

## AGREEMENT FOR PURCHASE OF SURPLUS MUNICIPAL WATER

This AGREEMENT is made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the parties, being Norman Utilities Authority of the City of Norman, Oklahoma, a public trust for the benefit of the City of Norman, Oklahoma, (hereinafter referred to as "NORMAN"), the Del City Municipal Services Authority, a public trust for the benefit of the City of Del City, Oklahoma (hereinafter referred to as "DCMSA"); the City of Del City, Oklahoma (City of Del City); and Central Oklahoma Master Conservancy District, a master conservancy district organized under the laws of Oklahoma (hereinafter referred to as "COMCD").

The parties agree as follows:

1. The City of Del City, Oklahoma and DCMSA are parties to a certain Contract with the Central Oklahoma Master Conservancy District, dated November 13, 1961 and extended on June 5, 1995, as amended, for a City of Del City water supply ("the Del City contract"), under the terms and provisions of which the City of Del City and the DCMSA are entitled to purchase a certain specified allocation of water from COMCD.
2. The City of Norman, Oklahoma and the Norman Utilities Authority are parties to a certain Contract with COMCD, dated September 5, 1961 and similarly extended, as amended, for the Norman water supply ("the Norman Contract"), under the terms and provisions which NORMAN is entitled to purchase a certain specified allocation of water from COMCD.
3. NORMAN anticipates, based upon past and current water demand and actual usage, that, in the near future, it will need more than the specified allocation of water available to NORMAN under said Contract with the COMCD, as amended, and that NORMAN desires to purchase Surplus Municipal Water (as referenced in Section 8. in both the Norman contract and the Del City contract) from COMCD, to help meet the needs and demands of NORMAN in the future.
4. DCMSA and the City of Del City are willing to allow COMCD to provide to NORMAN, at a mutually agreed upon price, some of the Surplus Municipal Water which DCMSA is otherwise entitled to purchase under the Del City contract.
5. NORMAN will pay COMCD for such Surplus Municipal Water.
6. Section 8. of the Del City contract and the Norman contract provides that when Surplus Municipal Water is available, COMCD may dispose of such current surplus on whatever terms it can arrange.
7. Net revenues from the sale of Surplus Municipal Water to NORMAN by COMCD, that was from amounts allocated to the City of Del City and DCMSA, shall be credited on the next payment or payments due to be paid by the City of Del City and DCMSA to COMCD.

8. DCMSA and the City of Del City shall retain all allocations and rights to all water which they have possessed immediately prior to the execution of this AGREEMENT, and NORMAN agrees not to seek or accept any rights to water as a result of the City of Del City and DCMSA making Surplus Municipal Water available to NORMAN under this AGREEMENT.

9. The effective date of this AGREEMENT shall be the 1st day of May, 2013.

10. COMCD will sell to NORMAN up to three hundred million gallons of Surplus Municipal Water per year from the Del City/DCMSA contract allocation under its COMCD Contract at the commercial billing rate set forth in Paragraph 18 of this AGREEMENT.

11. DCMSA agrees to notify NORMAN, in writing, as soon as practically possible, of any water rationing program implemented by the DCMSA or the City of Del City.

12. NORMAN will notify COMCD and DCMSA, in writing, within five (5) days of the date that NORMAN exceeds its allocation under the COMCD contract.

13. NORMAN will install all equipment required by local, state, and federal laws for the NORMAN water lines to, among other things, ensure raw water is being distributed and to monitor and reasonably repair any water line breaks.

14. NORMAN agrees that its water usage shall be subject to a water rationing program at least as stringent as the DCMSA or the City of Del City, Oklahoma water rationing program should one be implemented at a time when NORMAN is utilizing water from the DCMSA allocation during the contract term.

15. COMCD will prepare accurate billing statements at the conclusion of each water year (ending September 30 of each year) quantifying the amount of water purchased by NORMAN in accordance with Paragraph 18. herein and charging NORMAN the rate for such water set forth in Paragraph 18 below. NORMAN will pay to COMCD the amount stated in the billing statements sent by COMCD to NORMAN for the sale of such Surplus Municipal Water to NORMAN within thirty (30) days of the receipt of each such billing statement by NORMAN.

16. COMCD will receive the payments from NORMAN for the water NORMAN receives over its allocation under the COMCD contract and, to the extent such water received by NORMAN is within the amount of Surplus Municipal Water specified in Paragraph 18. of this AGREEMENT, shall credit such payments to DCMSA.

17. The Parties agree that the determination of NORMAN's purchase of water from COMCD under this AGREEMENT will be based on COMCD's records of NORMAN's total receipt of water for the water year, minus NORMAN's allocation amount under the Norman contract with COMCD.

18. COMCD will sell to NORMAN, and NORMAN shall pay COMCD for metered water, in a quantity up to three hundred million (300,000,000) gallons per year at the following rate: Thirty-three (\$.33) cents per 1000 gallons.

19. NORMAN acknowledges that DCMSA has advised NORMAN that the requirements of the Internal Revenue Code of 1986 and regulations adopted thereunder (collectively, the "Code") applicable to obligations issued and to be issued by DCMSA to finance water facilities must be complied with in order for interest on such obligations to be and

remain exempt from Federal income taxation. To ensure and maintain compliance with such Code requirements, DCMSA makes the following covenants:

- 19.1 NORMAN will not sell any water purchased under this Agreement in any manner that would cause such sale to result in any facility of DCMSA being deemed to be used for a private business use under the Code.
- 19.2 NORMAN will not resell any water purchased under this Agreement, whether directly or as a part of a sale of water from NORMAN's water system, to a wholesale purchaser for resale by such purchaser. NORMAN will only sell water purchased under this Agreement to its retail customers for ultimate consumption or use.
- 19.3 NORMAN will not enter into any agreement for water purchased under this Agreement and resold to NORMAN'S retail customers except for arrangements for water sale that is available to the general public at either (i) no charge, or (ii) on the basis of rates that are generally applicable and uniformly applied, it being understood that for this purpose, rates may be treated as generally applicable and uniformly applied even if (x) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (y) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates.
- 19.4 NORMAN will not enter into any arrangement for water purchased under this Agreement and resold to NORMAN'S retail customers that conveys priority rights or other preferential benefits or that would obligate any retail customer to make payments that are not contingent on the amount of water purchased by such customer such as take or pay or take and pay contracts.
- 19.5 In the event such Code requirements, or interpretations thereof, change after the date hereof, any or all of the foregoing may be modified, by notice in writing from DCMSA to NORMAN based on the advice of counsel, to reflect such changes.
- 19.6 NORMAN shall confirm to DCMSA at least annually by December 31 that it has not sold any water purchased under this Agreement other than in compliance with the foregoing. Nothing contained in this Article shall affect the ability of DCMSA to sell water to any customers under any conditions if and to the extent such sales are made solely from resources other than water purchased under this Agreement.
- 19.7 NORMAN represents and confirms that the Norman Utilities Authority is a public trust created and existing under the laws of the State of Oklahoma for the benefit of the City of Norman, Oklahoma, and covenants that it will continue to be such a public trust for the term of this Agreement. NORMAN further represents and confirms that it is exempt and will remain exempt from Federal income taxation for the term of this Agreement and, by virtue of such exemption, has not filed or paid and will not file nor pay any Federal income tax returns for the term of this Agreement

20. Having considered the potential liabilities that may exist during the performance of the SERVICES, the NORMAN fee for the SERVICES and in consideration of the promises contained in this AGREEMENT, DCMSA, NORMAN and COMCD agree to allocate and limit such liabilities in accordance with this Article to the extent permitted by Oklahoma statutes, constitution, and case law.

- 20.1 Consequential Damages. To the extent permitted by Oklahoma statutes, constitution, and case law, DCMSA shall not be liable to NORMAN or COMCD, NORMAN shall not be liable to DCMSA or COMCD, and COMCD shall not be liable to DCMSA or NORMAN for any special, indirect or consequential damages resulting in any way from the performance of this AGREEMENT.
- 20.2 Remedies and Indemnification for Breach of Tax Covenants. The parties agree that (a) the provisions of Paragraph 19. Of this AGREEMENT constitute material terms and conditions of this Agreement; (b) COMCD, the City of Del City, and DCMSA each has the right to terminate this Agreement by giving thirty (30) days' written notice to NORMAN in the event the City of Del City, DCMSA, or COMCD determines, in good faith, that NORMAN has breached any part of Paragraph 19. Of this AGREEMENT; and (c) because of the importance to DCMSA of preserving the tax-exempt treatment of the interest on its obligations, determinations by the DCMSA, in good faith, as to NORMAN'S compliance with the provisions of Article VI herein shall be conclusive. Notwithstanding the foregoing, NORMAN agrees to indemnify and hold harmless DCMSA for all costs incurred by DCMSA, including reasonable fees of counsel and other professionals, with respect to any action required to be taken by DCMSA to prevent, defend or settle any threatened, preliminary or final action or investigation by the Internal Revenue Service questioning or attacking the tax-exempt status under the Code of the interest on obligations issued by DCMSA arising from any violation by NORMAN of Article VI herein, except to the extent such violation results from any sale or resale approved in writing by DCMSA in its sole discretion. Any provisions contained herein which provide for indemnification shall not apply to the United States in the event that it or one of its agencies becomes a successor in interest to NORMAN. This Section shall survive the expiration or earlier termination of this Agreement.
- 20.3 Survival. Upon completion of all obligations and duties provided for in this AGREEMENT or if this AGREEMENT is terminated for any reason, the terms and conditions of this Paragraph 20 and all its subparagraphs shall survive.

21. The initial term of this AGREEMENT shall be for five (5) years commencing on May 1, 2013. The initial term may be renewed for an additional five (5) year term by written agreement of the parties. The foregoing notwithstanding, the provision of Surplus Municipal Water by COMCD to NORMAN may be terminated for failure to timely pay for such water as

provided in this AGREEMENT. This AGREEMENT may be amended or terminated at any time upon the mutual agreement of the parties hereto or their authorized representatives.

22. The terms and provisions of this Agreement for Surplus Municipal Water shall be suspended and COMCD's duty to sell water and NORMAN's right to purchase and receive said water shall immediately cease in the event that four (4) or more existing, functioning water wells within the City of Del City should cease to function. DCMSA shall immediately notify NORMAN and COMCD, in writing, in the event that four (4) or more of said wells cease to function. In the event that the number of nonfunctioning water wells is reduced to three (3) or less, the terms and provisions of this AGREEMENT shall be reinstated and the duties and rights hereunder shall be again enforceable from the date of said reinstatement.

23. Neither DCMSA, COMCD, or NORMAN shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this AGREEMENT, such circumstances include, but are not limited to: abnormal weather conditions; unforeseen emergency causing infrastructure failure; floods; earthquakes; fire; epidemics; war; riot and other civil disturbances; strikes, work slowdowns and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for anything required to be provided by either DCMSA, COMCD, or NORMAN under this AGREEMENT.

24. Should such circumstances occur the non-performing party shall, within a reasonable period after being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this AGREEMENT.

25. NORMAN may request that COMCD and DCMSA grant increases in the quantities of water which NORMAN may purchase under this AGREEMENT on an annual basis from 300 million gallons to up to 500 million gallons.

26. Any communication required by this AGREEMENT shall be made in writing to the addresses specified below:

NORMAN: Norman Utilities Authority  
Attn: Director of Utilities  
201-C West Gray  
Norman, OK 73070-0370

City of Del City and DCMSA: Del City Municipal Services Authority  
P. O. Box 15177  
Del City, OK 73155

COMCD: Central Oklahoma Master Conservancy District  
Attn: General Manager  
12500 Alameda Drive  
Norman, OK 73026



Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of NORMAN, the City of Del City, DCMSA and COMCD.

27. Any waiver by the City of Del City, DCMSA, NORMAN, or COMCD of any breach of this AGREEMENT shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

28. The invalidity, illegality, or unenforceability of any provision of this AGREEMENT or the occurrence of any event rendering any portion or provision of this AGREEMENT void shall in no way affect the validity or enforceability of any other portion or provision of this AGREEMENT. Any void provision shall be deemed severed from this AGREEMENT, and the balance of this AGREEMENT shall be construed and enforced as if this AGREEMENT did not contain the particular portion or provision held to be void. The parties further agree to amend this AGREEMENT to replace any stricken provision with a valid Provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire AGREEMENT from being void should a provision, which is of the essence of this AGREEMENT, be determined void.

29. This AGREEMENT represents the entire and integrated AGREEMENT between NORMAN, the City of Del City and DCMSA, and COMCD. Except as otherwise specified herein, this AGREEMENT supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT. This AGREEMENT may only be changed by written amendment executed by both parties.

30. Nothing in this AGREEMENT supersedes, amends, or abrogates any of the provisions of the Del City contract with COMCD or the Norman contract with COMCD.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, NORMAN, DCMSA and COMCD have executed this AGREEMENT.

**NORMAN UTILITIES AUTHORITY**

Approved by NORMAN this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

NORMAN UTILITIES AUTHORITY

By: \_\_\_\_\_  
Cindy Rosenthal, Chairman

ATTEST:

\_\_\_\_\_  
Brenda Hall, Secretary

REVIEWED this 21 day of MARCH, 2013.

  
\_\_\_\_\_  
Attorney for Norman Utilities Authority

**CITY OF DEL CITY/DEL CITY MUNICIPAL SERVICES AUTHORITY**

Approved by DEL CITY this \_\_\_\_ day of \_\_\_\_\_, 2013.

DEL CITY MUNICIPAL SERVICES  
AUTHORITY

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

REVIEWED this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Attorney for Del City Municipal  
Services Authority

CITY OF DEL CITY

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

REVIEWED this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Attorney for City of Del City



**CENTRAL OKLAHOMA MASTER CONSERVANCY DISTRICT**

Approved by COMCD this \_\_\_\_ day of \_\_\_\_\_, 2013.

CENTRAL OKLAHOMA MASTER  
CONSERVANCY DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, President

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

REVIEWED this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Attorney for COMCD