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WHOLESALE WATER CONTRACT

THE STATE OF TEXAS §
 §
THE COUNTY OF CHEROKEE §

THIS CONTRACT (the "Contract") made and entered into as of this the 1st day of September, 2022, by and between the City of Rusk, Texas, hereinafter called "City", a home rule municipal corporation in the State of Texas, and Rusk Rural Water Supply Corporation, hereinafter called "RRWSC."

WITNESSETH:

WHEREAS, RRWSC is authorized to enter into this Contract pursuant to Chapter 62, Acts of the 52nd Legislature, 1951 (Article 8280-141, Vernon's Texas Civil Statutes) and other applicable laws;

WHEREAS, the City and RRWSC have previously entered into a Memorandum of Understanding ("MOU") dated September 10, 2020, to negotiate in good faith concerning the sale of water in the event that Iron Hill Water Supply transfer certain accounts to RRWSC, with whom the City has an existing contract with dated June 6, 1966 for a term of 50 years. The contract was extended an additional 25 years collectively referred to as the "Iron Hill Agreement," whereby the City agreed to provide potable water to Iron Hill Water Supply Company in quantities specified therein;

WHEREAS, such a transfer between Iron Hill Water Supply and RRWSC has been reached;

WHEREAS, RRWSC desires to obtain an adequate and dependable water supply from the City;

WHEREAS, RRWSC acknowledges and understands that this Contract establishes a maximum amount of potable water that the City is required to deliver to RRWSC;

WHEREAS, RRWSC is not compelled to purchase water from the City and is voluntarily entering into this Contract;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the City agrees to furnish water, and RRWSC agrees to pay for water, upon the terms and conditions and for the consideration hereinafter set forth, to wit:

Section 1. DEFINITION OF TERMS. The following terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

- (a) "The City" means City of Rusk, Texas as defined in the preamble to this Contract;
- (b) "Monthly Payment" means the amount of money to be paid to the City by RRWSC during each Monthly Payment Period;
- (c) "Monthly Payment Period" means the beginning of a billing cycle which shall begin on the 1st of each month and ends on the final day of each month;
- (d) "Contract Date" means the effective date of this Contract as executed by both parties;
- (e) "RRWSC" means Rusk Rural Water Supply Corporation as defined in the preamble to this Contract;
- (f) "RRWSC Entity or RRWSC Entities" means any customer with which the City contracts to furnish water;
- (g) "Point of Delivery" means the air gap between the provision of service by the City to RRWSC, all facilities upstream of which shall be the sole responsibility of the City, and all facilities downstream of which shall be the sole responsibility of the RRWSC;
- (h) "System" means, collectively, the existing system and the future improvements and water of the City included as part of the System for projects, water storage, treatment, transmission and supply; and,
- (i) "Iron Hill Accounts" means customers currently supplied by Iron Hill Water Supply Company under the Iron Hill Agreement.

Section 2. QUANTITY. The water to be delivered by the City and received by RRWSC shall be potable water. RRWSC has satisfied itself that such water will be suitable for its needs. The City agrees, during the period of this Contract, to tender and make available to RRWSC, for its own use in servicing the Iron Hill Accounts and at the delivery point as hereinafter specified, treated water in the volume required by RRWSC, provided that the maximum rate of delivery of such water shall not exceed Fifty Thousand (50,000) gallons per day, and RRWSC agrees to pay the City for such services in accordance with the provisions of Section 8 hereof. The City of Rusk shall have the authority to make inspections and the plumbing inspector of the City of Rusk will make regular periodic inspections to assure that no cross-connections or conditions that might permit back-flow or back-siphonage exist on that portion of the system receiving water under pressure from the City supply line. If such conditions are found to exist, the City of Rusk shall have authority to disconnect water service to any customer until satisfactory corrections are made. The City and RRWSC shall cooperate, each within its legal powers, in preventing, to the extent practicable, the pollution and contamination of the reservoirs and watersheds from which water is obtained.

Section 3. OTHER CONTRACTS. The City reserves the right to supply potable water from the System to additional parties as determined by the Rusk City Council.

Section 4. FLOW RATE. The City shall provide water at a guaranteed rate of flow of 0.6 gallons per minute.

Section 5. POINT(S) OF DELIVERY. The points for delivery of water to the RRWSC from City's system shall be located at 647 County Road 1201, Rusk, Texas 75785, and City. agrees to deliver at said point of delivery the quantities of water herein contracted for at the pressure which is maintained at said point in the water supply system of the City, it being hereby specifically agreed that RRWSC utilize whatever pressure maintained in the City system for the movement of the water herein contracted to be purchased through the supply line to the first reservoir of the RRWSC.

In the event that the water supply line is relocated for any reason beyond the control of the City, RRWSC shall be responsible for all costs associated with construction and relocation of the delivery point.

Section 6. MEASURING EQUIPMENT. RRWSC shall furnish, and install at its own expense at, or near, the Point of Delivery the necessary rate of flow equipment, of a standard type approved by the City, for measuring properly in both low and high flow periods the quantity of potable water delivered under this Contract and such billing meter and other equipment so installed shall become the property of the City. RRWSC shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment thereof shall be accomplished only by the employees or agents of the City. For the purpose of this Contract, the original record or reading of the meter shall be the journal or other record book, including, but not limited to electronic databases, maintained by the City in its office in which the records of the employees or agents of the City who take the reading may be transcribed. Upon written request of RRWSC, the City will provide a copy of such journal or record book, or permit it to have access to the same in the office of the City during reasonable business hours.

Not more than once in any six (6) month time period, the City shall test its billing meter if requested in writing by RRWSC to do so, in the presence of a representative of RRWSC, and the parties shall jointly observe any adjustments that are made to the billing meter in case any adjustments shall be necessary. If upon any test, the percentage of inaccuracy of any billing meter equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If for any reason any billing meters are out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water

delivered through the period such billing meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (ii) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the billing meter or meters were registering accurately.

RRWSC may, at its option and its own expense, install and operate a check meter downstream of the Point of Delivery to check each billing meter installed by the City, but the measurement of water for the purpose of this Contract shall be solely by the City's meters, except in the cases hereinabove specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the City.

Section 7. UNIT OF MEASUREMENT. The unit of measurement for potable water delivered under this Contract shall be 1,000 gallons of water, U.S. Standard Liquid Measure.

Section 8. PRICE AND TERMS. The service to be performed under this Contract by the City consists of the readiness of the City to deliver to RRWSC upon its demand, water in accordance with the conditions, limitations and provisions of this Contract.

In return for such service, RRWSC agrees to compensate the City by payment of certain minimum annual sums of money, for each of which said sums the City agrees, if required by RRWSC, to deliver all, or so much thereof as RRWSC may desire, of a certain corresponding volume of water, as follows:

- (a) RRWSC will compensate the City at a rate of and a flat rate of \$5.00 per 1,000 gallons.
- (b) City agrees to take all reasonable and practical actions necessary to enable it to provide treated water to RRWSC as contemplated by this Agreement. If potable water must be rationed, such rationing shall, within the limits permitted by law, be accomplished by the City on an equal basis of the relative actual total amount of all potable water taken by each RRWSC Entity, respectively, during the average of the last three (3) preceding Monthly Payment Period in which rationing among said RRWSC Entities was not necessary.
- (c) Payment of the monthly service charge listed above shall be made each month by the RRWSC to the City and shall be due and payable on or before the 10th day of the month following the service,

- (d) The City agrees to not raise the water rates for a period of five (5) years from the commencement date of this contract. At the conclusion of the five (5) year period the RRWSC and the City agree to renegotiate as to the rate only.
- (e) Liability for making payments, as herein set forth, shall commence on the date of the first tender of delivery of water to RRWSC by the City at the Point of Delivery.
- (f) In the event that RRWSC shall fail to make any such monthly payment or annual payment within the time herein in this section specified, interest on such amount shall accrue at the rate of ten percent (10%) per annum from the date such payment becomes due until paid in full with the interest as herein specified. In the event such payment is not made within thirty (30) days from the date such payment becomes due, the City may at its option discontinue delivery of water to RRWSC until the amount due the City is paid in full with interest as herein specified.

Section 9. TERM OF CONTRACT. This Contract shall commence on the Contract Date and shall continue for a term of twenty-five (25) years following the Contract Date.

Section 10. MODIFICATION. This Contract may be changed or modified only by written agreement of the parties and only after having obtained approval from the governing bodies of both the City and RRWSC. No change or modification shall be made to this Contract which will affect adversely the prompt payment when due of all monies required to be paid by RRWSC under the terms of this Contract.

Section 11. FORCE MAJEURE. If by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of RRWSC, to make the payments required under Section 8 of this Contract, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonably within the control of the party claiming such inability.

Section 12. INSURANCE. The City agrees to carry and arrange for fire, casualty, public liability, and/or other insurance, including self-insurance for purposes and in amounts which, as determined by the City, ordinarily would be carried by a privately-owned utility company owning and operating such facilities, except that the City shall not be required to provide liability insurance except to insure itself against risk of loss due to claims for which it can, in the opinion of the City's legal counsel, be liable under the Texas Tort Claims Act or any similar law or judicial decision. Such insurance will provide, to the extent feasible and practicable, for the restoration of damaged or destroyed properties and equipment, to minimize the interruption of the services of such facilities. All premiums for such insurance shall constitute just and reasonable operation and maintenance expense. The insurance coverage referenced herein does not extend to any facility owned by RRWSC.

Section 13. REGULATORY BODIES AND LAWS. This Contract is subject to all applicable Federal and State Laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum, having jurisdiction.

Section 14. LIMITATION ON RESALE. RRWSC agrees that it will not, during the term of this Contract, resell any of the treated water it purchases from the City hereunder to any wholesale or other customer other than retail customers within its service area, without prior written consent by the City.

Section 15. NOTICES. Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:

CITY OF RUSK
City Manager
205 S. Main
Rusk, Texas 75785
Phone: 930-683-2213

If to RRWSC:

Rusk Rural Water Supply Corporation
Attn: General Manager
1055 N Dickinson Dr
Rusk, TX 75785

The parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other parties hereto.

Section 16. SEVERABILITY. The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Contract or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State of Texas or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Contract or the application of such sections, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Contract shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

Section 17. SOLE AGREEMENT. This Contract constitutes the sole and only agreement of RRWSC and the City and supersedes any prior understanding or oral or written agreements between RRWSC and the City with respect to the subject matter of this Contract.

Section 18. VENUE. All amounts due under this Contract including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Cherokee County, Texas, which is the County in which the principal administrative offices of the City are located. It is specifically agreed among the parties to this Contract that Cherokee County, Texas, is a principal place of performance of this Contract.

Section 19. OPERATING CONDITIONS AND PROVISIONS.

- (a) Operation and Maintenance of System. The City will continuously operate and maintain the System in an efficient manner and in accordance with good business and engineering practices, and at reasonable cost and expense.

- (b) Title to Water; Indemnification. The City shall retain title to all water supplied to RRWSC up to the Point of Delivery, at which point title to such water shall pass to RRWSC. The City and RRWSC shall save and hold each other harmless from all claims, demands, and causes of action that may be asserted by anyone on account of the transportation and delivery of said water while title remains in such party.
- (c) Operating Expenses of RRWSC. RRWSC represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary operating expense of its system and that all such payments will be made from the revenues of its system. RRWSC represents and has determined that the potable water supply to be obtained from the System is absolutely necessary and essential to the present and future operation of its water system and is the only available and adequate source of supply of potable water. Accordingly, all payments required by this Contract to be made by RRWSC shall constitute reasonable and necessary operating expense of its respective system as described above, with the effect that the obligation to make such payments from revenues of such systems shall have priority over any obligation to make any payments from such revenues (whether of principal, interest, or otherwise) with respect to all bonds or other obligations heretofore or hereafter issued by RRWSC.
- (d) RRWSC's Rate for Waterworks System. RRWSC agrees throughout the term of this Contract to continuously operate and maintain its waterworks system, and to fix and collect such rates and charges for water services to be supplied by its waterworks system as aforesaid will produce revenues in an amount equal to at least (i) all of its payments under this Contract and (ii) all other amounts required to be paid from said revenues by the provisions of the ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding and to file appropriate financial reports related to the RRWSC's system including annual audits.
- (e) Equity. RRWSC acknowledges that it will accrue no equity or any other interest in the System or any other assets of the City as a result of payment or other performance pursuant to this Contract.

Section 20. WATER CONSERVATION. RRWSC agrees to adopt, implement, and enforce any and all ordinances and policies related to water conservation and drought management as required by the Texas Water Code, rules of the TCEQ and/or as may be adopted by the City. The City's obligations pursuant to this Contract shall be subject to RRWSC preparing and implementing a water conservation plan or water conservation measures, as well as implementing any water conservation plans and drought contingency plans adopted by the City and required or approved by the TCEQ, the Board, or any other federal, state, or local regulatory authority with power to require or approve water conservation and drought contingency plans. Upon execution of this Contract, RRWSC shall submit its water conservation plan or water

conservation measures, and drought contingency plan, to the City for review and approval, and RRWSC agrees to amend its water conservation plan or water conservation measures, and drought contingency plan as requested by the City in order to comply with requirements of the City's water conservation plan and drought contingency plan, program and/or rules. RRWSC shall also submit any changes or amendments to its water conservation plan or water conservation measures, and drought contingency plan, to the City for review and approval.

Section 21. DEMAND ASSESSMENT. The location of the delivery point(s) and any quantity set forth in this Contract are intended to meet the water needs of RRWSC. The needs of RRWSC are independently determined by RRWSC, and the City has conducted no independent evaluation of the RRWSC's water system.

Section 22. NO THIRD PARTY BENEFICIARIES. This Contract shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Contract. Each party hereto shall be solely responsible for the fulfillment of its customer contracts or commitments, and the City shall not be construed to be responsible for RRWSC's contracts or commitments by virtue of this Contract or any provision contained herein.

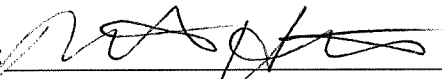
Section 23. ASSIGNMENT. This Contract may be assigned by the RRWSC to the United States of America, acting by and through the Rural Utilities Service, its successors or assigns, as security for a certain loan to be made by the Rural Utilities Service to the RRWSC. Other than the forgoing this Contract may not be assigned to any other entity without approval of the City by and through a majority vote of its City Council.


[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Contract Date.

RUSK RURAL WATER SUPPLY CORPORATION

CITY OF RUSK, TEXAS

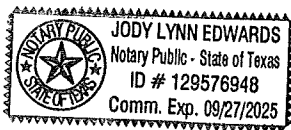
By: 
Mike Hamilton, General Manager

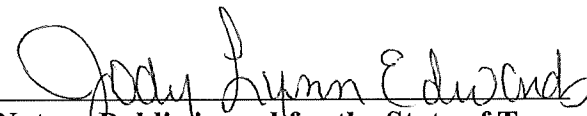
By: 
Ben Middlebrooks, Mayor

(Acknowledgment)

STATE OF TEXAS
COUNTY OF CHEROKEE

This instrument was acknowledged before me on the 11 day of August, 2022, by Ben Middlebrooks, Mayor of the City of Rusk, Texas, a home rule municipal corporation situated in Cherokee County, Texas, on behalf of said entity and in the capacity stated.

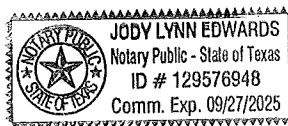


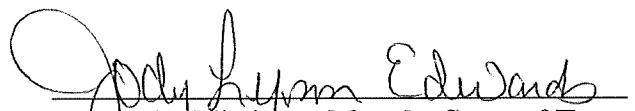

Notary Public in and for the State of Texas

(Acknowledgment)

STATE OF TEXAS
COUNTY OF CHEROKEE

This instrument was acknowledged before me on the 11 day of August, 2022, by Mike Hamilton, General Manager of Rusk Rural Water Supply Corporation, on behalf of said entity and in the capacity stated.




Notary Public in and for the State of Texas