



To: City Council

Agenda Item #: IV.M

From: Brian Olson, P.E. Director of Public Works *BEO*

Action

Discussion

Date: 12/18/2012

Information

Subject: Amendment to Water Agreement with City of Minneapolis

Action Requested:

Authorize Mayor and City Manager to sign attached amendment for water use with the City of Minneapolis

Information / Background:

According to the 2009 agreement, the City of Minneapolis owns the meter connecting the City of Minneapolis water supply to the City of Edina water supply. Even though the City of Minneapolis owns the meter, the City of Edina is expected and required to test the accuracy of this meter annually. The City of Minneapolis has requested that they be responsible for testing the water meter for accuracy. The City of Edina currently pays about \$2,000 annually for an independent testing company to complete this function. This amendment would alleviate Edina from performing this function annually.

Staff recommends authorizing the Mayor and City Manager to sign the attached amendment for water use with the City of Minneapolis.

October 31, 2012



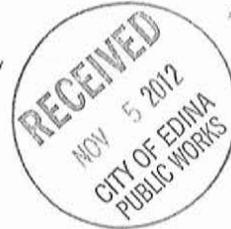
**Department of
Public Works**

Steven A Kotke, P.E.
City Engineer
Director

350 South 5th Street – Room 203
Minneapolis MN 55415

Office 612 673-3000
Fax 612 673-3565
TTY 612 673-2157

Brian Olson
Public Works Director
City of Edina
4801 West 50th Street
Edina, MN 55424-1394



RE: Master Water Meter from Minneapolis

Dear Mr. Olson:

As we discussed, Minneapolis is interested in changing the responsibilities related to the master meter where the sale of water to Edina is measured.

According to the 2009 agreement, the City of Minneapolis owns the meter but the City of Edina is responsible for testing the meter. In order to be consistent with other cities and to take responsibility for metering the sale of our water to Edina, Minneapolis proposes that in the future the testing of this meter and the cost associated with testing be the responsibility of the City of Minneapolis

I have attached a proposed contract amendment. If this looks acceptable, we will forward you the amendment for processing.

If there are any questions, please call me at 612-673-2418.

Sincerely,

A handwritten signature in blue ink that reads "Bernie R. Bullert".

Bernie R. Bullert
Director, Water Treatment & Distribution Services Division
Department of Public Works

Cc: Steve Kotke



**AMENDMENT NUMBER 1
MINNEAPOLIS – CITY OF EDINA
WATER AGREEMENT – 2009
AMENDMENT TO CONTRACAT NO. C-26961**

DRAFT

This agreement is made and entered into as of the _____ day of _____, _____, by and between the City of Minneapolis, a Minnesota home rule charter city in Hennepin County, Minnesota (City) and the City of Edina, a Minnesota Municipal Corporation (Edina)

WITNESSETH:

RECITALS

Whereas, the City of Minneapolis operates a municipal water system known as the Minneapolis Public Works – Division of Water Treatment and Distribution Services; and,

Whereas, the City of Minneapolis and the City of Edina have previously entered, into an Agreement for the City to supply water to the City of Edina to be effective the 1st day of June 2009 entitled “Water Distribution and Use Agreement by and between the City of Minneapolis and the City of Edina; and

WHEREAS, the City of Minneapolis and the City of Edina deem it appropriate to make amendments to that agreement as specified herein.

Now THEREFORE, it is mutually agreed as follows:

That Section 2.03 Measurement of Water Supplied is amended to read as follows:

Section 2.03 Measurement of Water Supplied

Water delivered pursuant to this Agreement shall be measured by the master meters to be furnished and maintained by the City. The master meters shall be subject to periodic inspection and testing by the City and verified by Edina according to the AWWA Standards for the frequency of testing, accuracy and tolerance of such master meters. The cost of testing shall be paid by the City.

BE IT FURTHER RESOLVED, that this change is effective January 1, 2013.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

WITNESSETH

City of Minneapolis

City of Edina

Department Responsible for
Administering this Agreement
Department of Public Works

By _____

ITS _____

Department Director

By: _____

Approved as to Form:

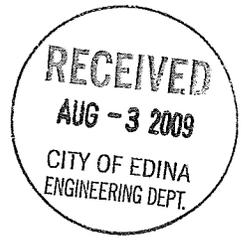
ITS: _____

Assistant City Attorney

Finance Officer/Designee

Date

C-26967



WATER DISTRIBUTION AND USE AGREEMENT

BY AND BETWEEN

CITY OF MINNEAPOLIS

AND

CITY OF EDINA

Date: _____, 2009
City of Minneapolis Contract No. _____

THIS AGREEMENT is made and entered into on this 15th day of June 2009 by and between the CITY OF MINNEAPOLIS, a Minnesota municipal corporation ("City"), and the CITY OF EDINA, a Minnesota municipal corporation ("Edina").

WITNESSETH:

RECITALS

- A. The City, through its Department of Public Works, Water Treatment and Distribution Division, operates a municipal water system commonly known as Minneapolis Water Works (MWW).
- B. The City is authorized to sell and distribute water it produces pursuant to Minnesota Statutes, Sections 456.29 and 456.37.
- C. Edina is authorized to purchase and receive water for the operation of its facilities pursuant to Minnesota Statutes, Section 444.075 and Section 456.30.
- D. The City produces water in quantities sufficient to satisfy the requirements of Edina and the City's obligations under this Agreement.
- E. The City has distributed and sold water to Edina for many years to the mutual benefit of the City and Edina.
- F. The City and Edina wish to memorialize this demonstrated history of mutual cooperation in the administration of water distribution and use by entering into this Agreement.
- G. Edina maintains its own water distribution system for the benefit of the residents of the northeast portion of Edina (Morningside).

NOW, THEREFORE, it is mutually agreed by the City and Edina as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01 Definitions. For the purposes of this Agreement, the following terms shall have the following meanings:

"Agreement" means this Agreement between the City of Minneapolis and the City of Edina.

"AWWA" means the American Water Works Association presently headquartered in Denver, Colorado.

"Base – Extra Capacity Method" – see cost of service methodology defined below.

“Billing Period” means the one year period from January 1 through December 31.

“Bulk Rate Adjustment Factor” means an adjustment to the Minneapolis Inside City Residential Rate based upon a rate study performed by the City and determined to be equal to sixty-two per cent (62%) of the Minneapolis Inside City Residential Rate. The Bulk Rate Adjustment Factor is subject to adjustment based upon subsequent rate studies that may be requested by either the City or Edina as provided in Section 5.02 of this Agreement.

“City” means the City of Minneapolis, a Minnesota municipal corporation and home rule city.

“Cost of Service Methodology” means the methodology to be used by the City to determine the cost of providing water to Edina. It refers specifically to the “Base – Extra Capacity Method” of allocating Cost of Service as described in the M1 Manual of Water Supply Practices published by the AWWA. As applied to this Agreement, “Cost of Service Methodology” defines the revenue requirements of the City on a utility basis as set forth in the M1 Manual and will be implemented using the cost of service analysis described in Section 6.02 in determining applicable water rates. The utility basis defines the costs of service as the sum of operations and maintenance costs, an allowance for depreciation and an allowance for return on capital. However, as used herein, the definition of “Cost of Service Methodology” limits the revenue requirements of the City to operations and maintenance costs plus an allowance for depreciation.

“Edina” means the City of Edina, a Minnesota municipal corporation.

“Master Meter” means the meter that is used to invoice Edina for water delivered by the City. The meter is located at the intersection of South France Avenue and West 40th Street.

“Minneapolis Inside City Residential Rate” means the published price charged by the City to residential customers who live within the city limits expressed in dollars per hundred cubic feet (HCF). The Minneapolis Inside City Rate shall be adjusted during each billing period to reflect any “seasonal rate,” “summer surcharge,” or “inclining block conservation rate,” that may be adopted by the City during the term of this Agreement. Such adjustments shall be determined based on the average monthly Water bill divided by the average monthly Water usage for residential customers located within the city limits or boundary.

“User” means other customers, municipalities or joint powers entities that contract with the City for the supply and distribution of Water.

“Water” means water at a point of delivery that conforms to the Federal Safe Drinking Water Act as well as all applicable state or other environmental regulations relating to potable Water.

**ARTICLE II
DISTRIBUTION AND SALE OF WATER**

Section 2.01 Distribution and Sale. The City shall sell, furnish and deliver to Edina from the water works system of the City for the use of Edina and its customers within the limits of the Morningside Area of Edina and to the limited extent hereinafter provided, outside those corporate limits, for a period of twenty (20) years in accordance with the terms and conditions of this Agreement. The City will submit to Edina on a monthly bill for Water used during each Billing Period. Edina will pay the bill within thirty-five (35) days of receipt of the bill.

Section 2.02 Standard of Quality. The City shall provide Water to Edina as meets the definition of Water set forth in Section 1 above. Should the quality of the Water deviate from the standard set forth in the definition of Water in Section 1 above, the City shall promptly inform Edina thereof and address the deviation within a reasonable period of time. Edina may review any Water quality data maintained by the City's Department of Public Works, Water Treatment and Distribution Division, upon one-week prior notice. In the event of operational or Water quality problems in the Edina Water system, both parties pledge to work cooperatively to resolve them in a timely manner.

Section 2.03 Measurement of Water Supplied. Water delivered pursuant to this Agreement shall be measured by the Master Meters to be furnished and maintained by the City. The Master Meters shall be subject to periodic inspection and testing by Edina and verified by the City according to the AWWA standards for frequency of testing, accuracy and tolerances of such Master Meters. The cost of testing shall be paid by Edina.

**ARTICLE III
OBLIGATIONS AND WARRANTIES**

Section 3.01 Obligations and Warranties of Edina.

- A. Edina shall construct, own, operate and maintain the water distribution system and storage facilities, downstream of the Master Meters that are necessary to supply Water to all its users.
- B. Edina shall make investments in, own and maintain and operate all facilities downstream of the Master Meters that are necessary to the metering, transmission, storage and distribution of Water received from the City.
- C. Edina's governing body has authorized entering into this Agreement.
- D. Edina will cooperate with the City in any litigation involving the City pursuant to the City being a party to this Agreement where the City and Edina are not adverse parties.

Section 3.02 Obligations and Warranties of the City.

- A. The City's Water Treatment and Distribution Facility is operational and has the capacity to supply Water to Edina to satisfy its needs at the MSP during the term of this Agreement.
- B. The City shall construct, own, operate and maintain water facilities upstream of the Master Meters that are necessary to provide sufficient Water to meet the demand of Edina for the duration of this Agreement.
- C. The City's governing body has authorized entering into this Agreement.
- D. The City will cooperate with Edina in any litigation involving Edina pursuant to Edina being a party to this Agreement where Edina and the City are not adverse parties.

**ARTICLE IV
TERM OF AGREEMENT**

Section 4.01 Duration. Unless terminated earlier as provided in Article VIII of this Agreement, this Agreement shall have an effective date of July 1, 2009, and conclude on June 30, 2028, at 11:59 p.m.

**ARTICLE V
WATER RATES AND SERVICES COSTS**

Section 5.01 Water Rate. The cost for Water sold by the City to Edina shall be based upon the Bulk Rate Adjustment Factor. The City shall notify Edina before January 1 of each year of any changes to the Minneapolis Inside City Residential Rate and the corresponding Bulk Rate Adjustment Factor. The City will notify Edina before October 1 of each year of the estimated Bulk Rate Adjustment Factor for the following three years.

Section 5.02 Changes to the Bulk Rate Adjustment Factor. The City or Edina may at any time, but no more often than bi-annually, request that the rate study performed by the City in February 2009, be updated. The requesting municipality (City or Edina) shall pay for the full cost of the updated rate study and will deliver copies of all the results to the non-requesting municipality. Any suggested changes to the Bulk Rate Adjustment Factor resulting from each rate study shall be incorporated into the Agreement as the new Bulk Rate Adjustment Factor unless both the City and Edina mutually agree to negotiate an amendment to the Agreement based upon the results of said rate study.

**ARTICLE VI
INDEMNIFICATION**

Section 6.01 Indemnification by Edina. Edina agrees to defend, indemnify and hold the City harmless from any and all claims or demands for damages arising out of Edina's operations or the actions or neglect of Edina's elected officials, officers, employees or agents,

relating to this Agreement or relating to the transport, use or disposal of Water supplied pursuant to this Agreement, or from the use, installation, maintenance and repair of Edina's facilities from the points of delivery of Water to Edina as set forth in this Agreement. The City shall give Edina prompt notice of any such action. The foregoing indemnification, and any liability assumed by Edina as a result thereof, shall be subject to the limits of liability and other provisions set forth in Minnesota Statutes, Chapter 466. Nothing in this Agreement constitutes a waiver of defenses or liability limits available to Edina under law.

Section 6.02 Indemnification by the City. The City agrees to defend, indemnify and hold Edina harmless for any and all claims based on the quality of the Water supplied to Edina by the City, which claims arise or may result from the City's operations or the actions or neglect by the City's elected officials, officers, employees or agents pursuant to this Agreement, or from the use, installation, maintenance and repair of the City's facilities inside of the City. Edina shall give City prompt notice of such action. The foregoing indemnification, and any liability assumed by City as a result thereof, shall be subject to the limits of liability and other provisions set forth in Minnesota Statutes, Chapter 466, and subject to the limitations on liability contained in Section 6.03 of this Agreement. Nothing in this Agreement constitutes a waiver of defenses or liability limits available to the City under law.

Section 6.03 Temporary Suspension of Service by City. Subject to the conditions and limitations set forth herein, when necessary to make repairs to, or changes in, its lines or system, the City may, without incurring any liability therefore, suspend service for such periods as may reasonably be necessary. The City agrees to provide Edina with at least two weeks advance notice of the suspension in service and the repairs and changes to be made, and to cooperate with Edina to adjust the daily delivery schedule in anticipation of the suspension of service. The parties recognize that such temporary service interruptions may involve restrictions that apply to all City customers. In accommodating the needs of Edina during periods when service is suspended, Edina shall receive the same consideration as given to other City customers. The City shall not incur any liability for interruptions in service which result from its failure to supply Water due to the inability to secure processing materials, breakdown or damage to processing, pumping, transmission or distribution facilities, acts of war, sabotage, work stoppage, labor disruptions or conditions or circumstances beyond the authority of the City to control.

Section 6.4 Emergency Suspension of Service by City. In the event an emergency occurs which results in the suspension of the delivery of Water by the City to Edina, the City will notify Edina as soon as practical of the nature of the emergency, the City's plan to correct the suspension of Water service necessitated by the emergency and an expected schedule for repairs and resumption of Water service.

ARTICLE VII AMENDMENT OR ASSIGNMENT OF AGREEMENT

Section 7.01 Assignment or Transfer of Interest. Edina shall not assign any interest in the Agreement and shall not transfer any interest in the same, either by assignment or novation, without the prior written approval of the City. Edina shall not subcontract any Water services under this Agreement to third parties without prior written approval of the City Department Contract Manager designated herein.

Section 7.02 No Resale of Water. Edina shall not sell or transfer Water to any User or other entity or individual without the written permission of the City. This prohibition shall not apply to the transfer of Water by Edina to its residents, occupants, and business operators located in the Morningside Area in the ordinary course of business by Edina.

Section 7.03 Amendment, Modification or Waiver. No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or their duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by either party of any breach or default of this Agreement shall not impair or prejudice any right arising from any other breach or default.

Section 7.04 Replaces Previous Agreements. This Agreement supersedes all other Water service agreements, whether written or oral, and any previous understandings between Edina and City.

ARTICLE VIII CANCELLATION OR TERMINATION

Section 8.01 Cancellation. Either the City or Edina may cancel or terminate this Agreement for any reason without cause upon delivery of written notice to the other party 365 days prior to the date of cancellation or termination.

Section 8.02 Termination Upon Default or Breach. Either the City or Edina may terminate this Agreement if either party determines that the other is in default of, or has breached any of the terms of provisions of this Agreement. The nondefaulting party shall have the right to terminate the Agreement upon delivery of written notice to the defaulting party with notice that the event of default shall be cured within forty-five days or such other reasonable time period as the City and Edina may determine. For the purpose of this Agreement, Event of Default shall include, but not be limited to:

- A. Failure by Edina to remit to the City prompt payment upon receipt of an invoice pursuant to Minnesota Statutes, Section 471.425.
- B. Failure by the City to deliver Water to Edina resulting in a breach of public safety, but subject to the limitations provided in Section 6.03 of this Agreement.

Section 8.03 Remedies. If an Event of Default has not been cured within forty-five (45) days or such other reasonable period of time after the written notice as required in Article IX has been delivered, then the City and Edina may proceed as follows:

- A. For nonpayment by Edina for Water provided and invoiced by the City, the City shall have the right to seek payment by any lawful means and as provided for in this Agreement, at the City's discretion including obtaining and enforcing money judgments and the levying of taxes against Edina for amounts owed and the termination of the delivery of Water service.

Section 10.02 Nondiscrimination. Edina will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Section 10.03 Disability Compliance Requirements. All parties that enter into contracts with the City are required to abide by the regulations of the U.S. Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination against individuals with disabilities. Edina will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires parties doing business with the City to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship. Contractors also agree to post in a conspicuous place, accessible to employees and applicants, notices of their policy on nondiscrimination. The above requirements also apply to the Minnesota Human Rights Act, Minnesota Statutes Chapter 363A.

In the event of Edina's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be canceled, terminated, or suspended, in whole or part, and Edina may be declared ineligible by the Minneapolis City Council from any further participation in City agreements in addition to other remedies as provided by law.

ARTICLE XI MISCELLANEOUS

Section 11.01 Data Practices. Edina agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. Edina must immediately report to the City any requests from third parties for information relating to this Agreement. The City agrees to promptly respond to inquiries from Edina concerning data requests. Edina agrees to hold the City, its officers, and employees harmless from any claims resulting from Edina's unlawful disclosure or use of data protected under state and federal laws.

Section 11.02 Retention and Inspection of Records. Edina shall retain all records pertinent to expenditures incurred under this Agreement for a period of the later of six years after the termination date or six years after the resolution of all audit findings. All Edina records with respect to any matters covered by this Agreement shall be made available to the City or its designees at any time during normal business hours, upon reasonable notice as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

Section 11.03 Conflict of Interest/Code of Ethics. By signing this Agreement, Edina agrees that it will not represent any other party or other client which may create a conflict of

interest in this Agreement with the City. If Edina is unclear if a conflict of interest exists, Edina will immediately contact the City Department of Public Works Contract Manager and ask for an interpretation.

In so far as it relates to its relationship with the City created by this Agreement, Edina agrees to comply with the City's Code of Ethics, City Code of Ordinances, Title 2, Chapter 15. Edina certifies that to the best of its knowledge all City employees and officers participating in this Agreement have also complied with Title 2, Chapter 15 of that Ordinance as it applies to the relationships between the City and Edina created by this Agreement. Compliance with the City's Code of Ethics by Edina will be in its potential role as an "interested person," "lobbyist," and not as a "local official" or "local employee" (except to the extent that an Edina representative or member of its governing body is already a City official or employee). It is agreed by the City and Edina that any violation of the Code of Ethics constitutes grounds for the City to void this Agreement. All questions relative to this section shall be referred to the City and shall be promptly answered.

Section 11.04 Intellectual Property and Ownership of Materials. Neither the City nor Edina anticipates any intellectual property will result from the delivery of the services provided for pursuant to this Agreement. However, any finished or unfinished data, studies, surveys, maps, reports or other materials resulting from this Agreement shall become the property of the City upon request by the City.

Section 11.05 Applicable Law. The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota.

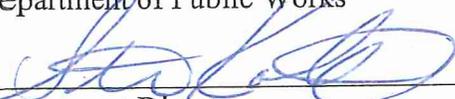
(Signature page follows.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

WITNESSETH:

CITY OF MINNEAPOLIS
A Municipal Corporation

Department Responsible for
Administering This Agreement
Department of Public Works

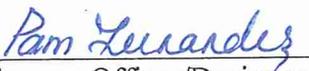


Department Director

Approved as to Form:



Assistant City Attorney

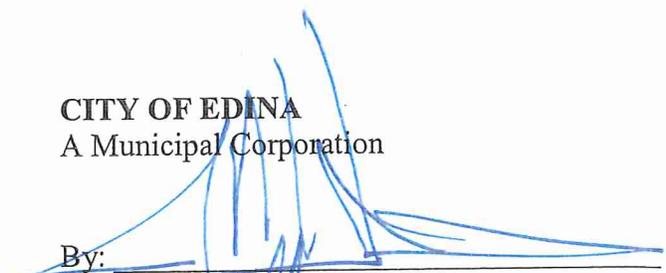


Finance Officer/Designee

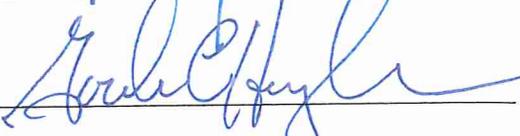
7.31.09

Date

CITY OF EDINA
A Municipal Corporation


By: _____

Its _____


By: _____

Its City Manager
