

RESOLUTION 23-2026

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A WHOLESALE WATER SALE AND PURCHASE AGREEMENT WITH SOUTHWEST WATER USERS PUBLIC WATER AUTHORITY

WHEREAS, The City Council of the City of Haskell, Arkansas deem it necessary to enter into a wholesale water sale and purchase agreement with Southwest Water Users Public Water Authority of the State of Arkansas to acquire and sell potable water within the service area.

WHEREAS, The Mayor of the City, as a Signatory Agent, is authorized to execute the Wholesale Water Sale and Purchase Agreement presented.

THEREFORE, BE IT RESOLVED this day 20th of July 2026.

Attest:

Approved:

Taylor Finley, Recorder/Treasurer

Clyde Crookham, Mayor

WHOLESALE WATER SALE AND PURCHASE AGREEMENT

This Wholesale Water Sale and Purchase Agreement (“Agreement”) is entered into this _____ day of _____, 2026 by and between the **Southwest Water Users Public Water Authority** of the State of Arkansas (“Seller” or “SWPWA”) and the **City of Haskell, Arkansas** (“Purchaser”).

WHEREAS, Seller is engaged in the business of acquiring potable water and selling such water to wholesale water purchasers within its service area; and

WHEREAS, Seller acquires treated, potable water from its water supply source(s) and delivers such water to wholesale purchasers at one or more points of delivery (“Treated Water”); and

WHEREAS, Purchaser desires to establish a long-term source of high-quality water at a reasonable cost; and

WHEREAS, it is contemplated that all Treated Water acquired by Purchaser pursuant to this Agreement will, in turn, be sold by Purchaser to its respective residential and commercial water customers; 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 acquire Treated Water from its water supply source(s) sufficient to meet its obligations under this Agreement;
- (b) the delivery of Treated Water to Purchaser at the point(s) of delivery designated by Seller after consultation with Purchaser (the “Point of Delivery”), at sufficient pressure and in that quantity that Purchaser may reasonably require, in the Minimum Monthly Amount, Maximum Monthly Amount (based on a 30-day month), and Maximum Daily Amount, all as shown on Exhibit “2” hereto, subject to Section 3.01 hereof and excluding any water “wheeled” pursuant to Section 4.03 hereof, with any additional Treated Water subject to the supply and delivery capacity available to Seller, or any acts or events that may have a material adverse effect on Seller’s supply or delivery system; and

- (c) the delivery to Purchaser of water that, as delivered to Seller by its supply source(s), meets the requirements of the Arkansas Department of Health for municipal water systems at the Point of Delivery. Seller does not treat water and makes no warranty as to treatment processes performed by its supply source(s); Seller's obligation is limited to delivering water in the condition received from its supply source(s) without adulteration by Seller.

Section 1.02 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 Treated Water service, which events include, without limitation, fire, earthquake, spills, terrorist event, tornado, natural disasters, broken pipes, heavy rains, boil orders, **any curtailment, interruption, reduction, or limitation of the water supplied to Seller by its supply source(s)**, and other unforeseeable operational problems that may prevent delivery of Treated Water in accord with Arkansas Department of Health requirements for pressure and contaminants. Should an Uncontrollable Circumstance occur, Seller shall promptly take all reasonable and necessary steps that a similarly situated wholesale water provider would otherwise take in order to promptly cure said occurrence and restore the delivery of Treated Water.

Section 1.03 Seller's obligation to deliver Treated Water to Purchaser is and shall be conditioned upon, and back-to-back with, the availability of water to Seller from its supply source(s). In the event the water available to Seller from its supply source(s) is curtailed, interrupted, reduced, or limited for any reason, Seller's delivery and minimum-quantity obligations to Purchaser under this Agreement shall be reduced proportionately, on a non-discriminatory basis applied uniformly across all of Seller's wholesale purchasers, for the duration of such curtailment, interruption, reduction, or limitation. Seller shall not be liable to Purchaser for any failure or reduction in delivery to the extent caused by a corresponding failure or reduction in the water available to Seller from its supply source(s).

ARTICLE 2

PRIMARY RESPONSIBILITY OF PURCHASER

Section 2.01 In addition to payment for that Treated Water delivered by Seller or the Minimum Monthly Purchase Amount (as may be adjusted pursuant to Section 6.04 hereof), whichever is greater, 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 water distribution system, including repairs, meter reading and re-reads, account billing, collecting, posting, maintaining records, backflow prevention programs, accounting, and other activities related to Purchaser's water distribution system or designating the same to an appropriate party as may be needed;

- (b) designing, engineering and construction of upgrades and improvements to Purchaser's water distribution system, and connections to Seller's wholesale Point(s) of Delivery; 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 Treated Water in accordance with the terms of this Agreement, Purchaser hereby agrees to purchase Treated Water from Seller at the initial wholesale water rate of **Three Dollars and Thirty-Two Cents (\$3.32) per one thousand (1,000) gallons** of Treated Water delivered, as set forth on Exhibit "1" hereto, incorporated herein by this reference (the "Wholesale Rate"), and in the minimum monthly quantities expressed in Exhibit "2" and as may be adjusted in the future pursuant to Section 6.04 below.

The Wholesale Rate is a pass-through of Seller's cost of acquiring Treated Water from its supply source(s) together with Seller's reasonable administrative and operating margin. The Wholesale Rate may be adjusted by Seller, uniformly and in a non-discriminatory manner across all wholesale purchasers, to reflect any increase or decrease in Seller's cost of acquiring Treated Water from its supply source(s) and any change in Seller's documented costs of delivering such water, including without limitation labor, materials, equipment, professional services, utilities, insurance, and reserves. Seller shall provide Purchaser with not less than thirty (30) days' written notice of any adjustment to the Wholesale Rate, together with reasonable supporting documentation of the cost change giving rise to the adjustment.

Section 3.02 Monthly Meter Charge. *Reserved.*

Section 3.03 Term. The Term of this Agreement shall begin on the Initial Water Service Date and shall continue for a period of **FIVE (5) years**. Provided Purchaser is not then in material breach, and provided Purchaser provides Seller with written notice of intent to renew at least 180 days in advance of the expiration hereof, any renewal, extension or modification hereof shall (a) allow Purchaser no less water volume than contained in Exhibit "2," as may be modified during the Term pursuant to Section 6.04 below, and (b) in accord with Section 3.01 above, i.e., on no less favorable terms than available to other wholesale purchasers of Seller. In the event the parties are unable to agree to the specific terms of such extension, renewal or modification within 90 days of such request, the dispute resolution provisions of Sections 7.03 and 7.04 below shall control. Excepting the first sentence hereof, this Section shall be incorporated in substance into any extension, renewal or modification hereof.

Section 3.04 Initial Water Service Date. Seller shall provide written notice to Purchaser of the date on which Seller is prepared to commence delivery of Treated Water to Purchaser (the "Completion Notice"). The date on which the Completion Notice is given to

Purchaser shall be referred to as the “Initial Water Service Date,” from which date the Term shall be measured.

Section 3.05 During the Term of this Agreement [except as may be adjusted during a period no longer than the initial six months hereof, during which time the Minimum Monthly Purchase Amount shall be half that otherwise provided herein per month] Purchaser agrees to purchase that minimum monthly amount of Treated Water reflected on Exhibit “2” (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 **or a curtailment, interruption, reduction, or limitation of Seller’s supply source(s)** is the cause thereof for a period in excess of forty-eight hours, in which case such Minimum Monthly Purchase Amount, and charges thereupon, shall be prorated to exclude those periods in which Seller cannot deliver water as required hereby, less and except water actually purchased during that prorated period.

All payment amounts owed to Seller hereunder shall be derived solely from revenues generated from the sale by Purchaser of water to its customers and, except for a pledge of said revenues, Purchaser does not otherwise fully guarantee the obligations hereunder with its full faith and credit. Purchaser shall charge its customers such water rates as sufficient to make the payments required pursuant to this Agreement.

Seller shall have no obligation to sell to Purchaser more than the Maximum Daily Purchase Amount (as shown on Exhibit “2” hereto), and may curtail service for the remainder of any month in which the Maximum Monthly Purchase Amount (as shown on Exhibit “2” hereto) is reached. Purchaser understands that Seller may not be able to deliver to Purchaser more than one and one-half (1½) times the prorated daily amount of its Maximum Monthly Purchase Amount in any 24-hour period, and that in times of stress on Seller’s supply or delivery system from demand, Seller may not be able to deliver the prorated daily amount of its Minimum Monthly Purchase Amount in any given 24-hour period.

Section 3.06 Except for (a) Uncontrollable Circumstances, (b) events wherein Seller is implementing, on a non-discriminatory basis, water rationing or other supply limitations to both Purchaser and other wholesale purchasers, or (c) reaching the maximum amount of water capable of being delivered, measured either daily or monthly, by Seller’s supply and delivery system without improvements and betterments thereto, Seller shall not otherwise ration or limit the supply of Treated Water otherwise available to Purchaser. Upon reaching Seller’s water delivery limitations, Purchaser and Seller agree to work together in good faith in an effort to develop a plan to enlarge capacity or add other improvements and appurtenances to meet the needs of Seller’s wholesale 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 (1,000) 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 Point of Delivery meter(s) or master meter(s) shall be purchased and maintained by Seller. Purchaser grants Seller nonexclusive use of any utility easements it owns or may acquire in the future for the purpose of transmission of water to Purchaser's system. Though Purchaser may in its discretion limit access to existing pipes for the purpose of "wheeling" water to other wholesale purchasers of Seller, and may otherwise privately contract with such other purchasers for that purpose, (a) Purchaser agrees to review any such request in good faith according to its pre-existing and projected needs; and (b) agrees to not charge any other wholesale purchaser more than five percent (5%) of the wholesale cost of Treated Water for that wheeling service.

Section 4.04 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 (1/2) of the period elapsed since the last date of test.

Section 4.05 Seller shall be obligated for reading the Point of Delivery meter(s) unless the parties agree otherwise.

ARTICLE 5

PAYMENT AND PROCEDURES

Section 5.01 In the first ten days of each calendar month, Seller will transmit by email or else deposit into the U.S. Mail to Purchaser an invoice equal to the prior month's consumption or the Minimum Monthly Purchase Amount, whichever is greater, at the Wholesale Rate per 1,000 gallons of water actually delivered to Purchaser in the preceding month.

Section 5.02 If payment is not received by Seller by the 21st day of the month in which the unpaid invoice was rendered, in addition to those remedies found within Section 7.02 hereof, Purchaser shall pay, in addition to the amount due, an administrative fee of \$100 per month 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 to pay for Treated Water shall begin the first month after the delivery by Seller to Purchaser of Treated Water, or for Minimum Monthly Usage upon the expiration of that time recited in Section 3.04, whichever comes first.

Section 5.04 Purchaser agrees to, on or before the Initial Water Service Date, pay to Seller a deposit equal to two months' then-estimated charges for the Minimum Monthly Purchase Amount, less any amounts on account, to be applied against Purchaser's final invoices under this Agreement or refunded upon expiration or termination, less any amounts then owed.

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 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 Seller may add additional wholesale purchasers and/or increase volumes available to any existing purchaser only where such agreement to deliver additional volumes will not impair Seller's ability to deliver to Purchaser the Maximum Daily Purchase Amount and the Maximum Monthly Purchase Amount as set forth on Exhibit "2" hereto. Seller and Purchaser agree to work together to allow for such additional sales, it being recognized that costs may be shared among additional customers thereby stabilizing Purchaser's water rates.

Section 6.03 *[Reserved.]*

Section 6.04 Purchaser shall have the right to request a modification of the Minimum Monthly Purchase Amount to alter the volume of Treated Water purchased, effective no more than one year in the future from such request, which shall be presumptively granted so long as (a) as to an increase, (i) Seller's available supply and delivery capacity exists or the parties otherwise agree on enlargement of such capacity, and (ii) Purchaser's capacity exists or else has been engineered to be enlarged, contingent on Seller's agreement and ability to deliver such additional capacity; and (b) as to a decrease, provided such request is predicated on a decrease in demand and not the availability of Treated Water from another source. Such requests for modifications shall be considered by Seller in the order made and reasonably based on engineering and supply capacity.

ARTICLE 7

TERMINATION FOR CAUSE

Section 7.01 Purchaser may on a pro rata basis reduce but not terminate its obligations under this Agreement, following the procedures found in Section 7.03, in the event Seller fails to deliver the quantities of Treated Water set out herein at a time that Purchaser 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, subject to Sections 1.03 and 3.05 above, Purchaser's obligations to purchase the Minimum Monthly Purchase Amount will be reduced only by that percent by which Seller is demonstrably incapable of delivery of Treated Water.

Section 7.02 Seller may terminate its obligations under this Agreement, following the procedures found in Section 7.03, in the event Purchaser fails to pay those charges required herein

within five days of being due, or twenty days after first billing, whichever comes later. That notwithstanding, Purchaser will remain responsible for the Minimum Monthly Purchase Amount 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 Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Arkansas.

Section 8.05 Incorporation of Recitals. All recitals are hereby incorporated within the body of this Agreement as if set forth word for word herein.

Section 8.06 Severability. If any portion of this Agreement is held invalid, illegal or unenforceable, such determination shall not impair the enforceability of the remaining terms and provisions contained herein which may be given effect without such invalid, illegal or

unenforceable terms or provisions, and to this end the terms and provisions of this Agreement are declared to be severable.

Section 8.07 Notice. Notices sent pursuant to this Agreement may be provided to the following physical and electronic mail addresses. Either party may provide the other party written notice of change of either or both addresses, to which future notices shall be sent:

Seller: Southwest Water Users Public Water Authority

Attn.: President

[Address]

[City, AR ZIP]

[Email]

Purchaser: City of Haskell, Arkansas

Attn.: [_____]

[Address]

[Haskell, AR ZIP]

[Email]

This Agreement is executed on the date first referenced above.

Southwest Water Users Public Water Authority

By: _____

Name/Title: _____

City of Haskell, Arkansas

By: _____

Name/Title: _____

EXHIBIT 1
TO
WHOLESALE WATER SALE AND PURCHASE AGREEMENT
INITIAL WHOLESALE WATER RATES

In exchange for the supplying of wholesale water, subject to adjustment pursuant to Section 3.01 above, Purchaser shall pay to Seller on a monthly basis the total of the following:

- (a) \$3.22 per one thousand (1,000) gallons of Treated Water taken by Purchaser from the Point of Delivery meter(s) ("Wholesale Rate").

EXHIBIT 2
TO
WHOLESALE WATER SALE AND PURCHASE AGREEMENT
SUBSCRIBED MINIMUM VOLUMES

Entity	Water Meters	Min MGM (30-day mo.)	Max MGD	Max MGM (30-day mo.)
City of Haskell	[1,400] +/-	[10.0]	[0.5]	[15.0]

Minimum Monthly Purchase Amount, Maximum Daily Purchase Amount, and Maximum Monthly Purchase Amount stated in millions of gallons (MG). Bracketed values to be confirmed by the parties.