

WATER SUPPLY CONTRACT

THIS AGREEMENT, entered into between Lincoln County Rural Water System, Inc., hereinafter referred to as "Water System", and the City of Harrisburg, South Dakota, hereinafter referred to as "City", WITNESSETH:

WHEREAS, Water System is a South Dakota non-profit corporation organized and established for the purpose of constructing and operating a rural water system; and

WHEREAS, City owns and operates a water distribution system and desires to purchase water from Water System for distribution by the City to customers within its assigned service territory on the terms and conditions provided herein; and

WHEREAS, Lincoln County Rural Water System Inc. and the City of Harrisburg desire to enter into an agreement to document the terms and conditions under which the City will purchase from Water System certain potable water as provided herein.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, WATER SYSTEM and CITY agree:

- I. PURCHASE AND WATER DELIVERY - Water System agrees to deliver certain potable water to City and City agrees to purchase water from Water System from the date of execution of this agreement until July 1, 2021.
 - a. City agrees to purchase from Water System, pay for, and accept delivery from Water System at the point of delivery hereinafter specified during the term of this agreement potable water meeting applicable purity standards in the amount of 50,000 gallons per day.
 - b. City guarantees a minimum purchase of fifty-thousand gallons (50,000) per day from Water System. The minimum purchase shall be calculated on a monthly basis. The total required minimum purchase for a given billing period is the number of days in the billing period multiplied by the daily minimum purchase amount of 50,000 gallons.
 - c. Water System will provide water service to City in such quantities as shall be needed by City up to the maximum of 50,000 gallons per day.
 - d. If City requests water purchases in excess of 50,000

gallons per day, Water System may grant the request if sufficient quantity is available. Water in excess of the maximum of 50,000 gallons in any given day will be billed at the same rate as the first 50,000 gallons.

e. The parties agree that City shall take and use the water purchased pursuant to this agreement before it will take and use any other water that it is entitled to receive from any other source including the City of Harrisburg and Lewis & Clark Regional Water System.

- II. OPTION TO EXTEND DELIVERY AGREEMENT - If mutually agreed upon by Water System and City the water supply contract may be extended for additional periods of time as agreed to by the parties in writing.
- III. QUALITY AND QUANTITY - Water System agrees to furnish the City, at the point of delivery hereinafter specified during the term of this contract, potable treated water meeting applicable purity standards. The Water System will deliver the potable water at a flow rate set and determined by Lewis & Clark Regional Water System. City must purchase from Water System 50,000 gallons of water per day during the term of this agreement.
- IV. POINT OF DELIVERY AND PRESSURE - Water System agrees to furnish water to City at the Lewis & Clark connection with City delivered by Lewis & Clark from the Water System allocation.
- Failures of pressure or supply due to emergencies such as main supply line breaks, power failures, Lewis & Clark well failures, Lewis & Clark water treatment and supply issues, flood, fire, and use of water to fight fire, earthquakes or other catastrophes, shall excuse Water System from the provisions of this agreement for such reasonable periods of time as may be necessary to restore service.
- V. METERING EQUIPMENT - City will coordinate with Lewis & Clark for the delivery and metering of the water to City as provided herein.
- VI. METER READING, RATES AND PAYMENT DATE - The monthly invoice from Lewis & Clark Regional Water System which contains among other information the monthly effective rate calculation for water purchased by the Water System. Using that information Water System will determine the amount due for the 50,000 daily gallons purchased by City during the same billing period. City will pay to Water System, not later than the 20th day of each succeeding month, for water purchased by City. The amount due will be the effective rate per one thousand gallons of water

delivered to Water System as determined by the Lewis & Clark Regional Water System for the month in which water is purchased by City pursuant to this agreement.

In addition to the effective rate City agrees to pay to Water System the sum of \$.10 for each One thousand (1,000) gallons of water purchased pursuant to the agreement for each month in which water is purchased by City. The amounts due for water delivery to City, if not paid within thirty (30) days of due date, shall be considered delinquent. Delinquent accounts may be turned off without notice.

City agrees to pay Water System for any additional water delivered by Water System through the Lewis & Clark Regional Water System connection for the amount Lewis & Clark Regional Water System delivers on behalf of Water System at the effective rate per 1,000 gallons and \$.10 per 1,000 gallons as provided herein. In no event will the amount due be less than the daily minimum of 50,000 gallons which is due and owing regardless of actual delivery.

VII. It is further mutually agreed between Water System and City as follows:

- a. This contract shall extend and be legally binding upon the parties hereto and their assigns according to the terms of this agreement.
- b. Compliance by City with the provisions of this agreement shall entitle City to the benefits provided by this agreement, but all rights, privileges, and benefits of City pursuant to this agreement, or otherwise, shall be limited by any restrictions which exist by virtue of any contract or other legal relationship, including any between Water System and the United States Department of Agriculture, acting by and through the Farmers Home Administration or its successors and assigns, or by and between Water System and the City of Sioux Falls, the City of Tea, or the City of Harrisburg, South Dakota as provided in that certain Settlement Agreement and Release dated September 30, 2008, or by any statutes, ordinances or other governmental regulations, or by the provisions of the water users agreement entered into by Water System and its members.
- c. Water System will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish City with quantities of water specified in this agreement.

In the event of a Force Majeure Event, or in the event the water supply production restrictions of Lewis & Clark Regional Water System delivery capacity drops below 23million gallons per day for all Lewis and Clark members and cannot adequately meet the essential needs of its customers or if Water System is prevented by court action of any kind from delivering water pursuant to the terms of this agreement, the furnishing of water by Water System may be curtailed or terminated while the contingency exists, and the Water System shall without a determination of liability or payment being made, be indemnified, defended, held harmless, and released by City for failure to deliver water under such circumstances. In the event of curtailment or termination of water service by Water System, Water System will make all reasonable efforts to resume water service to City as promptly as possible.

For purposes of this agreement, "Force Majeure Event" shall be defined as any event which wholly or partly prevents or delays the performance by either party of any obligation under this agreement including, without limitation, flood, lightning, earthquake, fire, explosion, epidemic, pandemic, quarantine, hurricane, strikes and other labor disputes (including collective bargaining disputes and lockouts), war (declared or undeclared), riot or similar civil disturbance, acts of God or the public enemy (including acts of terrorism), blockade, insurrection, revolution, malicious damage, sabotage, nuclear, chemical or biological contamination, expropriation or confiscation, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant, machinery or equipment, and unavailability of fuel, power or raw materials if the cause thereof otherwise would qualify as a Force Majeure Event, but specifically excludes economic hardship, changes in market conditions or insufficiency of funds (except as otherwise expressly provided herein).

- VIII. REGULATORY AGENCIES - This Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in the State of South Dakota, and City and Water System will cooperate in obtaining such permits, certificates, or the like, as may be required to comply therewith.
- IX. MODIFICATION OF AGREEMENT - This agreement incorporates the provisions of the Settlement Agreement and Release and its Exhibits between the City of Sioux Falls, the City of Harrisburg, the City of Tea, and Lincoln County Rural Water

System, Inc. dated September 30, 2008. To the extent that the terms and conditions of this agreement contradict the provisions of the Settlement Agreement, the terms and conditions of the Settlement Agreement shall supersede such contradictory provisions of this agreement, and the contradictory provisions of this agreement shall be null and void.

- X. ASSIGNMENT OF INTEREST BY WATER SYSTEM - The parties hereby acknowledge and agree that the interest of Water System under this contract may be assigned to the United States of America or any of its duly authorized agencies or departments, or any other financial or lending institutions, as collateral security for any loan made to finance construction, extension, repair or maintenance of Water System's water supply system.
- XI. SUCCESSOR TO THE WATER SYSTEM - That in the event of any occurrence rendering the Water System incapable of performing under this contract, any successor of the Water System, whether the result of legal process, assignment, or otherwise shall succeed to the rights of Water System hereunder.
- XII. MUTUAL COOPERATION - The parties agree to make and execute such additional documents as may from time to time be reasonably necessary to carry out the terms of this Agreement and to cooperate with and assist one another concerning the terms of this Agreement.
- XIII. OTHER REMEDIES - Each of the parties will be entitled to any and all remedies provided under applicable law, including but not limited to, recovery of engineers' fees and attorneys' fees due to a party's default.
- A party may submit any claim for injunctive relief, including, without limitation, a decree of specific performance, to the court of law to be resolved by legal or equitable proceedings; and in furtherance thereof, all parties agree that the Second Judicial Circuit Court for the State of South Dakota will have jurisdiction with respect to such claims or controversies.
- XIV. AMENDMENT AND ENFORCEMENT - This Agreement may be amended only if such amendment is in writing and signed by the party or parties bound by such amendment.
- XV. BINDING EFFECT - This Agreement shall bind and inure to the benefit of the parties hereto, their successors, representatives, heirs, and assigns. Nothing contained herein

may in any way be deemed or construed to create the relationship of principal and agent, partnership, or joint venture between the parties.

- XVI. WAIVER - Failure of any party to insist upon the strictest performance of any covenant or condition contained herein or to exercise any right or option conferred herein in one or more instances shall not be construed as a waiver or relinquish for the future any such covenant, condition, right, or option but the same shall remain in full force and effect. The doing by any party of any act or thing which is not obligated to do hereunder shall not be deemed to impose upon it any obligation to do any such act or thing in the future or in any way change or alter any provision of this Agreement.
- XVII. NOTICES - All notices and demands given or required to be given hereunder must be in writing and sent by United States mail, postage prepaid, to the parties at their respective addresses first set forth below or at such other address as may be specified by notice to the other parties. Date of service of such notice or demand shall be the date on which such notice or demand is deposited in the post office or postal mailbox of the United States Post Office Department.
- XVIII. PARTIAL INVALIDITY - In the event any covenant, condition, term or provision contained herein is held to be invalid, illegal, or unenforceable in any respect, in whole or in part, by a judgment, order, or decree of any court or other tribunal of competent jurisdiction, the validity of the remaining covenants, conditions, terms, and provisions contained herein, and the validity of the remaining part of any term or provision held to be partially invalid, illegal, or unenforceable shall in no way be affected, prejudiced, or disturbed thereby.
- XIX. WARRANTIES AND REPRESENTATIONS OF WATER SYSTEM - Water System hereby warrants and represents to the City that (i) Water System has the power and authority to execute and deliver, and perform Water System's covenants, obligations and agreements contained in this Agreement; (ii) Water System has taken all action necessary to authorize the execution, delivery and performance of this Agreement by Water System; (iii) the execution, delivery, and performance of this Agreement by Water System will not constitute a violation of or default under any agreement, order, decree, law, rule, or regulation to which Water System is a party or by which Water System is bound; (iv) this Agreement is a legal and binding obligation of Water System enforceable against Water System in accordance

with its terms.

XX. WARRANTIES AND REPRESENTATIONS OF CITY - City hereby warrants and represents to Water System that (i) City has the power and authority to execute, deliver and perform the City's covenants, obligations and agreements contained in this Agreement; (ii) City and its governing body have taken all action necessary to authorize the execution, delivery and performance of this Agreement by City; (iii) the execution, delivery and performance of this Agreement by City will not constitute a violation of or default under any agreement, order, decree, law, rule, or regulation to which City is a party or by which City is bound; (iv) this Agreement is a legal and binding obligation of City enforceable against City in accordance with the terms, upon approval by the City Council and either the expiration of 20 days thereafter with no referendum petition filed referring approval of this Agreement to a vote of the public or the approval of this Agreement by public vote if a referendum petition is timely filed.

XXI. EFFECTIVE DATE - This Agreement shall be effective upon its execution but will become null and void in the event a referendum petition passes.

XXII. INUREMENT OF BENEFIT TO ASSIGNS - All of the terms and provisions of this Agreement shall be binding upon, apply to and inure to the benefit of the parties, their respective successors, and assigns.

XXIII. TIME IS OF THE ESSENCE - Time of the performance of acts required by the parties to this Agreement are an essential part of this contract.

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

Dated this _____ day of _____, 2020.

LINCOLN COUNTY RURAL
WATER SYSTEM, INC.

By: _____
Its: President

ATTEST:

Secretary/Treasurer

Dated this _____ day of _____, 2020.

CITY OF HARRISBURG, SOUTH DAKOTA

By: _____
Its: Mayor

ATTEST:

Finance Officer