSAS CITY, MISSOURI

BY: *Sam H. Harkin*
Director of Water Services

1-26-10

Approved as to form:

Cecilia Abbott
Assistant City Attorney