

RESOLUTION NO. 425

A RESOLUTION APPROVING WATER PURCHASE CONTRACT BETWEEN THE CITY OF COLUMBUS, KANSAS, A MUNICIPAL CORPORATION, AND SPRING RIVER PUBLIC WHOLESALE WATER SUPPLY DISTRICT NO.19, STATE OF KANSAS.

WHEREAS, the CITY OF COLUMBUS, KANSAS, A MUNICIPAL CORPORATION, (hereinafter called "**City**") is a member of Spring River Public Wholesale Water Supply District No. 19, State of Kansas (hereinafter called PUBLIC WHOLESALE; and

WHEREAS, the **City** has decided to enter into a contract to purchase water from the Public Wholesale; AND

WHEREAS, a proposed Water Purchase Contract has been submitted to the **City** for approval;

NOW, THEREFORE, the Mayor and Council of the **City** hereby resolve as follows:

1. The Contract dated December 06, 2010, for sale of water by the PUBLIC WHOLESALE to the **City** is hereby approved and ratified in its entirety. A copy of the contract is hereby attached and made a part hereof.
2. The Mayor and City Clerk are hereby authorized to sign the Water Purchase Contract.
3. This Resolution shall take effect upon the date of adoption of this Resolution.

ADOPTED this 6th day of December, 2010.

AYES: 10
NAYS: 0
ABSENT: 0

Marie Nepple
Marie Nepple - Mayor

ATTEST:
Janice Blancett
Janice Blancett - City Clerk

(SEAL)

WATER SALE CONTRACT

THIS CONTRACT for the sale and purchase of water is entered into as of the 6th day of December, 2010, between SPRING RIVER PUBLIC WHOLESALE WATER SUPPLY DISTRICT #19, STATE OF KANSAS (hereinafter called SELLER), and **CITY OF COLUMBUS, KANSAS**, a Municipal Corporation, Cherokee county, Kansas, (hereinafter called BUYER).

WITNESSETH:

WHEREAS, SELLER is organized and established under the provisions of K.S.A. 19-3545, et seq., for the purpose of constructing a water treatment plant and a water distribution system in order to sell water to public agencies; and

WHEREAS, SELLER is in the process of applying for necessary funding in order to build a water treatment plant and a water distribution system with a capacity of serving BUYER; and

WHEREAS, BUYER is a public agency as defined under the laws of the State of Kansas and desires to purchase water from SELLER; and

WHEREAS, SELLER has completed a water supply feasibility study which has determined that it is economically feasible to provide water to BUYER in the event adequate financial funding is obtained; and

WHEREAS, SELLER has agreed to sell to BUYER water under the terms of this contract; and

WHEREAS, BUYER, has approved the purchase of water from SELLER in accordance with the provisions of this contract; and

WHEREAS, by Resolution No. 425 of the Board of Directors of SELLER enacted on the 6th day of December, 2010, SELLER has agreed to sell to BUYER water under the terms of this contract provided adequate funding is obtained for the project; and

WHEREAS, by Resolution No. 425, of the Board of Directors of BUYER enacted on the 6th day of December, 2010, BUYER has approved the purchase of water from SELLER in accordance with the provisions of this contract.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, the parties agree as follows:

1. **QUALITY AND QUANTITY; GUARANTEED MINIMUM MONTHLY COMMITMENT.** SELLER shall furnish to BUYER at a mutually agreed delivery point, potable treated water meeting applicable purity standards of the State of Kansas, State Department of Health and Environment, in such quantity as may be required by the BUYER not

to exceed 8,000,000 gallons per month. The minimum psi. cannot be less than 20 psi. at the delivery point.

2. **GUARANTEED MINIMUM MONTHLY COMMITMENT.**

BUYER shall purchase a minimum amount of 4,000,000 gallons of water per month from SELLER provided SELLER proceeds to build a water plant and other facilities necessary to supply water to BUYER.

3. **PURCHASE PRICE.** BUYER shall pay SELLER the amount of FIVE AND NO/100 (\$5.00) DOLLARS per thousand gallons of water with payment to be made on a monthly basis and with payment to be made not later than thirty 30 days after SELLER has submitted to BUYER the monthly bill.

4. **TERMS OF CONTRACT.** This contract shall extend for a term of forty (40) years from the date of initial delivery of any water as shown by the first bill submitted by SELLER to BUYER

and thereafter this contract may be renewed or extended for such terms as may be agreed upon by BUYER and SELLER.

5. **DELIVERY OF WATER.** Thirty days prior to the estimated date of completion of construction of SELLER'S water plant and water supply distribution system, SELLER will notify BUYER in writing of the date for the initial delivery of water.

6. **FAILURE TO DELIVER.** SELLER will, at all times, operate and maintain it's system in an efficient manner and will take such action as may be necessary to furnish the BUYER with quantities of water required by BUYER. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the SELLER is otherwise diminished over an extended period of time, the supply of water to BUYER'S consumers shall be reduced or diminished in

the same ratio or proportion as the supply to SELLER'S consumers is reduced or diminished.

7. **CONTRACT CONDITIONAL ON FUNDING AND PRICE**

OF WATER. The parties acknowledge that this contract is conditional on SELLER obtaining adequate public and private funding for construction of it's water plant and water distribution system. In the event that SELLER is unable to obtain adequate financial funding to submit bids for construction of the necessary water facilities within sixty (60) months of the signing of this Agreement, then this Agreement shall be null and void.

In the event that SELLER proceeds with submission of bids for construction of water facilities, the parties agree that subsequent to the opening of the bids for construction SELLER'S Engineer shall make a study to determine the initial cost of water if the facilities are built based upon the submitted contractor's bids. SELLER'S Engineer shall send BUYER'S governing body a certified letter

within 15 days of the opening of the construction bids indicating the estimated initial cost of water after the construction of the water facilities is complete. If SELLER'S engineer determines the initial cost of water will exceed FIVE AND NO/100 (\$5.00) DOLLARS per thousand gallons, BUYER shall have the option to cancel this Contract by sending to SELLER written notice of cancellation. BUYER'S cancellation letter must be mailed within 30 days of BUYER'S receipt of the engineer's letter indicating that the initial cost of water will exceed FIVE AND NO/100 (\$5.00) DOLLARS per thousand gallons. BUYER'S cancellation of this contract shall be without any further liability or obligations whatsoever (except for all obligations agreed to prior to the signing of this agreement by BUYER for preconstruction expenses and costs).

8. **MODIFICATION OF CONTRACT.** The provisions of this contract pertaining to the schedule of rates to be paid by BUYER to SELLER for water

delivered are subject to modification by SELLER'S Board of Directors. Any increase or decrease in rates shall be based on an increase or decrease in the cost of production or capitalization of SELLER'S system. In addition, SELLER shall have the right to add an additional charge to accumulate 10% as a reserve for additional unforeseen expenditures and costs. Any increase or decrease in rates shall be uniform for all public agencies who are members of SELLER at the time SELLER'S water plant and water distribution lines are completed. As such, any increase or decrease in rates shall be exactly the same cents per thousand gallons for every public agency that is a member of SELLER at the time construction of SELLER'S water facilities is completed. SELLER agrees that the water rates cannot be increased for at least one year from the date of initial delivery of water to BUYER.

9. **METERING EQUIPMENT.** SELLER shall furnish, install, operate, and maintain at it's own

expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the BUYER and shall calibrate such metering equipment whenever requested by BUYER but not more frequently than once every twelve (12) months. A meter registering not more than two per cent (2%) above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the two months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such periods shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless SELLER and BUYER shall agree upon a different amount. The metering equipment shall be read on the 25th day of each month. An appropriate official of the

BUYER at all reasonable times shall have access to the meter for the purposes of verifying its readings.

10. **REGULATORY AGENCIES.** This contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and SELLER and BUYER will collaborate in obtaining such permits and certificates that may be required to comply therewith.

11. **FINANCING.** The construction of a water plant, water reservoir, and water supply distribution system owned by SELLER is being financed by a loan made or issued by, and/or a grant from the United States of America, and the provisions hereof pertaining to the undertakings of the SELLER are conditioned upon the approval, in writing, of the State Director of USDA Rural Development.

12. **SUCCESSOR TO THE SELLER.** In the event of any occurrence rendering the SELLER incapable of performing under this contract, any successor of the SELLER, rather the result of legal process, assignment, or otherwise, shall succeed to the rights of the SELLER hereunder.

13. **ASSIGNMENT OF INTEREST.** The interest of SELLER under this contract may be assigned to the United States of America as collateral security for any loan made to finance construction, extension, repair or maintenance of the SELLER'S water plant, water reservoir, and water supply distribution system.

SELLER:

SPRING RIVER PUBLIC WHOLESAL WATER
SUPPLY DISTRICT NO. 19

BY: _____

TITLE: _____

ATTEST:

Secretary

BUYER:

CITY OF COLUMBUS, KANSAS

BY: Maie Nepple

TITLE: Mayer

ATTEST:

Janice Plawcett, City Clerk
Secretary