

**AGREEMENT FOR PURCHASE OF
SURPLUS MUNICIPAL WATER**

This AGREEMENT is made and entered into the _____ day of _____, 2016, 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 Midwest City Municipal Authority, a public trust for the benefit of the City of Midwest City, Oklahoma (hereinafter referred to as "MCMA"), as assignee of the Midwest City Utilities Authority; the City of Midwest City, Oklahoma ("City of Midwest 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 Midwest City, Oklahoma and MCMA 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 Midwest City water supply ("the Midwest City contract"), under the terms and provisions of which the City of Midwest City and the MCMA 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 Midwest City contract) from COMCD, to help meet the needs and demands of Norman in the future.
4. MCMA and the City of Midwest City are willing to allow COMCD to provide to Norman, at a mutually agreed upon price, some of the Surplus Municipal Water which MCMA is otherwise entitled to purchase under the Midwest City contract.
5. Norman will pay COMCD for such Surplus Municipal Water.
6. Section 8. of the Midwest 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 Midwest City and MCMA, shall be credited on the next payment or payments due to be paid by the City of Midwest City and MCMA to COMCD.
8. MCMA and the City of Midwest 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 Midwest City and MCMA making Surplus Municipal Water available to Norman under this Agreement.
9. The effective date of this Agreement shall be the 1st day of April, 2016.

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

11. MCMA agrees to notify Norman, in writing, as soon as practically possible, of any water rationing program implemented by the MCMA or the City of Midwest City.

12. Norman will notify COMCD and MCMA, 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 MCMA or the City of Midwest City, Oklahoma water rationing program should one be implemented at a time when Norman is utilizing water from the MCMA 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 MCMA.

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 rate of thirty-six (\$.36) cents per 1000 gallons.

19. Norman acknowledges that MCMA 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 MCMA 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, MCMA 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 MCMA 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 or 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 MCMA to Norman based on the advice of counsel, to reflect such changes.
- 19.6 Norman shall confirm to MCMA 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 MCMA 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, MCMA, 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, MCMA shall not be liable to Norman or COMCD, Norman shall not be liable to MCMA or COMCD, and COMCD shall not be liable to MCMA 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 Midwest City, and MCMA each has the right to terminate this Agreement by giving thirty (30) days' written notice to Norman in the event the City of Midwest City, MCMA, 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 MCMA of preserving the tax-exempt treatment of the interest on its obligations, determinations by the MCMA, 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 MCMA for all costs incurred by MCMA, including reasonable fees of counsel and other professionals, with respect to any action required to be taken by MCMA 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 MCMA 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 MCMA 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 April 1, 2016. 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 Midwest City should cease to function. MCMA 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 MCMA, COMCD, nor 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 MCMA, 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 MCMA 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 Midwest City Midwest City Municipal Authority and MCMA:
100 North Midwest Boulevard
Midwest City, OK 73110
Attn: Secretary

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 Midwest City, MCMA and COMCD.

27. Any waiver by the City of Midwest City, MCMA, 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 Midwest City, MCMA, 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 Midwest City contract with COMCD or the Norman contract with COMCD.

IN WITNESS WHEREOF, Norman, MCMA, City of Midwest City and COMCD have executed this Agreement.

Approved by Norman this _____ day of _____, 2016.

NORMAN UTILITIES AUTHORITY

By: _____
Cindy Rosenthal, Chairman

ATTEST:

Brenda Hall, Secretary

REVIEWED this _____ day of _____, 2016.

Attorney for Norman Utilities Authority

Approved by MIDWEST CITY this 26th day of January, 2016.

MIDWEST CITY MUNICIPAL AUTHORITY

By: Jay Dee Collins
Jay Dee Collins, Chairman

ATTEST:

Sara Hancock
Sara Hancock, Secretary

REVIEWED this 26th day of January, 2016.

Katherine Baller
Attorney for Midwest City Municipal Authority

CITY OF MIDWEST CITY

By: Jay Dee Collins
Jay Dee Collins, Mayor

ATTEST:

Sara Hancock
Sara Hancock, City Clerk

REVIEWED this 26th day of January, 2016.

Katherine Bolles
Attorney for City of Midwest City

Approved by COMCD this ____ day of _____, 2016.

CENTRAL OKLAHOMA MASTER
CONSERVANCY DISTRICT

ATTEST:

By: _____, President

_____, Secretary

REVIEWED this ____ day of _____, 2016.

Attorney for COMCD