

**COYLE PUBLIC WORKS AUTHORITY  
TAKE OR PAY WATER PURCHASE CONTRACT**

This Take or Pay Water Purchase Contract (the Contract) for sale and purchase of water is entered into this 19<sup>th</sup> day of August, 2014 between the Guthrie Public Works Authority (GPWA) and the Coyle Public Works Authority (Coyle).

WHEREAS, Coyle is a public trust established pursuant to Title 60, Oklahoma Statutes, Section 176 et.seq., whose sole beneficiary is the Town of Coyle, Oklahoma; and

WHEREAS, the GPWA is a public trust established pursuant to Title 60, Oklahoma Statutes, Section 176 et.seq., whose sole beneficiary is the City of Guthrie, Oklahoma, a Municipal Corporation; and

WHEREAS, GPWA owns and operates a water supply and distribution system with the capacity currently capable of serving the present customers of GPWA's system and sufficient surplus water to serve the water supply needs of Coyle; and

WHEREAS, the GPWA, at the request of Coyle, has determined the need to construct and finance a water line project to serve water to Coyle and to properly maintain and operate said project; and

WHEREAS, GPWA and Coyle heretofore have entered into discussions and negotiations to develop a contractual relationship for water service that would be beneficial to both parties and to accomplish the project.

NOW THEREFORE, come in consideration of the foregoing and mutual agreements and covenants herein set forth,

**THE GPWA AGREES:**

1. Quality and Quantity: To furnish Coyle at the point of delivery during the term of this contract or renewal thereof or extension thereof, potable treated water meeting applicable Oklahoma Department of Environmental Quality standards in such quantities as may be required by Coyle up to the maximum usage of twenty million gallons per year. Coyle will be responsible for any required water testing of water once it enters Coyle's system.

Pursuant to 11 O.S. § 37-119, Coyle shall be subject to a water rationing program consistent with any rationing program ordered by or effective upon the Guthrie Public Works Authority.

2. Pressure: The water will be furnished at a reasonable constant normal pressure at the point of delivery. If a greater pressure than that normally available at the point of delivery is required by Coyle, the cost of providing such greater pressure shall be borne by Coyle. Emergency failure of pressure or supply due to main

supply line leaks, power failure, flood, fire and use of water to fight fire, earthquake, or other catastrophe, shall excuse the GPWA from this provision for such reasonable period of time as may be necessary to restore service.

3. Construction of Water Line and Metering Equipment: GPWA will construct a six inch diameter water line extending east from the main entrance of Langston University to Coyle's water system. The line will parallel State Hwy. 33 and the primary access road or Main Street into the town of Coyle. The line will terminate or interconnect into the Coyle water system near the intersection of Iowa and Main Street. The length of the water line is approximately 7,100 feet. A master meter station as well as pressure reducing valve station will be installed in the proposed water line. Coyle's existing water storage tank will be utilized in place. Estimated cost of this project is \$700,000.00.

GPWA will design, construct and finance the line. The debt service associated with the cost of design and construction of the line will be added to the rate established in Paragraph 6 of this Contract. If grants that are not repayable are obtained for use on the line project, the grant savings will be passed on to Coyle.

By way of illustration, the anticipated monthly debt service on a 20 year loan is estimated to be \$3.84 per 1,000 gallons of water sold monthly. This amount would be added to the effective normal usage rate established in Paragraph 6 of this Contract, as adjusted pursuant to Paragraph 15 of this Contract, and would, for the initial period of this Contract, equate to an adjusted rate of \$9.41 per 1,000 gallons of water sold on the Take or Pay Minimum Monthly Charge (\$9,410.00 per month) and an initial adjusted rate of \$9.95 per 1,000 gallons of water sold in excess of the Take or Pay amount. Any grant money obtained for capital costs of this line project will be passed on to Coyle to reduce the rate. Coyle will pay \$7.50 per month to GPWA representing the water treatment plant fee. Said amount in addition to all other amounts paid under this contract.

4. Billing Procedure: To furnish Coyle, not later than the 30<sup>th</sup> day of each month, an itemized statement of the amount of water furnished Coyle during the preceding month and the applicable charges. Under no circumstances shall water service provided under this Contract be interrupted on the basis of non-payment unless bills for water sold under this contract are more than sixty (60) days past due or in any event if past due bills exceed \$10,000.
5. Water Availability: Water to be furnished under the contract is at all times limited to surplus water in excess of the needs or requirements of the GPWA and its beneficiary inhabitants and of other purchasers to whom GPWA has granted preferential rights to water, and all sales are contingent upon the existence of an ample supply of water. Coyle shall be granted the same rights of supply as other purchasers of similar classification to whom the GPWA may grant preferential rights in the future. GPWA reserves the right to discontinue, interrupt, reduce, or suspend delivery of water whenever such action is required by reason of an

emergency, unfavorable operating conditions, or a deficient supply of water. Except in emergency, GPWA shall give Coyle maximum practicable time of notice before interruption of water delivery.

COYLE AGREES:

6. Rates: To pay GPWA for water purchased at the initial effective normal usage rate of \$5.57 per 1,000 gallons, as may be amended from time-to-time as provided herein, plus the debt service adjustment described in Paragraph 3 herein, and a Water Meter charge as established by the City of Guthrie and/or Guthrie Public Works Authority Ordinance, but in any event not less than the Take or Pay Minimum Monthly Charge as described in Section 7. For water use in excess of the initial Take or Pay amount Coyle shall be \$6.11 per 1,000 gallons, plus the debt service adjustment described in Paragraph 3 herein. The effective normal usage rate shall be adjusted in the manner set forth in Paragraph 15 of this Contract.
7. Take or Pay Minimum Monthly Charge: The minimum monthly charge to Coyle shall not be less than the take or pay amount set out herein. To pay a minimum monthly charge equal to adjusted rate, as set based pursuant to Paragraphs 3 and 6 of this Contract, times a base usage amount of One Million (1,000,000) gallons per month, resulting in an initial adjusted Take or Pay Minimum Monthly Charge of \$9,410.00 per month based on the illustration set forth in Paragraph 3 of this Contract. Subsequent to the effective date of this Contract, the Take or Pay Minimum Monthly Charge may only be adjusted by written agreement of the parties. On or before April 1 of any given year Coyle may make a written nomination of water requested to the GPWA for review and approval by the Trustees of the Guthrie Public Works Authority, and such Take or Pay Minimum Monthly Charge may be adjusted effective July 1 of the year of approval and prospectively thereafter unless subsequently amended, PROVIDED in no event shall the monthly charge be less than the amount shown above.
8. Payment Dates: To pay GPWA no later than 30 days after receipt of a bill for water delivered during the preceding billing period. If the amount is not paid within said period, a penalty of 10 percent (10%) of the amount due will be charged per month. The metering equipment shall be read monthly. Appropriate officials of GPWA and Coyle shall have access to the meter(s) at all reasonable times for purpose of verifying readings.
9. Prohibited Connections: No connection shall be made to the municipal water distribution system without approval of GPWA, and no connection will be permitted when there is danger or possibility of contamination or pollution through back-siphonage or otherwise. GPWA shall have the right, at any time during business hours and at Coyle's reasonable expense, to inspect Coyle's facilities for reasons of testing and sampling water for the protection of the public

health. Likewise, Coyle shall have the right, from time to time, to canvass GPWA's records or other data of rate collection, to confirm accuracy.

10. Chlorination Equipment: To furnish, install, operate, and maintain, all necessary chlorination equipment, including protective structures as required, to provide disinfection within Coyle's distribution system.
11. **NO WARRANTIES: ALL SALES OF WATER ARE WITHOUT WARRANTY BY GPWA AS TO QUALITY, QUANTITY, VOLUME, OR PRESSURE, EXCEPT AS HEREIN OTHERWISE AGREED.**

IT IS MUTUALLY AGREED BETWEEN GPWA AND COYLE AS FOLLOWS:

12. Exclusive Agreement: Coyle and GPWA agree that this contract serves as an exclusive agreement for Coyle to purchase water from GPWA and that for a period of twenty (20) years and six (6) months from date of first water delivery by GPWA to Coyle, Coyle will not purchase water from any other source, PROVIDED should GPWA not be able to supply adequate water to Coyle, Coyle may obtain water from any other available source.
13. Term of Contract: The term of this contract shall be through the 30 day of June, 2035, subject to renewal from year to year thereafter unless and until either party notifies the other party in writing ninety (90) days prior to June 30 of any year after 2035, that they desire to amend, supplement, or terminate said contract.
14. Annual Estimated Usage: By April 1 of each year, Coyle shall provide GPWA with a statement as to the estimated water demand for the ensuing fiscal year beginning July 1.
15. Rate Adjustment Provision: For each year that this contract is in effect, GPWA shall conduct or cause to be conducted an annual review of the GPWA's costs. The GPWA shall implement an enterprise accounting system to account for the cost of water supply, treatment and delivery to the delivery point. Based upon the results of the annual review of the GPWA's costs, the usage rate in effect at that time shall be either increased or decreased as is appropriate. Increases in cost of delivery shall include operational, repair and capital costs hereafter incurred. The adjusted usage rate resulting from the aforementioned annual review adjustments shall be effective for a twelve month period following implementation. During any such twelve month period, such adjusted usage rates shall be referred to as the effective normal usage rate.

Coyle shall be deemed to have accepted any such rate adjustments as proper adjustments made pursuant to the terms of 11 O.S. §§ 37-119, 37-119(a) in the event that Coyle fails to object to such rate adjustments in writing no later than thirty (30) days from the date of GPWA's first communication of the rate

adjustment to Coyle, whether in the form of a billing statement or some other writing.

16. Failure to Deliver: Temporary or partial failures to deliver water shall be remedied with all possible dispatch. GPWA will provide a 24-hour notice, when possible, of its intent to discontinue, interrupt, reduce or suspend delivery of water. Coyle will provide GPWA with the name and telephone number of the person or persons to be contacted.
17. Successor to Coyle: That in the event of any occurrence rendering Coyle incapable of performing under this contract, any successor of Coyle, whether the result of legal process, assignment or otherwise, shall succeed to the rights of Coyle hereunder, provided that any voluntary assignments by Coyle are approved by GPWA.
18. Regulatory Agencies: This contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in the State of Oklahoma, and GPWA and Coyle will collaborate in obtaining such permits, certificates, or the like, as may be required to comply herewith. Any existing or new governmentally mandated fees charged in connection with this Contract or required because of water distribution systems shall be paid by Coyle.
19. No Amendments: No officer, official agent of GPWA or Coyle has the power to amend, modify or alter this contract or waiver any of its conditions or to bind GPWA or Coyle by making any promise or representation not contained in this contract.
20. No Assignment: This contract shall not be assigned or transferred by any party without the express written consent of the other parties.
21. Hold Harmless: Coyle shall hold the GPWA harmless and shall indemnify the GPWA from any claims, lawsuits or judgments filed in conjunction with this Contract. Coyle shall defend the GPWA should any actions be filed against the GPWA arising out of this contract.
22. Easements: It is the understanding of the parties that no additional easements will be required regarding construction of the project involved herein. However should additional easements be required, Coyle shall provide these easements at its cost.
23. Tax Covenants: Coyle acknowledges that GPWA has advised Coyle that the requirements of the Internal Revenue Code of 1986 and regulations adopted thereunder (collectively, the "Code") applicable to obligations issued and to be issued by GPWA to finance water facilities must be complied with in order for interest on such obligations to be and remain exempt from Federal income

taxation. To ensure and maintain compliance with such Code requirements, Coyle makes the following covenants:

(a) Coyle will not sell any water purchased under this Contract in any manner that would cause such sale to result in any facility of GPWA being deemed to be used for a private business use under the Code;

(b) Coyle will not resell any water purchased under this Contract, whether directly or as a part of a sale of water from Coyle's water system, to a wholesale purchaser for resale by such purchaser (*i.e.*, Coyle will only sell water purchased under this Contract to its retail customers for ultimate consumption or use);

(c) Coyle will not enter into any arrangement for water purchased under this Contract and resold to Coyle's retail customers except for arrangements for water sale that is available to the general public at either (i) no charge, or (ii) on the basis of rates that are generally applicable and uniformly applied, it being understood that for this purpose, rates may be treated as generally applicable and uniformly applied even if (x) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (y) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates; and

(d) Coyle will not enter into any arrangement for water purchased under this Contract and resold to Coyle's retail customers that conveys priority rights or other preferential benefits or that would obligate any retail customer to make payments that are not contingent on the amount of water purchased by such customer such as take or pay or take and pay contracts.

In the event such Code requirements, or interpretations thereof, change after the date hereof, any or all of the foregoing may be modified, by notice in writing from GPWA to Coyle based on the advice of counsel, to reflect such changes.

Coyle shall confirm to GPWA at least annually by December 31 that it has not sold any water purchased under this Contract other than in compliance with the foregoing. Nothing contained in this Section shall affect the ability of Coyle to sell water to any customers under any conditions if and to the extent such sales are made solely from resources other than water purchased under this Contract.

24. Additional Tax Covenants: Coyle represents and confirms that it is an Oklahoma Public Trust duly organized and established under the provisions of Title 60, Oklahoma Statutes 2011, Section 176 *et. seq.* and covenants that it will continue to be such an Oklahoma Public Trust for the term of this Contract. Coyle further represents and confirms that it is exempt and will remain exempt from Federal income taxation for the term of this Contract and, by virtue of such exemption, has not filed or paid and will not file nor pay any Federal income tax returns for the term of this Contract.

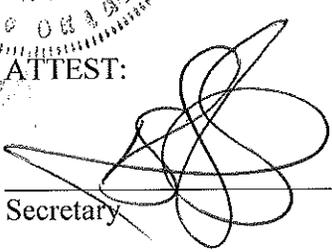
25. Remedies and Indemnification for Breach of Tax Covenants: Coyle and GPWA agree that (a) the provisions of Sections 23 and 24 constitute material terms and conditions of this Contract; (b) GPWA has the right to terminate this Contract by giving thirty (30) days' written notice to Coyle in the event GPWA determines, in good faith, that Coyle has breached either Section 23 or 24; and (c) because of the importance to GPWA of preserving the tax-exempt treatment of the interest on its obligations, determinations by GPWA, in good faith, as to Coyle's compliance with the provisions of Sections 23 and 24 shall be conclusive. Notwithstanding the foregoing, Coyle agrees to indemnify and hold harmless GPWA for all costs incurred by GPWA, including reasonable fees of counsel and other professionals, with respect to any action required to be taken by GPWA to prevent, defend or settle any threatened, preliminary or final action or investigation by the Internal Revenue Service questioning or attacking the tax-exempt status under the Code of the interest on obligations issued by GPWA arising from any violation by Coyle of either Section 23 or 24, except to the extent such violation results from any sale or resale approved in writing by GPWA in its sole discretion. Any provisions contained herein which provide for indemnification shall not apply to the United States in the event that it or one of its agencies becomes a successor in interest to the Coyle. This Section shall survive the expiration or earlier termination of this Contract.

IN WITNESS WHEREOF, the parties hereto, acting under the authority of their respective governing bodies, have caused this contract to be duly executed.

COYLE PUBLIC WORKS AUTHORITY  
BY: CHAIRMAN

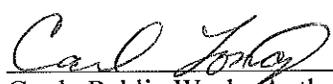


ATTEST:



Secretary

APPROVED AS TO FORM:

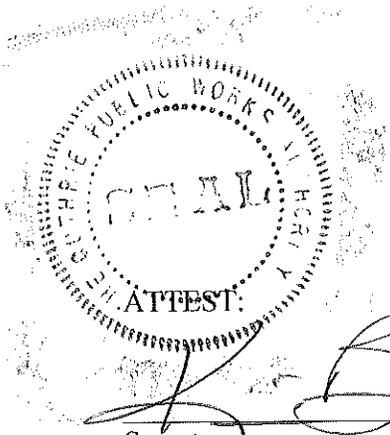


Carl Jones  
Coyle Public Works Authority Counsel



GUTHRIE PUBLIC WORKS AUTHORITY  
BY CHAIRMAN

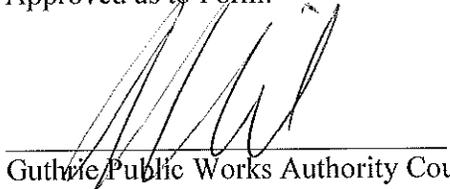
  
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Secretary

Approved as to Form:

  
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Guthrie Public Works Authority Counsel