



To: Mayor and Council

Agenda Item #: IV.H.

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

Action

Discussion

Date: 3/19/13

Information

Subject: Memorandum Of Understanding To Retain Professional Services With The Joint Waters Commission

Action Requested:

Approve the Memorandum of Understanding (MOU) to retain professional services for the Minneapolis Water Rate Review with the Joint Water Commission

Information / Background:

The City of Edina is a wholesale customer of Minneapolis water and has been for many years. In 2009, the City of Edina approved the attached agreement with the City of Minneapolis that allows Minneapolis to periodically review their rate structure. The City of Minneapolis is currently conducting a Water Rate Review for all wholesale customers including Edina, the Joint Water Commission, Bloomington, and the Metropolitan Airport Commission (MAC). Each of these entities would like to hire a single professional services Contractor to perform the review of the financial model that is being developed by the City of Minneapolis so that we can do our due diligence in understanding the differences in the new model. There will be efficiencies created by all of these entities working together. Tasks 1-3 of the attached proposal from Environmental Financial Group will be split between the four agencies mentioned above but the 4th task, which is to evaluate the model and how it individually affects each agency will be borne by the respective agency.

Staff recommends approval of the attached MOU which will simply guarantees that the City of Edina will reimburse the Joint Water Commission for our share of Tasks 1-3 (\$8,225) and all of Task 4 (\$8,750).

Memorandum of Understanding (MOU)
To
Retain Professional Services
For
Minneapolis Water Rate Review
Between the
Joint Water Commission
and the
City of Edina

WHEREAS, the City of Minneapolis operates a municipal water system known as Minneapolis Water Works (MWW); and

WHEREAS, the City of Minneapolis has for many years sold water to the Joint Water Commission of Crystal, Golden Valley and New Hope (hereinafter JWC) for distribution; and,

WHEREAS, the City of Minneapolis has for many years also sold water for distribution to additional suburban municipal customers including, but not limited to Edina and Bloomington as well as the Metropolitan Airports Commission (MAC); and

WHEREAS, the City of Minneapolis is proposing changes to the water cost of service methods, rate structures and revenue requirements in an effort to align all of the whole sale water contracts with a uniform cost of services methodology; and

WHEREAS, the JWC, Edina, Bloomington and the MAC wish to retain consultant services for the purposes of reviewing the proposed model and methodology, and to provide assistance with contract negotiations; and,

NOW THEREFORE, the parties express their mutual understandings and commitments as follows:

1. Consultant and Scope of Work Defined

The JWC agrees to retain the services of Environmental Financial Group (EFG) and that the JWC will authorize EFG to perform the tasks as set forth in Exhibit A (EFG Proposal dated 7 March 2013).

2. Cost and Payment

Reference Detailed Budget of Exhibit A, Tasks 1-3: The Cost to the City of Edina will be equal to the total of Tasks 1-3 divided by the number of entities participating in this Memorandum of Understanding. In addition, the City of Edina will pay for Task 4, Customer Specific Analysis and Communications in the amount not to exceed \$8,750.

The JWC shall invoice the Edina for Tasks 1-3 upon receipt of the MOU. The JWC will invoice Edina for Task 4 upon completion of the work by EFG.

3. Timeline

The participants who are a party to this MOU understand that time is of the essence. In order to comply with the review process set by the MWW, the consultant will begin work beginning the week of March 18, 2013 and will complete Tasks 1-3 by May 1, 2013. It is anticipated that Task 4 will be completed by June 1, 2013.

FOR THE JOINT WATER COMMISSION

BY:

Thomas D. Burt, Chair

FOR THE CITY OF EDINA

BY:

City Manager

**ENVIRONMENTAL
FINANCIAL
GROUP
INC**

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7 March 2013

Mr. Tom Burt, Chair
Joint Water Commission
c/o City of Golden Valley
7800 Golden Valley Road
Golden Valley, MN 55427

Minneapolis Water Rate Review

Dear Mr. Burt:

Environmental Financial Group, Inc. (“EFG”) is pleased to submit to you and the Joint Water Commission (“JWC”) this letter proposal to conduct a review of proposed City of Minneapolis (“City”) water rates and to participate in related discussions and negotiations.

Project Understanding

Over the past several weeks, the JWC has been participating in meetings with representatives from the City. These meetings were designed to introduce the JWC and other City wholesale customers to proposed changes in water cost of service methods, rate structures, and revenue requirements. It is apparent that this effort by the City to align all of the wholesale water contracts with a uniform cost of service methodology will involve detailed discussions and amendments to existing contracts.

The City has proposed an aggressive schedule to review this proposal, negotiate any necessary contract amendments, and integrate the results into the City’s 2014 budget process. The schedule calls for the release of the cost of service computer spreadsheet model on or about April 1, 2013, one-on-one meetings commencing in mid-April, and the conclusion of negotiations on or about May 1, 2013. All of these activities would take place with the model set-up to reflect audited 2012 financial results. The resulting wholesale rate adjustment factors would then be applied to 2014 budgeted expenses to derive indicated rate increases that would be effective January 1, 2014.

Within the next few weeks, City audited financial statements will be available for review. At that time, initial due diligence activities can begin as a lead-up to the April 1 release of the rate model. This review will require a

concentrated work effort to complete all reviews and analyses prior to anticipated one-on-one customer meetings beginning in mid-April.

The JWC and several other wholesale cities have expressed an interest in conducting a detailed review of the rate model, indicated 2012 wholesale rate factors, and financial impacts of proposed changes in the City's cost of service methods. As a result, the JWC has requested that EFG submit a proposal to conduct these services and identify those costs that would be common to all customers and those which would be customer-specific so that the JWC might manage a single consulting contract benefitting multiple customer cities.

Goals

The goals of this Review are as follows:

- Conduct detailed due diligence reviews of the City water rate proposal and cost of service analysis.
- Attend one-on-one meetings with the City.
- Compare and contrast existing wholesale water purchase agreements with City-proposed revenue requirements, cost of service methods, and other business terms and conditions affecting the cost of City water.
- Evaluate the City's inside-city water rate structure and develop benchmark concepts to allow the future indexing of wholesale water rates with City inside-city rates.
- Monitor the City's 2014 budget process and assess the financial impacts on the JWC and with other participating city wholesale customers.

Scope of Services

The following tasks are proposed to reach these goals and objectives.

Task 1 | Due Diligence

EFG shall conduct a detailed due diligence of the City's water enterprise fund and 2013 Water Rate Study. EFG shall meet with City Water and Finance department staff to collect and discuss financial statements, MERF allocation studies, depreciation and fixed asset schedules, General Fund service cost allocations, capital improvement plans, unaudited management statements, and other information related to the cost of providing water service to the City's wholesale water customers.

EFG shall conduct a detailed audit of the City's computer spreadsheet rate model. This audit shall include: precedent and dependent cells, data validity, program logic, error-checking, and other spreadsheet audit functions.

EFG shall analyze the cost of service methods employed in the analysis and compare and contrast these with AWWA Manual M1 (which is explicitly referenced in the JWC Water Purchase Agreement.) EFG shall pay particular attention to the use of a "residual cost" approach to determining inside-city revenue requirements.

EFG shall reconstruct 2012 revenue requirements that were used as a target rate year for the 2013 Water Rate Study. This will involve the development of four distinct revenue requirements methods as used by the City and its consultants.

Task 2 | Inside-City Rate Benchmark and 2014 Budget

EFG shall analyze the City's "Mayor's Recommended" budget proposal and assess its financial impact on the JWC.

EFG shall analyze the City's inside-city water rate structure and assess the ability to use such rates as a benchmark for the future indexing of wholesale rates. EFG shall identify alternatives to the City's proposal to use an average cost per hundred cubic feet as such a benchmark.

Task 3 | Rate Review Report and Documentation

EFG shall prepare a detailed letter report documenting the analysis, methods, conclusions and recommendations from Task 1 and 2 activities.

EFG shall prepare additional memoranda, talking points, and negotiating notes as necessary.

Task 4 | Customer Specific Analyses and Communications

EFG shall analyze the customer city water purchase and usage records to assess peak-to-average ratios and develop a negotiating strategy for discussions with the City.

EFG shall analyze the city's Minneapolis Water Purchase Agreement and compare and contrast the business terms and conditions as against those proposed by the City. EFG shall also estimate the financial impact of the various proposed methods and refinements.

EFG shall participate in the following meetings. EFG will produce presentation materials, handouts, as required and requested.

1. Two meetings with customer city representatives.
2. Two one-on-one meetings between customer city and City representatives.

Schedule and Budget

EFG understands and accepts that the schedule to complete these services will be largely dictated by others. EFG has made this project its first priority. Assuming a April 1, 2013 release of the cost model, Tasks 1 and 2 are proposed to be completed by April 15, 2013, prior to planned one-on-one customer meetings.

Mr. Tom Burt, Chair Joint Water Commission
Minneapolis Water Rate Review

Tasks 1-3 services are proposed to be conducted for a total fee not to exceed \$32,900. Per city services (Task 4) are proposed to be conducted for *up to* \$8,750 per city depending on the number of meetings required. Invoices will be submitted monthly and will itemize costs related to each participating customer city. No other EFG personnel will be assigned to this work without prior approval.

We appreciate the opportunity to submit this proposal to the Department and look forward to your favorable response. Thank you.

Very Truly Yours,
ENVIRONMENTAL FINANCIAL GROUP INC



Scott E. Harder, President and CEO

cc: Jeannine Clancy, City of Golden Valley

Minneapolis Water Rate Review - Detailed Budget

Minneapolis Water Rate Review - Detailed Budget			
	Scott Harder	Admin Asst	TOTALS
Hourly Rate	\$ 175.00	\$ 45.00	

TASK 1 - Due Diligence

Task 1.1 Data and Document Collection and Review	16	-	\$ 2,800
Task 1.2 Methodology Analysis	24	-	\$ 4,200
Task 1.3 Revenue Requirements Analysis	32	-	\$ 5,600
Task 1.4 Rate Model Error Checking	32	-	\$ 5,600
SUBTOTAL LABOR	104	-	\$ 18,200
Travel[1]			\$ -
Printing, courier, communications			\$ -
Subtotal Other Direct Costs			\$ -
			<u>SUBTOTAL \$ 18,200</u>

TASK 2 - Inside-City Rate Benchmark and 2014 Budget Analysis

Task 3.1 Inside-City Rate Benchmark Options Analysis	24	-	\$ 4,200
Task 3.2 Minneapolis 2014 Budget Review and Rate Impact	24	-	\$ 4,200
SUBTOTAL LABOR	48	-	\$ 8,400
Travel[1]			\$ -
Printing, courier, communications			\$ -
Subtotal Other Direct Costs			\$ -
			<u>SUBTOTAL \$ 8,400</u>

TASK 3 - Rate Review Report and Documentation

Task 3.1 Rate Review Letter Report	24	-	\$ 4,200
Task 3.2 Memoranda, other written communications	12	-	\$ 2,100
SUBTOTAL LABOR	36	-	\$ 6,300
Travel[1]			\$ -
Printing, courier, communications			\$ -
Subtotal Other Direct Costs			\$ -
			<u>SUBTOTAL \$ 6,300</u>
			<u>DUE DILIGENCE TOTAL \$ 32,900</u>

TASK 4 - Customer-Specific Analyses and Communications

Task 5.1 Peaking Factor Analysis and Financial Impact	24	-	\$ 4,200
Task 5.2 Customer city agreement review	8	-	\$ 1,400
Task 5.3 Minneapolis Customer Meetings and Preparation (2)	12	-	\$ 2,100
Task 5.4 Client Meetings and Preparation (2)	6	-	\$ 1,050
SUBTOTAL LABOR	50	-	\$ 8,750
Travel[1]			\$ -
Printing, courier, communications			\$ -
Subtotal Other Direct Costs			\$ -
			<u>CUSTOMER CITY TASK TOTAL \$ 8,750</u>
			(PER CITY)

[1] Customary travel expenses are included in hourly rate.

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.

- B. For interruption of Water service that results in a public health or safety crisis, but subject to Section 6.03, Edina may obtain substitute Water service and obtain and enforce a money judgment against the City.
- C. By either the City or Edina, termination of the Agreement upon delivery of an additional written notice forty-five (45) days prior to the termination date.

No remedies are waived by failure to assert for any previous default. Provided, however, the City and Edina agree that prior to initiation of termination the parties will be required to participate in mediation, in good faith with the goal of resolving whatever conflict or issue that would otherwise give the right to terminate as provided herein. Should the parties agree that mediation has reached an impasse, or if mediation has commenced and six months have passed since its initiation without resolution, then the party seeking to terminate this Agreement may do so upon forty-five (45) days written notice.

ARTICLE IX NOTICES

Whenever written notice is required under the terms of this Agreement, it shall be sent to the following "Contract Manager":

For the City:

Shahin Rezania
Director Water Treatment and Distribution
Department of Public Works
City of Minneapolis
250 South 4th Street, Room 206
Minneapolis, MN 55415

For Edina:

Wayne Houle
Director of Engineering and Public Works
City of Edina
4801 West 50th Street
Edina, MN 55424

Notice shall be delivered in person, by courier or by U.S. Postal Service, first class postage. For deliveries by U.S. Postal Service, first class postage, deliveries shall be assumed to have been received three (3) days after deposit in a U.S. mailbox.

ARTICLE X CIVIL RIGHTS AND NONDISCRIMINATION

Section 10.01 Equal Opportunity Statement. Edina agrees to comply with the provisions of all applicable federal and state statutes and regulations pertaining to civil rights and nondiscrimination including, without limitation, Minnesota Statutes, Section 181.59 and Chapter 363A incorporated herein by reference.

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.

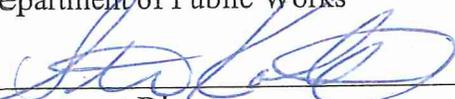
(Signature page follows.)

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

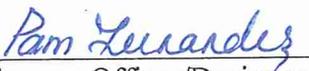


Department Director

Approved as to Form:



Assistant City Attorney

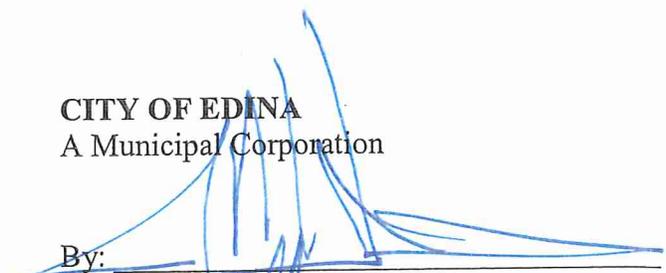


Finance Officer/Designee

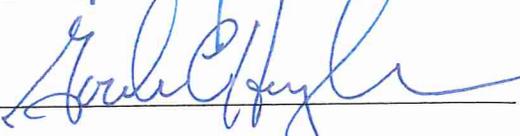
7.31.09

Date

CITY OF EDINA
A Municipal Corporation


By: _____

Its _____


By: _____

Its City Manager
