

AGREEMENT FOR SALE OF WATER SYSTEM

THIS AGREEMENT (the "Agreement"), made and entered into this ____ day of 12/21/11, 2011, by and between the City of Waynesville, Missouri, (the "Buyer") and Highway H Utilities, Inc. (the "Seller").

WITNESSETH:

WHEREAS, the Seller has developed, and operates as a regulated water and sewer corporation, facilities in an area of Pulaski County, Missouri, to include a water system known as the "Hunter's Point Water System"; and,

WHEREAS, Seller is a body corporate, organized and existing under the constitution and the laws of the State of Missouri with all the requisite power necessary to enter into the transaction described hereinafter; and,

WHEREAS, Seller is a political subdivision and city of the 3rd class organized and existing under the constitution and the laws of the State of Missouri with all the requisite power necessary to enter into the transaction described hereinafter; and,

WHEREAS, Seller desires to sell all the assets, property and real estate connected with the Hunter's Point Water System; and,

WHEREAS, Buyer desires to purchase all of the assets, property and real estate connected with the Hunter's Point Water System; and,

WHEREAS, the parties have reached an understanding with respect to the sale by the Seller and the purchase by the Buyer of all of the Hunter's Point Water System.

NOW, THEREFORE, it is mutually agreed that:

1. **SALE OF ASSETS.**

For and in consideration of the receipt of the Purchase Price, and the covenants and promises hereinafter set forth, the Seller agrees that on the closing date, the Seller shall sell, transfer, assign and deliver to Buyer all of Seller's then existing assets pertaining to the provision of water service in the Hunter's Point Water System located in Pulaski County, in the State of Missouri, and related properties, including, without limitation, the following:

A. The land, interests in land, easements, rights of way, and permits generally

described in Exhibit A, attached hereto; and,

B. All of Seller's water service facilities, equipment, lines, plant, pipes, manholes and appurtenances in the Hunter's Point Water System, as generally described in Exhibit B, attached hereto.

The assets to be sold and delivered, as above described, are hereinafter collectively described as the "Assets."

2. **CONVEYANCES OF REAL ESTATE.**

The real estate to be conveyed by Seller will include all facilities described herein and all interest of Seller in any water easements pertaining to the Hunter's Point Water System. The real estate will be conveyed by general warranty deed, in a form satisfactory to Buyer, and will vest marketable title in fact in the Buyer. Easements shall be assigned by written assignment, in a form satisfactory to Buyer.

3. **REGULATORY APPROVAL.**

The Seller agrees to make application to the Missouri Public Service Commission for authority to complete the transfer of the Assets. Buyer agrees to assist in this process when requested to do so by Seller. Buyer and Seller shall act diligently and cooperate with each other in obtaining final approval, if necessary, of the Missouri Department of Natural Resources for transfer of Seller's discharge and/or operating permits and other permits, if any.

4. **PURCHASE PRICE.** Buyer agrees to pay to Seller at the Closing Six Hundred Fifty Thousand Dollars (\$650,000.00) in cash or certified funds at closing. (the "Purchase Price").

5. **CLOSING.**

The closing of the sale shall take place at a mutually agreeable location within thirty days after the effective date of any necessary regulatory authority approval, or at such other time as the parties hereto may mutually agree. At the closing, Seller shall deliver to the Buyer such deeds, bills of sale, endorsements, assignments and other sufficient instruments of transfer and conveyance as shall be effective to vest in the Buyer such title to the Assets to be sold as provided in this agreement and Buyer will deliver to Seller the Purchase Price. From time to time, at Buyer's request, whether at or after the closing and without further consideration, the

Seller will execute and deliver such other instruments of conveyance and transfer and take such other action as Buyer reasonably may require to more effectively convey and transfer to the Buyer any of the Assets to be sold hereunder, and will assist the Buyer in the collection or reduction to possession of such Assets. The Seller will pay all sales, transfer and documentary taxes, if any, payable in connection with the sale, transfers and deliveries to be made to the Buyer hereunder.

On the date of closing, Buyer shall accept and assume ownership and title to the Assets to be conveyed hereunder and Buyer shall assume liability, and become responsible, for all obligations in connection with the Assets, except for those liabilities and obligations which Seller has herein under agreed to retain.

6. **SELLER'S REPRESENTATIONS AND WARRANTIES.**

The Seller represents and warrants as follows:

A. **Organization and Standing of Seller.**

Seller is a body corporate organized, existing under the constitution and laws of the State of Missouri in good standing, and has all the requisite power and authority to sell the Sewer System business and its Assets pursuant to the terms of this agreement.

B. **Liabilities.**

All liabilities or obligations of Seller, whether accrued, absolute, contingent or otherwise pertaining to or arising out from the Hunter's Point Water System are liabilities and obligations of the Seller.

C. **Absence of Certain Changes.**

After Buyer's inspection and acceptance of the Hunter's Point Water System, there shall not be:

- i. Any material change in the business or operations of the Hunter's Point Water System;
- ii. Any damage, destruction or loss whether or not covered by insurance, materially and adversely affecting the Hunter's Point Water System's assets.

D. **Title to Properties.**

Seller has, or shall have, good and marketable title to all of the Water Assets.

Seller also owns the Assets to be sold under this agreement, in all cases, free and clear of all liens, mortgages, pledges, leases, options, rights of first refusal, conditional sales agreements, encumbrances or other charges except liens for taxes not yet due or payable, easements or right of ways, streets, railways, pipelines, electric transmission and distribution lines, telephone lines, drainage rights and other similar rights or restrictions of record which do not, either individually or in the aggregate have a materially adverse effect on the value or utility of the Assets to be sold hereunder. Seller makes no warranty concerning the merchantability or status of the title of the real estate upon which the easements are located.

Notwithstanding, but not in limitation of, the foregoing, Seller agrees to provide within thirty days of the date first above written a plat of the distribution and collection lines showing the location of said lines with respect to lot lines, platted utility easements, if any, to the extent the same can be shown with reference to such lot lines and platted utility easements.

Seller agrees to identify any and all interests in land (including easements or license agreements) it has obtained in connection with its operation and maintenance of the Hunter's Point Water System and provide Buyer or Buyer's representatives copies of the same or a reference to the book and page number of the records of the Pulaski County Recorder's Office where such easements are recorded.

Buyer shall have thirty days from the date of receipt of the distribution and collection line plat, and the description and identification of all easements, licenses or other interests in land Seller has obtained within which to determine 1) if Seller lacks an easement or other interest necessary for operation of the Hunter's Point Water System or 2) an easement is defective in title or interest conveyed. If it appears that Seller lacks a valid easement for any portion of the Water System, or any easement identified suffers from a defect in title or interest conveyed, Buyer at its option may: 1) cancel this agreement, 2) independently negotiate with the owner of the affected property toward acquisition of water well, treatment plant, and distribution lines easement or other easements, 3) notify Seller that Buyer will cancel the agreement unless a necessary

easement is acquired or a defect satisfactorily cured or remedied and 4) undertake any action, which in Buyer's sole and absolute discretion, would correct an easement or remedy the situation caused by a lack of an easement or proper land interest. Buyer's failure to cancel this agreement, however, shall not relieve Seller from any of its duties of indemnification set forth in subsequent paragraphs herein, nor shall such failure be construed as Buyer's waiver of any such provisions.

E. **Authority to Operate.**

The Assets described at Section 1 of this agreement, constitute all of the assets presently owned by the Seller pertaining to the Hunter's Point Water System. To the best of Seller's knowledge, the Hunter's Point Water System is being conducted, and as of the closing date, will be conducted in full compliance with requirements of all regulatory bodies exercising jurisdiction with regard to rates and conditions of service, and with local building and zoning codes. Seller has received no notice of any violation of federal or state safety or environmental statute, rule or regulation which remains uncorrected.

F. **Litigation.**

There is no litigation or proceeding pending, or to the knowledge of the Seller threatened, against or relating to the Seller, its properties, or the Hunter's Point Water System, nor does the Seller know or have reasonable grounds to know of any basis for any such action, or of any governmental investigation relative to the Seller, its properties, or the Hunter's Point Water System, except as otherwise disclosed to Buyer.

G. **No Violation or Breach.**

The performance of this agreement by the Seller, including any preconditions or surviving warranties or representations, is not in violation of any laws, statutes, local ordinances, state or federal regulations, court orders or administrative order or ruling, nor is such performance in violation of any loan documents, conditions or restrictions in effect for financing, whether secured or unsecured.

H. **No Deposits.**

Seller has not required nor received any customer deposits related to the Hunter's Point Water System customers.

7. **BUYER'S REPRESENTATIONS AND WARRANTIES.**

Buyer represents and warrants as follows:

A. **Organization and Standing of Buyer.**

Buyer is a political subdivision and city of the 3rd class organized and existing under the constitution and laws of the State of Missouri, and has the requisite power to purchase the assets which are to be sold pursuant to the terms of this agreement.

B. **Authority.**

The execution and delivery of this agreement by Buyer and the purchase of the Assets as contemplated hereby have been duly authorized by the Buyer, and all necessary action on the part of the Buyer has been taken to authorize the execution and delivery of this agreement and to consummate the sale contemplated hereby.

8. **CONDITIONS PRECEDENT.**

All obligations of the Buyer under this agreement are subject to the fulfillment, prior to or at the closing, of each of the following conditions:

A. **Regulatory Approval.**

The Missouri Public Service Commission and Missouri Department of Natural Resources shall have, if necessary, authorized or approved the sale, transfer or disposition of the Assets to the Buyer from the Seller. Both parties shall diligently pursue the required approvals and authorizations contemplated herein.

B. **Representations and Warranties True at Closing.**

The Seller's representations and warranties contained in this agreement shall be true at the time of closing as though such representations and warranties were made at such time.

C. **Performance.**

The Seller shall have performed and complied with all agreements and conditions required by this agreement to be performed or complied with by Seller prior to or at the closing; including the payment of all taxes and assessments, or portions thereof, attributable to periods prior to or ending on the closing date.

D. **No Casualty.**

The system at any location shall not have been adversely affected in any material way as a result of any strike, lockout, accident or other casualty or act of God or the public enemy, or any judicial, administrative or governmental proceeding.

9. **INDEMNIFICATION.**

The Seller shall, and hereby agrees to indemnify and hold harmless the Buyer, at any time after the closing against and in respect of:

A. All liabilities or obligations of Seller, whether accrued, absolute, contingent or otherwise, and including all liabilities or obligations arising out of the transactions entered into, or any state of facts existing, prior to the date of closing, including, without limitation, such liabilities or obligations as are described in paragraph B of Section 5 hereof;

B. Any claim, damage or deficiency resulting from any misrepresentation, untrue warranty, breach of warranty, or nonfulfillment of any agreement on the part of Seller under this agreement or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to the Buyer under this agreement;

C. Any claim, liability, damage or obligation arising out of or attributable to, directly or indirectly, the storage or disposal of hazardous waste or materials prior to the date of closing;

D. All actions, suits, proceedings, demands, assessments, judgments, costs (including attorney's fees) and expenses incident to any of the foregoing;

E. All reasonable costs and expenses, including attorney's fees, reasonably incurred by Buyer to purchase or condemn easement rights if (i) such rights were to have been assigned under this agreement, but which Seller ultimately was unable to convey good and marketable title thereto for any reason, and (ii) such rights were used in, and necessary for, the operation of the Hunter's Point Water System business as of the closing date.

If any claim or demand is made against Buyer that, if sustained, would give rise to an obligation of the Seller pursuant to this section, the Buyer shall cause notice of the claim or

demand to be delivered to the Seller and shall afford the Seller, at his own cost and expense, the opportunity to defend the claim using counsel selected by the Seller, but approved by the Buyer.

The Seller shall reimburse the Buyer, on demand, for any payment involuntarily made, required by law to be made, or with the consent of the Seller made by the Buyer at any time after the date of closing in respect of any liability, obligation or claim to which the indemnity and hold harmless by the Seller contained in this section relates.

10. **FEES AND COMMISSIONS.**

Each party represents that it has not retained any broker or finder and is not paying, and is not obligated to pay, any finder's fee in connection with the transactions contemplated by this agreement. Each party shall pay its own fees for attorneys, accountants, appraisers or others engaged by it in the course of negotiating or executing this agreement and in closing and completing the transactions hereunder provided. Fees for professional advisors retained jointly by the parties for their mutual benefit shall be equally divided.

11. **BENEFIT.**

All of the terms of this agreement shall be binding upon, and enure to the benefit of, and be enforceable by, the respective legal representatives of the Seller, and the successors and assigns of the Buyer.

12. **GOVERNING LAW.**

This agreement is being delivered and is intended to be performed in the State of Missouri, and shall be construed and enforced in accordance with the laws of such state.

13. **COUNTERPARTS.**

This agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This agreement shall not be binding until executed by all parties.

14. **NO THIRD PARTY BENEFICIARIES.**

This Agreement shall not confer any rights or remedies upon any Person other than the parties and their respective successors and permitted assigns.

15. **ENTIRE AGREEMENT.**

This Agreement (including the documents referred to herein) constitutes the entire

agreement among the parties and supersedes any prior understandings, agreements or representations by or among the parties, written or oral, to the extent they have related in any way to the subject matter hereof.

16. **SUCCESSION AND ASSIGNMENT.**

This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. No party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of Buyer and Seller, said approval not to be unreasonable withheld.

17. **HEADINGS.**

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

18. **NOTICES.**

All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given and effective five (5) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below:

If to Buyer:

Carol Welch, City Clerk
City of Waynesville
601 Historic 66 West
Waynesville MO 65583

If to Seller:

Jerry Laughlin
Highway H Utilities, Inc.
P.O. Box CC
Waynesville, Missouri 65583

Any party may send any notice, request, demand, claim or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be

deemed to have been duly given unless and until it is actually received by the intended recipient. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

19. **AMENDMENTS AND WAIVERS.**

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer and Seller. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

20. **SEVERABILITY.**

Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

21. **EXPENSES.**

Buyer and Seller will each bear its own costs and expenses (including legal and accounting fees and expenses) incurred in connection with the preparation of this Agreement and activities necessary for Closing.

22. **CONSTRUCTION.**

The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.

23. **INCORPORATION OF EXHIBITS.**

The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

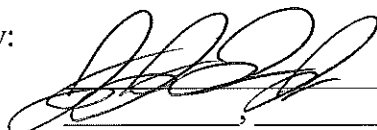
24. **DEFAULT; ATTORNEY'S FEES.**

If either party shall default in their performance under this Agreement, which default results in the expenditure of attorney's fees to enforce the terms of this Agreement or to recover damages for breach of this contract, then the prevailing party shall receive their reasonable and actually incurred attorney's fees in addition to any other damages recovered.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the day and year first above written.

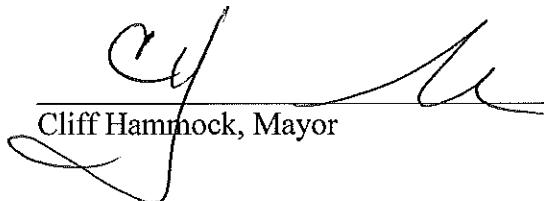
HIGHWAY H UTILITIES, INC., Seller

By:

 Pres.

CITY OF WAYNESVILLE, MISSOURI,
Buyer

By:


Cliff Hammock, Mayor

ATTEST:



Carol Welch, City Clerk

EXHIBIT A

The following described lots, tracts or parcels of land, lying, being and situate in the County of Pulaski and the State of Missouri to-wit:

All of that part of the Northeast quarter of the Southeast quarter of Section 35, and of the Northwest quarter of Southwest quarter of Section 36, all in Township 36 North, Range 12 West of 5th P.M., described as follows: Beginning at the Northeast corner of said Northeast quarter of Southeast quarter of Section 35; thence South 22° 29' 30" West 136.4 feet; thence South 0° 51' 40" West 171.52 feet; thence South 1° 09' 40" West 203.0 feet to the true point of beginning of the tract therein described; thence continuing South 1° 09' 40" West 50.43 feet to the North right-of-way of street known as Valley Road; thence South 89° 22' East 130.0 feet along the said North right-of-way; thence North 1° 08' 30" East 51.62 feet; thence North 89° 53' 20" West 130.0 feet to the true point of beginning of the tract herein described; containing 0.15 acre, more or less. Description per survey (R-1772) made by Elgin Surveying & Engineering, Inc. under date of April 21, 1987. Subject to easements of record.

And,

Lot 42 of Hunter's Point Plat No. 8 as recorded in the Pulaski County Recorder's office.

As well as:

WATER LINE EASEMENTS associated with the Hunter's Point Water System .

EXHIBIT B

All water lines, wells, pipes, manholes, machinery, pumps, equipment and appurtenances, and all other personal property, including as built drawings, comprising the Hunter's Point Water System located in Pulaski County, Missouri.

No vehicles, accounts receivable or cash accounts will be transferred.