

220465

CONTRACT # _____
ORDINANCE # _____
EFFECTIVE DATE _____

WATER PURCHASE AGREEMENT

THIS AGREEMENT, is entered into this _____ day of _____, 2022 by and between the RAYTOWN WATER COMPANY, a Missouri corporation and a public utility and water corporation as defined in sub-sections (43) and (59) of Section 386.020 of the Revised Statutes 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, a 20-year Water Purchase Agreement was executed by the BUYER and CITY on June 30, 1991 for the purpose of delivering and selling water to BUYER by CITY; and

WHEREAS, the BUYER’S Water Purchase Agreement has expired and BUYER desires to enter into a new Water Purchase Agreement to purchase water; and

WHEREAS, BUYER desires to contract for a maximum quantity of 3.0 million gallons per day (MGD); 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 in 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 91.050 et seq.
- 2 **Construction Records:** BUYER agrees to furnish to CITY one (1) set of BUYER’S existing 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 when they are available from the BUYER’s mapping

service or GIS system; and upon a major modification made to the system; or, thereafter when CITY requests copies of such maps.

- 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 the date set forth on page one hereof.
- 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, which consent if requested shall not be unreasonably withheld.

ARTICLE II POINTS OF SERVICE

- 1 **Wholesale Purchase Locations:** BUYER will purchase water from CITY, in accordance with the provisions of this Agreement, at the following metering facilities:

8709 E 55th Street
8722 E 59th Street
5440 Raytown Road
12205 E 47th Street
7500 Blue Ridge Blvd
9699 E. 75th Street
11499 E 75th Street
11600 E 58th Street

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, in accordance with the provisions of this Agreement, at the following emergency connections:

City of Independence Water Department;
Public Water Supply District No. 2 in Jackson County;
Tri-County Water Authority; and

such other emergency connections as BUYER may arrange in the future. BUYER agrees to provide notice to CITY of future emergency connections within thirty (30) days of establishing such connections.

4. **Customer Transfer KCMO:** The following customers are located in KCMO'S service area but are served by the BUYER. These customers are currently billed by KCMO. These customers will be transferred to the BUYER to provide and bill for water service only. The transfer will take place ninety (90) days after the Agreement has been approved by both parties and the customers have been notified of the change. The parties agree that CITY may take over service to and billing of these customers after constructing a main to provide the service to them, after the Agreement has been approved by both parties and the customers have been given a minimum 90 day notice of the change.

11214 E. 51 st Street	12201 E. 52 nd Terrace
11216 E. 51 st Street	12203 E. 52 nd Terrace
11218 E. 51 st Street	12205 E. 52 nd Terrace
11400 E. 51 st Street	12211 E. 52 nd Terrace
11402 E. 51 st Street	12301 E. 52 nd Terrace
11404 E. 51 st Street	12305 E. 52 nd Terrace
11506 E. 51 st Street	12309 E. 52 nd Terrace
11508 E. 51 st Street	12311 E. 52 nd Terrace
11510 E. 51 st Street	12401 E. 52 nd Terrace
11512 E. 51 st Street	12405 E. 52 nd Terrace
11807 E. 53 rd Street	12409 E. 52 nd Terrace
11811 E. 53 rd Street	12501 E. 52 nd Terrace
11905 E. 53 rd Street	
11909 E. 53 rd Street	

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 Agreement:

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 each of the metering facilities at the locations defined in Article II herein. CITY agrees to deliver water at a maximum quantity on any day of 3.0 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 on a prorata basis and for this purpose may adjust accordingly the aforesaid regulatory devices at or near the points of service.

d. Control System: Within 90 days after the Agreement has been approved by both parties Buyer will submit maps and drawings of its equipment at the points of service. After the BUYER has provided CITY maps and drawings of its equipment at the points of service, the parties will consult to determine what additional metering or regulatory devices or other equipment may be required to meet the objectives of this paragraph, set out below. After such determination the BUYER agrees to install necessary additional devices or other equipment to provide 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 operations of CITY'S water system and may adversely affect its customers as well as BUYER'S customers. If this requires material additional expense or investment by BUYER the parties shall agree upon a reasonable schedule for the addition of such additional devices or equipment, which shall become an Exhibit "A" to and part of the Agreement. The control system must be able to reduce the flow rate to zero during specific hours of the day coincident with peak demand on the CITY system. If, at the discretion of the CITY, the flow rate is reduced to zero, subsequent rates of delivery shall be increased to allow for delivery of the maximum quantity per day to the fullest practical extent.

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. Such information shall be submitted to CITY within 5 business days of its written request.

- 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. CITY agrees to give BUYER (10) days written advance notice of any exercise of the authority granted above in this paragraph.
- 4 **Sole Source:** BUYER and CITY agree that CITY shall be the sole source of water for the BUYER. 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 water supply--whether originating on CITY'S or BUYER'S water systems--or when BUYER requires water in excess of 3.0 MGD.

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.
 - a. **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 Agreement. 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. CITY agrees that the BUYER has met this requirement with existing facilities.
 - b. **Existing Storage:** BUYER has existing storage of 2,500,000 gallons
 - i. Elevated Tank 9406 E. 63rd St. 2,000,000 Gallons
 - ii. Elevated Tank 9009 E. Gregory 250,000 Gallons
 - iii. Elevated Tank 11200 E. 51st St. 250,000 Gallons
 - c. **Equalizing Storage:** BUYER acknowledges that in addition to meeting the requirements of Existing Storage, 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 7 of this Article.
6. **Wholesale Water Rate Classification:** Based on existing water usage and storage capabilities the BUYER would currently qualify for the Wholesale Customer/Restricted rate.
7. **Residential Water Rate:** Where CITY supplies water directly to a residential location within the BUYER'S service area the BUYER will pay the residential outside city rate to CITY.
8. **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. BUYER agrees to recognize the validity of these charges and agrees to pay the amended rate. CITY will provide information supporting any change in such rate to BUYER upon request by BUYER.
9. **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 10 herein.

10. Water Usage Resale: Any resale of water by BUYER purchased 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.

a. Current Resale: Buyer's current resale customers are as follows:

None

b. Future Resale: Any other resale of water purchased from CITY for any use outside BUYER'S service area, including water sold by any future resale customers of BUYER'S to other water purveyors, shall require the prior written notification to Director of intent to sell. BUYER shall notify Director in writing 30 days prior to commencing sale of water and within 30 days after terminating any such customer.

11. Agreement Termination – CITY: BUYER understands and agrees that if it fails to keep and perform every covenant, condition and obligation in this Agreement, 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 advance written notification to BUYER, unless BUYER has cured its violation within that period. The CITY may terminate this Agreement for convenience after five (5) years advance written notification to the BUYER.

12. Agreement 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 termination of the entire Agreement. BUYER may terminate this Agreement for convenience after providing five (5) years advance written notification to the Director.

13. 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 BUYER's water system.

14. 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.

- 15. 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 is also responsible for water quality testing at the point of interconnection with the city. 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.
- 16. 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 the amount CITY then charges BUYER for the purchase of water, less Supplementary Storage Charges.
- 17. 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.
- 18. 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.
- 19. 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.
- 20. Antenna Placement:** BUYER agrees to allow placement of CITY antennas to be used solely for the purpose of operating CITY'S water system on BUYER'S elevated tank(s) to accommodate present and future needs related to the water being furnished to BUYER under this Agreement, as may be required. Mounting methods, location of hardware and antennae placement by CITY are subject to prior approval by BUYER. This provision shall not preclude BUYER from installing antennas on BUYER'S elevated tank(s); however said antennas shall not impede CITY operation of maintenance functions. Nor shall CITY'S antennas impede BUYER'S operation or maintenance functions or any prior agreements BUYER has made with other antenna owners.

ARTICLE IV METERING & REGULATING FACILITIES

The parties agree that the requirements for construction and installation of any Metering Facilities and Telemetry/Regulating Equipment under the provisions of Paragraphs 1, 3 and 6, below, of this Article IV shall be determined after BUYER has provided CITY

information about the facilities now in place at the points of service, and discussion about what items must be installed in the immediate future and what items can be installed over an agreed period of time in the future, an agreed upon schedule of which will be made an Exhibit "B" to and incorporated as part of this Agreement, unless the CITY agrees to pay for such expense or investment and includes the charges necessary for recovery of such expense or investment in its wholesale water rates to BUYER.

- 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 "Rules and Regulations for Water Service Lines" dated 2018 and "Standards and Specification's for Water Main Extensions and Relocations" dated 2018, 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 3 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 **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.
- 4 **Facility Maintenance:** BUYER understands and agrees that BUYER shall be solely responsible for the maintenance of said Metering 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 aforesaid meters and regulators.

- 5 **Facility Access:** BUYER agrees to provide CITY access at all times, to the Metering Facility described herein, for the maintenance of CITY’s meters, regulators, and associated equipment.
- 6 **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 or leased telephone lines. 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 Metering Facility, including PLC with I/O interface modules, above-grade KCMO control panel with data transmission systems, radio, tower, antenna, and backup power supply. BUYER shall provide electric power at each Metering Facility for all telemetry/regulating equipment necessary for BUYER’s operation and CITY’s monitoring.

ARTICLE V

Buyer’s Capital Investment Obligations Subject to Missouri Public Service Commission Approval

CITY acknowledges that Buyer is a regulated public water utility subject to the jurisdiction of the Missouri Public Service Commission (“the Commission”) under Chapters 386 and 393 of the Missouri Revised Statutes.

ARTICLE VI

Notices or Notification Under this Agreement

All Notices and Notifications referred to in this Agreement, except Notice of Termination by either Party, may be given by First Class United States Mail, postage prepaid, Electronic Mail, Facsimile Transmission or by Hand Delivery to the following designated persons at the addresses below. Notice of Termination of this Agreement as provided herein shall be given by depositing same in First Class United States Mail, postage prepaid, with such written notice then sent as an attachment to an Electronic Mail Message to the designated persons’ Email Addresses below:

TO CITY:

Wes Minder, Director
Director, Water Services
City of Kansas City, Missouri
4800 E. 63rd Street
Kansas City, Missouri 64130

Email: wes.minder@kcmo.org

TO BUYER:

Chiki Thompson, Vice President
Raytown Water Company
10017 East 63rd Street
Raytown, MO 64133

Email: cthompson@raytownwater.net

|

[Signatures on following page]

**ARTICLE VII
EXECUTION**

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this Agreement to be duly executed as of the day and year indicated below.

(SEAL)

RAYTOWN WATER COMPANY

BY: _____
President

DATE: _____

CITY OF KANSAS CITY, MISSOURI

BY: _____
Director of Water Services

DATE: _____

Approved as to form:

Assistant City Attorney