

1 **BOARD BILL NO. 173 INTRODUCED BY: ALDERMAN ANTONIO FRENCH**

2 An ordinance adopted pursuant to the Intergovernmental Agreement Act, Sections 70.210 to
3 70.325, inclusive, of the Revised Statutes of Missouri, and authorizing the City of St. Louis to
4 enter into an Intergovernmental Cooperation Agreement with the Metropolitan Sewer District for
5 the purpose of sharing certain water data in the possession of the City with the Metropolitan
6 Sewer District, for fair and substantial compensation received by the Metropolitan Sewer
7 District, containing a severability clause and a governance clause.

8 **WHEREAS**, the City of St. Louis, Missouri (the “City”) is authorized and empowered
9 under the Intergovernmental Agreement Act, Sections 70.210 to 70.325, inclusive, of the revised
10 statutes of Missouri, to contract and cooperate with the Metropolitan Sewer District (the“
11 District”) as the City develops and maintains certain information and records (hereinafter “data”)
12 related to customer accounts, billings and water consumption, and the District desires to
13 purchase said information from the City for the purpose of billing for sewer service charges,
14 subject to the terms and conditions hereinafter set forth herein and in the attached
15 “Intergovernmental Water Data Agreement”; and

16 **WHEREAS**, The City and the District desire to enter into such Intergovernmental
17 Agreement in substantially the form attached to this Authorizing Ordinance (the
18 “Intergovernmental Agreement”); and

19 **WHEREAS**, the Board of Aldermen of the City hereby find it is advisable, necessary,
20 and in the best interests of the City of enter into the Intergovernmental Agreement.

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

22 **SECTION ONE.** The Board of Aldermen hereby confirms its approval of the
23 Intergovernmental Cooperation Agreement. The Board of Aldermen further finds and determines

1 that it is necessary and desirable to enter into the Intergovernmental Agreement with the
2 Metropolitan Sewer District, in substantially the form attached hereto as Exhibit A and
3 incorporated herein by reference.

4 **SECTION TWO.** The City is hereby authorized to enter into, and the Mayor and the
5 Comptroller and such other officers of the City as are appropriate are hereby authorized and
6 directed to execute, seal, attest and deliver, for and on behalf of the City, The Intergovernmental
7 Agreement, with such changes as are consistent with the intent of this Authorizing Ordinance, as
8 shall be approved by the appropriate officers of the City executing the Intergovernmental
9 Agreement, such officers' signatures thereon being conclusive evidence of their approval thereof
10 without further action of the Board of Aldermen necessary to authorize such changes by the
11 Mayor and the Comptroller or their designated representatives.

12 **SECTION THREE.** It is hereby declared to be the intent of the Board of Aldermen that
13 each and every part, section and subsection of this Ordinance shall be separate and severable
14 from each and every other part, section and subsection, separately and independently of any
15 other part, section and subsection. In the event that any part, section or subsection of this
16 Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining
17 parts, sections, and subsections shall be and remain in full force and effect, unless the court
18 making such finding shall determine that the valid portions standing alone are incomplete and are
19 incapable of being executed in accord with the legislative intent.

20 **SECTION FOUR.** In the event of any inconsistency between the provisions of this
21 Ordinance and the provisions of any prior ordinances, the provisions of this Ordinance shall
22 prevail.

1 **SECTION FIVE.** This Ordinance shall be governed exclusively by and construed in
2 accordance with the applicable laws of the State of Missouri.

Exhibit A-Intergovernmental Agreement

INTERGOVERNMENTAL WATER DATA AGREEMENT

INTERGOVERNMENTAL WATER DATA AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, by and between the METROPOLITAN ST. LOUIS SEWER DISTRICT, a municipal corporation and political subdivision of the State of Missouri, hereinafter called the “DISTRICT” and the CITY OF ST. LOUIS, MISSOURI, hereinafter called the “CITY”.

WITNESSETH:

WHEREAS, Sections 70.210 to 70.325, RSMo., as amended (the “Intergovernmental Agreement Act”), allow and provide, in pertinent part, for municipalities and political subdivisions to contract and to cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the U.S., or of Missouri, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service,

WHEREAS, the CITY develops and maintains certain information and records (hereinafter “data”) related to customer accounts, billings and water consumption, and

WHEREAS, the DISTRICT desires to purchase said information from the CITY for the purpose of billing for sewer service charges, subject to the terms and conditions hereinafter set forth,

WHEREAS, the MSD Executive Director is authorized to enter into this Intergovernmental Agreement by Ordinance No. _____ adopted _____ and the City Water Commissioner of the City of St. Louis is authorized to enter into this Intergovernmental Agreement by Ordinance No. _____.

NOW, THEREFORE, in consideration of the monthly sum of THIRTEEN THOUSAND DOLLARS (\$13,000.00) to be paid monthly upon receipt of said data by the DISTRICT to the CITY, the CITY agrees to provide to the DISTRICT certain customer and water consumption information as follows:

1. On a daily basis, within the regular CITY working hours, the CITY will provide customer and water consumption information to the DISTRICT, pursuant to individual telephone inquiries by the DISTRICT. Said inquiries by the DISTRICT shall not exceed the amount of twenty (20) per day, and shall be of a nature as can be answered by the CITY via electronic transmission. Each customer inquiry shall constitute one inquiry of the said twenty (20) allowed. This can be reassessed by either party and changed if mutually agreed upon by both parties.

2. City shall furthermore provide DISTRICT with view-only capability of customer and water consumption information via electronic modem connection or other electronic methods agreeable to both parties.

3. On a weekly basis, the CITY will make available to the DISTRICT the CITY's customer and premise updates from the previous week for new Metered accounts, changes in Metered accounts, termination in Metered accounts, changes in Flat Rate accounts, and terminations in Flat Rate accounts for use by the DISTRICT.

4. On a weekly basis, the CITY will make available to the DISTRICT any changes in the CITY's Flat Rate billing information (rooms, showers, etc.).

5. On a monthly basis, the CITY will make available to the DISTRICT the water consumption information for all metered accounts billed by the CITY for said month.

6. All files shall be transmitted via File Transfer Protocol (FTP) according to instructions supplied by DISTRICT and agreed to by the CITY. All files shall be transmitted on a regular schedule, to be mutually agreed upon by DISTRICT and CITY.

7. Corrected consumption shall be included with the usage information, with a clear indication that the usage has been adjusted, including the premise, which has been adjusted, the amount of the adjustment, indication of positive or negative adjustment, and the reading date to which the adjustment applies.

8. CITY shall provide DISTRICT with 90 day's notice if there is a change in any of the methods CITY uses to transmit files to the DISTRICT which are initiated by the CITY. For changes initiated by the CITY's software vendor, the notice to DISTRICT shall be at least 30 days. CITY will work with DISTRICT to lengthen the notice period whenever possible and necessary.

9. Any requests by DISTRICT for data, information, enhancements or other tasks beyond those contained in this AGREEMENT may be performed by CITY at a mutually agreed upon fee or rate.

10. The CITY shall not be liable, and the DISTRICT shall have no right in respect of any delay in availability or failure to make available the information, or of the non-performance or delay in performance of any term or condition of this AGREEMENT directly or indirectly resulting from any cause beyond the control of the CITY, including but not limited to riots, epidemics, war, governmental regulations, fire, communication line failure, power failure, computer problems, computer downtime and acts of God.

11. During the term of this AGREEMENT, on July 1st of each year the rate of THIRTEEN THOUSAND DOLLARS (\$13,000.00) per month shall be adjusted by a percentage amount equal to the change in the Consumer Price Index (all items), as published by the Federal Reserve, from the previous July. This adjustment shall become the new monthly rate for the subsequent twelve (12) month period.

12. Payment of the THIRTEEN THOUSAND DOLLARS (\$13,000.00) monthly rate shall be retroactive to July 1, 2015.

13. DISTRICT agrees not to distribute, resell or otherwise use any information obtained under this AGREEMENT for any purpose other than for the stated purpose of performing its billing function for sewer service charges.

14. This AGREEMENT shall not be assigned or transferred by either party without the written permission of both parties.

15. This AGREEMENT will be subject to cancellation in the event a court of competent jurisdiction restricts or limits, directly or indirectly, any of the CITY's rights to obtain, sell, contract for or distribute information and records subject of this AGREEMENT.

To the extent allowed by law, MSD agrees to indemnify, defend and hold harmless The CITY from all damages of any kind, nature and description which may arise as a result of making this AGREEMENT and furnishing the records and information pursuant to this AGREEMENT, except for any negligent act or misconduct by the CITY.

16. If any term, provision or article of this AGREEMENT, or the application thereof, shall, to any extent, be invalid or unenforceable, the remainder of the term, provision or article of this AGREEMENT, and the remainder of this AGREEMENT, and the application of same to the parties hereto, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law; provided, however, that no such severance shall serve to deprive either party of the enjoyment of the substantial benefits under this AGREEMENT.

17. All notices, demands, requests or approval to be issued pursuant to this AGREEMENT shall be in writing, signed by the party or officer, agent or attorney of the party giving notice, and shall be deemed effective upon receipt if hand delivered, or upon delivery or

the date of refusal if sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows:

City of St. Louis Water Division
Water Commissioner
1640 South Kingshighway Blvd.
St. Louis, Missouri 63110

Metropolitan St. Louis Sewer District
Purchasing Manager
2350 Market Street
St. Louis, Missouri 63103

18. This AGREEMENT has been prepared in the State of Missouri and shall be governed in all respects by Missouri law. The parties agree that venue of any kind and all petitions, suits, claims and demands filed with respect or regarding this AGREEMENT shall be in the Circuit Court of the City of St. Louis, Missouri.

19. Termination for Cause. Either party may terminate this agreement following a material default hereunder by the other party. The party claiming default shall provide written notice to the other party describing such material default. The defaulting party will have 90 days to take reasonable steps to cure such default. If the default is not cured within 90 days then this Agreement will become terminated.

20. Termination for Convenience. Either party may terminate this Agreement at any time if termination is determined to be in the best interest of the public. The party requesting termination shall provide written notice to the other party describing why termination is in the best interest of the public. Termination will become final within 90 days of written notice.

21. Term of Agreement. This agreement shall commence on the effective date on the face hereof and shall remain in effect as otherwise provided for a period of ten years. The AGREEMENT shall be renewed under the same terms and conditions for successive five year periods, after the expiration of the initial term, unless terminated by either party upon 90 days prior notice.

22. Severability. If any provision of this Agreement or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other parties or circumstances will not be affected thereby, the provisions of this Agreement being severable in any such instance.

23. Waiver. Failure by any Party at any time hereafter to require strict performance by another Party or other Parties of any provision of this Agreement shall not waive, affect or diminish any right of a Party to demand strict compliance and performance therewith.

24. Binding Agreement. The covenants, agreements, terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

25. Authority to Execute. Each of the individuals executing this Agreement on behalf of a party represents and warrants that he/she is acting officially and properly on behalf of his/her respective institution and have been duly authorized, directed and empowered to execute this Agreement on behalf of such institution. 25. Attorney's Fees. If any party brings any action or suit under this Agreement against another party or parties, then in such event each party will be responsible for their own costs and expenses of suit, including reasonable attorneys' fees and costs.

THIS AGREEMENT shall be effective as of the _____ day of December, 2015 and shall remain in full force and effect until the signatories mutually agree to approve a new agreement or amend the existing agreement. Financial obligations of the District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, any resulting Contract will become null and void, without penalty to the District.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year first above written.

Metropolitan St. Louis Sewer District

City of St. Louis, Missouri

By: _____
Brian Hoelscher, Executive Director

By: _____
Darlene Green, Comptroller

By: _____
Marion M. Gee, Director of Finance

By: _____
Curtis B. Skouby
Water Commissioner

ATTEST:

ATTEST:

Tim R. Snoke, Secretary/Treasurer

Parrie L. May, Registrar

Approved as to Legal Form
Office of General Counsel

Approved as to Legal Form

Susan M. Myers, General Counsel

City Counselor