

ORDINANCE #69104
Board Bill No. 2872

An Ordinance recommended by the Board of Public Service authorizing a contract between the City of St. Louis, the City of St. Peters, Missouri and the City of St. Charles, Missouri for the sale and purchase of water from the City of St. Louis for distribution by the City of St. Peters, Missouri and the City of St. Charles, Missouri in their general system; authorizing connections between the City of St. Louis system and the City of St. Peters, Missouri and the City of St. Charles, Missouri systems; setting forth the terms of the contract in substantially the form attached hereto and, incorporated by reference herein as Exhibit I, and containing an emergency clause.

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

SECTION ONE. The Mayor and Comptroller of the City of St. Louis, acting on behalf of said City, are hereby authorized and directed to enter into a contract with the City of St. Peters, Missouri and the City of St. Charles, Missouri for the sale of water by the City of St. Louis to the City of St. Peters, Missouri and the City of St. Charles, Missouri for their general system purposes and to make all necessary connections between the municipal water systems for this purpose as provided in the contract in substantially the form attached hereto and incorporated by reference herein as Exhibit I.

SECTION TWO. Emergency Clause.

This being an Ordinance providing for public work and improvements, and the passage thereof being deemed necessary for the immediate preservation of the public health and safety, an emergency is hereby declared to exist within the meaning of Section 20 of Article IV of the Charter of the City of St. Louis and this ordinance shall become effective immediately upon its passage and approval by the Mayor.

EXHIBIT I

CONTRACT

THIS CONTRACT made and entered into this _____ day of _____, 2012 by and between the City of St. Louis, Missouri, a municipal corporation, also referred to as "CITY" and the Cities of St. Charles, Missouri and St. Peters, Missouri, both Municipal corporations, also referred to herein as "PURCHASERS", witnesseth:

WHEREAS, the PURCHASERS are municipal corporations of the State of Missouri, and are authorized by their charters, or by state law, or by both to operate a municipal water system, and

WHEREAS, the PURCHASERS intend to continue their Joint Venture Agreement executed on October 2, 1985 for the duration of this CONTRACT with CITY, and

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, or aqueducts constructed or used for that purpose, and

WHEREAS, the Board of Aldermen of the CITY is further 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 finds 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.

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

ITEM 1. NATURE OF SERVICE

CITY agrees to furnish and sell and PURCHASER agrees to purchase water as needed as defined in ITEM 5 at an interconnecting point or points as defined in ITEM 4.

PURCHASERS recognize and agree that it is the duty of the CITY to furnish water at a normal volume and pressure to the CITY and its inhabitants before selling water to PURCHASERS. Historically, however, water sources available to the CITY have been more than sufficient to meet the CITY'S needs, and to provide water for sale to PURCHASERS and others.

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 or points of the PURCHASERS' interconnection during the life of this CONTRACT. CITY also agrees that the supply of water to PURCHASERS' shall be reduced only in proportion to the extent the water supply to CITY customers is at the time, inadequate or curtailed. PURCHASERS further recognize and agree that no liability for damages are attached to the CITY hereinunder on account of its failure to accurately anticipate availability of water supply, or because 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 PURCHASERS agree to pay for water at a rate based on the CITY'S annual cost of production, as defined in Appendix A, attached hereto and made a part of this Contract, at the City of St. Louis Howard Bend Water Treatment Plant plus the cost of operation and maintenance of the Stacy Park Reservoir and interconnecting conduits, as verified by the CITY'S independent audit. In addition, the rate shall include a component for depreciation of existing Plant and of future capital investments when made by the CITY on these facilities plus Eighteen percent (18%) for return on investment. 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 for each fiscal year by the CITY'S Water Division, based on the number of gallons of water actually produced and expenses incurred at Howard Bend during that given year. In calculating these costs, should the percent of pumping for the year at Howard Bend be less than thirty-three percent (33%) of the total pumpage from the CITY'S two treatment facilities, then the value of thirty-three percent (33%) of the total CITY pumpage shall be used in lieu of actual Howard Bend filtered water pumpage in Appendix B, Paragraph VIII, "Total Cost for Howard Bend Water Sales." These costs shall be the basis for determining the rate PURCHASERS will pay during the following calendar year. The applicable rate to be paid by the PURCHASERS shall be \$0.4967 per 100 cubic feet or \$0.6640 per 1000 gallons through December 31, 2012.

PURCHASERS shall have the right to conduct an independent annual audit of the above costs at its own expense. In the event of a dispute between CITY and PURCHASERS 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.

ITEM 3. PAYMENT

PURCHASERS agree to pay the CITY on a monthly basis for all purchases of water under this CONTRACT. PURCHASERS agree that the City of St. Peters shall be billed and shall be responsible for payment of the bill to the CITY. St. Charles agrees to pay St. Peters its proportionate share of the bill. 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 bill. Should any bill remain unpaid for a period of thirty (30) days after written notice by the CITY to the PURCHASERS that the same is past due, and failure of the PURCHASERS to make such payment within the period of such notice, then the CITY may at its option and upon ten (10) days' written notice to the PURCHASERS, discontinue all service to the PURCHASERS 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 PURCHASERS and CITY, CITY agrees that it will not discontinue service during the period of good faith discussions and during any period in which PURCHASERS dispute of said billing is before an administrative or judicial body.

ITEM 4. CONNECTIONS AND METERING

Water supplied hereinunder by the CITY to PURCHASERS shall be supplied on CITY'S land, at a point or points of connection on CITY'S Howard Bend Plant property or on the CITY'S treated water conduits between the Howard Bend Water Treatment Plant and the Stacy Park Reservoir. In order to permit said delivery:

CITY agrees at its own cost and expense to furnish, install and maintain all necessary meters to be located in facilities constructed or to be constructed by PURCHASERS within the limits of the Howard Bend Water Treatment Plant or on the CITY's right-of-way, at the PURCHASERS' sole cost and expense. PURCHASER has the right at all times to test the meter which registers the amount of water for which the CITY will bill PURCHASERS. Should said meter test show that said meter is recording with less than ninety-eight percent (98%) accuracy (higher or lower), an adjustment shall be made to the billings to the PURCHASERS for the prior one-year period to either credit or debit the next billing to the PURCHASERS by the amount of the over or under billing. PURCHASERS agree at its own cost and expense to furnish and install all pipe, valves, fittings and appurtenances necessary to connect its water distribution system with said connection point or points on the CITY'S system, and at its own cost and expense maintain all said pipe, valves, fittings and appurtenances located outside of the limits of the Howard Bend Water Treatment Plant. After inspection and acceptance by the CITY, all pipe, valves, fittings and appurtenances installed by PURCHASERS within the Howard Bend Treatment Plant shall become the property of and shall be maintained by the Water Division of the CITY, at the CITY's own cost and expense.

All pipe, valves, fittings and appurtenances installed within the Howard Bend Water Treatment Plant or on the CITY's right of way shall be designed and constructed in accordance with the recognized industry standards. CITY shall have the right to review and approve all contract plans and specifications of the pipe, valves, fittings and appurtenances installed within the Howard Bend Treatment Plant or on the CITY's right of way.

All work or construction to be performed or undertaken by PURCHASERS within the Howard Bend Water Treatment Plant or on the CITY's right of way between the Howard Bend Water Treatment Plant and the Stacy Park Reservoir shall be subject to the supervision and prior written approval of the Water Commissioner of the CITY.

ITEM 5. QUANTITY AND QUALITY OF WATER

1. The CITY agrees to sell PURCHASERS water, but not to exceed a maximum supply rate of 31 million gallons per day, as PURCHASERS desire to purchase, except the CITY, upon recommendation and approval of the Water Commissioner, may sell to PURCHASERS a higher maximum supply rate.
2. Water supplied by the CITY to PURCHASERS shall meet the treated water quality standards of the Missouri Department of Natural Resources and / or United States Environmental Protection Agency, or such successor agency.
3. Water will be supplied by CITY to PURCHASERS at the pressure residual at the point of interconnection to the CITY'S metering. Pressure at the point of interconnection shall be maintained at 109 psi, minimum as measured in the discharge headers at the Howard Bend Plant.

ITEM 6. COMMUNICATION BETWEEN CITY AND PURCHASERS

In order to insure that PURCHASERS have adequate information relative to the operations of the CITY's Water Division, as a minimum, the following documents shall be provided to the PURCHASERS:

1. A portion of the Annual Audit concerning Howard Bend and Stacy Park operations.
2. A portion of the Annual Audit concerning Supply and Purifying allocated management, Power and Pumping allocated management, and Administrative and Finance Cost allocated to Supply and Purification and Power and Pumping.
3. 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
4. Other pertinent documents as mutually agreed.

ITEM 7. EFFECTIVE DATE OF CONTRACT

This contract for the sale of water, subject to ITEM 8.1, shall be in full force and effect for a period of thirty (30) years from and after the completion of the existing water purchase agreement that is set to expire on December 26, 2015. PURCHASERS, in

the event the CITY does not give notice as provided in ITEM 8.1 to terminate this Contract, shall thereafter have successive options of extending the Contract for four (4) additional periods of ten (10) years each from the end of the above period, upon six (6) months prior notice to the CITY.

ITEM 8. TERMINATION

- 1. CITY has the right and option to cancel and terminate this CONTRACT upon expiration of the thirty (30) year period or any of the ten (10) year extensions and thereafter all rights and obligations hereunder shall cease, provided CITY provides PURCHASERS three (3) or more years notice of such decision to cancel and terminate upon expiration.
- 2. The PURCHASERS shall have the right and option, upon one (1) or more years written notice to the CITY, to cancel and terminate this CONTRACT, and thereafter all rights and obligations hereunder 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 nationally recognized 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 of causes of action, shall only be brought in the Missouri Circuit Court, Twenty-Second Judicial Circuit, the City of St. Louis.

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.

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

CITY OF ST. LOUIS, MISSOURI

BY _____
Mayor

CITY OF ST. LOUIS, MISSOURI

BY _____
Comptroller

Approved as to Form:

City Counselor

Attest:

City Register

CITY OF ST. CHARLES, MISSOURI

BY _____
Mayor

BY _____
City Clerk

CITY OF ST. PETERS, MISSOURI

BY _____
Mayor

BY _____
City Clerk

Appendix A
Summary of Accounting Policies

APPENDIX A
SUMMARY OF ACCOUNTING POLICIES

- 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 Howard Bend Plant to be summarized as follows:
 - 1. Labor – actual wages and fringes associated with employees working full time at the Howard Bend Plant.
 - 2. Support Services – actual water division costs for services provided directly to Supply and Purification at Howard Bend Plant.
 - 3. Chemicals – actual costs of chemicals utilized at Howard Bend Plant.
 - 4. Other materials and services – actual cost of materials and services utilized at Howard Bend Plant.
 - B. Direct costs of power and pumping section at Howard Bend Plant to be summarized as follows:
 - 1. Labor – actual wages and fringes associated with employees working full time at the Howard Bend Plant.
 - 2. Support Services – actual Water Division costs for services provided directly to Power and Pumping at the Howard Bend Plant.
 - 3. Power – cost of power for actual pumping at the Howard Bend Plant.
 - 4. Other materials and services – actual cost for materials and services utilized at the Howard Bend Plant.
 - C. Depreciation of Howard Bend Facilities and Stacy 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 – 50 years.
 - 2. Pumping Equipment – 33 years.
- III. Allocated costs to be included –

- A. General Office Expenses –
1. One third of 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. One third Power and Pumping general office expense. Charges to this expense category are wages and fringes for the 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 one third of the ratio of the total labor costs in Supply and Purification and Power and Pumping to the total labor costs in Supply and Purification, 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 Section of the Water Division.
 - b. Workers’ Compensation – Workers’ 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 Judgments, Bad Debt Expense and Support Services not directly for the operation of the Administration and Finance Section of the Water Division.
- C. Stacy Reservoir Costs –
1. The City of St. Louis has two reservoirs, Compton and Stacy. The Cities of St. Peters and St. Charles will be served by the Stacy Reservoir. The costs of maintenance of the above reservoirs are not recorded separately by specific reservoir in the City’s accounting records.
 2. As a result of the situation in (1) above one half of these costs will be included in the formula.
- 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. St. Peters and St. Charles cost per 1000 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 Howard Bend including water pumped to St. Peters/St. Charles.
- VI. Specifically excluded costs included the following:
- A. Transmission and Distribution costs.
 - B. Customer Accounting costs.

- C. Debt Service.
- D. 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 2011.
- VIII. The costs per 1000 gallons purchased should be calculated on expenses for years ending June 30, and audited by the Water Divisions' 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 – Howard Bend.
 - B. Direct costs of Power and Pumping – Howard Bend.
 - C. General Office Expenses – Power and Pumping.
 - D. General Office Expenses – Supply and Purification.
 - E. Reservoir Maintenance Expenses.
 - F. Support services charged to Administration and Finance that are directly related to the operation of the Administration and Finance Section of the Water Division.
 - G. 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. St. Peters/St. Charles reserve the right to audit the Water Division records at their own expense.

Approved: March 9, 2012