

Rural Water Settlement

#4.22
per 1,000 Gal.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into and made effective this 9th day of April, 2015 ("Effective Date"), by and among Rural Water District No. 11, Pittsburg County, Oklahoma ("Pitt-11"), and the Town of Kiowa ("Town") and the Kiowa Public Works Authority ("Authority"). Pitt-11, the Town and the Authority may each be referred to herein individually as "Party" and collectively as "Parties".

Recitals

WHEREAS, the Parties are currently involved in litigation pending in Pittsburg County District Court styled *Rural Water District No. 11, Pittsburg County, Oklahoma v. Town of Kiowa and the Kiowa Public Works Authority*, Case No. CJ-2013-261, Pittsburg County District Court, State of Oklahoma ("Lawsuit").

WHEREAS, Pitt-11 and the Authority are named parties to a Water Purchase Contract entered into on June 30, 1997 attached hereto as Exhibit 1 and expressly incorporated herein ("1997 Contract").

WHEREAS, by executing this Agreement, the Parties intend to compromise and finally settle/resolve, all disputes or controversies, known or unknown, concerning the subject matter of this Agreement, which accrued or occurred prior to the Effective Date of this Agreement.

NOW, THEREFORE, in consideration for this Agreement and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confirmed by execution hereof, the Parties agree as follows:

Terms

1. **Payment of Settlement Consideration.** In exchange for the releases and other covenants and terms contained herein, the Town and Authority shall jointly deliver to Pitt-11 20,000,000 gallons of treated, potable water compliant with the rules and regulations of the United States Environmental Protection Agency (EPA) and the Oklahoma Department of Environmental Quality (ODEQ) at no charge to Pitt-11 ("Free Water"). The delivery of this Free Water shall be made in increments of 833,333 gallons per month for 24 consecutive months beginning May 1, 2015. All water delivered by the Town and Authority to Pitt-11 during the said 24 months, that exceeds 833,333 gallons per month, shall be paid for by Pitt-11 at the rate as provided for in this Agreement. All water delivered by the Town and Authority to Pitt-11 following the end of the said 24 months through the end of the term of the 1997 Contract, shall be paid for by Pitt-11 at the rate as provided for in this Agreement.

2. **Rate Per Thousand Gallons.** The rate per thousand gallons to be paid by Pitt-11 to the Town and Authority for the water described in the 1997 Contract shall be \$3.50 per 1,000 gallons, commencing May 1, 2015. This \$3.50 per 1,000 gallon rate shall remain in effect until April 30, 2016. The rate per 1,000 gallons shall be adjusted annually during the remaining term of the 1997 Contract. Notwithstanding any provision in the 1997 Contract regarding how and when the rate per 1,000 gallons shall be adjusted, this Agreement shall control and all rate adjustment provisions in this Agreement shall act in substitution and replacement of such price adjustment provisions. The Parties agree and stipulate that the rate adjustment method described in this Agreement, complies with 11 O.S. §37-119.

Adjusting the rate per 1,000 gallons (either up or down depending on whether the applicable CPI-U change is a positive or negative number) on May 1, 2016 and on each anniversary thereafter during the remaining term of the 1997 Contract shall be performed in the following manner:

"CPI-U" shall mean the Consumer Price Index (CPI-U, All City Average) issued by the United States Department of Labor, Bureau of Labor Statistics. Specifically, the CPI-U shall be the percentage change of the CPI-U from April 30 of the immediate past calendar year and the CPI-U from April 30 of the second immediate past calendar year, as published by the Bureau of Labor Statistics. For example, the comparison for the first rate adjustment to be made effective May 1, 2016, shall be made by comparing the CPI-U difference (increase or decrease) between April 2014 through April 2015, with April 2015 through April 2016.

The methodology for that calculation is illustrated by, and shall be consistent with, the following methodology published by the Bureau of Labor Statistics. (Although the following formula, published by the U.S. Department of Labor specifies December to December, the Parties here will use an April to April calculation. Therefore the following is for illustration purposes only.)

The calculation below shows the over-the year change from December 2006 to December 2007 for the 1982-84=100 reference base. The percent change is rounded:

Reference Base	1982-84=100
December 2007	210.036
December 2006	201.8
Index point change	8.236
Divided by the earlier index	8.236/201.8
Equals	0.04081
Multiplied by 100	4.081
Equals percent change	4.1

April 21 - 267.054
 April 22 - 289.109
 Index point change 8.3
 Divided by the earlier index

Apr 21 - 267.054
 Apr 22 - 289.109
 Year Diff - 22.055
 earlier index - 267.054
 equals - .0825
 ... rounded up to 8.3

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Rural water current gallon rate
 .00394
 X 8.38
 .0032702 rounded up to
 .0033
 current rate to apply per gal.
 .00427 x 100 = \$4.27 per

For purposes of further illustration only (since the actual calculation to be performed to adjust the rate on May 1, 2016 and thereafter will likely be different), if the percentage change in the CPI-U from the 12 months ending April 2015 when compared to the 12 months ending April 2016 is 4.1% then the rate of \$3.50 per 1,000 gallons will increase to \$3.64. ($\$3.50 \times .041 = 0.1435$, $\$3.50 + \$0.14 = \$3.64$). By way of further illustration, if the price for water is \$3.64 effective for the period May 1, 2016 through April 30, 2017, and the CPI-U increased by 2.7% during the period of 12 months ending April 2016 compared with the 12 months ending April 2017, then the adjustment for the price of water shall be calculated in the following manner: $\$3.50 \times .027 = 0.0945$. The price effective on May 1, 2017 would then be $\$3.50 + \$0.14$ (increase effective 5/1/2016) + $\$0.09$ (increase effective 5/1/2017) = \$3.73. Therefore, for purposes of this illustration, the price applicable for 5/1/2017 through 4/30/2018 would be \$3.73 per 1,000 gallons.

3. **Maximum Volume.** Paragraph A (1) on page 1 of the 1997 Contract provides for a "not to exceed" volume of water and specifies 2,000,000 gallons per month. This Agreement modifies and amends that provision in the 1997 Contract, and such provision is now amended to read "not to exceed 4,000,000 gallons per month".
4. **Continuation of the 1997 Contract.** The Parties agree that the 1997 Contract shall continue, and that any contractual obligations for the purchase or sale of water specified therein, will continue as stated in the 1997 Contract, except as modified or amended by this Agreement.
5. **Dismissal of the Lawsuit.** Upon execution of this Agreement, Pitt-11, the Town and the Authority shall file a joint/mutual dismissal with prejudice of all claims of any type asserted in the Lawsuit.
6. **Release by Pitt-11.** Pitt-11, in consideration of the obligations and covenants contained in this Agreement, and on behalf of itself and each of its successors, administrators, executors and assigns, does hereby release, acquit, hold harmless and forever discharge the Town and Authority, and their representatives, directors, shareholders, employees and agents of and from any disputes, damages, actions, claims, causes of action, suits, debts, sums of money, contributions or expenses of any kind or nature relating to the Lawsuit. This release shall not release the Parties from their obligations under this Agreement.
7. **Release by Town.** The Town, in consideration of the obligations and covenants contained in this Agreement, and on behalf of itself and each of its successors, administrators, executors and assigns, does hereby release, acquit, hold harmless and forever discharge Pitt-11 and its representatives, directors, shareholders, employees and agents of and from any disputes, damages, actions, claims, causes of action, suits, debts, sums of money, contributions or expenses of any kind or nature relating to the Lawsuit. This release shall not release the Parties from their obligations under this Agreement.

8. **Release by Authority.** The Authority, in consideration of the obligations and covenants contained in this Agreement, and on behalf of itself and each of its successors, administrators, executors and assigns, does hereby release, acquit, hold harmless and forever discharge Pitt-11 and its representatives, directors, shareholders, employees and agents of and from any disputes, damages, actions, claims, causes of action, suits, debts, sums of money, contributions or expenses of any kind or nature relating to the Lawsuit. This release shall not release the Parties from their obligations under this Agreement.
9. **Governing Law.** This Agreement shall be governed, in all respects, by the laws of the State of Oklahoma, irrespective of its choice of law rules.
10. **Attorney Fees and Expenses.** The Parties are each responsible for their own respective attorneys' fees and expenses/costs related to the matters which are being released. In the event of a dispute concerning the enforcement or alleged breach of any provision of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party or Parties the reasonable attorneys' fees, expert witness fees and costs reasonably incurred.
11. **Authority and Capacity.** Each of the persons signing below on behalf of a Party hereto represents and warrants that he or she has full requisite power and authority to execute and deliver this Agreement on behalf of the Party for whom he or she is signing and to bind such Party to the terms and conditions of this Agreement. The Parties warrant to each other that they have fully complied with the notice requirements and procedures applicable under the Open Meeting Act in posting an agenda and voting in open session, approving this Agreement and authorizing the signatures below.
12. **Integration and Entire Agreement.** This Agreement and other documents referred to herein set forth the entire understanding between the Parties regarding the claims being resolved herein and supersede all previous and contemporaneous written or oral negotiations, commitments, understandings, and agreements regarding the claims being resolved and merge all prior and contemporaneous discussions between the Parties regarding the claims being resolved. No Party shall be bound by any definition, condition, representation, warranty, covenant or provision other than as specifically contained herein regarding the claims being resolved.
13. **No Admission of Liability.** The Parties acknowledge and warrant that the providing of Free Water and/or the execution of this Agreement itself, including all statements, admissions or communications by any of the Parties or their attorneys or other representatives, shall not be considered admissions of liability by Pitt-11, the Town and/or the Authority.
14. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective employees, agents, successors, trustees, and assigns. This Agreement is not intended to benefit any third-party who is not a party to this Agreement.
15. **Modification and Amendment.** No supplement, modification or amendment of the Agreement shall be effective or binding unless executed in writing by all Parties hereto.

16. **Counterparts.** For the convenience of the Parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.
17. **Additional Documents and Further Assurance.** Each Party hereto, at the request of any other Party hereto, shall execute and deliver such other instruments and documents and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of this Agreement and the transactions contemplated hereby.
18. **Miscellaneous.** The section headings in this Agreement are inserted for convenience only and shall not be considered a part of this Agreement or used in its interpretation.

The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely and fairly negotiated. Each Party acknowledges that in executing this Agreement, it has relied solely on its own judgment, belief and knowledge and such advice as it may have received from its own legal counsel. No provision in this Agreement is to be interpreted for or against any Party as a result of that Party or its legal counsel having drafted such provision.

If any part or any provision of this Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part or provision shall not affect any remaining parts or provisions of this Agreement.

This Agreement has been entered into as of the Effective Date written above.

**THE REST OF THIS PAGE IS INTENTIONALLY BLANK.
SIGNATURES ARE ON THE FOLLOWING PAGES.**

May. 8. 2015 1:17PM McAlester OCSS

No. 0367 P. 6

RURAL WATER DISTRICT NO. 11,
PITTSBURG COUNTY, OKLAHOMA

Signature

Print Name

Title

ATTEST:

Signature

Print Name

Title

Subscribed and sworn to before me this ____ day of April, 2015.

Notary Public

My Commission Expires:

My Commission No.:

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05/08/2016 FRI 15:12 [TX/RX NO. 8880] 2 008

TOWN OF KIOWA


Signature

Serena Johnston
Print Name

Mayor, Town of Kiowa
Title

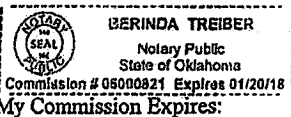
ATTEST:


Signature

John Thomas
Print Name

Attorney for Town of Kiowa
Title

Subscribed and sworn to before me this 8 day of April, 2015.



My Commission Expires:

1/20/18

My Commission No.: 05000821


Notary Public

KIOWA PUBLIC WORKS AUTHORITY

Serena Johnston
Signature

Serena Johnston
Print Name

Mayer/Chairman PWA
Title

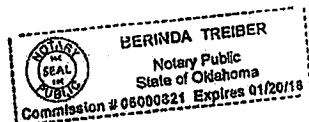
ATTEST

John Thomas
Signature

John Thomas
Print Name

Attorney for PWA
Title

Subscribed and sworn to before me this 8 day of April, 2015.



My Commission Expires:

1/20/18

My Commission No.: 06000321

Berinda Treiber
Notary Public

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