

**AGREEMENT FOR SALE OF  
SURPLUS MUNICIPAL WATER FROM DEL CITY TO NORMAN**

This agreement is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the parties, being Norman Utilities Authority of the City of Norman, Oklahoma, a public trust for the benefit of the City of Norman, Oklahoma, (hereinafter referred to as “NORMAN”), the Del City Municipal Services Authority, a public trust for the benefit of the City of Del City and the City of Del City, Oklahoma, a municipal corporation, (hereinafter collectively referred to as “DEL CITY”); and Central Oklahoma Master Conservancy District, a master conservancy district organized under the laws of Oklahoma (hereinafter referred to as “COMCD”) all hereinafter referred to as “Agreement”.

The parties agree as follows:

1. The City of Del City, Oklahoma (DEL CITY) and Del City Municipal Services Authority are parties to a certain Contract with the Central Oklahoma Master Conservancy District, dated November 13, 1961 for the DEL CITY water supply under the terms and provisions of which DEL CITY and the Del City Municipal Services Authority (hereinafter collectively referred to as “DEL CITY” for both entities) were entitled to purchase a certain specified allocation of water from COMCD for an initial twenty-five year term.
2. The City of Norman, Oklahoma and the Norman Utilities Authority (NORMAN) are parties to a certain Contract with COMCD, dated September 5, 1961, for the Norman water supply, under the terms and provisions which NORMAN was entitled to purchase a certain specified allocation of water from COMCD.
3. DEL CITY and NORMAN have subsequently and separately renewed their respective contracts with COMCD for an additional twenty-five year term two times, the most recent renewal being effective January 1, 2017 (the “Del City Contract” and the “Norman Contract” respectively).
4. NORMAN anticipates, based upon past and current water demand and actual usage, that it may need more than the specified allocation of water available to NORMAN under said Contract with the COMCD, as amended, and that NORMAN desires to purchase Surplus Municipal Water and potentially On Demand Surplus Municipal Water (as referenced in Section 7 in the Norman contract and Section 8 in the Del City contract) from COMCD, to help meet the needs and demands of NORMAN.
5. DEL CITY is willing to allow COMCD to provide to NORMAN, at a mutually agreed upon price, Surplus Municipal Water and On Demand Surplus Municipal Water which DEL CITY is otherwise entitled to utilize or retain under the Del City contract.
6. NORMAN will pay DEL CITY for such Surplus Municipal Water and On Demand Surplus Municipal Water.

7. COMCD Section 7 of the Del City Contract provides that when Surplus Municipal Water or On Demand Surplus Municipal Water is available, COMCD may dispose of such current surplus on whatever terms it can arrange.

8. DEL CITY ALLOCATION RIGHT RETENTION: DEL CITY shall retain all allocations and rights to all water which they have possessed immediately prior to the execution of this AGREEMENT, and NORMAN agrees not to seek or accept any additional rights of water currently held by DEL CITY as a result of DEL CITY making Surplus Municipal Water available to NORMAN under this AGREEMENT.

9. EFFECTIVE DATE: The effective date of this AGREEMENT shall be from October 1, 2024 to September 30, 2025. Then the term shall be from October 1 through September 30 each year. It is the intent of the parties to have this Agreement in Place for an additional nine (9) yearly renewals after the initial term with expiration on September 30, 2034, subject to DEL CITY, COMCD, and NORMAN approval and annual appropriation.

10. CONTRACT PURCHASE VOLUMES: DEL CITY agrees to sell, and COMCD agrees to convey, to NORMAN up to **three hundred million gallons (300,000,000)** of **Surplus Municipal Water** per year from DEL CITY contract allocation under its COMCD Contract and potentially additional **two hundred million gallons (200,000,000)** of **On Demand Surplus Municipal Water** per year from DEL CITY contract allocation under its COMCD Contract at the rates set forth within Paragraphs 10.1 and 10.2 of this AGREEMENT.

10.1 SURPLUS MUNICIPAL WATER: NORMAN agrees to purchase from DEL CITY, on an annual basis **three hundred million (300,000,000) gallons** of Surplus Municipal Water. Payment to DEL CITY for the available Surplus Municipal Water will be required to be paid on or before December 1<sup>st</sup> of each year of the Agreement in the amount of \$204,000.00 per year. Each subsequent year thereafter will be increased by 1.5% inflation rate increase (as is stated in Section 16).

- a. DEL CITY will irrevocably sell to NORMAN each year of the contract, and NORMAN shall pay DEL CITY for three hundred million (**300,000,000**) **gallons** per year of Surplus Municipal Water, whether the water is used or not, at a rate of **sixty-eight cents (\$0.68) per 1,000 gallons**.
- b. If DEL CITY determines that three hundred million (300,000,000) gallons of Surplus Municipal Water is not available for the upcoming year due to emergency condition defined in Paragraph 13 herein, DEL CITY will notify NORMAN within 60 days prior to the start of the contract year. If DEL CITY determines that the Surplus Municipal Water available is less than three hundred million (300,000,000) gallons after NORMAN has made full payment in accordance with this paragraph due to an emergency condition defined in Paragraph 13 herein, DEL CITY will reimburse NORMAN at the rate paid by NORMAN for the water made unavailable by DEL CITY.

10.2. ON DEMAND SURPLUS MUNICIPAL WATER: DEL CITY agrees to sell, and COMCD agrees to convey, to NORMAN, and NORMAN shall pay DEL CITY for On Demand Surplus Municipal Water on an as needed basis at the rate of

one dollar and **thirty-six cents (\$1.36) per 1,000 gallons**. On Demand Surplus Municipal Water is defined as available Surplus Municipal Water **in excess of three hundred million (300,000,000) gallons**. The minimum requested amount of On Demand Surplus Water shall be more than **fifty million (50,000,000) gallons**, and would be in addition to the purchased Surplus Municipal Water. The maximum amount of On Demand Surplus Municipal Water that can be requested per year is **two hundred million (200,000,000) gallons** and would be in addition to purchased Surplus Municipal Water. Use of On Demand Surplus Municipal Water would require NORMAN to request in writing the use of this water and DEL CITY to approve in writing the use of this water prior to the sale and use of any On Demand Surplus Municipal Water. Use of such water shall be in increments no less than fourteen 24-hour consecutive days. NORMAN shall pay DEL CITY in full within 60 days of each month for the use of any On Demand Surplus Municipal Water. DEL CITY may curtail or cancel the use of On Demand Surplus Municipal Water at their sole discretion.

11. BILLING AND WATER USAGE STATEMENTS: DEL CITY will provide invoice receipt for NORMAN after receiving payment for the purchase of Surplus Municipal Water. COMCD provides monthly usage statements and charts which reflect the current status of allocated water including yearly allocation, Surplus Municipal Water allocations, and On Demand Surplus allocations. COMCD will revise their monthly usage statement and charts upon written notification from the cities. NORMAN will request in writing to DEL CITY and COMCD of their desire to purchase the quantity of On Demand Surplus Water if needed. DEL CITY will invoice NORMAN for requested and approved water purchases shown on COMCD monthly usage statement and charts. During times when On Demand Surplus Water has been purchased by NORMAN, COMCD shall consider all water used thereafter, up to the amount of On Demand Surplus Water purchased, to be On Demand Surplus Water. The time period for the accounting of On Demand Surplus Water shall be in 24 hour day increments, beginning and ending at midnight each day. NORMAN will pay to DEL CITY the amount stated in the billing statements sent to NORMAN within sixty (60) days of the receipt of each such billing statement.

12. DEL CITY AND NORMAN USE OF TEMPORARY WATER: DEL CITY and NORMAN shall retain full rights to use temporary water in accordance with applicable contracts with COMCD.

13. EMERGENCY CONDITIONS: This AGREEMENT defines emergency conditions as follows:

13.1 COMCD determination of emergency conditions, includes but are not limited to, droughts, contamination, weather events, etc.

13.2 DEL CITY determination of emergency conditions, includes but are not limited to, droughts, contamination, terrorism, weather events, two or more DEL CITY water wells unable to produce drinking water, catastrophic infrastructure damage, large grass and structure fires, major acts of God, etc.

14. TAX PROVISIONS: NORMAN acknowledges that DEL CITY has advised NORMAN that the requirements of the Internal Revenue Code of 1986 and regulations adopted thereunder (collectively, the “Code”) applicable to obligations issued and to be issued by DEL CITY to finance water facilities must be complied with in order for interest on such obligations to be and remain exempt from Federal income taxation. To ensure and maintain compliance with such Code requirements, DEL CITY/NORMAN makes the following covenants:

- a. NORMAN will not sell any water purchased under this Agreement in any manner that would cause such sale to result in any facility of DEL CITY being deemed to be used for a private business under the Code.
- b. NORMAN currently provides service to the University of Oklahoma who provides service to other tenants or users on their premises. NORMAN will not resell any water purchased under this Agreement, whether directly or as a part of a sale of water from NORMAN’s water system, to a wholesale purchaser for resale by such purchaser other than to the University of Oklahoma.
- c. NORMAN will not enter into any agreement for water purchased under this AGREEMENT and resold to NORMAN’S retail customers except for arrangements for water sale that is available to the general public at either (i) no charge, or (ii) on the basis of rates that are generally applicable and uniformly applied, it being understood that for this purpose, rates may be treated as general applicable and uniformly applied, it being understood that for this purpose, rates may be treated as generally applicable and uniformly applied even if (x) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (y) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates and the rates established are as comparable as reasonably possible to the generally applicable rates.
- d. NORMAN will not enter into any arrangement for water purchased under this AGREEMENT and resold to NORMAN’S retail customers that conveys priority rights or other preferential benefits or that would obligate any retail customers to make payments that are not contingent on the amount of water purchased by such customer such as take or pay or take and pay contracts.
- e. In the event such Code requirements, or interpretations thereof, change after the date hereof, any or all of the foregoing may be modified, by notice in writing from DEL CITY to NORMAN based on the advice of counsel, to reflect such changes.
- f. NORMAN represents and confirms that the Norman Utilities Authority is a public trust created and existing under the laws of the State of

Oklahoma for the benefit of the City of Norman, Oklahoma, and covenants that it will continue to be such a public trust for the term of this AGREEMENT. NORMAN further represents and confirms that it is exempt and will remain exempt from Federal income taxation for the term of this AGREEMENT and, by virtue of such exemption, has not filed or paid and will not file or pay any Federal income tax returns for the term of this Agreement.

15. LIABILITY: Having considered the potential liabilities that may exist during the performance of the services, the NORMAN fee for the SERVICES and in consideration of the promises contained in this AGREEMENT, DEL CITY, NORMAN and COMCD agree to allocate and limit such liabilities in accordance with this Article to the extent permitted by Oklahoma statutes, constitution, and case law.

15.1 Consequential Damages. To the extent permitted by Oklahoma statutes, constitution, and case law, DEL CITY shall not be liable to NORMAN or COMCD, NORMAN shall not be liable to DEL CITY or COMCD, and COMCD shall not be liable to DEL CITY or NORMAN for any special, indirect or consequential damages resulting in any way from the performance of this AGREEMENT.

15.2 Remedies and Indemnification for Breach of Tax Covenants. The parties agree that (a) the provisions of Paragraph 15. of this AGREEMENT constitute material terms and conditions of this Agreement; (b) COMCD, DEL CITY each has the right to terminate this Agreement by giving thirty (30) days written notice to NORMAN in the event DEL CITY or COMCD determines, in good faith, that Norman has breached any part of Paragraph 15. of this AGREEMENT; and (c) because of the importance to DEL CITY of preserving the tax-exempt treatment of the interest on its obligations, determinations by the DEL CITY, in good faith, as to NORMAN'S compliance with the provisions of Paragraph 14 and its subparts herein shall be conclusive. Notwithstanding the foregoing, NORMAN agrees to indemnify and hold harmless DEL CITY for all costs incurred by DEL CITY, including reasonable fees of counsel and other professional, with respect to any action required to be taken by DEL CITY to prevent, defend or settle any threatened, preliminary or final action or investigation by the Internal Revenue Service questioning or attacking the tax-exempt status under the Code of the interest on obligations issued by DEL CITY arising from any violation by NORMAN of Paragraph 14 and its subparts herein, except to the extent such violation results from any sale or resale approved in writing by DEL CITY in its sole discretion. Any provisions contained herein which provide for indemnification shall not apply to the United States in the event that it or one of its agencies becomes a successor in interest to NORMAN. This Section shall survive the expiration or earlier termination of this Agreement.

15.3 Survival. Upon completion of all obligations and duties provided for in this AGREEMENT or if this AGREEMENT is terminated for any reason, the terms and conditions of this Paragraph 15 and all its subparagraphs shall survive.

16. TERM OF AGREEMENT: The initial term of this AGREEMENT is from October 1, 2024 to September 30, 2025. Then the term shall be from October 1 through September 30 each year. It is the intent of the parties to have this Agreement in place for ten (10) years, including the initial term with expiration on September 30, 2034, subject to DEL CITY, COMCD and NORMAN approval. At the renewal of each contract year, the price for Surplus Municipal Water and On Demand Surplus Water will increase by 1.5% over the previous year. The foregoing notwithstanding, the provision of Surplus Municipal Water or On Demand Surplus Municipal Water by COMCD to NORMAN may be terminated for failure to timely pay for such water as provided in this AGREEMENT. This Agreement is meant to be a utilized Agreement.

17. FORCE MAJEURE: Neither DEL CITY, COMCD, or NORMAN shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For the purposes of this AGREEMENT, such circumstances include, but are not limited to: abnormal weather conditions; unforeseen emergency causing infrastructure failure; floods; earthquakes; fire; epidemics; war; riot and other civil disturbances; strikes, work slowdowns and other labor disturbances; sabotage; judicial restraint; and inability to procure permits; licenses; or authorization from any local, state, or federal agency for anything required to be provided by either DEL CITY, COMCD, or NORMAN under this AGREEMENT.

18. NONPERFORMANCE: Should such circumstances occur the non-performing party shall, within a reasonable period after being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this AGREEMENT.

19. COMMUNICATION: Any communication required by this AGREEMENT shall be made in writing to the addresses specified below:

NORMAN: Norman Utilities Authority  
ATTN: Director of Utilities  
225 N. Webster Ave  
Norman, OK 73070-0370

And

City Attorney  
City of Norman  
201 W. Gray Street  
Norman, OK 73069  
City.attorney@normanok.gov

CITY OF DEL CITY: Del City Municipal Services Authority  
P.O. Box 15177

Del City, OK 73155  
Attn: Trust Manager

And

City Attorney

City of Del City  
3701 SE 15<sup>th</sup> Street  
Del City, OK 73115  
[legal@cityofdelcity.org](mailto:legal@cityofdelcity.org)

COMCD: Central Oklahoma Master Conservancy District  
ATTN: General Manager  
12500 Alameda Drive  
Norman, OK 73026

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of NORMAN, DEL CITY and COMCD.

20. WAIVER OF BREACH: Any waiver by DEL CITY, NORMAN, or COMCD of any breach of this AGREEMENT shall be in writing. Such waiver shall not affect the waiving party's right with respect to any other or further breach.

21. SEVERABILITY: The invalidity, illegality, or unenforceability of any provision of this AGREEMENT or the occurrence of any event rendering any portion or provision of this AGREEMENT void shall in no way affect the validity or enforceability of any other portion or provision of this AGREEMENT. Any void provision shall be deemed severed from this AGREEMENT, and the balance of this AGREEMENT shall be construed and enforced as if this AGREEMENT did not contain the particular portion or provision held to be void. The parties further agree to amend this AGREEMENT to replace any stricken provision with a valid Provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire AGREEMENT from being void should a provision, which is of the essence of this AGREEMENT, be determined void.

22. AMENDMENT: This AGREEMENT represents the entire and integrated AGREEMENT between NORMAN, DEL CITY and COMCD. Except as otherwise specified herein, this AGREEMENT supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT. This AGREEMENT may only be changed by written amendment executed by both parties.

23. CITY CONTRACTS WITH COMCD: Nothing in this AGREEMENT supersedes, amends, or abrogates any of the provisions of the Del City contract with COMCD or the Norman contract with COMCD.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, NORMAN, DEL CITY and COMCD have executed this AGREEMENT.

**NORMAN UTILITIES AUTHORITY**

Approved by NORMAN this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**NORMAN UTILITIES AUTHORITY**

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

\_\_\_\_\_  
\_\_\_\_\_, Secretary

Reviewed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
General Counsel for Norman Utilities Authority

**CITY OF DEL CITY/DEL CITY MUNICIPAL SERVICES AUTHORITY**

Approved by DEL CITY MUNICIPAL SERVICES AUTHORITY this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**DEL CITY MUNICIPAL SERVICES AUTHORITY**

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

\_\_\_\_\_  
\_\_\_\_\_, Secretary

Reviewed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Attorney for Del City Municipal Services Authority



CITY OF DEL CITY

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

Reviewed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Attorney for City of Del City

**CENTRAL OKLAHOMA MASTER CONSERVANCY DISTRICT**

Approved by COMCD this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CENTRAL OKLAHOMA MASTER  
CONSERVANCY DISTRICT

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, President

\_\_\_\_\_  
\_\_\_\_\_, Secretary

Reviewed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Attorney for COMCD