

## RESOLUTION 21-45

### A RESOLUTION TO APPROVE AGREEMENT FOR WATER SERVICE BY AND BETWEEN CITY OF SPRING HILL AND MAURY COUNTY WATER SYSTEM

**WHEREAS**, the City of Spring Hill owns and operates a water treatment facility and water distribution system pursuant to the State of Tennessee and the City's Code of Ordinances; and

**WHEREAS**, Maury County Water System ("MCWS") owns and operates a water distribution system pursuant to the State of Tennessee and MCWS rules and policies; and

**WHEREAS**, the City and MCWS entered into a Water Purchase Contract on June 1, 1977 for the City to sell water to MCWS that remained effective for a twenty (20) year period after which time there is no formal agreement currently in effect between the City and MCWS for sale and purchase of water between parties; and

**WHEREAS**, the Board of Mayor and Aldermen approved Resolution 21-44 to approve a Water Billing Agreement by and between the City of Spring Hill and Maury County Water System for the City to sell water to MCWS; and

**WHEREAS**, for several years the City sold water to MCWS at a connection point located near the intersection of Beechcroft Road and Dr. Robertson Road, which both the City and MCWS currently maintain for emergency use; and

**WHEREAS**, the City currently sells water to MCWS at a connection point located on Patriot Drive; and

**WHEREAS**, the City approved Resolution 20-39 to annex certain property known as 2251 Sugar Ridge Road, Tax Map 24, Parcel 8.00, into the City limits; and

**WHEREAS**, the parties desire to establish another connection point where the City will sell water to MCWS near the intersection of Sugar Ridge Road and the CSX railroad right-of-way; and

**WHEREAS**, in accordance with Article 15, Section 15.10, B. Spring Hill Unified Development Code, adequate water facilities are required that are capable of providing the minimum protection flows (750 GPM at a minimum 30 psi residual), including fire hydrants, subject to construction and material specifications of the Tennessee Department of Environment and Conservation and Spring Hill Standard Specifications for Water Additions, and any other applicable standards and specifications and additional requirements of the Planning Commission; and

**WHEREAS**, the Tennessee Department of Environment and Conservation only allows fire hydrants to be installed on water lines capable of providing the minimum protection flows of 500 GPM at a minimum of 20 psi residual;

**WHEREAS**, the parties wish to enter into an arrangement whereby the City

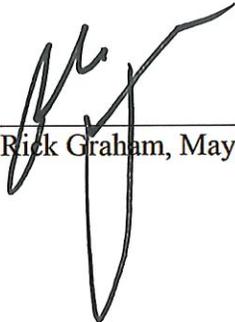
supplies water to MCWS at a delivery point near the property, providing a level of service adequate for fire protection to the property that conforms with minimum fire protection flow requirements of the Tennessee Department of Environment and Conservation (500 GPM at a minimum of 20 psi residual), and MCWS in turn provides water service to the property itself; and

**WHEREAS**, the parties wish to enter into an arrangement whereby the City supplies water to MCWS at a delivery point near the property, providing a level of service adequate for fire protection to the property that conforms with minimum fire protection flow requirements of the Tennessee Department of Environment and Conservation (500 GPM at a minimum of 20 psi residual), and MCWS in turn provides water service to the property itself; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Spring Hill Board of Mayor and Aldermen:

1. Approve the Agreement for Water Services by and between the City of Spring Hill and Maury County Water System attached hereto authorizing the connect between the City and MCWS and the subsequent sale of water by the City to MCWS.
2. Authorize the Mayor and City Attorney to sign said Agreement for Water Services and any ancillary agreements in substantial conformity with the Agreement approved by the Board for the City of Spring Hill to authorize the connection between the City and MCWS and the subsequent sale of water by the City to MCWS.

**Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on this 15<sup>th</sup> day of March, 2021.**

  
\_\_\_\_\_  
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 MAURY COUNTY WATER SYSTEM**

This Agreement is made and entered into this 15<sup>th</sup> day of March, 2021, by and between the Maury County Board of Public Utilities d/b/a the Maury County Water System, hereinafter referred to as "MCWS," and the City of Spring Hill, Tennessee, a municipal corporation hereinafter referred to as "the City."

WHEREAS, the City of Spring Hill owns and operates a water treatment facility and water distribution system pursuant to State of Tennessee statutes and the City's Code of Ordinances; and

WHEREAS, the City 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, MCWS has requested a metering point on Sugar Ridge Road within the corporate limits of the City of Spring Hill for the City to provide water to MCWS to serve water to customers within MCWS's territory, as MCWS does not currently have sufficient existing infrastructure installed to serve properties within the area; and

WHEREAS, in emergency circumstances, the public health and well-being could be threatened as a result of MCWS being unable to adequately supply its customers with drinking water and/or fire protection demands; and

WHEREAS, the City has approved Resolution 20-39 to annex a property known as 2251 Sugar Ridge Road, Tax Map 24, Parcel 8.00, into the City limits; and

WHEREAS, in accordance with Article 15, Section 15.10, B. Spring Hill Unified Development Code, adequate water facilities are required that are capable of providing the minimum protection flows (750 GPM at a minimum of 30 psi residual), including fire hydrants, subject to construction and material specifications of the Tennessee Department of Environment and Conservation and Spring Hill Standard Specifications for Water Additions, and any other applicable standards and specifications and additional requirements of the Planning Commission; and

WHEREAS, the Tennessee Department of Environment and Conservation only allows fire hydrants to be installed on water lines capable of providing the minimum protection flows of 500 GPM at a minimum of 20 psi residual;

WHEREAS, the parties wish to enter into an arrangement whereby the City supplies water to MCWS at a delivery point near the property, providing a level of service adequate for fire protection to the property that conforms with minimum fire protection flow requirements of the Tennessee Department of Environment and Conservation (500 GPM at a minimum of 20 psi residual), and MCWS in turn provides water service to the property itself; and

WHEREAS, it is the City'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 Domestic Water.

A. The parties will establish a new metered connection between their water systems near the intersection of Sugar Ridge Road and the CSX railroad right of way. This metered connection will serve as the point of delivery of water under this Agreement.

B. Notwithstanding any other provision of this Agreement, the City shall supply water to MCWS at the point of delivery in sufficient quantities and at sufficient pressure to enable MCWS to provide fire protection beyond the point of delivery that conforms with the minimum fire protection flow requirements of the Tennessee Department of Environment and Conservation (500 GPM at a minimum of 20 psi residual) until such time as MCWS constructs a future water main serving the subject property capable of providing the minimum fire protection flow requirements of the City of Spring Hill (750 GPM at a minimum of 30 psi residual).

C. The City will continue to maintain, at its expense, existing water treatment, distribution, and metering facilities, whereby the City can provide the supply of water to MCWS specified herein.

D. The City shall provide potable water to MCWS at a maximum daily flow rate not to exceed eight thousand (8,000) gallons and at a maximum monthly flow rate not to exceed two hundred forty thousand (240,000) gallons, maintaining a minimum delivery static pressure of twenty (20) pounds per square inch.

It is contemplated by the parties that, in addition to the flow rates stated above in this Section 1.D, the City may sell and MCWS may purchase additional amounts of water as may be necessary from time to time to meet system demands but only if the City agrees in advance to such additional sales. MCWS will make every effort to advise the City, in advance, when events requiring additional water may occur.

Any water provided by the City to MCWS for a fire event at the aforementioned property will not count toward the maximum daily and monthly flow rates stated above in this Section 1.D.

E. It is agreed that the City will reserve capacity and capabilities to meet the water supply identified in this Agreement throughout the term of the Agreement. MCWS shall be required to enter into negotiations with the City for additional water capacity should MCWS desire to exceed the contracted capacity defined in Section 1.D.

F. Abnormally high-water usage due to unforeseen circumstances will

be allowed up to four (4) separate occurrences per year without cause for renegotiation of this Agreement or the reset of capacity requirements and resulting associated costs. An event shall be no longer than eight (8) hours in duration. MCWS shall provide notice to the City to accommodate the increased usage and document the cause of such events to the City within one (1) week of occurrence and include a City-approved plan for corrective action.

G. The City 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 MCWS with water as set forth in this Agreement. All water sold by the City to MCWS shall meet applicable purity standards of the Tennessee Department of Environment and Conservation. Temporary or partial failure to deliver water will be remedied with all possible dispatch. The City shall not be liable for an interruption of service out of the City's control. In the event of an extended shortage of water, or the supply of water available to/from the City is diminished over an extended period of time, the City shall have the right to curtail the water supply to MCWS at the same extent (pro-rata) that the supply is curtailed to other customers of the City.

H. The City shall provide as much advance notice to MCWS as is reasonably possible if the City must reduce or cut off the water supply to MCWS.

2. Billing. MCWS will pay the City for water purchased under this Agreement in accordance with both the terms herein and the parties' Water Billing Agreement by and between the City of Spring Hill and Maury County Water System, which is being executed on the same date as this Agreement and is incorporated by reference into this Agreement.

3. Indemnification.

A. The City shall be responsible for and shall indemnify and hold MCWS 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 the City, its agents or employees in the operation and/or maintenance of the facilities under the control of the City while this Agreement is in effect, except those resulting from the sole and proven negligence of MCWS or its agents or employees.

B. MCWS shall be responsible for and shall indemnify and hold the City 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 MCWS, its agents or employees in the operation and/or maintenance of the facilities under the control of MCWS while this Agreement is in effect, except those resulting from the sole and proven negligence of the City or its agents or employees.

4. Master Meter.

A. The City shall operate and maintain, at its own expense, the metering equipment and other required devices of standard type for properly measuring the quantity of water delivered to MCWS (the "Master Meter"). At least once during each consecutive twelve (12)-month period, commencing on the date that the City first supplies water to MCWS, the City shall test and calibrate the Master Meter at the City's expense and after reasonable notice to MCWS.

B. If MCWS requests that the Master Meter be tested and calibrated more frequently, the City shall do so in the presence of a duly authorized representative of MCWS, who shall observe any adjustments made to the Master Meter in connection therewith. If the Master Meter registers not more than two (2%) percent above or below calibration, the test result shall be deemed to be accurate. If the Master Meter is found to be accurate within two (2%) percent or less, then the costs of the additional testing and calibration requested by MCWS shall be borne by MCWS. If the Master Meter is found to be above or below calibration by more than two (2%) percent, then the costs of such additional testing and calibration shall be borne by the City.

C. Whenever the Master Meter is found to be above or below calibration by more than two (2%) percent, the previous three readings and associated bills shall be adjusted to correct for the percentage of inaccuracy found by the test. If the Master Meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water furnished in the corresponding period immediately prior to the failure, unless the City and MCWS agree upon a different amount. A qualified representative of MCWS shall be designated and shall have access to all metering devices at all reasonable times for the purpose of verifying its or their readings. The City shall make available to MCWS, at MCWS's expense, signals sufficient to monitor from a remote location the flow through the Master Meter.

D. In the event that additional meter(s), above and beyond the Master Meter to be installed at the point of delivery, are required to be installed during the term of this Agreement, such additional meter(s) shall conform to the City's material specifications and shall, upon installation, become the exclusive property of the City. If such additional meter(s) are for MCWS's convenience, then the cost of such additional meter(s) and their installation shall be borne by MCWS. If such additional meter(s) are for the City's convenience, then the cost of such additional meter(s) and their installation shall be borne by the City.

E. If the Master Meter or other meter is relocated for MCWS's convenience, then the cost of such relocation shall be borne by MCWS. If the Master Meter or other meter is relocated for the City's convenience, then the cost of such relocation shall be borne by the City.

5. Term. The term of this Agreement shall be for twenty (20) years from the date of this Agreement. Either party may terminate this Agreement before the expiration

of the term by giving the other party at least one (1) year's advance written notice.

6. Force Majeure. The City shall exercise diligence in the operation and maintenance of its equipment and facilities so as to furnish MCWS 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 the City's water supply, failure or breakdown of equipment or facilities, acts of God, pandemic, or other acts or conditions beyond the control of MCWS or the City, 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.

7. Dispute Resolution.

A. The City and MCWS agree that they shall submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof to mediation. The offended party shall give notice to the other party of its request for mediation, and the parties shall promptly retain a mutually acceptable mediator. The cost of mediation shall be borne equally by the parties. If mediation does not resolve the parties' differences, then either or both parties may pursue arbitration, as provided below. Notwithstanding any other provision herein, a party may proceed with arbitration or take other appropriate legal action to preserve a claim before the expiration of a statute of limitations or other time limit, without completing mediation. In addition, MCWS's superintendent and the City's mayor may agree in writing, without seeking further approval from the parties' governing boards, to extend a statute of limitations or other time limit while the parties are engaged in mediation.

B. If the City and MCWS are unable to agree on any issue or any other question arising under this Agreement, it is agreed that both parties shall seek a binding arbitration of such disputed issues or questions by a panel of three (3) arbitrators pursuant to the Commercial Arbitration Rules of the American Arbitration Association, except as otherwise specifically provided herein. The cost of arbitration shall be borne equally by the parties. One arbitrator shall be appointed by MCWS, a second appointed by the City, 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.

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

D. The final determination by the arbitrators shall be effective as of the date specified by the arbitrators. 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.

8. 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 the City to MCWS shall be solely used for service to end-use customers by MCWS, except as hereinafter provided. The term "end-use customers" shall mean customers that consume water for domestic, irrigation, fire protection, commercial or industrial purposes, and specifically excludes customers that resell water to other end-use customers or to other distributors of water. If MCWS sells water purchased from the City to a non-end-use customer, then the City shall have the right to terminate this Agreement upon providing written notice to MCWS.

9. Compliance with Laws.

A. The City hereby represents by its execution of this Agreement that it 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 MCWS and to perform all of its obligations set forth hereunder.

B. MCWS hereby represents by its execution of this Agreement that MCWS 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, MCWS and the City 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.

10. Collaboration and Joint Planning. Recognizing that MCWS and the City are responsible for the administration and operation of their respective water systems, both MCWS and the City pledge to work together, where it is mutually beneficial, to develop regional water supply solutions, in partnership with the Duck River Development Agency and the Tennessee Department of Environment and Conservation.

11. Approval. This Agreement has been approved by the Maury County Board of Public Utilities and the Board of Mayor and Aldermen of the City of Spring Hill. The individuals signing below represent that they have full authority to execute this Agreement on behalf of their respective parties; that this Agreement has received any approval required by law from their respective parties; and that this Agreement is a legal, valid, and binding agreement.

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 specified below or his successor:

If to MCWS:            Todd Shultz, Superintendent  
                              Maury County Board of Public Utilities  
                              P.O. Box 1196  
                              Columbia, TN 38402

Copy to:                Michael Wall, Attorney for the Maury County Board of  
                              Public Utilities  
                              Branstetter, Stranch & Jennings  
                              223 Rosa L. Parks Avenue, Suite 200  
                              Nashville, TN 37203

If to Spring Hill:    City Administrator  
                              City of Spring Hill  
                              199 Town Center Parkway  
                              P.O. Box 789  
                              Spring Hill, TN 37174

Copy to:                Patrick M. Carter, City Attorney  
                              Wolaver, Carter & Heffington  
                              809 South Main Street, Suite 100  
                              Columbia, TN 38402

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 an arbitration panel or 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.

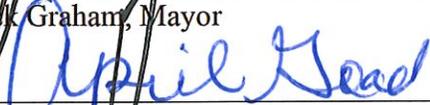
16. Entire Agreement. This Agreement shall constitute the entire agreement of the parties related to the subject matter herein. This Agreement may be modified or amended only by a written instrument signed by the parties.

17. Execution. This Agreement may be signed in counterparts. Signed copies of this Agreement delivered via facsimile or via e-mail in Adobe portable document format (.pdf) shall be deemed originals.

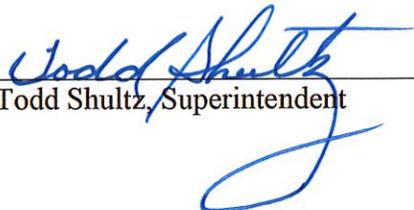
**IN WITNESS WHEREOF**, the parties hereto have subscribed their names on the date and year above written.

CITY OF SPRING HILL, TENNESSEE

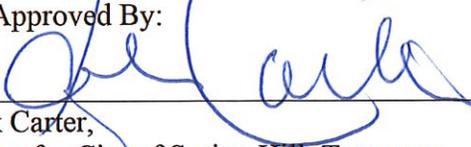
By:   
Rick Graham, Mayor

By:   
April Goad, City Recorder

MAURY COUNTY BOARD OF PUBLIC UTILITIES

By:   
Todd Shultz, Superintendent

Form Approved By:

  
Patrick Carter,  
Attorney for City of Spring Hill, Tennessee

  
Michael Wall,  
Attorney for the Maury County Board of Public Utilities