

RESOLUTION 16-175

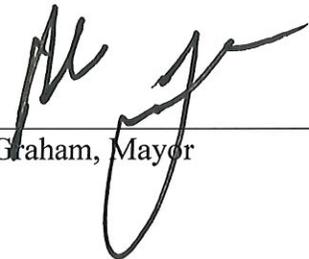
**A RESOLUTION TO APPROVE AN AGREEMENT FOR WATER SERVICES
BETWEEN THE CITY OF SPRING HILL, TENNESSEE,
AND COLUMBIA POWER AND WATER SYSTEMS**

WHEREAS, the City of Spring Hill, Tennessee (“City”) desires to enter into a Water Services Agreement with Columbia Power and Water Systems (“CPWS”) (a copy of which is attached hereto); and

WHEREAS, it is deemed in the public’s best interest for the City to enter into said Water Services Agreement with CPWS to provide the water services recited therein.

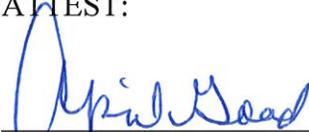
NOW, THEREFORE, BE IT RESOLVED, by the Board of Mayor and Aldermen that the Mayor is authorized to enter into and execute the herein-referenced Water Services Agreement on behalf of the City, public interest demanding it.

Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee, on the 21st day of February, 2017.



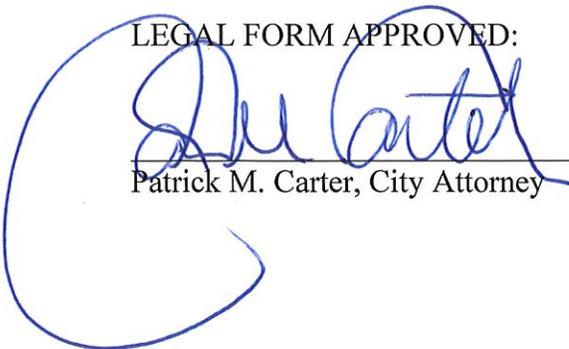
Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick M. Carter, City Attorney

AGREEMENT FOR WATER SERVICES
BY AND BETWEEN THE CITY OF SPRING HILL
AND THE COLUMBIA POWER & WATER SYSTEMS

This Agreement is made and entered into this February 22, 2017, by and between the Columbia Power & Water Systems operated by the Board of Public Utilities of the City of Columbia, hereinafter referred to as "CPWS," and the City of Spring Hill, Tennessee, a municipal corporation hereinafter referred to as "Spring Hill."

WHEREAS, CPWS owns and operates a water treatment facility and water distribution system pursuant to State of Tennessee statute and City of Columbia Ordinance; and

WHEREAS, CPWS desires to be a good neighbor to adjacent water systems and act in a manner that supports the Safe Drinking Water Act of Tennessee; and

WHEREAS, CPWS and Spring Hill first entered into a water purchase agreement on August 12, 1969; and

WHEREAS, the last water purchase agreement between CPWS and Spring Hill dated October 10, 1994, provided Spring Hill with as much as two million eight hundred and eighty thousand (2,880,000) gallons per day at a maximum peak flow rate of two thousand (2,000) gallons per minute; and

WHEREAS, the last water purchase agreement between CPWS and Spring Hill expired on August 31, 2004, after the 2003 construction of Spring Hill's water treatment plant; and

WHEREAS, Spring Hill's increasing water demands are projected to rise above the current supply capacity of the Spring Hill water treatment plant; and during periods of peak demand and in emergency circumstances, the public health and well-being could be threatened as a result of Spring Hill being unable to adequately supply its customers with drinking water and/or fire protection demands; and

WHEREAS, it is CPWS's intention to use revenues received through this Agreement to fund water supply and water treatment improvements that benefit both parties.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Agreement to Supply Water.

A. CPWS will continue to maintain, at its expense, existing water treatment, distribution, and metering facilities; whereby, CPWS can provide a limited supply of water to Spring Hill.

B. CPWS shall provide potable water to Spring Hill at a maximum daily flow rate not to exceed two million eight hundred eighty thousand (2,880,000) gallons in any twenty-

four (24) hour period, at an instantaneous peak flow rate not to exceed two thousand (2,000) gallons per minute, maintaining a minimum delivery residential pressure of twenty (20) pounds per square inch at the point of connection near the Spring Hill municipal boundary on Nashville Highway.

C. It is agreed that CPWS will reserve capacity and capabilities to meet the water supply identified in this Agreement throughout the term of the Agreement. Spring Hill shall be required to enter into negotiations with CPWS for additional water capacity should Spring Hill exceed the contracted capacity defined in Section 2.

D. Abnormally high water usage due to unforeseen circumstances will be allowed up to four (4) events per year without cause for renegotiation of the contract, reset of capacity requirements and resulting costs. An event shall be no longer than forty-eight (48) hours in duration. Spring Hill shall provide notice to CPWS to accommodate the increased usage and document the cause of such events to CPWS within one (1) month of occurrence and include a plan for corrective action.

E. CPWS will at all times operate and maintain its water system in an efficient manner in compliance with all applicable state and federal laws, rules and regulations and will take such action as may be necessary to furnish Spring Hill with water as set forth in this Agreement. Temporary or partial failure to deliver water will be remedied with all possible dispatch. CPWS shall not be liable for interruption of service. In the event of an extended shortage of water, or the supply of water available to/from CPWS is diminished over an extended period of time, CPWS shall have the right to curtail the water supply to Spring Hill at the same extent (pro-rata) that the supply is curtailed to other customers of CPWS.

2. Purchase Price.

A. Spring Hill agrees to pay CPWS for potable water at its established rates as recommended by the City of Columbia Board of Public Utilities and set by the Columbia City Council for wholesale water sales (i.e. Sales for Resale). All water sales will be subject to CPWS rules and regulations and all state and federal rules and regulations. The rules and regulations may be revised from time to time by CPWS and the revised rate as set by the Columbia City Council will become effective on the same date it becomes applicable to all CPWS's customers. Furthermore, CPWS's source of water is the Duck River and Spring Hill is located within the Duck River watershed; therefore, Spring Hill agrees to collect the current Duck River Amortization Charge from its customers and remit the charge to the Duck River Development Agency per current policies and procedures utilized by the City of Spring Hill.

B. Spring Hill will pay a minimum delivery charge equal to the sum of the current customer charge assessed to industrial customers outside the City of Columbia, plus seventeen and one-half (17.5%) percent (this percentage correlates to Three Hundred Fifty Thousand (350,000) gallons within a twenty-four (24) hour period) of the maximum daily flow rate provided in this Agreement. This minimum delivery charge shall be paid even if no water is purchased by Spring Hill within a given month. Failure by Spring Hill to promptly pay any and

all of the charges provided for in this Agreement will be considered a material breach and may result in CPWS terminating the Agreement.

3. Indemnification.

A. CPWS shall be responsible for and shall indemnify and hold Spring Hill harmless from and against any and all claims, demands, actions and judgments lodged or asserted, including death, arising out of or in connection with any acts of CPWS, its agents or employees in the operation and/or maintenance of the facilities under the control of CPWS while this Agreement is in effect, except those resulting from the sole and proven negligence of Spring Hill or its agents or employees.

B. Spring Hill shall be responsible for and shall indemnify and hold CPWS harmless from and against any and all claims, demands, actions and judgments lodged, asserted or recovered by others, for loss, damages, or injury to person or property, including death, arising out of or in connection with any acts of Spring Hill, its agents or employees in the operation and/or maintenance of the facilities under the control of Spring Hill while this Agreement is in effect, except those resulting from the sole and proven negligence of CPWS or its agents or employees.

4. Term. The term of this Agreement shall be for two (2) years from the date first above written. The Agreement shall be automatically renewed thereafter on a year-to-year basis for up to five (5) additional years unless canceled by either party with at least ninety (90) days' prior written notice.

5. Force Majeure. CPWS shall exercise diligence in the operation and maintenance of its equipment and facilities so as to furnish Spring Hill continuous water service during the requested periods, consistent with the type and level of service specified herein. Neither party shall be liable for damages, breach of contract, or otherwise by reason of the failure, suspension, diminution or other variance in water services as the result of injunction, fire, strike, riot, explosions, flood, accident, curtailment, interruption, failure or depletion of CPWS's water supply, failure or breakdown of equipment or facilities, acts of God, or other acts or conditions beyond the control of CPWS or Spring Hill, respectively. Furthermore, neither party shall be liable for damages resulting from interruption of service, when such interruptions are necessary to make repairs, changes or adjustments in equipment and facilities.

6. Dispute Resolution.

A. If Spring Hill and CPWS are unable to agree on any issue or any other question arising under this Agreement, it is agreed that prior to instituting suit against the other party, both parties shall seek a binding arbitration of such disputed issues or questions which shall be referred to a determination of three (3) arbitrators: one appointed by CPWS, a second appointed by Spring Hill, and the third chosen by the two arbitrators so chosen. Only parties qualified as professionals in the matter of controversy will be appointed as arbitrators. The party desiring such arbitration shall give written notice to the other party and in such notice shall name

an arbitrator. The arbitrator to be appointed by the other party shall be named in written notice to the party requesting such arbitration within thirty (30) days after receipt of such notice of arbitration. The third arbitrator shall, within fifteen (15) days of appointment of the second arbitrator, be selected by the two arbitrators previously appointed. If one of said parties shall have failed to appoint an arbitrator within the time provided herein, it is expressly understood and agreed that the one arbitrator who has been appointed shall be the sole arbitrator and shall arbitrate the question alone. If arbitrators shall have been appointed by the respective parties and shall have failed to select the third arbitrator within the time provided herein, the third arbitrator shall be appointed by agreement of the parties or by the Clerk and Master of the Chancery Court of Maury County, Tennessee, upon application therefor filed by either of said parties to the arbitration. If the Clerk and Master is unwilling or unable to appoint the third arbitrator, either party may file a petition with the Chancery Court of Maury County, Tennessee, for the appointment of such arbitrator.

B. The determination of the arbitrator(s) shall be submitted to CPWS and to Spring Hill with findings of fact, conclusions of law, and citation of supporting data. A dissenting view may be filed by any arbitrator.

C. The final determination by the arbitrators shall be effective as of the date on which the disputed action was originally proposed to go into effect. A copy of the final determination shall become and shall be made part of this Agreement and both parties hereto shall be subject to the directives and conditions of the determination.

D. It is the intent of both CPWS and Spring Hill that only issues of significant economic and operational importance be resolved through arbitration, and that arbitration be considered a last resort following other attempts to resolve through negotiations, use of independent experts and consultants, mediation, or other means at the disposal of each of the parties.

E. It is the intent of both CPWS and Spring Hill that issues related to the rate making and rate setting authority of CPWS and the City of Columbia are not subject to arbitration procedures in this section.

7. General Conditions. The intent of this Agreement is to avoid interbasin transfers of water so that the Duck River water supply is used by customers within its watershed. To that end, water supplied by CPWS to Spring Hill shall be solely used for service to end-use customers by Spring Hill, except as hereinafter provided. The term "end-use customers" shall mean customers that consume water for domestic, commercial or industrial purposes, and specifically excludes customers that resell water to other end-use customers or to other distributors of water. If Spring Hill sells water purchased from CPWS to a non-end-use customer other than to Hillsboro, Burwood and Thompson's Station (H.B.&T.S.) Utility District or the Maury County Water System pursuant to existing agreements, the terms of which have been fully divulged to CPWS, then CPWS shall have the right to terminate this Agreement upon providing written notice to Spring Hill.

8. Compliance with Laws.

A. CPWS hereby represents by its execution of this Agreement that CPWS has in all respects complied with city ordinances, federal and state laws and regulations in the making and execution of this Agreement, and further represents by its execution of this Agreement that it has the lawful authority and financial, administrative, and technical capability to maintain and operate the described water service facilities at the described locations, to furnish adequate water services through such facilities to Spring Hill and to perform all of its obligations set forth hereunder.

B. Spring Hill hereby represents by its execution of this Agreement that Spring Hill has in all respects complied with city ordinances, federal and state laws and regulations in the making and execution of this Agreement, and further represents by its execution of this Agreement that it has the lawful authority and financial, administrative, and technical capability to maintain the described water service facilities to receive water under this Agreement.

C. During the term of this Agreement, CPWS and Spring Hill agree to comply with the Regional Drought Water Shortage Management Plan, as approved by the Duck River Development Agency and as it may be amended from time to time.

9. Prior Agreements. This Agreement, upon taking effect, shall terminate, supersede, and cancel any and all previous agreements between CPWS and Spring Hill, relative to the purchase and sale of water services covered by this Agreement.

10. Collaboration and Joint Planning.

A. Recognizing that CPWS and Spring Hill are responsible for the administration and operation of their respective water systems, both CPWS and Spring Hill pledge to work together to develop regional water supply solutions, in partnership with the Duck River Development Agency and the Tennessee Department of Environment and Conservation.

B. It is understood that while CPWS is supplying water to Spring Hill, improvements to CPWS's water supply and treatment facilities benefit both parties. Therefore, CPWS agrees to establish a special revenue account for sales received from Spring Hill. After deducting CPWS current cost of water production, the remaining monies will be deposited in the special revenue account and shall be used exclusively for CPWS water supply and treatment improvements.

11. Approval. It is understood that this Agreement shall be approved by the Board of Public Utilities of the City of Columbia and the Board of Mayor and Aldermen of the City of Spring Hill.

12. Notice. The parties hereto agree that whatever notice to the other party is required by the terms of this Agreement, such notice shall be in writing and sent by certified mail, return receipt requested, addressed to the appropriate agent of the other party.

If to CPWS: Executive Director
Columbia Power & Water Systems
P. O. Box 379
Columbia, TN 38402-0379

Copy to: Daniel Murphy, Esq., Attorney for the Board of Public Utilities
Fleming, Flynn & Murphy, P.C.
207 W. Eighth Street
P.O. Box 90
Columbia, TN 38402-0090

If to Spring Hill: City Administrator
City of Spring Hill
P.O. Box 789
Spring Hill, TN 37174-0789

Copy to: Patrick M. Carter, Esq., City Attorney
Tisher, Wolaver, Free, Carter & Lynn, PLLC
809 South Main Street
P.O. Box 1431
Columbia, TN 38402-1431

13. Venue and Jurisdiction. It is mutually agreed, for all purposes, that this Agreement shall be deemed to have been executed in Maury County, Tennessee, and shall be controlled by and interpreted under Tennessee law as applicable.

14. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

15. Headings and References. The headings in this Agreement are for convenience of reference only and shall not define or limit the provisions thereof. All references in this Agreement to particular Articles or Sections are references to Articles or Sections of this Agreement, unless otherwise indicated.

IN WITNESS WHEREOF, the parties hereto have subscribed their names on the date and year above written.

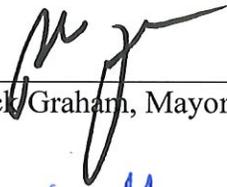
COLUMBIA POWER & WATER SYSTEMS

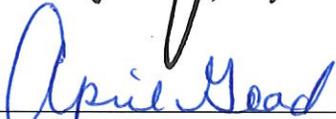
By: 
Teresa J. Beck, Chairman

Board of Public Utilities

By: 
Wes Kelley, Executive Director
Columbia Power & Water Systems

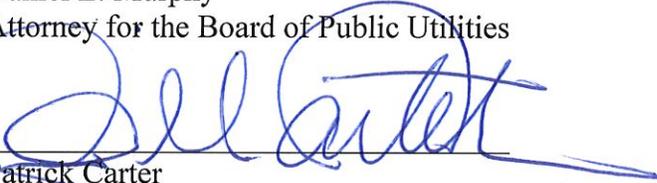
CITY OF SPRING HILL, TENNESSEE

By: 
Rick Graham, Mayor

By: 
April Goad, City Recorder

Form Approved By:


Daniel L. Murphy
Attorney for the Board of Public Utilities


Patrick Carter
Attorney for City of Spring Hill, Tennessee