

CITY OF ARDMORE
Office of City Manager

Council Letter No. 4619
Meeting Date: August 19, 2019

Mayor and City Commission
City of Ardmore, Oklahoma

RE: Contract between Arbuckle Master Conservancy District and Southern Oklahoma Water Corporation

Dear Mayor and Commissioners:

The Contract is between Arbuckle Master Conservancy District (Conservancy District) and the Southern Oklahoma Water Corporation (Corporation). The current contract between the Conservancy District and Corporation, dated September 22, 1969, will expire on September 21, 2019. The Corporation desires to continue to purchase and receive water supply from the Conservancy District. The Conservancy District requests the Ardmore City Commission acknowledge and consent to the Contract.

Staff respectfully recommends acknowledgment and consent to the Contract between Arbuckle Master Conservancy District and Southern Oklahoma Water Corporation.

Respectfully Submitted,


J.D. Spohn
City Manager

CONTRACT
between the
ARBUCKLE MASTER CONSERVANCY DISTRICT
and the
SOUTHERN OKLAHOMA WATER CORPORATION,
A NON-PROFIT CORPORATION
FOR A MUNICIPAL WATER SUPPLY

THIS CONTRACT, made this 1st day of October, 2019, between the ARBUCKLE MASTER CONSERVANCY DISTRICT (Conservancy District), a master conservancy district duly created and existing under the laws of the State of Oklahoma, and SOUTHERN OKLAHOMA WATER CORPORATION (Corporation), a non-profit corporation, organized under the Non-Profit Corporation Act (New) (Title 18, Oklahoma Statutes Annotated, Section 851 et. seq.) with its principal place of business and office at Ardmore, Oklahoma.

WITNESSETH THAT:

WHEREAS, the Conservancy District did contract with the United States of America, through the Department of the Interior, Bureau of Reclamation, for repayment of the reimbursable costs of construction of certain water storage, distribution, and pumping facilities, with related works, designated as the Arbuckle Project, Oklahoma, which project is designed to provide, among other things, a water supply to cities, towns, and industries; and

WHEREAS, the contract between the Conservancy District and the Corporation, dated September 22, 1969, will expire on September 21, 2019; and

WHEREAS, the Corporation desires to continue to purchase and receive a water supply from the Project.

NOW, THEREFORE, the parties hereto agree as follows:

GENERAL DEFINITIONS

1. Where used in this contract:

a. United States – shall mean the United States of America, including its representative for construction of the Project, the Department of the Interior, and the Bureau of Reclamation.

b. Conservancy District – shall mean the Arbuckle Master Conservancy District.

c. Corporation – shall mean Southern Oklahoma Water Corporation, a non-profit corporation, organized under the Non-Profit Corporation Act (New) (Title 18, Oklahoma Statutes Annotated, Section 851 et. seq.) with its principal place of business and office at Ardmore, Oklahoma.

d. Project – shall mean all features of the Arbuckle Project, Oklahoma, as constructed under the terms of the repayment contract between the District and the United States for construction and operation, maintenance, and replacement and repayment of certain reimbursable costs.

e. Project Water Supply – shall mean and include all water developed for beneficial use from the Project.

f. Day – shall mean and include the 24-hour period from midnight to midnight.

SALE OF WATER

2. For and in consideration of the payments required to be made by the Corporation to the Conservancy District under this contract and subject to the conditions and limitations hereinafter set forth, and to the extent water is available in the opinion of the Conservancy District, the Conservancy District agrees to make untreated water available to the Corporation.

PAYMENT

3. The Corporation shall pay for water at the flat rate of three hundred fifty dollars (\$350) per day, which payment shall entitle the Corporation to receive its requirements up to a maximum of 1 million gallons of water per day or 1,120 Acre Feet/Year. If the Conservancy District determines that the total amount which can be made available is less than 1 million gallons on any particular day or days, then the Corporation shall pay for water made available on days of such shortage at a daily rate of 35 cents per thousand gallons, and the minimum daily charge of three hundred fifty dollars (\$350) shall not apply.

The Corporation shall advance a sum equal to three hundred fifty dollars (\$350) per day times the number of days in the month on the first day of each month to cover its anticipated requirements for that month. Adjustments in compliance with the payment provisions of this article shall be made immediately following the first day of the following month, or in the event of credits to the Corporation, may be deducted from the advance payment for the month following the month of service.

LIMITATIONS

4. The Conservancy District may need to make alterations, repairs, and installations of new or additional equipment from time to time during the life of this contract. Any limitation on the availability of water for use by the Corporation due to such operation shall not be cause for claim of damage against the Conservancy District. Reasonable effort must be made by the Conservancy District to make water available to the Corporation in accordance with this contract. In cases of temporary restrictions in availability, the Conservancy District shall give the Corporation as much advance notice as may be practical and the estimated duration thereof. In the event that any project or Conservancy District facilities instrumental to the availability of water to the Corporation are destroyed or damaged as the result of any cause

whether by force majeure or otherwise, so as to limit the availability of water, the Conservancy District shall, as to the extent of available resources, immediately proceed to restore said improvements and facilities.

The Corporation assumes the responsibility for maintenance of its distribution system from the point of connection with the City of Ardmore, Oklahoma system as described below and agrees that its system shall be constructed and maintained to result in a minimum of waste. Should the Conservancy District determine that any part of the Corporation's system is causing unreasonable waste, it shall notify the Corporation to that effect and upon failure of the Corporation to remedy the situation, at its option the Conservancy District may discontinue or limit deliveries until the condition has been corrected.

POINT OF AVAILABILITY

5. a. Water will be made available to the Corporation from the Lake of the Arbuckles Reservoir just downstream of Arbuckle Dam at the turnout for the Ardmore Aqueduct. The Conservancy District and the Corporation agree to have the City of Ardmore, Oklahoma deliver raw water to the Corporation from the reservoir, through the City of Ardmore owned Ardmore Aqueduct. The Corporation will have a metering device at the point of delivery from the Ardmore Aqueduct into the Corporation's treatment plant located at the Air Park in Gene Autry, Oklahoma, subject to the approval of the District Manager of the Conservancy District and the Contracting Officer for the Bureau of Reclamation.
- b. The Corporation is granted the right to use any easements, rights-of-way, or property held by the City of Ardmore, Oklahoma or the Conservancy District for the purpose of making its connections.
- c. The Corporation shall furnish, install, operate, and maintain the metering device at its own expense. The Corporation shall keep a true record of all meter readings as transcribed from the reports of Corporation employees or agents with respect thereto. Upon the request of the District, the Corporation will give such information as it may request from the Corporation's journals or record books or permit the District to have access to the same in the office of the Corporation during regular business hours. Monthly readings shall be furnished by the Corporation to the Conservancy District's office by 5:00 pm on the last day of each calendar month.
- d. The Corporation shall calibrate its metering equipment as often as it considers necessary and at such times as the Conservancy District may show reasonable evidence of error. If upon any test, the percentage of inaccuracy thereof is found to be in excess of 2 percent, registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if not, then for a period extending back one-half of the time elapsed since the last date of calibration, but in no event further back than a period of 6 months. In the event the meter is out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water taken by the Corporation during the period such meter is out of service or out of repair shall be agreed upon by the parties hereto, by correcting the error if the percentage of the

error is ascertainable by calibration tests or mathematical calculations, or by estimating the quantity of water by amounts taken during preceding periods under similar conditions when the meter was registering accurately.

WATER SHORTAGES

6. There may occur at times during any year a shortage in the quantity of water made available by the Conservancy District to the Corporation pursuant to this contract. In no event shall any liability accrue against the Conservancy District, the United States, or any of their officers or employees for any damage, direct or indirect, arising out of any such shortages.

RIGHT TO USE OF WATER

7. The ownership of and rights to use and control all waters of the project shall remain in the Conservancy District or the United States to the point of connection to the Ardmore Aqueduct. The water will be under the temporary control of the City of Ardmore for conveyance from Arbuckle Dam to the point of connection to the facilities of the Corporation, and upon passing through the Corporation's meter, ownership shall pass to the Corporation. Each party hereto agrees to save and hold the other party harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation, delivery, and disposal of said water while the right to control remains in such party.

SECURITY FOR PAYMENT BY CORPORATION

8.
 - a. In addition to all other remedies provided in this contract, the Conservancy District shall have the right to refuse water to the Corporation in the event of any default of the Corporation in the timely payment of any amount due and owing by the Corporation to the Conservancy District under the provisions of this contract.
 - b. All rights of action for breach of this contract are reserved to the Conservancy District. Nothing contained in this contract shall be construed as abridging, limiting, or depriving the Conservancy District or the Corporation of any means of enforcing any remedy either at law or in equity for the breach of any provisions hereof which either party would otherwise have. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any provisions hereof, or of any other or subsequent breach of any provision hereof.

EQUAL EMPLOYMENT OPPORTUNITY

9.
 - a. During the performance of this contract, the Corporation agrees as follows:
 - (1) The Corporation will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Corporation will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action

shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Corporation agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Corporation will, in all solicitations or advancements for employees placed by or on behalf of the Corporation, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Corporation will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Corporation's legal duty to furnish information.

(4) The Corporation will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Corporation's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Corporation will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Corporation will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Corporation's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Corporation may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed

and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Corporation will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Corporation will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Corporation becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Corporation may request the United States to enter into such litigation to protect the interests of the United States.

PLEDGE OF CONTRACT

10. The payment obligations assumed by the Corporation under this Contract may be pledged to the United States to secure payment of the District obligations for OM&R of the Project.

TERM OF CONTRACT

11. This contract shall be effective as of September 22, 2019, and shall continue thereafter for ten (10) years.

PENALTY FOR DELINQUENT PAYMENTS

12. Charges required to be paid by the Corporation to the Conservancy District under this contract which remain unpaid after the due date shall be subject to a penalty of one-half of 1 percent per month from the date of delinquency.

NOTICES

13. Any notice authorized or required by this contract shall be deemed properly given, except where otherwise herein specifically provided, if mailed postage prepaid, to the District Manager, Arbuckle Master Conservancy District, P.O. Box 753, Davis, Oklahoma, 73030, on behalf of the Conservancy District, and to the Secretary-Treasurer of the Corporation, 1967 Sam Noble Parkway, Ardmore, Oklahoma, 73401-1611, on behalf of the Corporation. The designation of the person to be notified, or the address of such person, may be changed at any time by similar notice.

REGULATORY – CONDITIONS

14. This contract shall be subject to all valid rules, regulations and laws applicable thereto, passed or promulgated by the United States of America, the State of Oklahoma, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them.

CONTRACT SUBJECT TO
THE UNITED STATES AND CONSERVANCY DISTRICT CONTRACT

15. This Contract shall be subject to the terms, conditions, and provisions of the repayment contract between the District and the United States for constructing and financing the Project, as amended or modified. This Contract cannot be amended or supplemented without the advance approval of a duly authorized representative of the United States. The District may assign all or any part of its rights or authority under this Contract to the United States.

SUCCESSORS AND ASSIGNS

16. This contract shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed in multiple, each of which shall constitute one and the same contract, all as of the day and year first above written.

ATTEST:

ARBUCKLE MASTER CONSERVANCY DISTRICT

By: _____

By: _____

Printed Name: _____
Secretary

Printed Name: _____
President

ATTEST:

SOUTHERN OKLAHOMA WATER CORPORATION

By: _____

By: _____

Printed Name: _____
Secretary

Printed Name: _____
President

APPROVED AS TO FORM AND SUBSTANCE

UNITED STATES OF AMERICA

By: _____
Michael S. Black
Regional Director
Great Plains Region
Bureau of Reclamation

CITY OF ARDMORE, OKLAHOMA

By: _____
Printed Name: _____
Mayor