

**City of Fayetteville Staff Review Form**

**2021-0353**

**Legistar File ID**

**5/18/2021**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Tim Nyander

4/29/2021

WATER SEWER (720)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Staff recommends approval of a Water Purchase Agreement between the City of Fayetteville and Mount Olive Water Association to furnish potable treated water at two points of delivery for distribution within its present service area.

**Budget Impact:**

N/A	N/A
Account Number	Fund
N/A	N/A
Project Number	Project Title
<b>Budgeted Item?</b> <u>NA</u>	Current Budget    \$    -
	Funds Obligated    \$    -
	<b>Current Balance</b> \$    -
<b>Does item have a cost?</b> <u>NA</u>	Item Cost    \$    -
<b>Budget Adjustment Attached?</b> <u>NA</u>	Budget Adjustment    \$    -
	<b>Remaining Budget</b> \$    -

V20180321

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:**



**MEETING OF MAY 18, 2021**

**TO:** Mayor and City Council

**THRU:** Susan Norton, Chief of Staff  
Water & Sewer Committee

**FROM:** Tim Nyander, Utilities Director

**DATE:** April 29, 2021

**SUBJECT:** Resolution approving a fifteen-year agreement to continue water service by Fayetteville for Mount Olive Water Association for the period of June 1, 2021 to May 31, 2036

---

**RECOMMENDATION:**

Staff recommends approval of a Water Purchase Agreement between the City of Fayetteville and Mount Olive Water Association to furnish potable treated water at two points of delivery for distribution within its present service area.

**BACKGROUND:**

Fayetteville has furnished Mount Olive Water Association potable water for over 40 years. The current water services agreement has expired, and both entities desire to continue the water service agreement.

**DISCUSSION:**

The City agrees to operate and maintain the water mains up to the point of delivery to Mount Olive's water distribution system, furnish water at a reasonably consistent pressure, and provide the Manager of the buyer with an itemized statement of the amount of water furnished and other charges to the Buyer in accordance with the City billing policies.

Mt. Olive Water Association agrees to remit payment to the City for a minimum of 2.7 million gallons of water per month (commonly referred to as "take-or-pay"), maintain a backflow prevention device approved by the City and the Arkansas Department of Health, and restrict water connections to those customers having adequate on-site sewage disposal systems.

These items were contained in the previous agreement and are unchanged.

A review by the Water & Sewer Committee is the norm before starting a Legistar item, however, Mt. Olive is applying for funding for their water system and need a current unexpired agreement to proceed. It is important to get this item moving forward for the benefit of the City's long-standing customer. This item will be discussed at the May 11<sup>th</sup> Committee meeting following the Agenda session for the May 18<sup>th</sup> City Council meeting.

**BUDGET/STAFF IMPACT:**

There is not a budget impact. The rates remain unchanged from what Mt. Olive is currently paying for water service.

**Attachments:**

Water Purchase Agreement

## WATER PURCHASE AGREEMENT

This Agreement, made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Fayetteville, Arkansas ("City") and Mount Olive Water Association ("Buyer") witnesseth:

**WHEREAS**, the City owns and operates a water supply distribution system with a capacity currently capable of serving the present customers of the City system and the estimated number of water users to be served by the said Buyer; and

**WHEREAS**, the Buyer desires to purchase water from the City for distribution within the present service area of the Buyer, and the City desires to furnish and sell water to the Buyer for distribution within its present service area.

**NOW, THEREFORE**, the City of Fayetteville, Arkansas and Mount Olive Water Association agree as follows:

1. The City of Fayetteville, Arkansas agrees to:

A. Furnish the Buyer, at the two points of delivery hereinafter specified, for distribution within its present service area, during the term of this agreement or any renewal or extension thereof, potable treated water meeting applicable purity standards of the Arkansas Department of Health, and in such quantity as may be required by the Buyer, not to exceed 450 gallons per minute. The City shall not be obligated to provide water to the Buyer at a rate greater than 450 gallons per minute. Delivery rates at the individual metering points shall be 300 gallons per minute at the 3985 Black Oak Road metering point and 150 gallons per minute at the 664 East Wallin Mountain Road metering point (see Exhibit "A" attached hereto). In the event the Buyer requires water at a rate greater than thus specified, the City shall have the sole discretion in determining whether to furnish water at a greater rate and in determining the terms and conditions upon which its agreement to do so will be given, including, but not limited to, conditions for reinforcement of the 8" and 6" mains hereinafter referred to at the Buyer's expense in order to increase its capacity, if the reinforcement has not been accomplished by the City prior to the time it is required by the Buyer. Provided, the rates charged for any water, which the City may agree to supply in excess of 450 gallons per minute, shall be the same as that charged to other customers receiving in excess of 450 gallons of water per minute. Any such agreement shall be in writing and duly authorized by the governing bodies of the respective parties hereto.

It is further understood and agreed that the City's responsibility for the water ends at the meter box outlet or vault.

B. Furnish water at a reasonably constant pressure (due consideration being given to friction loss) from a six (6) inch water main at a point located at the site described in Exhibit "B" attached hereto and made a part hereof.

- C. Operate and maintain the water mains up to the point of delivery and maintain at point of delivery the necessary metering equipment, including a meter pit, check valves, and required devices of standard type for properly measuring the quantity of water delivered to the Buyer, including a meter of proper size. The cost of maintenance and operation of the metering facility shall be borne by the City. The responsibility for testing and calibrating the meter rests solely with the City.

A meter registering not more than two percent (2%) above or below 100% accuracy shall be deemed to be accurate. The previous reading of 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 determined by average readings over a period of two previous months or a like month of a previous year, at the City's option. The metering equipment shall be read on a regular schedule each month.

The size of the meter shall be in keeping with anticipated water usage and/or demand. Currently, a four (4) inch meter is installed at the Black Oak connection, and a three (3) inch meter is installed at the Wallin Mountain connection.. The Buyer currently has a valve at the inlet side of the meter to shut off the supply and also to limit the flow of water to the rate permitted. The Buyer also currently has a by-pass to the meter installed for use during periods of meter maintenance. The maintenance cost for the by-pass valves, fittings, and pipe shall be borne by the City.

- D. The City's responsibility for maintenance shall end at the outlet side of the meter box or vault.
- E. The City agrees to furnish the Manager of the Buyer with an itemized statement of the amount of water furnished and other charges to the Buyer in accordance with the City billing policies.
2. Mount Olive Water Association agrees to:

- A. **Maximum.** Purchase water as required by the Buyer and the consumers within the presently defined service area of the Buyer, up to a maximum of 450 gallons per minute.
- B. **Minimum.** Buyer agrees to remit payment to the City for a minimum of 2.7 million gallons of water per month (commonly referred to as "take-or-pay"). Such take-or-pay minimum shall be chargeable at the current wholesale water rate, as amended from time to time as set forth in Section 2(C). Any water usage above 2.7 million gallons per month shall be charged at the same wholesale water rate.

- C. Pay the City not later than the due date given on the bill for water delivered in the preceding reading period, in accordance with the rates as established by the City from time to time that may hereinafter be established by the City from time to time. The rates for water and meter service charges presently in effect are illustrated by the attached schedule, marked Exhibit "C", but it is understood and agreed that the City is in no way bound to said schedule, and that the City in its sole discretion has the right to increase or decrease the rates and charges shown therefore, at any time, for the Buyer as for other outside the City users.
- D. Maintain a backflow prevention device approved by the City and the Arkansas Department of Health.
- E. Restrict water connections to those customers having adequate on-site sewage disposal systems. For purposes of this agreement, all on-site disposal systems previously approved by the Arkansas Department of Health shall be deemed adequate. New on-site systems shall be deemed adequate if the system is approved by the Arkansas Department of Health. New on-site disposal systems on lots contained within a subdivision of five or more lots shall be considered adequate for one single family residence if the Arkansas Department of Health approves the system.

New on-site disposal systems on platted lots or lots platted after the effective date of this agreement shall be considered adequate for multi-family housing if the Arkansas Department of Health approves the system.

The term "platted lot" shall mean a lot within a subdivision, the plat of which is on file in the County Courthouse.

- 3. It is further mutually agreed between the City and the Buyer as follows:
  - A. That this agreement shall extend for a term of 15 years from the date of the signature on this agreement. Thereafter this agreement may be renewed for such term, or terms, as may be agreed upon by the City and the Buyer.
  - B. That the City will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the quantities of water required by the Buyer, up to the maximum amount of 450 gallons per minute as provided in Paragraph 1(A) hereof. Temporary or partial failures to deliver water caused by the failures or difficulties in the City's system shall be remedied with all

possible dispatch. Provided, however, the City reserves the right, in the event of acute shortage of water, to limit or discontinue water sales and service to the Buyer. Any reduction or discontinuance of water sales and service for this reason shall not render the City liable for damages of any kind, it being understood between the parties that the City's primary obligation is to furnish water and water services to the citizens of the City of Fayetteville, Arkansas.

The City shall not be responsible for any damages to the Buyer or its consumers by reason of emergency failures of water supply due to water main breaks, power failure, flood, fire, earthquake and other acts of God, or catastrophe, acts of war, insurrection or rebellion, acts of a public enemy, acts of any unauthorized person, firm, or corporation, or acts of the Buyer, or during any periods of water reduction or discontinuance by reason of fire fighting or other emergency situation; nor shall such failures of water supply and/or discontinuance or reduction of water sales and service be construed as a breach of this agreement by the City.

- C. That this agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in the State of Arkansas and the City and Buyer will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

It is expressly understood and agreed that the sale of water herein provided for, from the City to the Buyer, is a sale for resale, and the Buyer agrees to maintain a sales tax permit as required by the State of Arkansas and agrees that it will collect and pay over to the Commissioner of Revenues of the State of Arkansas, any and all sales tax now or hereafter imposed upon the resale of said water to the Buyer's consumers.

- D. That in the event of any occurrence rendering the Buyer incapable of performing under this agreement, any successor of the Buyer whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Buyer hereunder.
- E. It is understood and agreed that the water to be supplied by the City to the Buyer under this agreement is to be furnished for distribution within the Mount Olive Water Association service area. The Buyer shall not extend its water main outside its defined service area without the prior written consent of the City. The City shall have the sole discretion in determining the terms and/or conditions upon which its consent shall be given.
- F. In the event a portion of the Buyer's water mains are constructed within the corporate limits of the City, the Buyer is not permitted to serve consumers within the corporate limits of the City without prior written consent of the City.
- G. The Buyer agrees that it will not during the period of this agreement or any renewal thereof, levy any franchise tax, occupation tax, or any other tax of any for

whatsoever, by whatever name it may be called, upon the City, the City water system and appurtenances thereto, or the operations called for by this agreement.

- H. This agreement may be terminated by either the Buyer or the City upon breach by the other of any of the covenants or agreements contained herein, and the failure of the party in breach to remedy such a breach within thirty (30) days after receipt of written notice of the existence of such breach. Written notice shall be sufficient, if sent by certified mail, return receipt requested, postage prepaid, to the respective mayor or chairman of the parties hereto.

**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE SIGN BELOW:**

**MOUNT OLIVE WATER ASSOCIATION**


**CITY OF FAYETTEVILLE, ARKANSAS**

By:   
**TOM UNGER**  
President of the Board

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

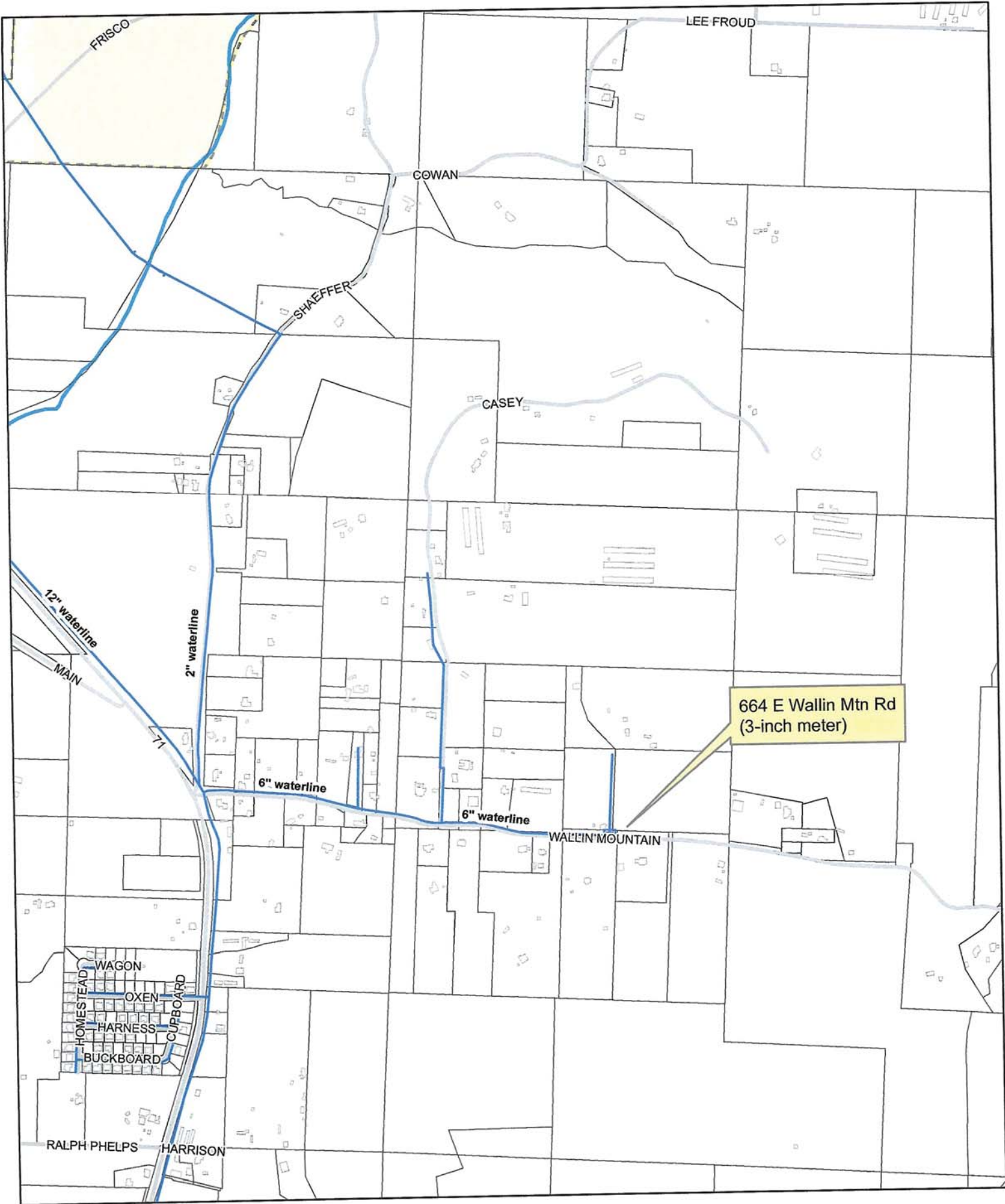
ATTEST:

ATTEST:

By:   
**TODD SOCIA**  
Secretary of the Board

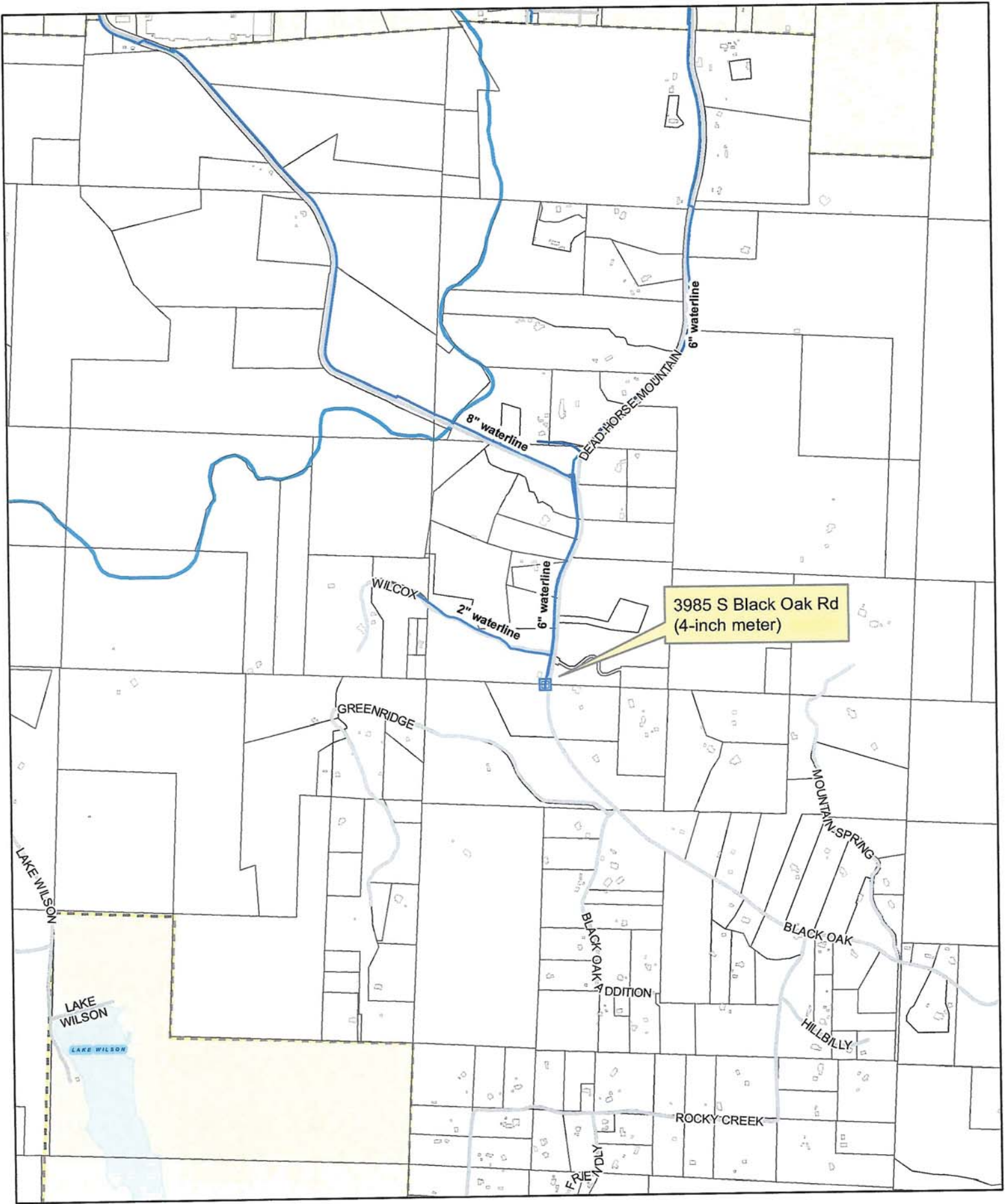
By: \_\_\_\_\_  
**KARA PAXTON, City Clerk**



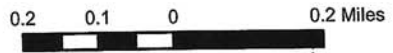


**Exhibit A**  
**664 E Wallin Mountain Road (3-inch meter)**  
**150 Gallons per minute**





**Exhibit B**  
**3985 S Black Oak Road**  
**(4-inch meter)**



## EXHIBIT C

Purchase of Water

\$2.79 per 1,000 Gallons

4-inch Meter - \$108.98 per Month Meter Charge

3-inch Meter - \$62.20 per Month Meter Charge