

**RESOLUTION NO. 3005**

**A RESOLUTION APPROVING THE WHOLESALE WATER CONTRACT BETWEEN THE CITY OF EL DORADO, KANSAS, A MUNICIPAL CORPORATION, AND BUTLER WHOLESALE WATER DISTRICT 8.**

**WHEREAS** the City of El Dorado owns and operates a municipal water works; and

**WHEREAS**, the City of El Dorado has decided to enter into a Wholesale Water Contract to sell water to the Butler Wholesale Water District 8.

**WHEREAS**, the proposed Wholesale Water Contract has been submitted to the City for approval;

**Now, Therefore**, the City of El Dorado hereby resolves as follows:

1. The Wholesale Water Contract for sale of water by the City of El Dorado to is hereby approved and ratified in its entirety. A copy of the Wholesale Water Contract is hereby attached and made part hereof.
2. The Mayor and City Clerk are hereby authorized to sign the Wholesale Water Purchase Contract.
3. This Resolution shall take effect upon the date of adoption of this Resolution.

**Adopted** this 21<sup>st</sup> day of January 2024.

## **WHOLESALE WATER CONTRACT**

THIS WHOLESALE WATER CONTRACT (the "Agreement"), made and entered into this 21<sup>st</sup> day of January 202025, by and between the CITY OF EL DORADO, Butler County, Kansas (a municipal corporation of the second class, hereinafter called title "CITY", and PUBLIC WHOLESALE WATER SUPPLY DISTRICT NO. 8, Butler County, Kansas, existing under and by virtue of the laws of the State of Kansas and having its principal place of business in Butler, County, Kansas, hereinafter called the "WATER DISTRICT").

**WHEREAS**, the City of El Dorado owns and operates a municipal water works; and

**WHEREAS**, the water produced by the municipal water works has been approved by the Kansas State Board of Health for domestic use; and

**WHEREAS**, the said water district maintains a system of water mains and distribution lines in an area adjacent to the City of El Dorado, Kansas, all of which is, and shall remain outside the corporate limits of the City of El Dorado, Kansas; and

**WHEREAS**, it is mutually agreed by and between said parties hereto that the said City shall sell to the Water District, and the said Water District shall purchase from the City of El Dorado, water upon the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, in view of the premises aforesaid and in consideration of their mutual covenants and promises herein contained, it is agreed by and between the parties hereto as follows:

It is acknowledged by the parties that the City desires to sell water only for domestic usage as that term is defined in K.S.A. 82a-701(c) as amended. Prior to providing service to any user, the Water District shall require such user to restrict its usage accordingly. The water district hereby grants to the City the right and authority to bring any action necessary against any user to enforce such restrictions which action may be in the name of the City or in the name of the water district. Further, The term "water" as used in this Agreement shall refer to water as treated by the City for its domestic consumption.

### **Section 1 – Quality and Quantity**

1.1 During the term of this Agreement or any renewal or extension thereof, The City shall furnish water to the Water District at the point of delivery hereinafter specified, which shall meet quality standards of State, Federal, and other regulatory agencies. The City will not be responsible for water quality beyond the point of delivery. The Water District agrees to purchase an average maximum of 301,107 gallons per day, totaling no more than 110,000,000 gallons per year. If usage exceeds the maximum on an occasional basis, the Water District may request advanced notice or limited forgiveness of any maximum usage violation (not to affect the payment amount for water provided by the City). Any such notice or forgiveness for overages shall not be unreasonably withheld. However, if usage significantly exceeds the average maximum to the extent that it may require the City to increase its production capacity, the City reserves the right to limit the maximum to the established average defined above.

- 1.2 Both parties may revisit the allocated gallons per year at any time, for reasons including, but not limited to, water line breaks, droughts, and increase of customers. Should the Water District need the regular use of water in excess of the average maximum described in paragraph 1.1 above, the Water District shall obtain written permission from the City of El Dorado, not to be unreasonably withheld. Unless prior written permission is obtained, the use of water in excess of the average maximum described in paragraph 1.1, above, shall be in violation of this Agreement. Any such violation may be called to the attention of the Water District which shall take immediate steps to limit the Water District's usage of water to the amount allotted herein. The failure of the Water District to take such steps shall be sufficient cause for immediate cancellation of this Agreement, upon further written notice from the City. The written permission of any additional supplies of water of the maximum quantity allowed does not guarantee that the City will make water available on that basis at any time other than the timeframe the City elects to provide additional supplies of water to the Water District.
- 1.3 The Water District agrees to notify the City, in writing, of any anticipated increase to the Water District's water demand, so the City may make proper arrangements for its water withdraws to meet the Water District's estimated demand.
- 1.3 Following the end of the first one-year period covered by this Agreement, and at the end of each succeeding one-year period, the maximum gallons allowed to be purchased per month shall be increased by the same percentage as the average monthly gallons purchased has increased over that one-year period.
- 1.4 The City will not be responsible for quality or quantity in the event that the City is unable to perform for reason or reasons beyond its control. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire, and the use of water to fight fires, earthquake, or other catastrophe or circumstances beyond the control of the City or acts of God shall excuse the City from this provision for such reasonable period of time as may be necessary to restore service. During such failure the Water District shall be excused from minimum monthly gallon purchase as provided herein.

## **Section 2 – Term**

- 2.1 This Agreement shall be in full force and effect from the Effective Date of the Agreement until the expiration of forty (40) years, unless otherwise amended, in writing, by both parties. The Agreement may be amended, extended, or renewed by mutual written consent of both parties under such terms and conditions agreeable to the parties.
- 2.2 Either party may provide the other with notice of its desire to amend or extend the Agreement by giving notice of such intention, in writing, six months prior notice of its desire to negotiate provisions of this Agreement. Such negotiations shall not be considered to be a default of the Agreement, nor shall it necessarily prevent an extension of this Agreement. Said Agreement shall be renewed and extended under the same terms and

conditions herein.

### **Section 3 – Point of Delivery and Metering**

- 3.1 Water will be delivered to the point of delivery at a reasonably constant pressure. The “point of delivery” shall be located at 988 NE Shady Creek Access Road, El Dorado, Kansas, or at such other locations as may be agreed upon in writing by the parties. The Water District shall be responsible for the water, for all purposes and intents, from and after title passage to the Water District. The Water District hereby agrees, to the fullest extent permitted by law, to indemnify, save and hold the City harmless from any and all claims, demands, losses, and causes of action, which may be asserted by anyone related to the transportation and delivery of said water while title remains with the Water District. The Water District reserves its right to direct any action or interplead or cross claim against the City in the event the City is in breach of any terms of this agreement.
- 3.2 The Water District shall be responsible for the construction and installation of metering equipment at a location agreeable to both parties (the “Terminal”), and water sold pursuant to this Agreement shall be measured through such equipment (the “Metering Equipment”). The Metering Equipment shall be read on the last working day of each month, or as soon thereafter as is practical and convenient, and each party may have, at their option, a representative present for such monthly reading.
- 3.3 Following completion of construction of the Metering Equipment, or if the Metering Equipment is already installed on the effective date of this Agreement, the Water District shall convey such Metering Equipment to The City for its ownership and perpetual maintenance. The City shall be responsible for the operation and maintenance of the aforementioned Metering Equipment, including replacement as needed, and shall provide for the necessary routine maintenance to ensure such Metering Equipment is kept in good working order to meet industry standards for similar Metering Equipment. The Standards and Specifications of the American Water Works Association (“AWWA”) effective as of the Effective Date of this Agreement shall govern calibration and replacement of Metering Equipment. Any necessary replacement of the Metering Equipment shall meet or exceed the then-current Standards and Specifications of the AWWA for similar Metering Equipment.
- 3.4 Either party may, at any time and at its own expense, have such Metering Equipment tested to determine accuracy. In the event that either party determines the Metering Equipment are not performing within aforementioned industry standards, the other party shall be notified and a plan shall be coordinated to recalibrate or replace such Metering Equipment. If the Water District requested the testing and the meter was inaccurate, then the City shall bear the expense of testing, recalibration and/or replacement. If the meter was accurate, then the Water District shall bear the expense of such testing.

#### **Section 4 – Rates and Payment**

- 4.1 The City shall invoice the Water District on a monthly basis in arrears for all water supplied under this contract during the preceding calendar month, an amount to be computed at the rate outlined by Chapter 13.08.010 of the Code of the City of El Dorado, Kansas, a copy of which is attached hereto and marked as Exhibit “A”. The District agrees to pay each invoice in full within ten (10) days of receipt.
- 4.2 It is further agreed that the rate established by said ordinance may be changed by the amendment of said ordinance, but that any future increase in the rate affecting said Water District shall bear the same proportionate ratio to domestic retail consumer rates within the City of El Dorado at the time of such change as the rate set forth in Section 17-201 of the Code of the City of El Dorado, Kansas, 1981.
- 4.3 If the Water District is late in the payment of any charge or fee due and payable to the City under this Agreement, late payments shall bear per annum interest at a rate equal to the lesser of two percentage points (2%) above the Prime Interest Rate as published in the Wall Street Journal on the Day said statement becomes delinquent, or the maximum allowed by law to be charged to the Water District. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, the Water District shall be in default under this Agreement, and the City may invoke the remedies specified herein or otherwise available by law.
- 4.4 Complete records and accounts required to be maintained by each Party shall be kept for a period of five (5) years. Each Party shall at all times, upon notice, have the right at reasonable times to examine and inspect said records and accounts during normal business hours. If required by any law, rule or regulation, a Party shall make said records and accounts available to federal and/or state auditors.

#### **Section 5 – No Obligation to Serve**

- 5.1 The City shall not be obligated to furnish the allocation of water described in this Agreement at times when there is less water available than might reasonably be expected to meet the needs of the citizens of El Dorado; however, The City shall immediately notify the Water District of any such apparent shortage. The City shall be not required to provide water to the Water District during conditions that are beyond the City’s control and that prevent the allocation to be provided.
- 5.2 The parties recognize there may be certain circumstances in which discontinuance of the supply of water to the Water district may be necessary or the supply of water may be temporarily reduced, such as but not limited to:
- a. Severe Drought – In the event of a severe drought that reduces the amount of water available for human consumption from El Dorado Lake, and such supply requires that amount of water being taken from El Dorado Lake be rationed, then the amount of water supplied to the Water District will be proportionately reduced in the same

ratio as the City and other purchasers of water.

- b. Contamination – The supply of water to the Water District may be temporarily discontinued in the event the water supply in El Dorado Lake becomes contaminated to the point it is unusable for human consumption. Such discontinuance shall continue until such time as all conditions have been remedied to the satisfaction of the parties and the Kansas Department of Health and Environment.
  - c. Emergency – The City may temporarily suspend the sale of water to the Water District during any emergency by reason of unforeseen catastrophe or disaster commonly referred to as “acts of God,” which interfere with or otherwise disrupt the use of water supplies at El Dorado Lake for human consumption. The City also has the right to declare an emergency at any time in which the supply of water to the Water District might lead to contamination of the public water supply for El Dorado, and may continue to refuse delivery of water to the Water District until such time as all conditions have been remedied to the satisfaction of the parties and the Kansas Department of Health and Environment.
  - d. Non-Payment - The supply of water to the Water District may be discontinued for the non-payment of any fee required by this Agreement if payment is not received by The City within thirty (30) days of the date of the invoice. The City may continue to refuse delivery of water to the Water District until such time as all delinquent payments are received by the City.
- 5.3 In the event of interruption in the supply of treated water for any reason, the Water District agrees to waive any right, claim or damage arising out of said action against the City. This includes, and not by way of limitation, the right to interrupt the supply at any time for necessary repairs. The District agrees that it will not interconnect said Water District lines with any other supplier, including water wells. Provided, however, Wholesale Water District No. 8 is a supplier to Rural Water District No. 3, who in turn supplies water to others. Further, Rural Water District No. 3 and Rural Water District No. 1 have a connection to a flushing hydrant, which is only utilized in case of emergency due to a water line break. In the event the flushing hydrant is used, or if any issue occurs that may potentially affect the City's lines or water supply, the Water District shall provide notice to the City as soon as practicable.

#### **Section 6 - Title; Maintenance; Replacement; Modifications**

- 6.1 All water supplied by said City to said Water District, pursuant to the terms and conditions of this Agreement, and all distribution lines and equipment installed or provided by said Water District, shall remain the absolute property of said Water District with full title and ownership.
- 6.2 The Water District shall own and maintain the lines and equipment installed and/or provided by the Water District and such lines and equipment shall remain the property of

the Water District with full title and ownership. The Water District shall be responsible for all costs necessary to design, construct, and maintain its lines and equipment in good working order to accommodate the transmission of water as provided herein. The Water District shall retain exclusive control of the premises and agrees to hold the City harmless from any claim or legal action against the Water District and/or the City arising from the construction, operation, and maintenance by the Water District or any part thereof.

- 6.3 In the event it is necessary to stop the flow of water in distribution lines and/or equipment owned by The Water District due to the need of The Water District to make repairs on said equipment, authorized representatives of The Water District shall be permitted to shut off the water supply by use of a valve located at an agreed upon point in the equipment. In the event such discontinuance of service is necessary, The Water District shall notify The City of the period during which the water supply will be discontinued and the purpose of said discontinuance.
- 6.4 Any significant modifications to the Main or Metering Equipment, which The Water District desires to make and which might affect The City's water system, must receive written approval from The City's City Manager prior to the commencement of construction-related activities. The Water District shall also provide notice to The City when working on property owned by The City.
- 6.5 The City shall keep The Water District advised of any proposed modifications to its water system which may affect The Water District's water utility operations or impede The Water District's ability to receive water as provided in this Agreement. The City shall give The Water District reasonable advance notice in the event that it becomes necessary to interrupt its performance under this Agreement for maintenance or repairs to the water system.
- 6.6 In the event of an annexation by the City of Water District territory, it is agreed that the City does not and will not assume or agree to assume or pay any part of portion of the indebtedness, bonded or otherwise, of said Water District. Provided, however, the City's obligation to the Water District under K.S.A. 12-541 shall remain in full force and effect.

#### **Section 7- Indemnification**

- 7.1 The City covenants and warrants that it will exonerate, indemnify, and hold harmless the Water District, its agents and employees, from and against any and all third-party claims, made or asserted against the Water District, its agents or employees, arising out of or in any way connected with the performance of (or failure to perform) any duty or obligation of the City contained in this Agreement. The City reserves its right to direct any action or to interplead or crossclaim against the Water District in the event the Water District be in breach of any of the terms of this agreement.
- 7.2 The Water District covenants and warrants that it will exonerate, indemnify, and hold harmless the City, its agents and employees, from and against any and all third-party claims, made or asserted against the City, its agents or employees, arising out of or in any way connected with the performance of (or failure to perform) any duty or obligation of

the Water District contained in this Agreement. The Water District reserves its right to direct any action or to interplead or crossclaim against the City in the event the City be in breach of any of the terms of this agreement.

### **Section 8 – Water District’s Obligations**

- 8.1 The Water District shall furnish a backflow preventer to be installed near the master water meter(s) site.
- 8.2 If pumping is required by the Water District, no pump shall be located within one-half mile of the connection of the Water District to the City of The City's system, unless a storage facility, to be furnished by the Water District, is used, and all pumping shall then be from storage; however, if surging is caused by such pumping, the parties agree that is shall be remedied to the satisfaction of the City. Provided, however, this provision shall not apply to the District’s existing pump station which is located within three hundred feet (300’) of its connection to the City.
- 8.3 The Water District acknowledges that this agreement calls for the sale of water under the terms and conditions hereof and does not transfer to the Water District any water rights now or hereafter held by the City

### **Section 9 – Miscellaneous Provisions**

- 9.1 If any legal action or any other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party agrees that the successful or prevailing party or parties will be entitled to recover reasonable attorneys’ fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.
- 9.2 Notices and communications required to be in writing pursuant to this Agreement shall be effective only if delivered personally, or sent by facsimile, electronic mail, or certified mail, to the following:

Wholesale Water District #8  
Attn: Chairperson  
P.O. Box 401  
El Dorado, KS 67042

City of El Dorado, Kansas  
Attn: City Manager  
220 E. First Avenue  
El Dorado, KS 67042

- 9.3 The covenants, terms and conditions of this Agreement shall extend to and be binding upon the successors and assigns of the parties.
- 9.4 This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas. Venue and jurisdiction for any interpretation or action arising hereunder shall be exclusively in the federal and state courts of Butler County, Kansas.
- 9.5 This Agreement may only be amended by a written amendment executed by both parties.
- 9.6 This Agreement may not be transferred or assigned, in whole or in part and without exception, without the written approval of the other party, which will not be unreasonably withheld.
- 9.7 This Agreement shall supersede and replace any existing Agreements between the parties concerning the sale and purchase of water.
- 9.8 This Agreement supersedes all prior and contemporaneous oral and written agreements and understandings pertaining to hereto. Any changes to this Agreement must be approved in writing by both parties.

**[Signatures On Following Page]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate, each copy to be treated as an original, the day and year first above written.

**Public Wholesale Water Supply District No. 8**

**The City of El Dorado, Kansas**

Debbie Anderson  
Debbie Anderson, Chairman

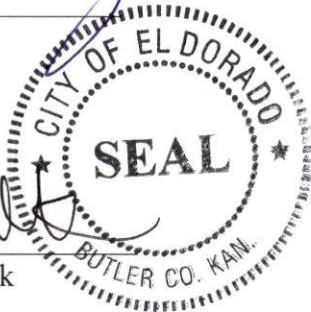
Bill Young  
Bill Young, Mayor

Attest:

Attest:

Erik Sorum  
Erik Sorum, Secretary

Emerald Ashlock  
Emerald Ashlock, City Clerk



Approved as to Form:

Ashlyn Lindskog  
Ashlyn Lindskog, City Attorney