

**WATER PURCHASE CONTRACT**

The terms agreed to in this contract for the sale and purchase of water between the CITY OF BRECKENRIDGE, City Offices, 105 North Rose Avenue, Breckenridge, Texas 76424 (hereinafter referred to as Seller) and TOMMY C. WIMBERLEY, DBA HIGH MESA WATER COMPANY, 400 West Walker Street, Breckenridge, Texas 76424 (hereinafter referred to as Purchaser), shall be effective as of \_\_\_\_\_, 20\_\_.

**WITNESSETH:**

**WHEREAS**, Purchaser has obtained a Certificate of Convenience and Necessity from the Texas Commission on Environmental Quality which allows Purchaser to operate a water supply distribution system serving water users within the area described on the attached Exhibit A, which is incorporated herein for all purposes, containing approximately 80 acres of land as situated 1/2 mile southwest of the City of Breckenridge, bounded by Post Oak Road on the east side thereof, and

**WHEREAS**, Seller owns and operates a water supply distribution system with a capacity currently capable of serving the present customers of Purchaser,

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements hereinafter set forth,

**A. THE SELLER AGREES TO THE FOLLOWING:**

1. To furnish Purchaser at the point of delivery from an existing two (2) inch main supply at a point located approximately 1,999 feet south of the intersection of West Elliott Street and County Road No. 224, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the Texas Department of Health in such quantity as may be required by Purchaser not to exceed 150,000 gallons per month.
2. That water will be furnished at a constant pressure calculated at 35 PSI from an existing two (2) inch main supply line at a point located at approximately 1,999 feet south of the intersection of West Elliott Street and County Road No. 224.

Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake, or other catastrophe shall excuse Seller from this provision for such period of time as may be necessary to restore service.

3. To calibrate such metering equipment whenever requested by Purchaser but not more frequently than once every twelve (12) months. A meter registering within the standards as prescribed by the American Water Works Association standards shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the one month prior to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the volume of water furnished during such period shall be deemed to be the volume of water delivered in the corresponding period immediately prior to the failure, unless Seller and Purchaser agree otherwise based on facts supporting such agreement. The metering equipment shall be read on or about the 15th of every month. An appropriate official of Purchaser at all reasonable times shall have access to the meter for the purpose of verifying its readings.
4. To furnish Purchaser at the above address not later than the 25th day of each month, with an itemized statement of the amount of water furnished Purchaser during the preceding month.

**B. THE PURCHASER AGREES TO THE FOLLOWING:**

1. To pay Seller, not later than the 30th day of each month, for water delivered in accordance with the following rate schedule and future rates as approved by the commission during the fiscal year budget process:

First 2,000 gallons (minimum)	\$45.50
2,001 gallons and over, per one thousand gallons:	\$6.00

2. The Purchaser under this contract agrees that this contract is subject to the Water Conservation and Drought Contingency Plan which has been heretofore adopted

by Seller, as same now exists and as same may be hereafter amended, a copy of the present Plan having been furnished to the Purchaser prior to execution of this amendment, and with Purchaser to be furnished a copy of any amendments to said Plan as same may be adopted from time to time, so that at all times subsequent to execution of this amendment, Purchaser's rights under this contract will be subject to the Water Conservation and Drought Contingency Plan enacted by Seller.

3. The Purchaser shall provide and install, at the points of delivery, metering equipment and connections to Seller's system at no cost to Seller. Metering equipment and connections shall be approved by the Seller prior to installation.
4. It is further understood and agreed between the parties that Seller, from time to time, will have to purchase water from the Hubbard Creek Lake from the West Central Texas Municipal Water District, and it is understood and agreed that when such water purchase is required by Seller that Seller's cost of acquisition of such water from West Central Texas Municipal Water District will be passed on and paid by Purchaser as an additional charge to the water it acquires from Seller under the terms of this contract.
5. (Sanitary Requirements) The Seller reserves the right and authority to enter upon the property of Purchaser or Purchaser's customers' property to inspect the water facilities for compliance with Texas State Health Department requirements related to the City of Breckenridge's State Water Certification. The Seller shall notify the Purchaser of any situation existing that jeopardizes the City of Breckenridge's water certification with the Texas State Health Department, and the Purchaser shall immediately correct any such condition that might result in the contamination of Seller's water supply. In the event Purchaser fails to correct such situation within ten (10) days, Seller reserves the right to cease delivery of water under this Contract until such condition is corrected to Seller's satisfaction.

6. Notwithstanding any provision to the contrary herein, it is understood and agreed that in the event the Seller should expand, enlarge, rebuild, or replace its existing water treatment plant, then such expense of Seller may be considered as an increase in the cost of performance hereunder which would justify an increase in rates to Purchaser, provided the water rates of Seller's other customers are also increased due to such additional expense of Seller.

**C. IT IS FURTHER MUTUALLY AGREED BETWEEN THE SELLER AND THE PURCHASER AS FOLLOWS:**

1. That this contract shall extend for a term of five (5) years from the date of the initial delivery of any water as shown by the first bill submitted by Seller to Purchaser and, thereafter may be renewed or extended for such term or terms, as may be agreed upon by Seller and Purchaser.
2. That Seller will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish Purchaser with quantities of water required by Purchaser. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser's consumers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's consumers is reduced or diminished.
3. That the provisions of this contract pertaining to the schedule or rates to be paid by Purchaser for water delivered are subject to modification annually. Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder. Other provisions of this contract may be modified or altered by mutual agreement.
4. That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State, and Seller and Purchaser will collaborate in

obtaining such permits, certificates, or the like, as may be required.

5. This Contract cannot be assigned in whole or in part by Purchaser without first obtaining the written consent of Seller.
6. Seller has no obligation under this contract to furnish more than 150,000 gallons of water per month to Purchaser. Purchaser shall comply with all statutory requirements, rules, and regulations that apply to the sale and distribution of water in the State of Texas.

**EXECUTED** in duplicate originals the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**SELLER:**

THE CITY OF BRECKENRIDGE, TEXAS

\_\_\_\_\_  
BOB SIMS, MAYOR

**PURCHASER:**

TOMMY C. WIMBERLEY, DBA  
HIGH MESA WATER COMPANY

\_\_\_\_\_  
TOMMY C. WIMBERLEY, OWNER

**ATTEST:**

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HEATHER ROBERTSON-CARAWAY, CITY SECRETARY

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