

**A RESOLUTION AUTHORIZING  
THE MAYOR AND RECORDER TO  
SIGN A NEW WATER CONTRACT WITH THE  
COLUMBIA BOARD OF PUBLIC UTILITIES**

BE IT RESOLVED by the Board of Mayor and Aldermen of the  
Town of Spring Hill:

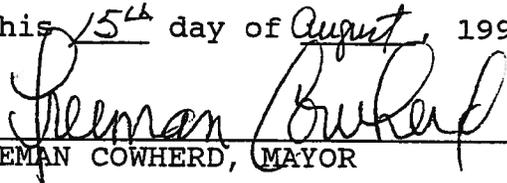
1. That the Mayor and Recorder are hereby authorized to  
execute in behalf of the Town of Spring Hill a new contract with  
the Columbia Board of Public Utilities by which Spring Hill will  
receive its water supply from the Columbia Water System.

2. The form of the contract to be signed by them is  
attached hereto as Exhibit "1" to this resolution and hereby made  
a part hereof.

3. The Mayor is authorized to negotiate for the length  
of the contract for any period of time not less than five (5) years  
from the date of the agreement.

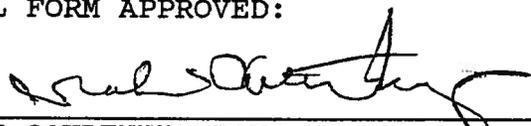
4. It is agreed that the Town of Spring Hill will be  
bound by the terms of the contract until its expiration date, until  
it is amended or rescinded by the mutual consent of the parties to  
the agreement, or a change in the laws or a court decision relieves  
either party from the terms of the agreement.

PASSED AND ADOPTED on this 15<sup>th</sup> day of August, 1994.

  
\_\_\_\_\_  
FREEMAN COWHERD, MAYOR

  
\_\_\_\_\_  
JUNE QUIRK, RECORDER

LEGAL FORM APPROVED:

A handwritten signature in black ink, appearing to read "Robin Courtney", written over a horizontal line.

ROBIN COURTNEY, TOWN ATTORNEY

AGREEMENT FOR WATER SERVICES BETWEEN  
THE BOARD OF PUBLIC UTILITIES OF THE  
CITY OF COLUMBIA, TENNESSEE,  
OPERATING THE COLUMBIA WATER SYSTEM  
AND THE TOWN OF SPRING HILL, TENNESSEE

This Agreement made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 1994, by and between the Board of Public Utilities of the City of Columbia, Tennessee, operating the Columbia Water System, (hereinafter referred to as "CWS"), and the Town of Spring Hill, Tennessee, a municipal corporation, (hereinafter referred to as "Spring Hill").

WHEREAS, CWS owns and operates a waterworks plant and water delivery system pursuant to Ordinance No. 74 dated February 3, 1939, the Tennessee Municipal Electric Plant Law of 1935, and a Resolution of the City of Columbia of May 10, 1941, accepting custody, administration, operation, maintenance, and control of the waterworks of the City of Columbia, in accordance with the provisions of Chapter 68 of the Public Acts of 1933, that permit and allow CWS to provide service for use by customers inside and outside its territorial limits under similar rates, terms, and conditions as service provided to other customers within and without its territorial limits; and

WHEREAS, Spring Hill currently operates under a contract with CWS, but desired to increase the volume of water delivered by CWS and purchased by Spring Hill; and

WHEREAS, CWS and Spring Hill desire to enter into a new contract to provide for the delivery and acceptance of water; and

WHEREAS, CWS has agreed to furnish water services, and Spring Hill has agreed to purchase such services from CWS and to use CWS as its sole source of water service; and

WHEREAS, subject to unavoidable operation or other interruptions, it is important to Spring Hill to have assured, economic, adequate, reliable, continuous, and uninterrupted water services; and

WHEREAS, the terms, conditions, obligations, duties, responsibilities and benefits of and to the parties are hereinafter set forth.

NOW, for and in consideration of the premises and in further consideration of the promises and agreements hereafter contained, CWS agrees to sell, and Spring Hill agrees to purchase, water service upon the conditions and limitations hereinafter provided.

I. WATER SERVICE PROVISIONS

Section 1: CWS shall provide flow availability to Spring Hill for potable water as measured by suitable metering facilities and protected by approved cross connection control devices as mutually agreed upon by CWS and Spring Hill at a peak daily flow rate not to exceed two million eight hundred eighty thousand (2,880,000) gallons, and at a peak flow rate not to exceed two thousand (2,000) gallons per minute, at a minimum delivery residual pressure of 20 pounds per square inch.

Section 2: During the term of this contract and provided CWS can provide a peak flow of two thousand (2,000)

gallons per minute, Spring Hill agrees to accept and pay for its entire water requirements from CWS unless Spring Hill receives from CWS prior written approval to accept water from an alternate source.

Section 3: The approximate point of delivery of water service from CWS to Spring Hill is shown on Appendix A, attached hereto and made a part hereof. CWS shall be responsible for the operation and maintenance of water supply, treatment, purification, pumping and delivery facilities to the point of delivery. Spring Hill shall be responsible for providing, and for the operation and maintenance of, all facilities beyond the point of delivery.

If Spring Hill is not capable of accepting two thousand (2,000) gallons per minute at the point of delivery, then it shall be the obligation of Spring Hill, if it so elects, to construct such mains and other facilities so that Spring Hill can accept delivery of water service at a peak flow rate not to exceed two thousand (2,000) gallons per minute. Spring Hill shall pay for any and all costs associated with the construction of said mains and facilities.

Section 4: The above water supply shall be made available continuously by CWS to Spring Hill except for:

- (a) Operational interruptions required to flush and maintain lines and storage tanks. CWS agrees to notify and schedule such interruptions with Spring Hill to eliminate and/or minimize the impact on Spring Hill's operation.

b) A break, outage, or interruption of [redacted]'s supply or delivery system.

(c) Force majeure conditions as described in Article IV, Section 1.

## II. WATER SERVICE FACILITIES

Section 1: The water service facilities to be constructed by CWS shall consist of such metering equipment and related facilities, as CWS requires to adequately meter water, including required meter(s), backflow preventers, instrumentation, and telemetry system. Spring Hill shall pay for the costs of the meter and related facilities and equipment.

Section 2: Any water service facilities constructed by Spring Hill, including any additional or replacement mains shall be constructed by Spring Hill according to plans and specifications approved by CWS which approval will not be unreasonably withheld from the point of metering, the costs of such facilities shall be paid by Spring Hill.

Section 3: One or more water meters shall be operated, tested, calibrated, maintained and replaced as necessary by CWS if a malfunction in a water meter(s) is known to occur. If it is demonstrated that a water meter(s) has provided incorrect reading for up to three (3) months, billing to Spring Hill for water usage shall be adjusted and based on reasonable engineering estimates based on past history as determined jointly by CWS and Spring Hill. If CWS and Spring Hill cannot agree, Spring Hill agrees to pay the bill as

submitted by CWS, and either party may submit the compute for determination pursuant to paragraph VI.

Section 4: CWS shall maintain a reasonable inventory of spare parts on hand for all meters directly serving Spring Hill.

Section 5: All reasonable and documented costs incurred by CWS for extraordinary repairs, replacement and maintenance consisting of, but not limited, replacement or factory repair, or major repair, or replacement of the major metering components, shall be reimbursed by Spring Hill. CWS shall initiate and perform such extraordinary equipment repair, replacement, or maintenance work, if in CWS's best engineering judgment, such repair, replacement or maintenance is necessary to maintain proper metering operation and integrity. CWS shall provide to Spring Hill supporting documentation in reasonable detail for all charges assessed to Spring Hill, including but not limited to, material, administration, labor, operating margin, and other related costs for such repair.

### III. INDUSTRIAL CUSTOMERS

It is mutually agreed that CWS shall have the first right to serve any large industrial load that locates south of the present city limits of Spring Hill, and in the event of annexation by Spring Hill, CWS shall continue to serve said industrial load. Should CWS elect not to serve an industrial load desiring service south of the Spring Hill city limits and north of the Columbia city limits, Spring Hill may serve said load. The parties hereto agree that such industrial load should be served at the lowest possible rate under long term arrangements. A large industrial load is hereby defined as a

load requiring a sprinkler system requiring an eight (8) inch main or larger, and/or one that requires water in excess of 1,000,000 gallons per month.

#### IV. CONTRACT TERM

Section 1: The primary term for water service pursuant to this contract expires \_\_\_\_\_ day of \_\_\_\_\_, ~~1999~~<sup>2020</sup>. Thereafter this contract shall automatically be renewed on a year-to-year basis unless cancelled by either party by at least one (1) year's prior written notice.

At the time of execution of this agreement, it is the mutual intent and expectation of CWS and Spring Hill that this contract should be renewed with and under essentially the same terms and conditions, including a water rate level and rate structure consistent with services being offered to other customers and not preferential or discriminatory to either Spring Hill or CWS's other customers.

#### V. FORCE MAJEURE

Section 1: CWS shall exercise diligence in the operation and maintenance of its equipment and facilities so as to furnish Spring Hill continuous water service consistent with the type and level of service specified herein, and Spring Hill shall exercise diligence in the use of water service so as to not interfere unreasonably with the service to others dependent upon CWS for such services. 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 CWS's water supply, failure or breakdown of equipment or facilities, acts of God, or other acts or conditions beyond the control of CWS 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.

#### VI. RATES AND CHARGES

Section 1: Rates and charges for water service shall be that rate adopted by the appropriate governing body setting rates for the Columbia Water System for other customers of CWS located outside the Columbia city limits.

Section 2: In the event that changes in the rate of water service are required to assure adequate and reasonable revenues to CWS, then the rate shall be that rate adopted as required by public law or private act by the appropriate governing body to other customers of CWS located outside the Columbia city limits.

#### VII. RESOLUTION OF DISPUTES

##### Section 1:

A. If Spring Hill and CWS are unable to agree on any issue or any other question arising under this contract, other than the rate or rates for water service, it is agreed that prior to instituting suit against the other party, both parties shall seek arbitration of such disputed issues or questions which shall be referred to a determination of three (3) arbitrators, one appointed by CWS, a second appointed by Spring

Hill, the third chosen by the two arbitrators chosen. Only parties qualified as professionals in the matter in 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 therefore 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 CWS 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 CWS 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 CWS and Spring Hill that issues related to the rate making and rate setting authority of CWS and the City of Columbia are not subject to the arbitration procedures in this section and either party may institute legal proceedings in the appropriate court or courts to resolve any such issue.

#### VIII. GENERAL CONDITIONS

Section 1: Except as herein provided, water supplied by CWS 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 resale water to other end use customers or to other distributors of water. Spring Hill shall have the right to sell water to non-end use customers pursuant to contracts in existence at the time of the execution of this agreement, copies of which are attached hereto and annexed as Appendix C. The volume of water sold by Spring Hill to non-end use customers, pursuant to existing contracts, shall not increase the obligation of CWS to deliver water to Spring Hill, in other words, CWS is obligated to provide two thousand (2,000) gallons per minute regardless of the amount sold to non-end use customers. Spring Hill may not increase the volume of water sold under the existing contracts above the existing contractually required volume, or contract with other non-end use customers to sell water, without the express written consent of CWS, which consent may be granted by CWS in its sole and absolute discretion. The term "non-end use customers" shall include all distributors of water and all intermediaries supplying water to distributors.

It is the intent of CWS and Spring Hill to restrict the sale of water outside the boundaries of Maury County except for such portions of other counties that are within the city limits of Spring Hill, unless CWS, in its sole judgment, determines that the sale of water outside said boundaries will not adversely affect CWS's ability to provide water, both at the time of the execution of this agreement and in the future, to customers of CWS.

Section 2: Failure of either party hereto to exercise any right hereunder shall not be deemed a waiver of such party's right and shall not affect the right of such party to exercise at some future time said right or rights or any other right it may have hereunder.

Section 3: None of the remedies provided for under this Agreement need be exhausted or exercised as a prerequisite to resort to further relief to which the party may be entitled in the event of an emergency situation or an imminent threat to health or property.

Section 4: CWS shall notify Spring Hill in writing and in a timely manner of any proposed amendment, modification, or change to Columbia Water System's policies applicable to water service rates, charges, water service facilities, service availability, and rules that may or could materially affect the terms and conditions of this Agreement. For the purposes of this agreement, "timely manner" shall mean within three (3) days following the date of the first reading of the City of Columbia concerning any proposed amendment, modification or change, if same is required to be passed by the City of Columbia, or, if the proposed amendment, modification or change is not required at least ten (10) days prior to the proposal appearing on the agenda of a meeting of the Board of Public Utilities.

Section 5: CWS hereby represents by its execution of this agreement that CWS has in all respects complied with City ordinances 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 construct, install, 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.

Section 6: Spring Hill hereby represents by its execution of this Agreement that Spring Hill has in all respects complied with Ordinances of the Town of Spring Hill 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 construct, install and maintain the described water service facilities as it is required to provide and to perform all of the obligations set forth hereunder it is required to perform.

Section 7: CWS shall be responsible for and shall indemnify and save Spring Hill 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 CWS, its agents or employees in the construction, use, and maintenance of the facilities under the control of CWS while this Agreement is in effect, except those resulting from the sole and proven negligence of Spring Hill or its agents or employees.

Section 8: Spring Hill shall be responsible for and shall indemnify and save CWS 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 construction, use, and 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 CWS or its agents or employees.

Section 9: No voluntary assignment by Spring Hill of its rights under this Agreement shall be binding upon CWS, unless CWS shall have assented to such assignment with the same formality as employed in the execution of this contract.

Section 10: This agreement, upon taking effect, shall terminate, supersede, and cancel any and all previous agreements between CWS and Spring Hill relative to the purchase and sale of water services covered by this Agreement.

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

Section 12: If in the future Spring Hill sells water to any other distributor of water Spring Hill agrees to pay CWS a transmission charge of one cent (1 ) per 1,000 gallons per mile of all water resold to other water

distributors as measured from CWS's water purification plant to the point of delivery of water to Spring Hill.

IX. NOTIFICATION PROCEDURE

Section 1: 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. CWS addressed to the General Manager, Columbia Water System, P.O. Box 379, Columbia, Tennessee, 38402-0379; Spring Hill addressed to the Mayor of the Town of Spring Hill, City Hall, P. O. Box 789, Spring Hill, Tennessee, 37174.

X. CONTRACT ADJUSTMENTS AND AMENDMENTS

Section 1: Adjustments and amendments to this Agreement and its associated terms and conditions as appropriate shall be made by mutual agreement, and this Agreement may either be supplemented with an amendment by the parties or by means of an informal agreement reached by the parties incorporated in a written letter of understanding exchanged between the two (2) parties and signed by the duly authorized operating official representing each party.

XI. PLACE OF EXECUTION

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.

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

BOARD OF PUBLIC UTILITIES OF  
THE CITY OF COLUMBIA, TENNESSEE  
COLUMBIA WATER SYSTEM

TOWN OF SPRING HILL, TENNESSEE

By: \_\_\_\_\_  
Chairman, Board of  
Public Utilities

By: Freeman Cochran  
Mayor

By: \_\_\_\_\_  
General Manager,  
Columbia Water System

By: Jane Quirk  
Town Recorder

Form approved by: Robert L. Holloway, Jr.  
Attorney for the Board of Public Utilities  
  
Robin S. Courtney  
Attorney for Town of Spring Hill, Tennessee