



## **Bryant City Council Meeting**

Thursday, September 16, 2021

6:00 PM

Boswell Municipal Complex-City Hall Courtroom

210 SW 3rd Street

Or watch live on YouTube at:

<https://www.youtube.com/c/BryantArkansas>

## **Agenda**

### **INVOCATION**

### **PLEDGE OF ALLEGIANCE**

### **CALL TO ORDER**

### **PRESENTATIONS & ANNOUNCEMENTS**

### **PUBLIC COMMENTS**

### **NEW BUSINESS**

#### **Legal**

1. Memorandum of Understanding to continue the efforts to secure a secondary water source for the residents of Bryant AR and Saline County through our partnership with the Saline County Regional Water Authority.  
*Memorandum of Understanding with the Saline County Regional Water Authority to continue our partnership in the pursuit of identifying and creating a secondary water source for the residents of Bryant and Saline County.*

### **COUNCIL COMMENTS**

### **MAYOR COMMENTS**

### **ADJOURNMENT**

## Memorandum of Understanding

Whereas, the undersigned, being “Wholesale Water System Operators,” recognizing the need for a regionalized water delivery system (a System) and the desirability of ordered and mutually beneficial cooperation among the providers of water in Saline County, does hereby commit to develop such a system, and to investigate, engineer, and construct such a system, and in so-doing do hereby commit in principle to purchase water from that combined system upon the availability thereof, and

Whereas, intending to be formally bound at a later date, the undersigned have agreed in principle to ratification of a water purchase and sharing agreement in the form attached hereto as Exhibit “A”, by which ratification of sufficient purchasers the exploration of funding of such System at a capacity to serve current and future needs, yet in a form that generates neutral or positive cash flow, may begin, and

Whereas, upon entry hereof, the parties may expend funds in contemplation of performance of that agreement attached as Exhibit “A” and otherwise in planning and construction of such System, and may otherwise act in reliance on the intentions expressed hereby. Only such amounts expended by the Saline County Regional Public Water Authority or else that are approved in advance by the Saline County Regional Public Water Authority by Board vote shall be reimbursable to wholesale water system operator.

Now therefore, the below signatories, having all requisite authority to execute this Memorandum of Understanding in their representative capacity, do hereby agree to pursue planning, engineering, development, financing, and construction of the System as may be agreed by majority vote by the Board of Directors of Saline Regional Public Water Authority, and do further agree, without recourse as to any reliance interest except as stated above, to take such steps as necessary to effect same.

And furthermore, the undersigned do further agree to enter and adopt a water delivery and purchase agreement in substantial form as that attached hereto as Exhibit “A” in that time following substantial completion of general design of such system and acquisition of funding commitments therefor, but prior to consummation of issuance of financing funding same. It is understood between agreeing parties that the (a) ramp-up period, and (b) minimum gallon commitments will vary between Members, each as set out in Exhibit “B” hereto, but that the signatories hereto will otherwise be treated equally and no less favorably than the remaining signatories in sale and delivery of water. This Memorandum of Understanding may be executed in counterparts, and a copy shall carry the force and effect of an original.

And furthermore, in consideration of the above and attached, the undersigned Purchaser agrees to continue to remit to Seller that monthly meter amount charged uniformly to all participating Purchasers, currently \$0.25 per meter per month, pending construction of the System and the initiation of performance of Exhibit "A", or termination of the Project (in which case all participating Purchasers shall be refunded pro rata from funds then on account) except that participating Purchasers who had ceased such payments will bring such payments current by paying twice that amount until no arrearage exists..

Provider Saline Regional Public Water Authority:

Signature: \_\_\_\_\_

Name: Bobby Westbrook \_\_\_\_\_

Title: President \_\_\_\_\_

Date: \_\_\_\_\_

Purchaser Entity Member: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Entity Member: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Entity Member: Sardis Water Association

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Entity Member: City of Bryant, Arkansas

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Entity Member: Salem Water Users PWA

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Entity Member: Southwest Water Users Assn.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Entity Member: Benton Utilities

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Entity Member: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Entity Member: \_\_\_\_\_

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Title: \_\_\_\_\_

Entity Member: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**WHOLESALE WATER  
SALE AND PURCHASE AGREEMENT**

This Wholesale Water Sale and Purchase Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Saline Regional Public Water Authority (“Seller”) and \_\_\_\_\_ (“Purchaser”).

WHEREAS Seller intends to construct a water treatment plant and water transmission system (the “Project”) and sell water to wholesale water purchasers; and

WHEREAS Purchaser desires to establish a long-term source of high-quality water at a reasonable cost and without political limitations; and

WHEREAS it is contemplated that all potable water acquired pursuant to this Agreement will, in turn be sold by Purchaser to its respective residential and commercial water purchasers; and

WHEREAS the parties hereto desire to be legally bound by the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions referenced herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, agreeing to be legally bound hereby, do hereby agree as follows:

**ARTICLE 1  
PRIMARY RESPONSIBILITIES OF SELLER**

Section 1.01 Seller shall be responsible for the following duties and activities at Seller’s sole cost and expense;

- (a) the taking of all reasonable actions to develop, construct and finance the Project;
- (b) the engineering, design and construction of the Project;
- (c) the taking of all reasonable actions to further the applications for and obtaining of appropriate permits, easements and rights-of-way which may be necessary in order to construct the Project and comply with the goals and intentions of this Agreement;
- (d) the ongoing operation, administration and maintenance of the Project to ensure the continuous flow of potable water through the Project;
- (e) the reconstruction of all or any portion of the Project that might be damaged or destroyed.
- (f) the delivery of potable water to Purchaser at sufficient pressure and in that quantity

that Purchaser may reasonably require, subject to the capacity limitations of the Project or any acts or events that may have a material adverse effect on the Project;

- (g) the transmission to Purchaser of water that has been properly treated, is acceptable for household use and meets the requirements of the Arkansas Department of Health for municipal water systems at the respective delivery points. It is recognized that Uncontrollable Circumstances (defined below) may temporarily interrupt the ability to deliver water in accordance with those quality standards otherwise provided herein. As used throughout this Agreement, the term “Uncontrollable Circumstances” shall mean those force majeure events that are outside of the control of Seller after Seller’s exercise of diligence and care, and that serve to interrupt potable water service from the Project, which events include, without limitation, fire, earthquake, spills, terrorist event, tornado, natural disasters, broken pipes, heavy rains, boil orders and other unforeseeable operational problems. Should an Uncontrollable Circumstance occur, Seller shall promptly take all reasonable and necessary steps that a similarly situated municipal water works would otherwise take in order to promptly cure said occurrence and restore the delivery of potable water through the Project.

**ARTICLE 2  
PRIMARY RESPONSIBILITY OF PURCHASER**

Section 2.01 In addition to payment for that water delivered by Seller, Purchaser shall be responsible for providing the following activities at Purchaser’s sole cost and expense:

- (a) providing for the operations, administration and maintenance of its retail distribution system, including repairs, meter reading and re-reads, billing, collecting, posting, customer services, collecting meter deposits, maintaining records, backflow prevention programs, consumer confidence reports, accounting, and other activities related to Purchaser’s water distribution system or designating the same to an appropriate party.
- (b) designing and engineering of upgrades and improvements to Purchaser’s water distribution system; and
- (c) developing policies related to approving of new connections and of water line extensions into new service areas in need of water to Purchaser’s water distribution system.

**ARTICLE 3  
WATER RATES, TERM, QUANTITY**

Section 3.01 Rates: During the Term (defined below) and in consideration of the supplying of potable water in accordance with the terms of this Agreement, upon completion of construction of the Project, Purchaser hereby agrees to purchase potable water from Seller at those initial wholesale water rates that are set forth on EXHIBIT A, attached hereto and incorporated herein by this reference (the Wholesale Rate), which wholesale rate may be adjusted uniformly by the Seller's Board of Directors from time to time as the need may exist in accord with then-existing cost structures, but in any case to no higher of a Base Rate and Meter Contribution Charge than as enjoyed by other participating Purchasers who have executed that Memorandum of Understanding leading hereto.

Section 3.02 Term: The Term of this Agreement shall begin as of the date of Initial Water Service as defined below, and shall continue for a period of 40 years, and upon expiration, shall be automatically renewed for multiple successive five (5) year period of time unless Purchaser in its discretion delivers to Seller written notice of Purchaser's decision not to so extend the terms of this Agreement. The initial term of this Agreement along with any renewals hereof shall be defined herein as the "Term."

Section 3.03 Initial Water Service: Seller shall between 90 and 180 days prior to expected completion of such infrastructure provide Notice to Customer of the anticipated completion date, at which time Customer shall connect to Seller's infrastructure within 180 days from completion and final certification of such infrastructure by the Arkansas Department of Health. The date on which water is actually accepted shall be referred to as the Initial Water Service date, from which date the Term shall be measured.

Section 3.04 In addition to the Monthly Meter Charge, during the Term of this Agreement [except as may be adjusted during a period no longer than the initial eighteen months hereof, terminating \_\_\_\_\_, during which time the Minimum Monthly Purchase Amount shall be \_\_\_\_\_ gallons per month] Purchaser agrees to purchase a minimum of \_\_\_\_\_ gallons per month (the "Minimum Monthly Purchase Amount"). Purchaser agrees to pay for the Minimum Monthly Purchase Amount irrespective of whether actually taken that month, except for cases in which failure of Seller's Water Delivery Infrastructure is the cause thereof. All such payments shall be made from funds derived from retail water service and not from the general revenues of Purchaser. Seller shall have no obligation to sell to Purchaser more than twice the Minimum Monthly Purchase Amount, and may curtail service for the remainder of any month in which such quantity is reached.

Section 3.05 The Project is being engineered and designed by Seller to deliver to Purchaser the maximum amounts of a minimum gallons of potable water per month. Except for (a) Uncontrollable Circumstances, (b) events wherein Seller is implementing, in a non-discriminatory basis, water rationing or other supply limitations to both Purchaser and other wholesale users, or (c) reaching the maximum amount of water capable of being delivered by the Project without improvements and betterments to the Project, Seller shall not otherwise ration or limit the supply of potable water otherwise available to Purchaser. Upon reaching the Project's water delivery limitations, Purchaser and Seller agree to work together in good faith in an effort to develop a plan to enlarge the Project or add other improvements and appurtenances to meet the

needs of the Project's water purchasers.

#### **ARTICLE 4 MEASUREMENT OF VOLUME**

Section 4.01 The unit of water deliverable by Seller to Purchaser shall be on the basis of units of one thousand (1000) gallons. Fractional units shall be determined by rounding to the nearest tenth (0.10) of a unit.

Section 4.02 The unit of volume for the purpose of measurement of water received hereunder shall be a gallon as measured by a meter or meters approved by the American Water Works Association Standards Committee.

Section 4.03 The Delivery Point meter(s) or Master Meter(s) shall be purchased by Seller and maintained by Seller. At all reasonable times, the Master Meter(s) shall be subject to joint checks, tests, and inspections. At least 10 days' notice will be given before such tests are to be conducted. Inspection of the Master Meter(s) will be made at least annually. When any tests show an error of more than two percent (2%) in the measurement, the meter shall be adjusted properly and corrections made for the period during which the meter was in error. If the period cannot be reasonably ascertained or the approximate difference in gallons consumed cannot be reasonably ascertained, correction shall be made for one half (½) of the period elapsed since the last date of test.

Section 4.04 Seller shall be obligated for reading the Delivery Point Meter(s).

#### **ARTICLE 5 PAYMENT AND PROCEDURES**

Section 5.01 Within the last three working days of each calendar month, Seller will deposit into the U.S. Mail to Purchaser an invoice equal to the Wholesale Rate per 1000 gallons of water actually delivered to Purchaser.

Section 5.02 If payment is not received by Seller by 21<sup>st</sup> day of the month following which the unpaid invoice was rendered, in addition to those remedies found within paragraph 7.02 hereof, Purchaser shall pay, in addition to the amount due, an administrative fee of \$100 per month shall apply for late payment. Should any payment due for a calendar month not be paid in full within ninety (90) days from the date the delinquent invoice was issued, Seller shall have the right to initiate collection litigation against Purchaser, irrespective of whether terminated by Seller for such non-payment.

Section 5.03 Purchaser's obligations for payment of the Monthly Meter Charge pre-exist the execution hereof and shall continue during the Term of this Agreement, as may be amended uniformly by Seller's Board of Directors; Purchaser's obligations to pay for Base Water Charges shall begin the first month after the delivery by Seller to Purchaser of potable water from

the Project.

## **ARTICLE 6 UPGRADES, MAINTENANCE AND REPAIRS**

Section 6.01       The parties acknowledge that for temporary periods, it will be necessary to interrupt the flow of water from the Project for routine maintenance or repairs. Seller shall use its best efforts to schedule such maintenance or repair at times when the water usage of Purchaser is expected to be at a seasonal low period.

Section 6.02       Upon design of the System, the Seller may add additional participating Purchasers and/or increase volumes available to any existing Purchaser only where such improvement or agreement to deliver additional volumes will not impair Seller's ability to deliver to any existing Purchaser twice the minimum quantities set out above. Seller and Purchaser agree to work together to allow for such additional sales, it being recognized that Project costs will be shared among additional customers thereby stabilizing Purchaser water rates, and that third party purchasers, subject to the foregoing, shall be allowed to tie to the Project only upon the payment by said third party purchasers of their pro-rated share of initial Project costs and all extraordinary costs incurred in order to allow for such third-party access to the Project.

Section 6.03       In addition to those charges reflected in section 3.04 above and in Exhibit "A" hereto, upon affirmative vote by a majority of the Board of Directors of Seller, there may be a one-time special assessment made upon all participating Purchasers for the purpose of repair or improvement of the System, which shall be shared by the participating Purchasers pro rata according to number of gallons purchased in the prior year, or alternatively, in that proportion found to be benefited by such anticipated capital expenditure, each upon the affirmative vote of a majority of the Board of Directors.

## **ARTICLE 7 TERMINATION FOR CAUSE**

Section 7.01       Buyer may terminate their obligations under this Agreement, following the procedures found in Section 7.03, in the event Seller fails to deliver the quantities of potable water set out herein at a time that Buyer is not in arrears in those payments called for herein. In the event Seller is demonstrably incapable of providing such quantities in-part but not in whole, Buyer's obligations will be reduced only by that percent of the Minimum Water Quantities

Section 7.02       Seller may terminate its obligations under this agreement, following the procedures found in Section 7.03, in the event Buyer fails to pay those charges required herein within five days of being due, or twenty days after first billing, whichever comes later. That notwithstanding, Buyer will remain responsible for the Minimum Water Charges set out above for the duration of this Agreement even if terminated by Seller for non-payment.

Section 7.03 Any perceived breach hereof shall be communicated in writing to the party claimed to be in breach of this Agreement, which shall have five days to cure such breach (in the event of financial breach) or to initiate cure for such breach, proceeding with all reasonable commercial speed to fully remedy same (in the case of a non-financial breach). Any breach uncured thirty days from notice of same shall be subject to mandatory non-binding mediation before the American Arbitration Association or similar provider of non-judicial settlement services, and shall be concluded within sixty days of the initial notice of breach. In the event unsuccessful, either party may file such action at law as may be deemed appropriate.

Section 7.04 This Agreement may be enforced by law and/or by equitable proceedings for positive or negative injunctions. BOTH PARTIES EXPRESSLY AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL OF ANY DISPUTE ARISING HEREUNDER. Both parties waive any entitlement to indirect or consequential damages arising from breach hereof, with their damages being limited to (a) amounts arising hereunder; (b) damages directly flowing from the breach hereof, including those arising from cover damages; and (c) costs and fees incurred in enforcing their rights hereunder.

## **ARTICLE 8 MISCELLANEOUS**

Section 8.01 Amendment. The parties shall not amend, modify, or waive any provision of this Agreement without the written consent of all parties unless expressly permitted under the terms of this Agreement.

Section 8.02 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which constitute one and the same instrument.

Section 8.03 Interpretation. The language in all parts of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any of the parties. All words used herein in the singular number shall extend to and include the plural number. Captions and headings contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision of this Agreement.

Section 8.04 Authorization of Agreement. This Agreement shall be subject to the review and approval of bond counsel for Seller, and may be subject to the review and approval of Seller's bond issuer and/or insurer, and/or the Arkansas Natural Resources Commission. Should any changes materially affect the terms hereof, it shall be subject to further review and ratification by the parties, which shall not be necessary in the event such changes are non-material or as to form rather than substance.

Section 8.05 Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Arkansas.

Section 8.06 Incorporation of Recitals. All recitals are hereto incorporated within

the body of this Agreement as if set forth word for word herein.

Section 8.07 Representation on Seller's Board. Purchaser (along with all other participating Purchasers) shall be allotted one (1) seat (each) on the Board of Directors of Seller throughout the Term of this Agreement.

This agreement is executed on the date first referenced above.

Saline Regional Public Water Authority

Purchaser: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

**EXHIBIT A**  
**WHOLESALE WATER RATE**

In exchange for the supplying of wholesale water, Purchaser shall pay to Seller on a monthly basis the total of the following:

- (a) \$0.25 per meter per month Monthly Meter Charge, PLUS
- (b) \$2.90 per thousand gallons of water taken by Purchaser from the Project's master meter(s) Base Water Charges.