

WHOLESALE WATER SALES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between:

THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, hereinafter referred to as “Wichita”; and

RURAL WATER DISTRICT NO. 1 OF SEDGWICK COUNTY, KANSAS, hereinafter referred to as “District.”

WITNESSETH:

WHEREAS, Wichita and the District have hereto entered into a Contract dated May 6, 1969, and amended from time to time, where by the District has connected to and received water from Wichita, which connections and service are currently in existence, and the parties desire to enter into a new agreement for such connections and service; and

WHEREAS, Wichita owns and operates the Wichita Water Utilities, which produces an adequate supply of water from both surface and groundwater sources; and

WHEREAS, the water produced by Wichita has been approved by the Kansas Department of Health and Environment for domestic use; and

WHEREAS, the District has constructed, operates and maintains a system of water mains and distribution lines in an area generally northeast of Wichita, some of which is located inside the corporate limits of Wichita; and

WHEREAS, it is the intent and purpose of this Agreement for Wichita to provide a supply of potable water in sufficient quantities to the District to meet the needs of the District’s current and future customers; and

WHEREAS, it is the desire of the parties hereto to reach a mutually acceptable means of transferring ownership of certain territory and/or customers of the District to Wichita; and

WHEREAS, the District needs additional pumping and chlorination facilities to meet the needs of its existing and future customers;

NOW THEREFORE, in view of the premises aforesaid and in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

Article 1

Permission to Connect and Right to Receive Water Services

1.1 Wichita hereby grants permission to the District to maintain its connections to the water distribution system of the Wichita water system as they currently exists.

1.2 Wichita will install backflow prevention devices at each of the two existing connections to Wichita's water distribution system at Wichita's cost.

Article 2

Water Metering and Flow

2.1 All water sold to the District hereunder shall be measured by the master meter(s) installed in the meter vault(s) at each point of connection. Ownership of such vaults, meters, valves and other equipment located therein shall remain with Wichita.

2.2 Any changes, modifications or additions to said vault and contents shall be approved in advance by Wichita and paid for and constructed or altered as necessary by District. The District may connect to and receive data from any flow control or monitoring devices installed by Wichita within said vault, or may install and receive data from flow control or monitoring devices installed by the District at the District's expense; provided that any such device shall be approved by the Wichita.

2.3 Wichita shall have the right at any time to test the master meters. If the District requests a meter test, the test shall be conducted by Wichita at District's expense. If upon such examination and test conducted in the presence of a representative of District a meter is found to be inaccurate according to the standards of the American Water Works Association, the meter will be repaired or another meter will be substituted therefore and the water bill for the immediately preceding billing period will be adjusted to include a credit for the meter test charge. Whenever Wichita finds the meter to be malfunctioning, an adjustment of charges for the immediately preceding billing period shall be made by averaging the water used for the corresponding billing period for each of the three prior years or, if such records are not extant, the best practical alternative for determining the estimate shall be used.

2.4 In the event it is necessary for Wichita to temporarily stop the flow of water into District's lines due to the need of District to make repairs to such lines, authorized representatives of District shall be permitted to shut off the water supply by use of the valve located outside of the meter vault. In the event that such discontinuance of service is necessary, District shall promptly notify Wichita that the water supply was discontinued and the purpose of such discontinuance. Whenever possible, advance notice of such discontinuance shall be given to Wichita.

Article 3

Liability for Pressure

3.1 Wichita does not guarantee to maintain any specific pressure on its water supply line. Wichita will make a reasonable effort to maintain at least the minimum pressure required by State and/or Federal regulations at the point(s) of connection.

3.2 Wichita agrees to make a reasonable effort to deliver to the point(s) of connection water quality that meets State and Federal regulations.

Article 4

Covenant to Purchase Water and Terms of Purchase

4.1 District agrees to take and pay for or to pay for as tendered, 50% of the projected water usage for each year of this Agreement, as defined in the Schedule of Projected Water Usage (the "Usage Schedule") which appears as Attachment 1 to this Agreement. This obligation shall be unconditional throughout the duration of this Agreement. Parties agree the District may request a modification of this usage rate during the term of the Agreement and Wichita agrees to renegotiate such modification in good faith.

Wichita agrees to furnish and sell to District a quantity of potable water equal to 100% of projected water usage for each year of this Agreement as defined in the Usage Schedule. The 100% demand levels projected on an annual basis over the twenty (20) year life of the Agreement shall be as defined in the Usage Schedule.

It is anticipated that the supply needs of District will not exceed the amounts shown in the Usage Schedule. If water consumption in any one year exceeds 115% of the level as defined in the Usage Schedule for such year, there shall be a 10% surcharge paid by District to Wichita on that portion of overall water consumption above the 115% level. For each year thereafter with respect to which the parties have not reached agreement on a revised Usage Schedule and during which overall consumption exceeds 100% of the level established by the Usage Schedule, a surcharge of 10% shall be paid by District to Wichita on that portion of overall consumption in excess of the yearly allowable limits as stated in the Usage Schedule. Surcharges payable hereunder shall be calculated on the basis of the average volume rate charged to the District in the year in which the excess occurred.

District's annual water use shall in no circumstance exceed the levels specified in the Usage Schedule. If these annual limits are exceeded, Wichita is authorized under the terms of this Agreement to put into place flow restriction measures which will result in restriction of usage by District in accordance with the volume limits as contained in the Usage Schedule.

4.2 Subject only to Articles 5 and 9 hereof authorizing interruption or curtailment of water service in case of emergency or at the direction of a public health authority, Wichita agrees to furnish up to two and one-half (2 ½) times the pro rata daily portion of the annual contract volume of water as defined in the Usage Schedule during any one day for the applicable year of the Agreement.

4.3 If Wichita fails to furnish the daily volume of water it is obligated to furnish under this paragraph, the rate for purchase of water by District as set out in §8.1 for any such day Wichita fails to furnish such daily volume shall be reduced by ten percent (10%) This reduction in rates is on a per day basis such that a failure for one day shall result in a reduction in the rates only for water supplied on such day. The volume of water to which this reduction shall be applied shall be equal to the volume of water recorded for the billing period divided by the total

number of days of service in the billing period, multiplied by the total number of days during which Wichita fails to deliver the volume of water to District as specified in §4.2.

4.4 The number of benefit units which are contemplated to be served by the distribution system of the District is 750. The location of each benefit unit shall be clearly designated on a map. Said maps shall be updated no less than annually. The District shall notify the Director of Utilities, Wichita, Kansas, of any new additional benefit unit or the termination or relocation of any existing benefit unit no less than annually.

4.5 In the event the District wishes to increase the number of benefit units it will serve within its approved boundaries, the District will provide a written request for the same to Wichita before such benefit units are provided. Said written request shall identify the number of additional benefit units being requested, the location of the new benefit units and the projected water use (average and maximum day) by the new benefit units. Wichita will provide written approval of the request after due consideration of the impact such an increase may have on Wichita's water supply, water production, water treatment and water conveyance systems. Wichita's approval of the request will not be unreasonably withheld. Such increase of the number of benefit units may be made by the parties without formal amendment of this Agreement.

Article 5

Discontinuance of Water Service

5.1 Wichita may refuse to deliver water to the District if it is determined by the Kansas Department of Health and Environment, the Health Officer of the City of Wichita or the Health Officer of Sedgwick County that conditions exist which might lead to contamination of the public water supply, and may continue to refuse such delivery of water to District until such condition is remedied to the satisfaction of such officials or agencies and Wichita.

Article 6

Conditions of Water Service to Customers of District

6.1 District agrees to have in effect for all its customers a water conservation plan. Within six (6) months of the effective date of this Agreement, such conservation plan shall be submitted to and approved by Wichita. Future changes in such plan shall also be submitted to Wichita for approval. Such approvals shall not be unreasonably withheld.

District further agrees it will review and incorporate to the extent possible and reasonable any changes Wichita makes to its program. District shall accomplish such modification within ninety (90) days of written notification by Wichita of such changes.

6.2 District agrees that all water service connections will be individually metered and billed no less frequently than bimonthly.

6.3 District agrees to institute for its customers any water restrictions imposed by Wichita on its customers within forty-eight (48) hours of written notice of promulgation of such restrictions from Wichita.

6.4 District agrees to adopt regulations recommending that any new plumbing fixtures be of a low water use type to the same extent as is required by the ordinances of Wichita, as they may from time to time be amended.

6.5 District agrees that any violation of the provisions of this Article 6 shall result in a surcharge on rates for water service from Wichita to District in the amount of 10% above the rates as outlined in Article 8 for as long as the said violations shall continue after Wichita has provided the District with written notice of any violation and provided a reasonable time to cure such violation.

Article 7

District Service Area

7.1 District agrees to provide water service only to customers within the service area defined by the boundaries described in Attachment 2 of this Agreement. The District further agrees that water service will not be provided to any benefit unit with a lot size less than 10 acres in the District's service area south of 45th Street North. Such 10 acre restriction may be lifted administratively without formal amendment of this Agreement upon reasonable written demonstration by the District to Wichita of a hardship.

This 10 acre minimum size restriction south of 45th Street North shall not apply to lots that were platted prior to 1969 in the area referred to in §7.6 below.

7.2 The service area boundaries are further delineated on a map, which appears as Attachment 3 to this Agreement as the "District Service Area," hereinafter referred to as the "Service Area." In the event of a conflict between the legal description contained in Attachment 2 and the map designated as Attachment 3 hereto, the legal description contained in §7.1 shall control.

7.3 District agrees that it will not sell water to other incorporated cities, improvement districts, rural water districts or to other customers located outside of the Service Area as delineated in §7.1 of this Agreement without the express written approval of Wichita. Wichita hereby grants an exception to this provision for District benefit unit #315 located in the SE quarter of Section 19 Township 25 Range 2 East and the SW corner of the NW quarter of Section 12 Township 26 Range 2 East.

7.4 In the event that the District violates the provision of §7.3 concerning service outside of the defined Service Area, District shall have ten (10) days to correct such violation after receipt of written notice from Wichita of the existence of such violation. If the District fails to make such correction and eliminate any violation of the provisions of §7.3, Wichita may discontinue water service to District. As an alternative to discontinuance of water service,

Wichita may impose at the discretion of Wichita, and District agrees to pay, a surcharge of 100% on all water sold to District during the period of time such violation remains uncorrected.

7.5 The service area described herein is subject to renegotiation by the parties at any time after five (5) years have elapsed from the effective date of this Agreement. Renegotiation of the service area may be commenced by either party notifying the other party of its desire to renegotiate the service area at least forty-five (45) days in advance of the anniversary date of the five-year period. Either party reserves the right to refuse to agree to a service area change request.

7.6 The District hereby agrees to release in the manner provided by law all territory within the District's service area that is within Wichita's metropolitan growth area and/or corporate limits upon the effective date Agreement with the exception of the NE quarter of Section 29, Township 26 Range 2 East. All as more fully described in the map attached hereto (Attachment # 4).

7.7 In compensation for the release of territory in §7.6 above and the District's water lines contained therein, Wichita agrees to pay one-half the total reasonable cost (design and construction) of a pressure and chlorine booster pump station (hereinafter "station"). Wichita will be responsible for obtaining a site, designing, bidding and constructing said station. Wichita will include the District's designated representative in review of planning, locating, designing and constructing said station. Wichita will submit final design parameters and documents to the District for approval. The District will timely provide such approval or any requests for modification to Wichita. The District will not unreasonably withhold approval. The District agrees to make monthly payments for one-half the costs associated with the planning, locating, design and construction of the station, including actual financing costs and reasonable overhead costs, within 30 days of receiving the invoice from Wichita. Wichita will add and the District agrees to pay a late payment penalty of 1% of the invoiced cost for each 30 days or part thereof that the payment is made after 30 days. The obligation of the District to repay Wichita for one-half said costs of the station shall be unconditional throughout the term of the agreement.

The responsibility for ownership, operation and maintenance of the station shall rest with the District.

7.8 The District will release to Wichita in the manner prescribed by law 14 existing benefit units more fully described in Attachment # 5. Six of these benefit units are active and Wichita will compensate the District for those at \$10,000 per benefit unit with one-half of such sum being paid within 30 days of the effective date of this agreement and the other half of such sum paid when Wichita actually begins serving those benefit units from Wichita's system. Until such time as Wichita actually begins to serve the six active benefit units, the District may continue to serve the same.

Eight of these benefit units are inactive and Wichita will compensate the District for those at \$5,000 per benefit unit with the entire sum of \$40,000 being paid to the District within 30 days of the effective date of this Agreement.

7.9 The District shall not be entitled to make a claim against Wichita under any federal or state law or regulation for any territory, facility, infrastructure or benefit unit released by the District or served by Wichita under the provisions of this Article 7. The parties agree that the compensation provided by this Article 7 and the benefits of this Agreement are adequate and sufficient compensation for such releases by the District and service by Wichita.

Article 8

Rates for Water Service

8.1 The rate charged District for water service shall be in accordance with the rates established and amended from time to time for by Wichita for Wichita's wholesale water customers.

8.2 District shall be considered by Wichita as one customer for computation of water charges. The water volume charges for treated water shall be based on actual metered water consumption at the rate for wholesale service under the terms of applicable rates as provided in §8.1 of this Agreement.

8.3 District will be billed monthly at the rates established by the provisions of this Agreement and by Wichita ordinances. If said bill is not paid within twenty-five (25) days after Wichita mails said bill, interest will be charged and District agrees to pay such interest in accordance with the ordinances of Wichita, as the same may exist from time to time.

8.4 District will be required to adopt, and maintain in place throughout the term of this Agreement, a conservation based rate structure with graduated usage blocks similar in concept to the rate structure employed by Wichita for its retail customers.

Article 9

Emergency Restriction or Interruption of Service

9.1 Wichita hereby agrees to make reasonable efforts to provide adequate water service and pressure pursuant to the terms of this Agreement. However, it is understood and agreed by the parties hereto that the Wichita water supply might, by reason of unforeseen catastrophe or disaster (commonly called acts of God) or shortage of water, be temporarily restricted or interrupted.

9.2 Restriction or interruption of service to the District under such conditions or as a result of pipeline failures shall not give rise to any claim on the part of District, or customers of District, against Wichita or its water utility. In such cases, Wichita will make reasonable efforts to restore normal water service.

9.3 Wichita agrees that it will not restrict or interrupt water service to District pursuant to this Agreement by reason of a shortage of water unless service to Wichita's retail water customers is subject to similar limitations.

Article 10 Operation and Maintenance

10.1 District shall be fully responsible for the operation and maintenance of the water distribution system owned by District, except as otherwise provided herein, and District agrees to indemnify and hold Wichita harmless of and from any claim or legal action against Wichita or District arising from the operation or maintenance by District of water systems owned by District, or any part or extension thereof.

In the event that it is necessary to temporarily stop the flow of water into the District transmission system, an authorized representative of District shall be permitted to shut off the water supply by use of the valve located outside the meter vault. In the event that such discontinuance of service is necessary, District shall notify the Wichita Water Utilities by contacting the Water Production and Pumping Superintendent or his/her authorized representative and specify the period of time the water supply will be discontinued before closing the valve. Likewise, District shall notify Wichita prior to reopening the valve.

In the event such discontinuance of service is initiated by Wichita, Wichita will likewise notify District.

Article 11 Agreement Term and Renewal

11.1 The term of this Agreement shall be twenty (20) years. Upon mutual agreement between District and Wichita, this Agreement may be extended for an additional period of up to ten (10) years under the same terms and conditions as contained herein.

11.2 District shall notify Wichita before the end of the sixteenth (16th) year of this Agreement as to whether District wishes to extend this Agreement.

11.3 If Wichita and District fail to agree on an extension of this Agreement before the end of the seventeenth (17th) year of this Agreement, this Agreement shall terminate at the end of the twentieth (20th) year.

11.4 In the event this Agreement terminates, District shall disconnect its water distribution system from Wichita's pipeline connection no later than one (1) year following expiration of this Agreement. All water sold to District after this date shall be subject to a 100% surcharge above the rates as defined in Article 8.

11.5 In the event this Agreement expires as provided in §11.3 above, the parties hereto agree that the provisions of this Agreement shall remain in full force and effect until District has actually disconnected from Wichita's water system and District has paid all amounts due Wichita under the terms of this Agreement or any amendments thereto.

Article 12
Notices and Mediation

12.1 All notices required to be given herein shall be in writing and shall be delivered in person or mailed by certified mail to the following addresses:

- (a) All notices (including emergencies) to Wichita:

City Clerk
City Hall – 13th Floor
455 North Main
Wichita, KS 67202

Director of Utilities
City Hall – 8th Floor
455 North Main
Wichita, KS 67202
Phone: 316-268-4515
Fax: 316-858-7700

- (b) All notices to District:

General Manager, Rural Water District #1 of Sedgwick County, KS
PO Box 490
Kechi, KS 67067
316-744-3173

12.2 In the event negotiation of any terms or conditions takes place between the parties as called for and defined in this Agreement, and if no agreement is reached as a result of such negotiation, the parties hereto agree to attempt mediation. Such mediation shall take place by appointment of an individual mediator chosen from a list of names to be submitted to both parties from the League of Kansas Municipalities or other such entity as may be mutually agreed upon by the parties hereto. Such mediation shall be undertaken by the parties hereto in good faith, but the same shall be non-binding.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be signed by their respective officer duly authorized so to do on the dates set forth below.

THIS AGREEMENT SHALL BE EFFECTIVE on the date first above written and upon execution of each party hereto.

RURAL WATER DISTRICT No. 1

CITY OF WICHITA
By Order of the City Council

Kenneth Lewis, Board President

Carl Brewer, Mayor

ATTEST:

Donna Burk, Manager

APPROVED AS TO FORM

Ray Connell, RWD #1 Attorney

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM

Gary E. Rebenstorf, Director of Law

Attachments

1. Schedule of Projected Water Usage
2. District Service Area Boundaries(Legal Description)
3. District Service Area Map
4. Map of Area to Be Released by District to Wichita
5. Municipal Address and Property Description of 14 Benefit Units Acquired by Wichita