

**RESOLUTION 21-89**

**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.

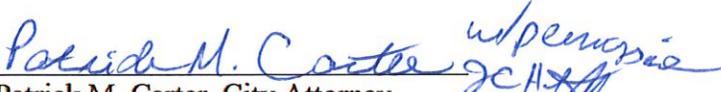
**Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee, on the 21<sup>st</sup> day of June 2021.**

  
\_\_\_\_\_  
Jim Hagaman, 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 \_\_\_\_\_, 2021, by and between the Board of Public Utilities for the City of Columbia DBA Columbia Power and Water Systems, 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 February 22, 2017, 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, with the population growth that has occurred in Columbia, Maury County and Spring Hill, the increasing water demands are projected to rise above the current supply capacity of the CPWS intake and water treatment plant, therefore CPWS will construct a new water treatment plant and seek a new Duck River intake on the western edge of Maury County to meet the long term water supply needs of the County including drought conditions; 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 make water supply, treatment, and transmission improvements to provide Spring Hill the quantity of water as set forth in this agreement; and

WHEREAS, it is the desire of CPWS and Spring Hill to enter into a new Agreement to meet the water needs in the area.

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

1. Agreement to Supply Water.

A. CPWS will continue to maintain, at its expense, its existing water treatment, distribution, and metering facilities as well as construct additional facilities which will enable CPWS to supply Spring Hill potable water as set forth in this agreement.

B. CPWS shall provide potable water meeting applicable purity standards of the Tennessee Department of Environment and Conservation (TDEC) and the United States Environmental Protection Agency (EPA) to Spring Hill at a minimum daily flow rate established during July of each fiscal year. This minimum daily flow rate shall be a daily flow rate not less than two million eight hundred eighty thousand (2,880,000) gallons in any twenty-four (24) hour period. The maximum daily flow rate shall be eight million (8,000,000) gallons in a continuous twenty-four (24) hour period (maximum quantity), at an instantaneous peak flow rate not to exceed five thousand five hundred and fifty-six (5,556) gallons per minute from the existing purchase point and future connection points on the CPWS system to be agreed upon by the parties. For the daily flow rates described above, a minimum delivery residential pressure of twenty (20) pounds per square inch shall be maintained at the point of connection near the Spring Hill municipal boundary on Nashville Highway.

C. If future connection points are needed to meet Spring Hill system growth and use up to the maximum quantity as set forth above, the parties agree to expand purchase points at mutually agreed upon locations so that a minimum delivery of residential pressure of twenty (20) pounds per square inch at the point of connection can be maintained. The cost for constructing these connection points shall be the responsibility of Spring Hill with meters then deeded to CPWS for operation and maintenance throughout the life of this agreement.

D. 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. If Spring Hill desires additional water capacity that exceeds the contracted capacity defined in Section 1 B above, CPWS and Spring Hill would have to negotiate the cost of such additional capacity which may include Spring Hill contributing towards the required capacity improvements. Furthermore, the feasibility of improvements, and the accompanying impacts to both systems, shall be considered during negotiations.

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 and in accordance 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.

F. Both parties shall share all relevant planning and technical information, for the purpose of addressing present and future water supply needs, during the term of this contract.

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 Spring Hill Water System.

B. Spring Hill will pay a minimum daily delivery charge equal to the purchase of two million eight hundred eighty thousand (2,880,000) gallons of water within a twenty-four (24) hour period, for the minimum quantity provided in this Agreement and multiplied by the current 'Sale for Resale' water rate established by Columbia City Council. This minimum delivery charge shall be paid even if no water is purchased by Spring Hill within a given month. Water purchased above this volume within a twenty-four (24) hour period will be charged at the established CPWS rates for wholesale water sales. 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. The minimum daily delivery charge will go into effect upon substantial completion of the CPWS West Water treatment plant, which is anticipated to occur around Memorial Day 2024. CPWS will provide Spring Hill thirty (30) days notice for the minimum daily delivery charge. Prior to the minimum daily delivery charge, 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.

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 forty (40) years from the date first above written.

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. 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.

8. 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.

9. Collaboration and Joint Planning. 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 all appropriate stakeholders.

10. 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 Alderman of the City of Spring Hill.

11. 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:            President/CEO  
                             Columbia Power & Water Systems  
                             P. O. Box 379  
                             Columbia, TN 38402-0379

Copy to:                Daniel Murphy, Esq., Attorney for the Board of Public Utilities  
                             Murphy, Cox, Franks & Lasater, 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  
                             Wolaver, Carter & Heffington  
                             809 South Main Street  
                             Columbia, TN 38401

12. 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.

13. 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.

14. 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.

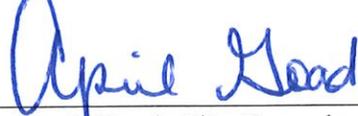
COLUMBIA POWER & WATER SYSTEMS

By: \_\_\_\_\_  
Eddie Campbell, Chairman  
Board of Public Utilities of Columbia

By: \_\_\_\_\_  
Scott Dahlstrom, President/CEO  
Columbia Power & Water Systems

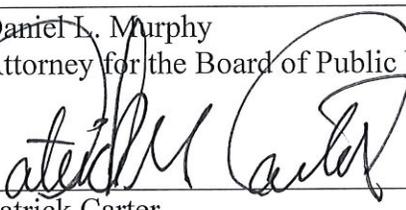
CITY OF SPRING HILL, TENNESSEE

By:  \_\_\_\_\_  
Jim Hagaman, 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