

AGREEMENT

Sale of Treated Water to Rural Water District No. 2 of Douglas County, Kansas from City of Lawrence, Kansas

1.0 PROVISIONS

- 1.10 **General.** This agreement for the treatment and transmission of water entered into this ___ day of _____, 2010, by and between the City of Lawrence, Douglas County, Kansas, a municipal corporation of the first class, hereinafter referred to as "City;" and Rural Water District No. 2, Douglas County, Kansas, hereinafter referred to as "District."

Whereas, the District, has contracted for an allotment of water from the Clinton Reservoir, Douglas County, Kansas, as administered by the Kansas Water Office, and

Whereas, the District is organized and established under the provisions of K.S.A. 82a-612 *et. seq.* for the purpose of operating a water supply distribution system serving water users within the area defined in this agreement, and the District requests a supply of treated water; and

Whereas, the City owns and operates a water supply treatment and distribution system with a current and projected capacity capable of serving District needs as defined in this agreement; and

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, the details of this agreement are as follows:

2.0 DEFINITIONS

For the purposes of this Agreement the following definitions shall be applicable:

Average Day Demand shall mean the total annual volume of water divided by 365 days.

City shall mean the City of Lawrence, Kansas.

District shall mean Rural Water District No. 2, Douglas County, Kansas.

gpd = gallons per day

gpm = gallons per minute

KWO shall mean the Kansas Water Office

Maximum Day Demand shall mean the maximum water use demand over a 24-hour period.

mg/l = milligram per liter

Peak Hourly Demand shall mean the maximum usage over a one (1) hour period.

QUANTITY

- 2.10 **Agreement Amount.** The maximum quantity of water the City agrees to treat under this contract is 125,500,000 gallons per year. The parties agree that in order for the City to treat and deliver the quantity of water the District seeks pursuant to this Agreement, accurate projections of the District's maximum quantities are needed from the District. The District agrees to provide to the City each year this agreement is in effect, a five-year projection of the maximum quantities of water it seeks the City to treat and deliver to the District. On or before the 15th day of January of

each year this Agreement is in effect, the District shall provide to the City a table projecting the maximum quantities of water the District seeks in the form provided below. If after receiving the annual updated five-year projection, the City determines it cannot treat and deliver the quantity of water in the District's projection, the City shall so notify the District in writing within 60 days of receipt of the annual quantity projection. The parties may then negotiate a revision to the projection. If the City does not notify the District that it cannot treat and deliver the quantity of water in the District's projection as provided herein, the District's projection of maximum quantities shall be deemed accepted by the City and the Projection of Quantities Table shall be attached to this Agreement as an Exhibit and incorporated by reference.

The City agrees to treat and deliver a quantity of water to the District as set forth in the table below, and as annually updated by the District and accepted by the City as provided in this Section:

Year	Average Day Demand Shall Not Exceed (gpd)	Peak Day Demand Shall Not Exceed (gpd)	Peak Hourly Demand Shall Not Exceed (gpm)	Annual Demand (gallons)
2009	119,000	238,000	500	43,435,000
2010	123,000	246,000	500	44,895,000
2011	127,000	254,000	500	46,355,000
2012	132,000	264,000	500	48,180,000
2013	136,000	272,000	500	49,640,000

If the District withdraws quantities in excess of the maximum quantities set forth in the Projection Table provided for in Section 2.10 of this Agreement, the City shall charge the District two times the billing rate for the quantity of water withdrawn in excess of the projected maximum quantity until such time as the District returns to the level set forth in the Projection Table.

2.20 Reservoir Allotment. As the terms of this agreement reflect primarily the sale of water treatment and water-transmission, the District shall maintain its agreement with the KWO for purchase and security of water allotments. As of the date of the execution of this Agreement, the District's allotment with the Kansas Water Office is 80.782 million gallons per year.

The maximum quantity of water the City agrees to treat under Section 2.10 of this Agreement exceeds the District's allotment through its agreement with the Kansas Water Office. The City agrees to supplement the District's allotment with water the City has the legal authority to sell up to 125,500,000 gpy in accordance with Section 2.10, except the City shall have no duty to supplement the District's allotment if the KWO reduces either the District's or the City's allotment, or both, from Clinton Reservoir. In the event the KWO reduces the allotments of the District and/or the City, the parties hereto may renegotiate the maximum quantity provision of this Agreement.

The District shall reimburse the City an amount equal to the prevailing cost per thousand gallons for marketing water multiplied by the quantity of water, in thousands of gallons, used in excess of the contract amount between the District and KWO, in addition to the billing rate set forth in section 6.10 of this Agreement for the treatment and transmission of the additional water.

3.00 BOUNDARIES

- 3.10 Service Area.** The District shall be defined as that area inclusive of the boundaries of Rural Water District No. 2 as recorded with the Board of County Commissioners of Douglas County, Kansas, and any subsequent attachments as recorded by same.

Service Area Expansion Plans. The District shall annually provide the City with a Map of the District's boundaries and the number of meters in the District. When the District is considering expanding its boundaries, the District shall advise the City of the anticipated number of meters and average daily demand within the proposed District Boundaries.

4.00 METERING

- 4.10 Master Meter Location.** The master meter is located at the intersection of 35th Street and Iowa. Structure and equipment shall be purchased and constructed in accordance with City specifications, at the District's expense.

The necessary easements and rights-of-way shall be obtained by the District. The master meter, valve immediately downstream of the master meter, meter strainer, and valve immediately upstream of the master meter, shall, upon acceptance by the City, be owned by the City. All further maintenance of the master meter, meter strainer, upstream valve, and downstream valve shall be the responsibility of the City. The remaining equipment and structure shall be maintained by the District, at the District's expense.

The City and the District acknowledge the possibility of the relocation of the master meter. The master meter may be relocated provided the City approves in writing the relocation and the District is responsible for all costs associated with the relocation and the new master meter and master meter location.

- 4.20 Master Meter Specifications.** Master meters shall meet applicable AWWA specifications and be of either the Turbine type, Compound type or Fire service type. The type of meter shall be determined by the City of Lawrence Utilities Department. For monthly water usage billing purposes, meter readings will be taken at the actual meter register. If master meters of other types are desired, prior approval must be obtained from the City.
- 4.30 Master Meter Testing.** Testing shall be performed annually by the City on master meters, with a copy to the District. A master meter registering not more than two percent (2%) above or below the test results shall be deemed accurate. Should any master meter be found registering inaccurately, adjustments in billing shall be made to the District by the City for water metered during the previous six (6) months.
- 4.40 Master Meter Reading.** The City shall read the District master meter once per month. The City shall have the authority to install, maintain, remove, and otherwise operate remote reading devices at the meter location. The City shall grant the District no allowances for loss of water due to repairs, main breaks, or similar system disruption. The City shall read the District's master meters during the week respective of the City's established meter-reading schedule. The District shall be billed from the City's established billing cycle.

5.00 BACKFLOW PREVENTION

- 5.10 Devices.** The master meter location shall contain backflow prevention devices, approved by the City, in accordance with the City's Cross-Connection Control Code (City of Lawrence, Kansas Code Section 19-701 *et. seq.* and amendments thereto). Devices shall be installed at the District's expense. The devices shall be adequately protected from freezing, and maintain adequate drainage to prevent submergence.

5.20 Testing. Backflow prevention devices shall be tested at the time of installation, at the District's expense, by a licensed and certified backflow device technician. Devices shall be tested annually, at the District's expense, by a licensed and certified backflow device technician. Devices shall be rebuilt every five years, at the District's expense, by a licensed and certified backflow device technician. Completed test records shall be sent to the City and maintained on file.

5.30 Accountability. The District shall provide the City, to be kept on file with the City, a copy of the District's Public Water Supplier's Permit. The District shall also, in accordance with the City's Cross-Connection Control Code, provide the City with the District's cross-connection control plan, to be kept on file with the City. The City shall provide its Public Water Supplier's Permit and its Backflow Prevention and Cross-Connection Control Plan to the District.

6.00 RATES

6.10 Billing Rate and Annual Review. The City shall bill the District Monthly for treatment and transmission services registered at the master meter location. The billing rate for 2009 is \$3.25 per 1000 gallons purchased. The City shall annually establish the billing rate as provided for herein, provided that if the City does not adjust the rate the most recently established rate shall remain in effect until adjusted by the City.

For every year after 2009, the City shall determine the billing rate. The billing rate shall be determined by the City based on the following:

The rate shall be based on the reasonable projected cost of service, which shall include but not be limited to the cost of service for peak demand service, administrative cost of service and rate of return on City investment, and related reasonable capital improvement costs associated with service to the District.

The cost of service for District service shall not include the cost of City distribution lines of eight (8) inches or less in size, costs of City water usage, City public fire protection related costs, or any costs related to the purchase of raw water from Clinton Reservoir purchased by the District.

6.20 DEMAND CONTRACT CHARGE

The City and the District acknowledge that the City has and is expending substantial resources to ensure the orderly and timely provision of water service to the District, including fixed capital costs which would be idled or of reduced need if the District should cease to use water the District agrees to pay a sum equal to the total revenue paid by the District to the City for the two years immediately preceding the effective date of the termination of the Agreement. Said payment shall be made by the District within 45 days of the effective date of the termination.

All warranties, representations, indemnifications, covenants and agreements between the City and the District contained in this Agreement, including but not limited to the Demand Contract Charge, shall survive the termination or the expiration of this Agreement. Provided, that if termination occurs as the result of notification thereof made by the City, pursuant to paragraph 14.20, then the District shall have no further liability for the Demand Contract Charge after termination. Further provided, that if termination occurs as a result of the District and the City of Lawrence entering into and executing a separate agreement for Public Wholesale Water Supply District No. 25, then the District shall have no further liability for the Demand Contract Charge after termination.

7.00 WATER QUALITY

- 7.10 Source Water.** The City shall draw source water from the Clinton Reservoir, the Kansas (Kaw) River, and an alluvial well field, immediately adjacent to the Kaw River. Water pursuant to this Agreement shall be treated by either the Kaw River Water Treatment Plant or the Clinton Reservoir Water Treatment Plant. The source of all water delivered under this agreement will be considered a part of the allotment to the district through the KWO to be withdrawn from Clinton Reservoir. Nothing in this Agreement shall be interpreted as a limitation on the source of supply the City provides the District pursuant to this Agreement.
- 7.20 Treated Water.** Source water shall be treated by means of conventional water treatment techniques by the City. Finished, treated water shall meet all federal, state, and local regulations, as defined by the U.S. Environmental Protection Agency (EPA), and the Kansas Department of Health and Environment (KDHE). Water delivered at the master meter shall have a total combined chlorine residual of not less than 2.0 to 2.5 mg/l. Water processed by the City's two water treatment plants shall be pumped in the City's distribution system.
- 7.30 Water Transmission.** Water being pumped from the City's two treatment plants shall not be segregated, or otherwise delivered to specific areas of the City's system. Source water from the Kaw River may be treated and delivered to the District in amounts as defined in this Agreement. Differentiation between water originally drawn from the Kansas River and treated water originally drawn from the Clinton Reservoir shall not be made.

8.00 PRESSURE

- 8.10 Minimum Supply Pressure.** Water shall be supplied by the City from water lines feeding the master meter location. Supply pressures at the meter location shall be approximately 45-50 psi (pounds per square inch) and reasonably constant under normal conditions.

9.00 AREAS OF RESPONSIBILITY

- 9.10 Point of Responsibility.** The City shall deliver water, treated in accordance with all regulatory requirements, and to the best of its abilities to the master meter location. This location shall serve as the point in which ownership shall be transferred from the City to the District.
- 9.20 Indemnification and Liability.** The District shall at all times save and hold harmless the City from all liability, costs, damages, and expenses of any kind, for the payment of which the City may become liable to any person, firm, or corporation by reason of any claim or damages arising from the failure of the District, its employees, agents, or servants to exercise due care and diligence in the operation of the District's water distribution system.

10.00 WATER QUALITY PROTECTION

- 10.10 System Protection.** Both the City and the District shall maintain their respective distribution systems pursuant to EPA and KDHE requirements. Systems shall be kept in a good state of repair, including all lines, meters, pumps, storage tanks, and other appropriate equipment.
- 10.20 Disinfectant Residual.** The City shall provide adequate disinfectant residual to the master meter location in accordance with EPA and KDHE requirements and in accordance with Section 7.20. Since disinfectant residuals may dissipate from the water while in the District's distribution system, the District shall ensure adequate disinfectant residuals throughout their system. All provisions necessary for re-disinfection shall be provided at the District's expense.
- 10.30 Contamination Protection.** Should contamination be suspected with either system, including positive coliform tests, rapid dissipation of disinfection residual, evidence of bacteriological or viral

organisms, or other external forms of contamination, the owner of such system shall notify the other party immediately. All efforts shall be made to ensure water quality integrity within respective distribution systems.

11.00 DIMINISHED CAPACITY

11.10 Emergency Failures. Diminished pressure or supply due to main breaks, power failure, flood, fires, drought, earthquake, or other such disasters shall be restored as expediently as is reasonably possible. Nothing in this Agreement shall be interpreted as providing the District with preferential treatment or special rights in relation to the orderly restoration of service to the District versus other City water supply responsibilities.

11.20 Excessive Demand. Heavy demands on the City's system may result in diminished pressure or supply to the District without prior warning or notification. All reasonable efforts shall be made by the City to restore service as expediently as possible.

11.30 Water Emergencies. The parties agree that the City now has the capacity of producing treated water in a quantity sufficient to meet the normal demands of its users, including the District. The City agrees to make every reasonable effort to provide an adequate supply of water at all times pursuant to the terms of this Agreement, but both parties understand that the City's water supply might, by reason of unforeseen emergency, catastrophe, extended drought, disaster, or other acts of God, become inadequate to meet the needs of the inhabitants of the City, and all other customers. Should such an emergency occur, the City shall not incur any liability to the District because of any need to curtail or interrupt the provision of water to the District. The District agrees to adopt, observe, and enforce conservation measures that achieve an equivalent percentage of water conservation as the conservation measures in effect at the time in the City of Lawrence. Normal service shall be resumed under the terms and conditions of this Agreement, at the termination of the emergency as determined by the City.

12.00 RESALE

12.10 Resale Prohibited. The City shall provide treatment and transmission services to the District for water to remain in the District's area, unless otherwise agreed by the City in writing. Water delivered to the District by the City shall be sold to District customers only. Both parties further agree that connections between public water supplies for the temporary delivery of water during emergencies is acknowledged.

13.00 ACCOUNTABILITY

13.10 End of the Year Reporting. The District shall submit to the City an annual usage report. Reports shall include the District's records of monthly flow, peak hour demand, peak day demand, and current number of service connections. This report shall be submitted to the City by February 15th, following the reporting year.

14.00 AGREEMENT TERMS

14.10 Agreement Length. This Agreement, between the City and the District, shall expire on December 31, 2040 and on such date shall be of no further force and effect. Provided, this Agreement may be renewed or extended upon such terms as the parties may agree.

14.20 Termination. As the City and District recognize rapidly changing technology, as well as regulations, this Agreement may be terminated by either the City or the District, given thirty-six (36) months written notification.

All warranties, representations, indemnifications, covenants, and agreements between the City and the District contained in this agreement, including but not limited to the demand contract

charge, shall survive the termination or expiration of this agreement. Provided, that if termination occurs as the result of notification thereof by the City, then the District shall have no further liability for the Demand Contract Charge after termination.

14.30 Assignment. This Agreement may not be assigned without the written consent of both the District and the City. This Agreement is and shall be binding and obligatory upon the successors and assigns of the parties hereto.

14.40 Repeal of Earlier Agreements. Those certain agreements entered into on or about December 29, 1981, and June 8, 1999, between the City and the District are hereby repealed. It is the intent of the City and the District that this Agreement succeeds the earlier agreements.

14.50 Agreement Not Severable. The provisions of this Agreement are not severable. If a court of competent jurisdiction rules that any provision or term of this Agreement is invalid or in violation of any local, state or federal law, this Agreement shall be null and void.

IN WITNESS WHEREOF, the parties hereto, acting under the authority of the respective governing bodies, have caused this Agreement to be executed in triplicate, each of which shall constitute an original.

City of Lawrence, Kansas

A Municipal Corporation

Robert Chestnut, Mayor

ATTEST: _____
Jonathan M. Douglass, City Clerk

STATE OF KANSAS)
DOUGLAS COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Robert Chestnut, Mayor, City of Lawrence, Kansas, who is personally known to me to be the same person who executed the above Agreement, and such person duly acknowledged the execution of the same to be their free and voluntary act and deed.


IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last mentioned.

Notary Public

My appointment expires:

Rural Water District No. 2
Douglas County, Kansas,
A Quasi-Municipal Corporation

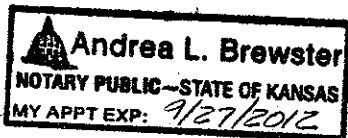

Arthur Miles, Chairman

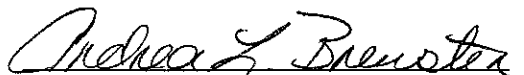

Rob Harris, Secretary

STATE OF KANSAS)
DOUGLAS COUNTY)

BE IT REMEMBERED, that on this 29th day of December, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Arthur Miles, Chairman, and Rob Harris, Secretary of Rural Water District No. 2, Douglas County, Kansas, who are personally known to me to be the same persons who executed the above Agreement, and such persons duly acknowledged the execution of the same to be their free and voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last mentioned.




Notary Public

My appointment expires: 9/27/2012