



CITY OF MARSHALL

COMMISSION AGENDA INFORMATION SHEET:

MEETING DATE: September 10, 2015

PROJECT: Consider and act on renewal of a five year Water Supply Contract with the City of Scottsville, Texas. (Public Services Director)

DESCRIPTION: This is the first renewal of a water supply contract initiated with the City of Scottsville in 2010, and only supplies a small segment they acquired from the Leigh Water Supply Corporation; the segment is not interconnected with the balance of Scottsville's water distribution system. This segment of their system supplies approximately 30 customers on the old Leigh Water Supply line and is located east of the Loop and south of FM-1998. The average monthly billing volume for this small segment is approximately 150,000 gallons.

The only changes from the 2010 contract, which used updated language drafted by our City Attorney, are the dates - all other wording remains unchanged.

Section 3 – they are billed the same rate as in city customers (which is the same rate for all of our wholesale customers), but the contract includes a 10% overhead service charge to cover our additional cost in verifying compliance and certification of flow rates and monthly billing.

Section 12-A & B - with regard to the segment of their system that we supply, we have been careful to provide language that does not allow the City of Scottsville to provide water to additional industrial users, nor resale to other public or water entities without our prior approval.

Section 13-G - does not allow the City of Scottsville in interconnect the segment we serve with any other portion of their system – without our prior written approval.

Section 18 - Term of the contract is for a 5 year period, with a provision for two additional 5 year periods, for a maximum term of 15 years.

*As our old wholesale contracts expire, they are being replaced with the attached format. We are currently working on new contracts with three others: Cypress Valley, Gill, and Leigh Water Supply.

COST:

N/A – Revenue Source; approximately \$7,900 a year.

FUNDING:

Acct. Name & No
N/A

Original Budget
N/A

RECOMMENDED

ACTION:

Consider approval of the attached Water Supply Contract with the City of Scottsville, Texas.

CITY CONTACT: J. C. Hughes, Public Services Director

ATTACHMENTS:

City of Scottsville, Texas Water Supply Contract 2015 – 2020

cc: File

STATE OF TEXAS '

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HARRISON '

WATER SUPPLY CONTRACT – CITY OF SCOTTSVILLE, TEXAS
SEPTEMBER 2015 – AUGUST 2020

This Water Supply Contract (hereinafter called this Agreement) is made and entered into this 10th day of September, 2015, by and between the City of Marshall, Texas (hereinafter called the City), a municipal corporation, and the City of Scottsville, Texas a municipal corporation, (hereinafter called Scottsville) acting through its duly authorized representative:

WITNESSETH:

WHEREAS, the City owns and operates a water supply and water distribution system with sufficient supplies of water capable of serving the needs of water users within Scottsville’s service area up to the maximum quantity and diversion rate specified in this Agreement; and,

WHEREAS, the City owns and operates a water supply and water distribution system with sufficient supplies of water capable of serving the needs of water users within Scottsville’s service area up to the maximum quantity and diversion rate specified in this Agreement; and,

WHEREAS, Scottsville has acquired certain existing water lines, connections, and water costumers from Leigh Water Supply Corporation (hereinafter called Leigh Water); and,

WHEREAS, the City of Marshall has previously supplied water to the existing connection for Leigh Water Supply Corporation and Scottsville now desires to purchase water through the

existing connection to serve those same on the same line segment and previous Leigh Water Supply Corporation customers; and

WHEREAS, the parties concur that the terms, conditions and considerations stated herein are fair, just and reasonable and will mutually benefit the parties and serve the public interest; and,

WHEREAS, the City has agreed to sell Scottsville water for the use of previous Leigh Water customers and future residential or commercial customers on that existing segment of the Leigh Water System; and

WHEREAS, the parties fully understand and agree that this Water Supply Contract is only intended to serve that previously existing and served Leigh Water System segment recently acquired by Scottsville and that all Sections herein below are intended to only address that existing Leigh Water System segment, and for the considerations and upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises, covenants and considerations set forth herein, the parties hereto agree as follows:

ARTICLE I
SALE TO SCOTTSVILLE

The City agrees to sell to Scottsville and Scottsville agrees to purchase from the City at the Points of Delivery specified in Article V hereof, treated water in the quantities and subject to the terms and conditions as set forth in this Agreement.

ARTICLE II
DEFINITIONS

- a. Agreement. This Agreement and any amendments thereto.

- b. Maximum Daily Rate of Flow. The highest daily rate of flow of water delivered to Scottsville or Leigh Water Supply by the City on any day within the five water years immediately preceding the determination.
- c. Maximum Monthly Quantity. The maximum quantity of water which the City is obligated to deliver to Scottsville under the terms of this Agreement during any calendar month. The Maximum Monthly Quantity is 300,000 gallons per month.
- d. Monthly Direct Costs. A monthly charge to recover costs which are solely attributable to Scottsville, such as meter calibration or repair, additional capital expenditures for facilities chargeable to Scottsville which are not recovered by lump sum payment, and other appropriate direct charges.
- e. TCEQ. The Texas Commission on Environmental Quality or any successor state agency.
- f. Total Maximum Diversion Rate. The maximum rate at which the City is obligated to deliver water to Scottsville under the terms of this Agreement, expressed in gallons per minute, at all Points of Delivery combined. The Points of Delivery and the maximum diversion rate for each Point of Delivery are identified in Article IV.
- g. Water. Treated water, at the Point of Delivery, meeting the standards of treatment established by the Texas Department of Health, the TCEQ, or any successor or other state agency of appropriate jurisdiction, and meeting the requirements of the Federal Safe Drinking Water Act, Title 42 U.S.C.A.' 300F.
- h. Water Year. The City's Fiscal Year (January 1 of any year through December 31 of the following year).

ARTICLE III
COMPENSATION

The cost of water supplied to Scottsville shall be based upon the water rate schedule of the City of Marshall for residential customers inside the City limits of Marshall as is adopted and may hereafter be amended by the City Commission (excluding NORIT, Inc.) plus a overhead service charge of 10%; however, subject to all conditions, restrictions and limitations imposed upon business or wholesale customers purchasing water from the City. In addition, Scottsville shall pay any Direct Costs which are solely attributable to Scottsville, such as meter calibration or repair, additional capital expenditures for facilities chargeable to Scottsville which are not recovered by other appropriate direct charges.

ARTICLE IV
POINTS OF DELIVERY AND MAXIMUM DIVERSION RATES

The City's obligation to deliver water to Scottsville is limited to the Maximum Monthly Quantity and Maximum Diversion Rate. The Points of Delivery and their associated maximum diversion rates for water delivered and taken under this Agreement shall be as follows:

"Point of Delivery" shall be the existing 4" connection between the City system and Scottsville's system just northeast of the intersection of FM 1998 and Loop 390. The maximum diversion rate at the Point of Delivery shall be 60 gallons per minute, unless prior written approval on a temporary basis is granted by the City; temporary defined as not exceeding a period of 90 consecutive days.

ARTICLE V
TITLE TO AND RESPONSIBILITY FOR WATER

- a. Title to, possession and control of water shall remain in the City to the Point of Delivery that are specified in Article IV herein, where title to, possession and control shall pass to Scottsville.
- b. The City shall be in exclusive control and possession of the water deliverable hereunder until the same shall have been delivered to Scottsville at the Point of Delivery, at which point Scottsville shall be in exclusive control and possession thereof and solely responsible for any damage or injury caused thereby.

ARTICLE VI
METERING FACILITIES

- a. The City shall furnish and install the metering equipment and all related telemetry and controls that the City determines to be appropriate for the measurements and controls necessary under this Agreement. The City shall operate, maintain, repair, and calibrate all metering equipment, including telemetry, installed by the City at the Point of Delivery. All costs of such operation, maintenance, repair, and calibration of metering equipment shall be billed to Scottsville as Direct Costs, as provided for herein.
- b. The properly authorized officers, agents and representatives of the City shall at all times have free access to the metering equipment for the purpose of shutting off water for the failure to pay the water rates; for the purpose of reading the registration of said meters; to examine, shut off and test the same to ascertain whether or not they are in good condition and repair;

and to make such repairs upon the same as may be necessary or requested in writing by the City.

- c. The City shall, at reasonable times, provide Scottsville with access to all metering equipment, including any associated telemetry signals, used in making any measurements under this Agreement. The City may test the metering equipment on its own initiative, and shall test such metering equipment for accuracy upon request by Scottsville, which request shall not be made more frequently than once in any twelve-month period for each meter. In the event the percentage of accuracy of such metering equipment is found as the result of any testing, whether requested by Scottsville or performed by the City on its own initiative, to be within the tolerance of two percent (2%), such meter shall be deemed to have correctly measured the quantity of water taken hereunder. If, however, upon any test of the percentage of the accuracy tolerance, such tolerance is found to be in excess of two percent (2%), then such meter shall be adjusted at once to register correctly and accurately, and the amount paid by Scottsville to the City for the period from the last test on that meter until the current test (but for no more than three months) shall be adjusted by debit or credit in accordance with the percentage of inaccuracy found by such test.
- d. In the event such metering equipment is out of service or out of repair and the amount of water taken cannot be ascertained or computed by the reading thereof, the amount of water taken during this period shall be estimated and agreed upon by Scottsville and the City, unless the parties otherwise agree, based upon the amount of water pumped in the corresponding period of the previous year (including any unaccounted for loss of water), as shown in existing records.

ARTICLE VII
INITIAL DELIVERY

Commencement of the delivery of water by the City to Scottsville under the terms of this Agreement shall be immediately upon the Effective Date of this Agreement. Unless agreed to otherwise in writing by the parties hereto, Scottsville shall commence receiving water under this Agreement on the 10th day of September, 2015.

ARTICLE VIII
BILLING AND PAYMENT

- a. For purpose of billing, the City shall read the metering equipment provided for herein on or about the same day of each month (or more frequently if necessary as determined by the City) and shall report the total quantity of water taken (or rate of take thereof) for each meter during the preceding month to Scottsville on or before the 7th day after reading the meter each calendar month.
- b. The City shall render to Scottsville at the address shown herein (or such other place as designated by Scottsville) on or before the 7th day after reading the meter each month a statement showing, the following information:
 1. The date and reading of each meter at the beginning and at the end of the period for which the statement is rendered; the quantity of water diverted at each meter;
 2. The total amount due for the water consumed;
 3. The total amount due on or before the due date of the bill;

4. The amount of the charge or credit, if any, applicable to past undercharge or overcharge as determined by the true-up process.
5. Such statement shall be due and payable at the City's offices in the City Hall (or at such other place as designated by the City) on or before the thirtieth (30th) day after the receipt of such statement.

ARTICLE IX
CANCELLATION FOR NONPAYMENT

In the event that Scottsville, without good cause, fails to make any payment to the City when due hereunder, the City may, in addition to any other remedy available to it by law, cancel this Agreement, by written notice of such nonpayment and statement of the City's election to cancel this Agreement by reason thereof delivered to Scottsville no less than thirty (30) days before the date for cancellation specified in such notice, provided that the nonpayment with respect to which notice has been given shall not be cured by the date thus specified in such notice.

ARTICLE X
REPORT ON SERVICE CONNECTIONS

Scottsville agrees to monthly provide the City a record of the number of service connections installed on that existing segment of the Leigh Water System, in any twelve month period to accompany monthly payments made by Scottsville to the City.

ARTICLE XI
INDEMNITY BY SCOTTSVILLE

- a. Scottsville agrees that the use and resale of the treated water provided for in this Agreement shall be at the sole risk of Scottsville and Scottsville agrees to indemnify and hold the City

harmless from any and all claims for damages to property arising out of or in any way connected with the use of said water by Scottsville or any other person.

- b. Scottsville agrees to indemnify and hold the City harmless from any and all claims for damages, loss of life, injury or illness to any person or persons or for damages to property arising out of the installation or maintenance of Scottsville's water distribution system, including damages to the City's system occasioned by the installation, maintenance, or operation of Scottsville's system.
- c. The City shall not be responsible in damages for any failure to supply water or for any interruption of the supply, unless caused by the gross negligence of the City.
- d. Scottsville agrees to save and keep the City harmless from all damage of every kind, nature and description which may arise as a result of the making and performance of this Agreement.

ARTICLE XII
RESALE OF WATER

Scottsville shall not permit the use of any of the water covered by the terms of this Agreement for any of the following purposes:

- a. Industrial use except for industries already being served by Scottsville on the date of this contract or agricultural crop irrigation;
- b. Resale to a municipality, public or private water distribution company, water district, or rural water supply corporation without prior written authorization by the City;

- c. Save and except within Scottsville’s certificated area of convenience and necessity, supply water to any customer inside the corporate limits or extraterritorial jurisdiction of the City without prior written authorization by the City.

ARTICLE XIII
SCOTTSVILLE’S OBLIGATIONS

- a. Scottsville shall comply with all rules and regulations of the Texas Department of Health and the TCEQ (or their successor agencies) as the same may pertain to the installation and operation of public water distribution systems or disposal facilities.
- b. Scottsville shall comply with any and all sanitary regulations, both present and future, of the Texas Department of Health, the TCEQ, or any other State agency of appropriate jurisdiction.
- c. Scottsville shall, for the previous Leigh Water customers serviced under this agreement, comply with the provisions of any water conservation plan formally adopted by the City Commission of Marshall by Ordinance for implementation within the City’s corporate boundaries for the City’s residential customers or any water conservation plan adopted by an administrative agency of the State of Texas applicable to Scottsville or Scottsville’s service area, including implementation of any necessary rationing plan or program which the City adopts for implementation within the City’s corporate boundaries. In lieu of adopting the exact same rationing plan or program, for the previous Leigh Water customers serviced under this agreement, as the City, Scottsville may implement an alternative rationing plan provided

said rationing plan will conserve the same or a greater amount of water as under the plan implemented by the City.

- d. Scottsville shall install and maintain an air gap separation or an approved backflow assembly device at the point of delivery (service connection). The backflow preventer must be certified for operation upon installation and annually tested by a certified backflow assembly tester. Scottsville shall provide testing results to the City for review and audit within five days of the date of receiving the report.
- e. Scottsville shall notify the City as promptly as possible of all emergency and other conditions which may directly or indirectly affect the quality of the water received hereunder.
- f. From and after the date of this Agreement, for the previous Leigh Water customers serviced under this agreement, Scottsville shall comply with all provisions of the City's Plumbing and Fire Codes applicable to water supply and distribution which are presently in effect or which shall hereafter be adopted.
- g. Scottsville fully understands and agrees to not interconnect the existing Leigh Water segment and customers with any other portion of the Scottsville water system, without prior written approval of the City; interconnection of the Leigh Water segment with any other segment or system, without prior written approval of the City, will result in immediate termination of water delivery by the City.

ARTICLE XIV
SUSPENSION OF DELIVERY

The City shall have the right to make inspections and require tests of the quality of the water supply within Scottsville's Transmission System. In the event the City shall determine that water

from Scottsville's system is flowing back into the City's pipes or other delivery facilities or that the condition of Scottsville's system or other facilities creates a hazard to the health, safety or welfare of the water consumers of the City, the City shall have the immediate right to suspend delivery of water as provided herein and to disconnect any connections with Scottsville's system until the City is satisfied that such conditions have been corrected.

ARTICLE XV
WATER QUALITY

The City makes no warranty, express or implied, as to the suitability or quality of the water to be taken under the terms hereof. The City agrees that the quality of the water delivered by it to Scottsville will meet or exceed the standards established by the regulations of the Texas Department of Health, the TCEQ, and the provisions of the Safe Drinking Water Act, Title 42 U.S.C.A., Section 300F, as administered by the United States Environmental Protection Agency. The City shall take such steps as shall be required to bring all water delivered to Scottsville under the terms of this Agreement into compliance with such regulations and laws.

ARTICLE XVI
PRIORITY

In the event the City finds the necessity to reduce water supply to its own users, the same pro rata reduction may be effected to Scottsville. The City agrees to give Scottsville verbal notice of such reduction and the terms of such reduction as soon as practical, but no later than twenty-four (24) hours after such reduction, followed by written notice within five (5) working days.

ARTICLE XVII
FORCE MAJEURE

In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement, other than the obligation to make payment of amounts accrued and due hereunder at the time thereof, it is agreed that upon such party's giving notice in full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the cause relied upon, then the obligations of the party giving such notice, so far as they are affected by such cause, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all responsible dispatch. The term "force majeure" as employed herein shall mean interferences not reasonably within the control of the party claiming force majeure, arising out of acts of God, governmental action, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, and restraints of government and people, civil disturbances, explosions, major breakage or accidents to machinery, conduits and/or pipelines, partial or entire failure of the supply of water, extreme and unforeseeable delays in transportation and any other causes, whether of the kind enumerated or otherwise, not reasonably within the control of the part claiming suspension.

ARTICLE XVIII
TERM

- a. This Agreement shall be a binding obligation on the parties hereto from and after the execution hereof and shall extend for an initial term of five (5) years from the Effective Date hereof, unless sooner terminated in accordance with the provisions hereof.

- b. This Agreement may be extended for two additional five year terms upon the mutual agreement of the City and Scottsville evidenced by a letter agreement executed no later than the fourth (4th) and ninth (9th) anniversary of the Effective Date of this Agreement.

ARTICLE XIX
ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the respective parties hereto and their legal successors but the same shall not be otherwise assignable in whole or in part by either party without first obtaining the written consent of the other.

ARTICLE XX
APPLICABLE LAW

The Constitution and the laws of the State of Texas and the decisions of its Courts shall govern with respect to any question or controversy which may arise hereunder. Venue for any actions arising under this Agreement in state courts shall lie exclusively in the courts of Harrison County, Texas. Venue for any actions arising under this Agreement in federal courts shall lie exclusively in the Eastern District of Texas, Marshall Division.

ARTICLE XXI
NOTICES

Any notice, request or other communication under this Agreement shall be given in writing and shall be deemed to have been given by any party to the other party upon either of the following dates:

- a. The date of the mailing thereof, as shown by a post office receipt, if mailed to the party hereto be registered or certified mail at the latest address specified for such other party in writing; or
- b. The date of the receipt thereof by such other party if not so mailed by registered or certified mail.

ARTICLE XXII
MISCELLANEOUS

- a. All headings of the Articles and particular sections of this Agreement have been inserted for the convenience of reference only and are not to be considered as part of this Agreement and in no way shall they affect the interpretation of any provision of this Agreement.
- b. A waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of default of the other which may thereafter occur.
- c. In case any one or more of the Articles, sections, provisions, clauses or words of this Agreement shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other Articles, sections, provisions, clauses or words of this Agreement and it is intended that this Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional Article, section, provision, clause or word had not been included herein.
- d. The City may, at its sole discretion, alter or modify the beginning and ending dates of its Fiscal Year which applies for purposes of this Agreement. The City shall provide SCOTTSVILLE written notice of any change in the City's Fiscal Year.
- e. This Agreement contains all of the agreements between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate originals
on this 10th day of September, 2015.

CITY OF MARSHALL
401 South Alamo
Marshall, Texas 75670

Lisa Agnor
City Manager

ATTEST:

Debbie Manuel
Acting City Secretary

APPROVED AS TO FORM:

Todd Fitts
City Attorney

CITY OF SCOTTSVILLE
PO Box 463
Scottsville, Texas 75688

By: _____

Title: _____

ATTEST:

Secretary