

*St. Louis City Ordinance 63909*

FLOOR SUBSTITUTE

BOARD BILL NO. [96] 239

INTRODUCED BY ALDERMAN FRED WESSELS

AN ORDINANCE recommended by the Board of Public Service authorizing a contract between the City of St. Louis and the Metro East Municipal Joint Action Water Agency for the sale and purchase of water from the City for distribution by the Metro East Municipal Joint Action Water Agency in its general system; authorizing connections between the City of St. Louis system and the Metro East Municipal Joint Action Water Agency system, setting forth the terms of the contract, and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Mayor and the Comptroller of the City of St. Louis, acting on behalf of said City, are hereby authorized to enter into a contract with the Metro East Municipal Joint Action Water Agency for the sale of water for general system purposes, and to make all necessary connections between the water systems for these purposes, which said contract shall read as follows:

CONTRACT

THIS CONTRACT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1996, by and between the City of St. Louis, Missouri, also referred to as "CITY", and the Metro East Municipal Joint Action Water Agency, both municipal corporations, also referred to herein as "AGENCY", WITNESSETH;

WHEREAS, the CITY is a municipal corporation of the State of Missouri and is authorized by its charter to maintain waterworks for the furnishing of water to the CITY, its property, its inhabitants and the places and people along or in the vicinity of the pipes, conduits and aqueducts constructed or used for that purpose, and

WHEREAS, the Mayor and the Comptroller of the CITY are authorized to enter into contracts for the supply of water by the CITY and to sell water to persons, public and private, outside the CITY, on terms and conditions the Board of Aldermen find appropriate, and

WHEREAS, the CITY is further authorized by its charter to enter into intergovernmental agreements for the performance of its duties or for the exercise of powers conferred upon it, and

WHEREAS, Section 70.220 of the Missouri Revised Statutes authorizes units of local government to enter into intergovernmental agreements for the performance of their duties or for the exercise of powers conferred upon them, and

WHEREAS, the CITY has determined that it is in the best interest of its rate payers for the CITY to enter into contracts for the sale of water, and

WHEREAS, the service and commodity provided by the CITY are a special contract service and are not provided by the CITY as a common utility service, and

WHEREAS, the Intergovernmental Cooperation Act of the State of Illinois authorizes two (2) or more municipalities of the State of Illinois to establish a Joint Action Water Agency, by Intergovernmental Agreement, to provide adequate supplies of water from the Mississippi River on an economical and efficient basis for member municipalities, public water districts, and incorporated and unincorporated areas in the State of Illinois (5 ILCS 220/3.1), and

WHEREAS, the City of Columbia, Illinois is a municipal corporation located in the Illinois Counties of Monroe and St. Clair which was created and exists under and by virtue of the laws of the State of Illinois and the Commonfields of Cahokia Public Water District is a public water district located in the Illinois County of St. Clair and was created and exists under and by virtue of the laws of the State of Illinois, and

WHEREAS, by Intergovernmental Cooperation Agreement, the City of Columbia and the Commonfields of Cahokia Public Water District have created the Metro-East Municipal Joint Action Water Agency to provide adequate supplies of water on an economical and efficient basis for its member municipalities, public water districts and other incorporated and unincorporated areas in the State of Illinois pursuant to and as authorized by the Intergovernmental Cooperation Act of the State of Illinois, and

WHEREAS, by the Metro-East Municipal Joint Action Water Agency Agreement and the Act authorizing the creation of the AGENCY, the

AGENCY is authorized to purchase Mississippi River water from the CITY and to make and enter into this Water Purchase Contract for the same, and

WHEREAS, the CITY has an excess potable water service capacity above what it currently produces and sells to its retail and wholesale customers, and

WHEREAS, the AGENCY has determined that it is in the welfare and best interest of the AGENCY and its member municipalities that it make and enter into this Water Purchase Contract with the CITY on the terms and conditions herein made and provided.

NOW THEREFORE, in consideration of these promises, it is mutually agreed:

#### ITEM 1. NATURE OF SERVICE.

The CITY agrees to furnish and sell potable water to the AGENCY and the AGENCY agrees to purchase potable water from the CITY at an interconnecting point as defined in Item 4.

CITY agrees to exercise reasonable diligence and foresight to repair, replace and maintain its water system so as to provide the flow of water as defined in Item 5 herein at the point of the AGENCY'S interconnection during the life of this Contract. The CITY also agrees that the supply of water to the AGENCY shall be reduced only in proportion to the extent water supply to CITY customers would otherwise be inadequate. Any necessary reduction in water supplied shall be proportional to all CITY customers - retail and wholesale. The AGENCY further recognizes and agrees that no liability for damages are attached to the CITY hereunder on account of an actual failure of supply due to Acts of God or other occurrences beyond the reasonable control of the CITY.

#### ITEM 2. PRICING.

The AGENCY agrees to pay for water at a rate based on the CITY'S annual cost of production, transmission and distribution, as defined in Appendix A, attached hereto and made a part of this CONTRACT, as verified by the CITY'S independent audit. The rate shall include a component for depreciation of existing Plant and future capital investments when made by the CITY on these facilities, plus eighteen percent (18%) for margin above cost. All audits shall be in accordance with the accounting principles set forth in Appendix A, attached hereto and made a part of this Contract. Costs shall be determined in accordance with Appendix B each fiscal year by the CITY'S Water Division, based on the number of gallons of water actually produced and the expenses

incurred during that given year. In calculating these costs, should the percent of pumping for the year at the Chain of Rocks Plant be less than 66.66% of the total pumpage from the CITY'S two treatment facilities, then the value of 66.66% of the total CITY pumpage shall be used in lieu of actual Chain of Rocks filtered water pumpage in Appendix B, Paragraph VIII, "Total Cost for Chain of Rocks Water Sales." These costs shall be the basis for determining the rate the AGENCY will pay during the following calendar year. The applicable rate to be paid by the AGENCY shall be \$.5748 per 1,000 gallons through December 31, 1998. The AGENCY shall have the right to conduct its own independent audit of the above costs at its own expense. In the event of a dispute between the CITY and the AGENCY, concerning audit results and/or the development of water pricing as described herein, the adjudication of such dispute shall be as defined in ITEM 9. Change in State or Federal law, or State or Federal regulatory action, may be grounds for renegotiation of factors shown in Appendices A and B. Failure to agree upon impacts of such changes shall be adjudicated as defined in ITEM 9.

### ITEM 3. PAYMENT.

The AGENCY agrees to pay the CITY on a monthly basis (i.e., Billing Month) for all purchases of water under this CONTRACT. The CITY and the AGENCY will cooperate and coordinate meter readings so they can check for line loss by reading of meters for the AGENCY customers at the same time the CITY meters are read. All purchases shall be billed monthly, within fifteen (15) days after rendition of service, and all such bills shall be due and payable without discount within thirty (30) days after date of billing. If the bill is not paid within thirty (30) days after billing, the CITY may give the AGENCY written notice of the delinquency. Should any bill remain unpaid for a period of thirty (30) days after written notice by the CITY to the AGENCY that the same is past due, then the CITY may, at its option and upon ten (10) days written notice to the AGENCY discontinue all service to the AGENCY and all bills then delinquent shall carry interest at the rate of ten percent (10%) per annum from the date due. Should a billing dispute arise between the AGENCY and the CITY, the CITY agrees that it will not discontinue service during the period of good faith discussions and during any period in which the AGENCY disputes said billing before an administrative or judicial body.

### ITEM 4. CONNECTIONS AND METERING.

A. Point of Interconnection. Water to be supplied hereunder by the CITY to the AGENCY shall be supplied on CITY'S land, at a point of connection on the CITY'S land. In order to permit said delivery:

1. The CITY agrees at its own cost and expense to furnish, install and maintain all necessary meters to be located in facilities to be constructed by the AGENCY at the AGENCY's sole cost and expense. The AGENCY shall have the right at all times to test the meters which register the amount of water for which the CITY will bill the AGENCY. Should said meter test show that said meter is recording with less than ninety-eight percent (98%) accuracy, or the standard for metering from time to time in effect by the American Waterworks Association, whichever standard allows for less deviation, an adjustment shall be made to the billings for the AGENCY for the prior one-year period to credit the next billing to the AGENCY by the amount of the over billing. If the meter recording inaccuracy is resulting in an under billing, no adjustment nor debit to billing for the AGENCY shall be required. On request of the CITY the AGENCY shall share its submetering information with the CITY.

2. The CITY shall grant to the AGENCY such easements on, over, along and across City property as the AGENCY and the CITY mutually agree are necessary to construct, install and operate the facilities required for interconnection. Granting of said easement by the CITY shall not be unreasonably withheld.

3. The AGENCY agrees, at its own cost and expense, to furnish and install all pipe, valves, fittings, meter pits, and appurtenances necessary to connect its water distribution system at said connection point with the CITY'S system.

B. Ownership and Maintenance. The AGENCY shall pay for, own and install all pipe, valves, fittings and appurtenances to be constructed and installed between the AGENCY'S plant in the State of Illinois and the point in the State of Missouri where the meter pit and the water meter for water sold to the AGENCY by the CITY will be installed. The AGENCY will pay for and construct the meter pit and it will be installed as close to the AGENCY'S jurisdictional boundary as good engineering practices and circumstances allow and provide for. The AGENCY will pay a maximum of three hundred fifty thousand dollars (\$350,000) for the installation of the new water transmission line needed to transport the water from the point of interconnection with the CITY'S distribution system to the connection with the AGENCY's system at the meter pit. Ownership and maintenance of the pipe, valves, fittings, meter pit and appurtenances shall be transferred to the CITY from the point of interconnection with the CITY'S distribution system up to and including the meter pit. The AGENCY will execute and deliver a good and sufficient bill-of-sale or any other reasonably required legal documents to transfer ownership of the pipe, valves, fittings, meter pit and appurtenances installed in Missouri from the point of interconnection with the CITY'S distribution system to the outlet

side of the meter, including the meter pit. The CITY shall have the right to operate such valves as necessary to maintain meters and will assume maintenance, operation and improvement responsibility for the meter pit, water meters, isolation valves, pipes, fittings and appurtenances located in Missouri from the point of interconnection with the CITY'S distribution system to the outlet side of the meter. The CITY may install such equipment as needed to obtain continuous information on flows and pressures.

C. Installation. All pipe, valves, fittings and appurtenances installed on CITY property shall be designed and constructed in accordance with recognized water works industry standards. The CITY shall have the right to review and approve all plans and specifications for the pipe, valves, fittings, meter pit, and appurtenances which the AGENCY proposes to install on the CITY property. In addition, all work or construction performed or undertaken by the AGENCY on the CITY property shall be subject to supervision by and the approval of the Water Commissioner of the CITY.

#### ITEM 5. QUANTITY AND QUALITY OF WATER.

1. The CITY agrees to sell water to the AGENCY in such amount as the AGENCY desires to purchase, up to a supply rate of not to exceed fifteen (15) million gallons per day, without approval of the Water Commissioner.

2. Water supplied by the CITY to the AGENCY shall meet the treated water quality standards of the Missouri Department of Natural Resources and/or United States Environmental Protection Agency, or such other successor agency. Water supplied by the CITY shall also meet applicable Maximum Contaminant Levels (MCL) as promulgated by the Illinois Environmental Protection Agency.

3. Water will be supplied by the CITY to the AGENCY at a normal pressure of 70 psi and a minimum pressure of 50 psi at the point of interconnection to the CITY's metering.

ITEM 6. COMMUNICATION BETWEEN CITY AND AGENCY. In order to assure the AGENCY has adequate information relative to the operation of the CITY'S Water Division, as a minimum the following documents shall be provided to the AGENCY.

1. A portion of the Annual Audit concerning systemwide operations;

2. Monthly operating reports consisting of all reports submitted to the State of Missouri Department of Natural Resources and which relate to finished water quality; and
3. Other pertinent documents as mutually agreed.

#### ITEM 7. EFFECTIVE DATE OF CONTRACT.

This Contract for the sale of water, subject to ITEM 8, shall be in full force and effect for a period of thirty (30) years from and after its date of execution. The AGENCY, in the event the CITY does not give notice as provided in ITEM 8.1 to terminate this Contract, shall have the option of extending this Contract for four (4) additional periods of ten (10) years each after the end of the original thirty (30) year Contract term, upon six (6) months prior notice to the CITY.

#### ITEM 8. TERMINATION.

1. The CITY has the right and option to cancel and terminate this Contract upon expiration of the original thirty (30) year Contract term and thereafter all rights and obligations hereunder shall cease, provided the CITY gives the AGENCY three (3) or more years notice of such decision to cancel and terminate upon expiration. 2. The AGENCY has the right and option, upon sixty (60) days written notice to the CITY, to cancel and terminate this Contract, and thereafter all rights and obligations hereunder, other than easement rights conveyed by separate instruments, shall cease.

#### ITEM 9. THIRD PARTY AUDIT.

In the event of disagreement concerning audit results, and/or the calculations necessary for ITEM 2, the parties agree to submit the matter to binding determination to a mutually agreed upon "Big Six" accounting firm not previously engaged in the audit. In the event of inability to mutually agree on any such firm, said firm shall be selected by lot from each party's single nominee.

#### ITEM 10. DISPUTES OR CLAIMS.

It is expressly understood between the parties that any disputes or claims arising out of this Contract, other than described in ITEM 9, resulting in a cause or causes of action, shall only be brought in the Missouri Circuit Court, Twenty- Second Judicial Circuit, the City of St. Louis.

#### ITEM 11. BINDING EFFECT.

This Contract shall be binding upon and shall inure to the benefit of the CITY and the AGENCY, as the respective parties hereto, their successors and assigns.

ITEM 12. SEVERABILITY.

Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law. If any provision of this Agreement or the application of any provision of this Agreement to a party or a circumstance shall be prohibited by or declared invalid by a court of competent jurisdiction under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of the Agreement or the application of the remainder of the Agreement to the parties or other circumstances.

ITEM 13. ENTIRE AGREEMENT.

This writing contains the entire agreement of the parties and shall not be changed, supplemented or amended in any manner except by an instrument in writing properly executed by the parties to this agreement. The CITY and the AGENCY agree and acknowledge that all prior agreements, whether written or oral, relating to the subject matter of this written agreement are abrogated and rendered of no further force or effect from and after the date of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first above written.

CITY OF SAINT LOUIS METRO EAST MUNICIPAL JOINT  
ACTION AGENCY, an Illinois Municipal Corporation

By: \_\_\_\_\_ By: \_\_\_\_\_

Mayor BILLY JACKSON  
Chairman of the Board of  
Directors

By: \_\_\_\_\_  
Comptroller

Approved as to form:

\_\_\_\_\_  
City Counselor LESTER SCHNEIDER  
Secretary, Board of Attest: Directors



SECTION TWO. This ordinance, being deemed necessary for the immediate preservation of the public health, safety and general welfare, shall be and is hereby declared to be an emergency measure within the meaning of Article IV, Section 20, of the Charter of the City of St. Louis, and as such shall take effect immediately upon its approval by the Mayor.

## APPENDIX A

### SUMMARY OF ACCOUNTING POLICES

I. Revenues and expenses of the St. Louis City Water Division must be reported in accordance with generally accepted accounting principles.

II. Direct costs to be included:

A. Direct costs of Supply and Purification at the Chain of Rocks Plant to be summarized as follows:

1. Labor - Actual wages and fringes associated with employees working full-time at the Chain of Rocks Plant.
2. Support Services - Actual Water Division costs for services provided directly to Supply and Purification at the Chain of Rocks Plant.
3. Chemicals - Actual costs of chemicals utilized at the Chain of Rocks Plant.
4. Other Materials and Services - Actual cost of materials and services utilized at the Chain of Rocks Plant.

B. Direct costs of Power and Pumping Section at the Chain of Rocks Plant to be summarized as follows:

1. Labor - Actual wages and fringes associated with employees working full-time at the Chain of Rocks Plant.
2. Support Services - Actual Water Division costs for services provided directly to power and pumping at the Chain of Rocks Plant.
3. Power - Cost of power for actual pumping at the Chain of Rocks Plant.

4. Other Materials and Services - Actual cost for materials and services utilized at the Chain of Rocks Plant.

C. Direct costs of Transmission and Distribution Section.

1. These costs will include all personal services, supplies, materials, services and charges.

2. Costs associated with the Meter and Tap section will be specifically excluded.

D. Depreciation of Chain of Rocks Facilities, Transmission and Distribution Facilities, Distribution Mains, Transmission Mains and Compton Reservoir Facilities. Amount should be equal to the actual amounts recorded in the accounting records of the Water Division for these facilities. Depreciation will be calculated under the straight line method utilizing the following useful lives:

1. Building and Improvements - Fifty (50) years.

2. Pumping equipment - Thirty-three (33) years.

3. Transmission mains - One hundred (100) years.

4. Distribution mains - Seventy-five (75) years.

III. Allocated Costs to be included:

A. General Office Expenses:

1. Two-thirds Supply and Purification general office expense. Charges to this expense category are wages and fringes for the staff that oversees the Supply and Purification function at the Howard Bend Plant and Chain of Rocks Plant and related miscellaneous expenses.

2. Two-thirds of Power and Pumping general office expense. Charges to this expense category are wages and fringes for this staff that oversees the Power and Pumping function at Howard Bend and Chain of Rocks and related miscellaneous expense.

B. Administration and Finance Expense:

1. Costs will be allocated by taking two-thirds of the ratio of the budgeted positions in Supply and Purification (including construction and maintenance)

and Power and Pumping to the budgeted positions in Supply and Purification (including construction and maintenance), Power and Pumping, Transmission and Distribution and Customer Accounting and applying this factor to certain Administration and Finance expenses.

2. Certain Administration and Finance expenses in (1) above include the following:

a. Labor - Actual wages and fringes for employees working in the Administration and Finance Departments of the Water Division.

b. Worker's Compensation - Worker's Compensation insurance for all employees of the Water Division.

c. Support Services - Only those support services directly for the operation of the Administration and Finance Section of the Water Division.

d. City Services - City of St. Louis costs allocated to the Water Division according to the "Central Service Cost Allocation Plan". This plan allocates City of St. Louis expenses to various City departments, including the Water Division, based upon each department's relative use of that city service. This allocation must be deemed fair by the Water Division's Certified Public Accountant.

e. Other Services and Miscellaneous - Charges for utilities, telephone, supplies and other miscellaneous expenses of operating the Administration and Finance Section.

3. Administration and Finance expenses specifically excluded from the costs in (2) above are charges for judgements, Bad Debt Expense and Support Services not directly for the operation of the Administration and Finance Section of the Water Division.

C. Compton Reservoir Costs:

1. Actual costs associated with the maintenance of the Compton Reservoir. Maintenance of the park grounds will be specifically excluded.

IV. Return on Investment - Calculated by taking the sum of costs in II and III above, times 18%. This amount includes any and all taxes to be paid to both the Water Division and the City of St. Louis.

V. The Metro East Joint Water Action Agency's cost per 1,000 gallons - Calculated by totaling Items II, III, and IV above and dividing this total cost by the actual total gallons of filtered water pumped at Chain of Rocks including water pumped to the Agency, except as set forth in Item 2, Pricing.

VI. Specifically excluded costs included the following:

A. Customer Accounting costs.

B. Debt Service.

C. Any other cost item not specifically included in II, III or IV above.

VII. See Appendix B as an example of the above formula for Fiscal year 1994 - 95.

VIII. The costs per 1,000 gallons purchased should be calculated on expenses for years ending June 30, and audited by the Water Division's Certified Public Accountant. The cost so calculated will become effective for the subsequent calendar year.

IX. The Audit Report of the Water Division for the years ending June 30 should separately state the following (as previously defined):

A. Direct costs of Supply and Purification - Chain of Rocks.

B. Direct costs of Power and Pumping - Chain of Rocks.

C. Direct costs of Transmission and Distribution.

D. General Office Expenses - Power and Pumping.

E. General Office Expenses - Supply and Purification.

F. Compton Reservoir Maintenance Expenses.

G. Support services charged to Administration and Finance that are directly related to the operation of the Administration and Finance Section of the Water Division.

H. Labor Cost used to calculate percent allocation in III, B. 1. above.

X. Water Division personnel will furnish interim Financial Statement information equivalent to that included as Appendix B of this agreement on a quarterly basis.

XI. The Agency reserves the right to audit the Water Division at its own expense.

<b>Legislative History</b>					
<b>1ST READING</b>	<b>REF TO COMM</b>	<b>COMMITTEE</b>	<b>COMM SUB</b>	<b>COMM AMEND</b>	<b>VOTE</b>
<b>10/18/96</b>	<b>10/18/96</b>	<b>PU</b>			
<b>2ND READING</b>	<b>FLOOR AMEND</b>	<b>FLOOR SUB</b>	<b>VOTE</b>	<b>PERFECTN</b>	<b>PASSAGE</b>
<b>11/01/96</b>				<b>11/08/96</b>	<b>11/08/96</b>
<b>ORDINANCE</b>	<b>VETOED</b>		<b>VETO OVR</b>		<b>EFFECTIVE</b>
<b>63909</b>					