

AGENDA
SHAWNEE MUNICIPAL AUTHORITY
December 6, 2021 AT 6:00 P.M.
COMMISSION CHAMBERS AT CITY HALL
16 WEST 9TH STREET
SHAWNEE, OKLAHOMA

Official action can only be taken on items which appear on the agenda. The public body may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any agenda item. When more information is needed to act on an item, the public body may refer the matter to Staff or back to Committee or the recommending body. Under certain circumstances, items are deferred to a future date or stricken from the agenda entirely.

CALL TO ORDER

DECLARATION OF A QUORUM

1. Consider approval of Consent Agenda:
 - a. Minutes from the November 15, 2021 regular meeting.
 - b. Confirm action taken by the City Commission on Agenda Item No. 8 regarding a Water Sale Agreement with Tri-County Water District No. 2.
2. New Business

(Any matter not known or which could not have been reasonably foreseen prior to the posting of the agenda)
3. Adjournment

Respectfully submitted,

Lisa Lasyone, CMC, City Clerk

The City of Shawnee encourages participation from its citizens in public meetings. If participation is not possible due to a disability, notify the City Clerk, in writing, at least forty-eight hours prior to the scheduled meeting and necessary accommodations will be made. (ADA 28 CFR/36)

Shawnee Municipal Authority

1. a.

Meeting Date: 12/06/2021

Minutes

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Minutes from the November 15, 2021 regular meeting.

Fiscal Impact

Attachments

Minutes

THE TRUSTEES OF THE SHAWNEE MUNICIPAL AUTHORITY OF THE CITY OF SHAWNEE, COUNTY OF POTTAWATOMIE, STATE OF OKLAHOMA, MET IN REGULAR SCHEDULED SESSION, MONDAY, NOVEMBER 15, 2021, DURING THE BOARD OF CITY COMMISSIONER MEETING AT 6:00 P.M., PURSUANT TO NOTICE DULY POSTED AS PRESCRIBED BY LAW AT 5:07 P.M. ON NOVEMBER 10, 2021. UPON ROLL CALL, A QUORUM WAS DECLARED WITH THE FOLLOWING MEMBERS IN ATTENDANCE:

PRESENT: Matthews, Engles, Flood, Bolt, Rutherford, Sehorn, Salter

ABSENT: None

Call to Order

Declaration of a Quorum

AGENDA ITEM NO. 1: Consider approval of Consent Agenda:

- a. Minutes from the November 1, 2021 regular meeting.

A motion was made by Trustee Matthews, seconded by Trustee Flood, to approve Consent Agenda Item No. 1(a). Motion carried 7-0.

AYE: Matthews, Flood, Bolt, Rutherford, Sehorn, Salter, Engles

NAY: None

AGENDA ITEM NO. 2: Consideration of a budget amendment for Fund 501 Shawnee Municipal Authority for position adjustments and cost of living adjustments.

Human Resources Director Jennifer Greenland explained this budget amendment is for cost of living adjustments for Shawnee Municipal Authority employees.

A motion was made by Trustee Engles, seconded by Trustee Flood, to approve a budget amendment for Fund 501 Shawnee Municipal Authority. Motion carried 7-0.

AYE: Engles, Flood, Bolt, Rutherford, Sehorn, Salter, Matthews

NAY: None

AGENDA ITEM NO. 3:

New Business (Any matter not known, or which could not have been reasonably foreseen prior to the posting of the agenda)

There was no New Business.

AGENDA ITEM NO. 4.:

Adjournment

There being no further business to be considered, the meeting was adjourned by power of the Chair. (7:25 p.m.)

ED BOLT, CHAIRMAN

ATTEST:

LISA LASYONE, SECRETARY

Shawnee Municipal Authority

1. b.

Meeting Date: 12/06/2021

Agreement

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Confirm action taken by the City Commission on Agenda Item No. 8 regarding a Water Sale Agreement with Tri-County Water District No. 2.

Fiscal Impact

Attachments

Memo

Agreement



Shawnee Municipal Authority

111 S. Kickapoo St.
Shawnee, OK 74801
ShawneeOK.org

Date: December 6, 2021
To: City Commission
From: Bradley Schmidt, Public Works Director
Subject: Consideration of a Water Sale Agreement with Tri-County Rural Water District No. 2.

Background: In August 2021, the Tri-County Rural Water District No. 2 approached the City of Shawnee related to the Water District's desire to purchase water.

Chapter 26, Article III, Section 26-26(c) of the City of Shawnee - Code of Ordinances provides for the furnishing of "water to water authorities, nonprofit corporations and other entities who furnish water to individual users outside the city limits."

The terms of the proposed agreement are as follows:

- The agreement will be for a term of five (5) years, which is to start as soon as possible.
- District will construct a water tap, meter pit, and other improvements deemed necessary, and will also install a master meter, all based on City specifications.
- District agrees to indemnify, defend, and hold harmless the City of and from any and all claims, obligations and liabilities resulting from the construction, maintenance, operation and existence of the tap, meter pit, and meter.
- Water usage will be assessed at the residential rates and billed monthly.
- District may terminate the agreement upon a thirty (30) day's written notice.

Financial Impact: None at this time. A not-yet known amount of revenue will be created once water service is implemented and billed.

Attachment: Agreement.

Staff Recommendation: Approval of the item.

WATER PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2021, by and between the CITY OF SHAWNEE/SHAWNEE MUNICIPAL AUTHORITY, hereinafter "Seller", and the TRI-COUNTY RURAL WATER DISTRICT #2, hereinafter Purchaser."

W I T N E S S E T H

WHEREAS, Seller is the owner of certain potable water which it makes available for public consumption; and

WHEREAS, Purchaser desire to purchase potable water from Seller to service Purchaser's customers living _____, Pottawatomie County, Oklahoma; and

WHEREAS, Seller and Purchaser are mutually desirous of entering into this Agreement for the sale and purchase of potable water.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, it is agreed that:

1. Term. The term of this of this Agreement shall be for a five (5) year term beginning from the date of first delivery of potable water to purchaser.

2. Sale of Potable Water. Seller agrees to sell to Purchaser, at Purchaser's option, potable water to enable Purchaser to supply potable water to its customers. Purchaser shall abide by the same water usage rules, regulations and ordinances as Seller applies to its customers.

3. Exclusive Right. Seller retains the exclusive right to sell potable water to all consumers located or living south of the Lincoln County/Pottawatomie County line, unless inside Tri-County Rural Water District #2's boundary lines. Seller retains the exclusive right to sell potable water to all other municipalities. Purchaser retains exclusive right to sell potable water to all of its consumers located within Tri-County Rural Water District #2's boundary lines.

4. Delivery of Potable Water and Construction of Improvements. Seller agrees to deliver potable water sold to Purchaser at or near the east side of the Cedar Creek Addition near MacArthur Street, Shawnee, Oklahoma or as close as reasonably feasible. Purchaser shall construct, at the point determined by Purchaser and Seller, a tap on Seller's water line and a meter pit with a meter for delivery of potable water to Purchaser. Such tap shall contain an appropriate valve to enable water exiting the tap for transportation by Purchaser to its customers to be shut off without interrupting the service to Seller's customers. Purchaser will purchase the master meter recommended by Seller and installed by Purchaser. The master meter will be no smaller than a six inch (6") meter and will be compatible with six inch (6") PVC C900 or eight inch (8") HDPE pipe. The Purchaser will be required to tap into the Seller's line, install a valve and run the six (6") or eight (8") inch line into the meter vault, built to Seller's vault specifications, and install master meter. Purchaser shall construct all lines necessary to transport potable water to its customers within Purchaser's rural water district limits.

(A) Purchaser agrees to indemnify, defend and hold harmless Seller and any and all of its officers, employees and agents, of and from any and all claims, obligations and liabilities resulting from the construction, maintenance, operation and existence of the tap, meter pit and meter, valve, necessary lines, and any other improvement deemed necessary by the parties to carry out the terms of this Agreement.

(B) All improvements constructed by Purchaser and Seller shall conform to all federal, state and local laws and regulations. All plans, specifications, as-built drawings, and related documents pertaining to the installation or construction of improvements located on property owned by Seller, or any entity which the City of Shawnee is a beneficiary, must be approved in writing by Seller prior to installation or construction of such improvements. During the installation or construction of such improvements, Seller shall have complete control of the scheduling of those activities which will or may require interruption in the service of Seller's water system. All materials and equipment utilized in the installation, or construction of such improvements must meet Seller's standards and must be installed or constructed in a manner acceptable to Seller.

5. Easements. Seller agrees to grant any necessary easements and rights-of-way in its city limits to enable Purchaser to construct, inspect, maintain, repair and replace any improvements used pursuant to this Agreement.

6. Date of First Delivery. The date of first delivery of potable water by Seller to Purchaser shall be as soon as reasonably possible after the complete installation and construction of the tap, meter pit and meter, and valve described in Section 4 herein, but not prior to Purchaser's written request for delivery being received by Seller.

7. Payment. Purchaser agrees to pay to Seller, during the term of this Agreement and any renewal thereof, an amount for potable water delivered to the tap, as described in Section 4 herein, equal to the price Seller charges its residential customers within its city limits, as may be adjusted from time to time. Seller shall bill Purchaser monthly following the delivery of potable water by Seller to Purchaser, which bill shall be paid by Purchaser by the nineteenth (19th) of the month. Late payments by Purchaser shall bear interest at the rate of ten percent (10%) per annum. Seller reserves the right to suspend delivery of potable water for nonpayment. Such suspension shall be effective until the payments and costs of enforcement of this Agreement by Seller, including attorney's fees, if any, are paid in full with interest.

8. Meter Readings and Rights of Inspection. Seller shall read all meters used in monitoring water flow pursuant to the purpose of this Agreement with such frequency as needed to ensure compliance with this Agreement or with all federal, state and local laws or regulations. Date obtained shall be kept by Seller and will be available for inspection by Purchaser. A meter registering not more than two percent (2%) above or below the actual flow shall be deemed to be accurate. In the event any of said meters become inaccurate for any reason, the previous reading for any meter disclosed by test to be inaccurate shall be corrected for the two (2) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails

to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure unless Seller and Purchaser shall agree upon a different amount.

(A) Seller shall have the right of access to all improvements described in Section 4 herein for any purpose in order to ensure compliance with all federal, state or local laws or regulations or to ensure Seller's water system is not interrupted or otherwise injured. If, after reasonable notice, Purchaser shall fail or neglect or make any necessary repairs to or replacement of the improvements, Seller shall have the right to make such repairs or replacement to the extent necessary to prevent interruption or injury to Seller's water system. In such event, Purchaser shall be liable to Seller for the reasonable costs of such repairs or replacement, including any costs of collection and attorney's fees.

(B) Purchaser shall have the right of access to all improvements described in Section 4 herein for any purpose in order to ensure compliance with all federal, state or local laws or regulations or to ensure Purchaser's water system is not interrupted or otherwise injured. If, after reasonable notice, Seller shall fail or neglect or make any necessary repairs to or replacement of the improvements, Purchaser shall have the right to make such repairs or replacement to the extent necessary to prevent interruption or injury to Purchaser's water system. In such event, Seller shall be liable to Purchaser for the reasonable costs of such repairs or replacement, including any costs of collection and attorney's fees.

9. No Property Rights. It is expressly understood and agreed by the parties that no provision of this Agreement is to be construed to grant Purchaser any property rights of any nature or kind in Seller's water system or the waters stored therein. It is further understood and agreed by the parties that at the end of the term of this Agreement, or any extension thereof, the tap, meter pit and meter, and valve described in Section 4 herein shall remain the sole property of Purchaser.

10. Failure to Deliver. It is expressly understood and agreed to by the Seller, that the Seller will at all times take such action as may be necessary to furnish the Purchaser with quantities of water required by the Purchaser under the terms of this Agreement. Temporary or partial failure 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 the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser shall be reduced or diminished in the same ration proportion as the supply to Seller's consumers is reduced or diminished. With prior written approval from the Seller, Purchaser shall have the right to transport treated water from any other source through the system described herein should its supply be diminished by the Seller. For purposes of this Agreement, Seller's supply shall be deemed diminished when Seller is no longer able to meet the current water demands of Purchaser. Purchaser agrees to pay Seller any additional fees incurred through the use of Seller's system to transport water from any other source.

11. Indemnity. Each party agrees to indemnify, defend and hold the other party harmless from and against all liability for injuries or death to persons, damage to property or legal expense caused by or occurring incident to either party's acts or the acts of its agents or employees pursuant to this Agreement; provided, however, neither party shall be liable for any injury, damage

or loss occasioned solely by the negligence of the other party, its agents or employees. Either party shall give the other party prompt and timely notice of any claim made arising out of this Agreement or the activities contemplated herein which in any way, directly or indirectly, contingently or otherwise affects or might affect the other.

12. Costs of Litigation. In the event of any dispute arising between the parties hereto concerning any provision of this Agreement, the successful party in any legal action of proceedings shall be entitled to recover the costs incurred therein, including reasonable attorney's fees.

13. Termination. Unless otherwise provided herein, this Agreement shall not be subject to termination by Seller except with the written consent of Purchaser. Purchaser may terminate this Agreement upon thirty (30) days written notice any time all costs owed by Purchaser are paid in full.

14. Assignment. The rights and privileges granted by this Agreement shall not be assigned by either party without prior written consent of the other party. Provided that in the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the Purchaser, whether the result of legal process, assignment or otherwise, shall succeed to the rights of the Purchaser hereunder.

15. Notices. Notices or other communications to the parties pursuant to this Agreement shall be sufficient if hand-delivered or sent by registered or certified mail, postage prepaid, addressed to:

Seller: City of Shawnee
ATTN: City Manager
16 West 9th Street
Post Office Box 1448
Shawnee, Oklahoma 74802

Purchaser: Tri-County Rural Water District #2
100 South Seminole Street
Post Office Box 118
Earlsboro, Oklahoma 74840

or to such other addresses as the parties may designate in writing from time to time. Bills for payment shall be sufficient if sent by mail, postage prepaid, or hand-delivered to Purchaser at the above address.

16. Entire Agreement and Modification. This Agreement supersedes all prior agreements between the parties and comprises all of the terms agreed to by the parties, and any modification, amendment or alteration of this Agreement must be in writing and executed by both parties.

17. Severability. If any part of this Agreement shall be contrary to law, then it shall be deemed severable from the rest of this Agreement and shall not affect the validity of the rest of this Agreement.

18. Counterparts. This Agreement may be executed in multiple originals and in counterparts, all of which shall have full force and effect; and any copy of an original Agreement shall have the same force and effect as an original.

19. Authorization. The parties hereto expressly represent, and it is understood, that the individuals executing this Agreement on behalf of each party are authorized and empowered to make and execute this Agreement as the official act and deed of such party.

20. Waiver. The parties to this Agreement do hereby specifically waive the right for the municipality to unilaterally abrogate this Agreement pursuant to 11 Oklahoma Statutes, Section 37-119B, and any other now present or hereinafter effected, statute concerning abrogation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF SHAWNEE, OKLAHOMA
SHAWNEE MUNICIPAL AUTHORITY

BY: _____
ANDREA WECKMUELLER-BEHRINGER
CITY MANAGER

ATTEST:

(SEAL)

LISA LASYONE, CMC
CITY CLERK

TRI-COUNTY RURAL WATER
DISTRICT #2

BY: _____
Printed Name: _____
Chairman

ATTEST:

Printed Name: _____
Title: _____