



**NOTICE OF A REGULAR MEETING TO BE HELD BY THE  
McALLEN PUBLIC UTILITY BOARD OF TRUSTEES**

**DATE:** Tuesday, August 15, 2023

**TIME:** 4:00 P.M.

**PLACE:** McAllen City Hall  
Commission Chambers – 3<sup>rd</sup> Floor  
1300 Houston Avenue  
McAllen, Texas 78501

**SUBJECT MATTER:**

**See Subsequent Agenda.**

**CERTIFICATION**

I, the Undersigned authority, do hereby certify that the attached agenda of meeting of the McAllen Public Utility Board of Trustees is a true and correct copy and that I posted a true and correct copy of said notice on the bulletin board in the Municipal Building, a place convenient and readily accessible to the general public at all times, and said Notice was posted on the 11th day of August, 2023 at 3:00 P.M. and will remain so posted continuously for at least 72 hours preceding the scheduled time of said meeting in accordance with Chapter 551 of the Texas Government Code.

  
Clarissa Hernandez  
Utility Board Secretary



**BOARD OF TRUSTEES MEETING  
TUESDAY, AUGUST 15, 2023 – 4:00 PM  
MCALLEN CITY HALL - 3RD FLOOR  
1300 HOUSTON AVE, MCALLEN, TX 78501**

## **AGENDA**

**AT ANY TIME DURING THE COURSE OF THIS MEETING, THE MCALLEN PUBLIC UTILITY BOARD MAY RETIRE TO EXECUTIVE SESSION UNDER TEXAS GOVERNMENT CODE 551.071(2) TO CONFER WITH ITS LEGAL COUNSEL ON ANY SUBJECT MATTER ON THIS AGENDA IN WHICH THE DUTY OF THE ATTORNEY TO THE MCALLEN PUBLIC UTILITY BOARD UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH CHAPTER 551 OF THE TEXAS GOVERNMENT CODE. FURTHER, AT ANY TIME DURING THE COURSE OF THIS MEETING, THE MCALLEN PUBLIC UTILITY BOARD MAY RETIRE TO EXECUTIVE SESSION TO DELIBERATE ON ANY SUBJECT SLATED FOR DISCUSSION AT THIS MEETING, AS MAY BE PERMITTED UNDER ONE OR MORE OF THE EXCEPTIONS TO THE OPEN MEETINGS ACT SET FORTH IN TITLE 5, SUBTITLE A, CHAPTER 551, SUBCHAPTER D OF THE TEXAS GOVERNMENT CODE.**

### **CALL TO ORDER**

### **PLEDGE**

### **INVOCATION**

#### **1. MINUTES:**

- a) Approval of the Minutes for the Regular Meeting held July 25, 2023

#### **2. BIDS AND CONTRACTS:**

- a) Consider Approval of the First Amendment to the Contract for Water Services with the City of Hidalgo.

#### **3. FUTURE AGENDA ITEMS**

#### **4. EXECUTIVE SESSION, CHAPTER 551, TEXAS GOVERNMENT CODE, SECTION 551.071 CONSULTATION WITH ATTORNEY, SECTION 551.072 LAND TRANSACTION, SECTION 551.074 PERSONNEL MATTERS; SECTION 551.087 ECONOMIC DEVELOPMENT NEGOTIATIONS**

- a) Consultation with City Attorney relating to personnel matters. (Section 551.071, T.G.C.)
- b) Consideration of real estate matters, Tract 1. (Section 551.087, T.G.C.)
- c) Consultation with City Attorney regarding pending litigation. (Section 551.071, T.G.C.)

## **ADJOURNMENT**

**IF ANY ACCOMMODATION FOR A DISABILITY IS REQUIRED (OR INTERPRETERS FOR THE DEAF), NOTIFY UTILITY ADMINISTRATION (681-1630) FORTY-EIGHT (48) HOURS PRIOR TO THE MEETING DATE. WITH REGARD TO ANY ITEM, THE MCALLEN PUBLIC UTILITY BOARD OF TRUSTEES MAY TAKE VARIOUS ACTIONS; INCLUDING BUT NOT LIMITED TO RESCHEDULING AN ITEM IN ITS ENTIRETY FOR A FUTURE DATE OF TIME. THE MCALLEN PUBLIC UTILITY BOARD MAY ELECT TO GO INTO EXECUTIVE SESSION ON ANY ITEM WHETHER OR NOT SUCH ITEM IS POSTED AS AN EXECUTIVE SESSION ITEM AT ANY TIME DURING THE MEETING WHEN AUTHORIZED BY THE PROVISIONS OF THE OPEN MEETINGS ACT.**

**THE NEXT REGULARLY SCHEDULED BOARD MEETING WILL BE HELD ON AUGUST 29, 2023.**



|                      |                |             |
|----------------------|----------------|-------------|
|                      | AGENDA ITEM    | <u>1.a.</u> |
| PUBLIC UTILITY BOARD | DATE SUBMITTED | 08/09/2023  |
|                      | MEETING DATE   | 8/15/2023   |

1. Agenda Item: Approval of the Minutes for the Regular Meeting held July 25, 2023

2. Party Making Request:

3. Nature of Request:

4. Budgeted:

|               |       |                   |       |
|---------------|-------|-------------------|-------|
| Bid Amount:   | _____ | Budgeted Amount:  | _____ |
| Under Budget: | _____ | Over Budget:      | _____ |
|               |       | Amount Remaining: | _____ |

5. Reimbursement:

|                    |                              |
|--------------------|------------------------------|
| 6. Routing:        |                              |
| Savannah Arredondo | Created/Initiated - 8/9/2023 |

7. Staff's Recommendation:

8. City Attorney: Approve. IJT

9. MPU General Manager: Approved - MAV

10. Director of Finance for Utilities: Approved - MDC

**STATE OF TEXAS  
COUNTY OF HIDALGO  
CITY OF MCALLEN**

The McAllen Public Utility Board (MPUB) convened in a Regular Meeting on **Tuesday, July 25, 2023**, at 4:00 pm at in the City Commission Chambers at City Hall with the following present:

|        |                       |                                           |
|--------|-----------------------|-------------------------------------------|
|        | Charles Amos          | Chairman                                  |
|        | Ernest Williams       | Vice-Chairman                             |
|        | Javier Villalobos     | Ex-Officio Member/Mayor                   |
|        | Albert Cardenas       | Trustee                                   |
|        | Ricardo Godinez       | Trustee                                   |
| Staff: | Marco A. Vega, P.E.   | General Manager                           |
|        | Isaac Tawil           | City Attorney                             |
|        | J.J. Rodriguez        | Assistant General Manager                 |
|        | Clarissa Hernandez    | Utility Board Secretary                   |
|        | Savannah Arredondo    | Assistant to the Utility Board Secretary  |
|        | Melba Carvajal        | Director of Finance for Utilities         |
|        | Pablo Rodriguez       | Assistant Director for Customer Relations |
|        | Carlos Gonzalez, P.E. | Utility Engineer                          |
|        | Juan Vallejo          | Assistant Director of Water Systems       |
|        | David Garza           | Director of Wastewater Systems            |
|        | Erika Gomez, EIT      | Assistant Utility Engineer                |
|        | Katia Sanchez         | Water Education & Comm Coord              |
|        | Yesenia Tijerina      | Senior Administrative Clerk               |
|        | Juan Pedraza          | Manager, Transmission & Dist.             |
|        | Rafael Balderas, EIT  | Assistant Utility Engineer                |
|        | David Lopez           | Pretreatment Inspector                    |
|        | Michael Gonzalez      | Pretreatment Working Supervisor           |
|        | Jolee Perez           | Director of Employee Benefits             |
|        | Terri Uvalle          | Assistant Director Utility Billing        |
|        | Janet Landeros        | Grants & Contracts Coordinator            |
|        | Christina Molano      | Water Lab Manager                         |
|        | Jim Bob Sides         | Video Production Specialist               |

**CALL TO ORDER:**

Chairman Amos called the meeting to order at 4:04 p.m.

**1. MINUTES:**

a) Approval of the Minutes for the Regular Meeting held July 11, 2023.

Trustee Godinez moved to approve the minutes for the regular meeting held on July 11<sup>th</sup>, 2023. Vice-Chairman Williams seconded the motion. The motion carried unanimously.

## **2. CONSENT AGENDA**

- a) Approval of Lark Subdivision
- b) Discussion and Approval of Garden Rose Subdivision
- c) Discussion and Approval of Homewood Subdivision

Trustee Cardenas moved to approve items 2a through 2c. Vice-Chairman Williams seconded the motion. The motion carried unanimously

## **3. BIDS AND CONTRACTS:**

- a) Award of Contract for Stop Loss Insurance for City of McAllen Employee Health plan

Jolee Perez, Director of Employee Benefits, stated the City ensures access to stop loss insurance to protect against high-dollar claims that exceed a certain threshold of \$300,000. Traditionally, this has been a United Healthcare plan that has been conjoined with the medical plan. As discussed in June, a third party is being sought out. After receiving proposals, staff is wanting to award QBC, a one-year contract with an extension for an additional second year if the rates remain favorable.

Trustee Cardenas moved to approve the Contract for Stop Loss Insurance. Vice-Chairman Williams seconded the motion. The motion carried unanimously.

- b) Consideration and approval of Change Order 5: Southwest and Northwest WTP Improvements

Mayor Villalobos moved to approve of Change Order 5. Trustee Godinez seconded the motion. The motion carried unanimously.

## **4. ORDERS:**

- a) Order amending the budget of the McAllen Public Utility Board of Trustees for Fiscal Year 2022-2023 for an increase in operating transfers within the Water Fund
- b) Order amending the budget of the McAllen Public Utility Board of Trustees for Fiscal Year 2022-2023 for an increase in expenditures within the Water Depreciation Fund.
- c) Order amending the budget of the McAllen Public Utility Board of Trustees for Fiscal Year 2022-2023 for an increase in expenditures within the Water Capital Improvement Fund.

- d) Order amending the budget of the McAllen Public Utility Board of Trustees for Fiscal Year 2022-2023 for a decrease in expenditures within the Water Revenue Bond Fund.
- e) Order amending the budget of the McAllen Public Utility Board of Trustees for Fiscal Year 2022-2023 for an increase in expenditures within the Water Revenue Bond – TWDB Fund.
- f) Order amending the budget of the McAllen Public Utility Board of Trustees for Fiscal Year 2022-2023 for an increase in operating transfers within the Wastewater Fund.
- g) Order amending the budget of the McAllen Public Utility Board of Trustees for Fiscal Year 2022-2023 for an increase in expenditures within the Wastewater Depreciation Fund.

Marco Vega, P.E., General Manager, stated that items 4a through 4g are re-budgets that were needed due to the funds not being spent last year. Staff was recommending to move the funds over to this fiscal year.

Mayor Villalobos moved to approve items 4a through 4g. Trustee Godinez seconded the motion. The motion carried unanimously.

- h) Order amending the budget of the McAllen Public Utility Board of Trustees for Fiscal Year 2022-2023 for an increase in expenditures within the Wastewater Capital Improvement Fund.

Mr. Marco Vega, P.E., General Manager, stated this is a budget amendment to the Wastewater Capital Improvement Fund. It is \$556,400 in total, but only \$352,000 will be new money. The main expenditure is the 6-mile road sewer project, which came in a little above for the construction. He noted the material would be purchased separately and handing it to the construction company.

Trustee Godinez asked Mr. Vega if he knew the break down on the additional funds being considered. He specified, that a contract was awarded to J&S for construction in the amount of was \$750,000. An estimate for material is \$350,000, putting the total just over \$1 million. A budget was set at approximately \$800,000; between the amount budgeted and the final amount, around \$350,000 is needed. The total of the amendment is \$556,400, but the other \$206,000 was a re-budget from the previous year.

Trustee Godinez moved to approve item 4h, Vice-Chairman seconded the motion. The motion carried unanimously.

## **5. RESOLUTION:**

- a) Consider Adopting Resolution Appointing Clarissa Hernandez, as Board Secretary for McAllen Public Utility.

Marco Vega, P.E., General Manager, stated that it was coming to a year without a Board Secretary. After many interviews and discussions, Clarissa

Hernandez has been selected as the Board Secretary. Her hiring would now need to be done by appointed by the Board.

Vice-Chairman Williams moved to appoint Clarissa Hernandez as Board Secretary. Trustee Cardenas seconded the motion. The motion carried unanimously.

**6. MANAGER'S REPORT:**

- a) Review and approval to write-off uncollectible septic tank hauler fee receivables in the amount of \$1,330.00

Mayor Villalobos moved to approve to write-off uncollectible septic tank hauler fee. Vice-Chairman Williams seconded the motion. The motion carried unanimously.

- b) Expiration of Preliminary Reimbursement Certificates with Recorded Plats
- c) Expiration of Final Reimbursement Certificates

Marco Vega, P.E., General Manager stated both items b and c are very similar. He stated that Preliminary Reimbursement Certificates are given a year to commence the project to collect reimbursements. He mentioned that projects that remained in preliminary status and were never completed and were never moved to the final reimbursement certificates. He specified that Final Reimbursement Certificates have a 15-year term. Trustee Godinez asked if notices were mailed out or if developers and engineers were emailed. Erika Gomez, EIT, Assistant Utility Engineer, stated they are sent a letter via certified mail.

Mayor Villalobos moved to approve items 6a and 6b. Vice-Chairman Williams seconded the motion. The motion carried unanimously.

**7. FUTURE AGENDA ITEMS**

Marco Vega, P.E., General Manager reminded the Board of the upcoming Budget Workshops being held on August 8<sup>th</sup> and 9<sup>th</sup>. Mr. Vega also wanted to recognize another new hire for MPU. Katia Sanchez will be our new Water Education and Communication Coordinator

**8. EXECUTIVE SESSION, CHAPTER 551, TEXAS GOVERNMENT CODE, SECTION 551.071 CONSULTATION WITH ATTORNEY, SECTION 551.072 LAND TRANSACTION, SECTION 551.074 PERSONNEL MATTERS; SECTION 551.087 ECONOMIC DEVELOPMENT NEGOTIATIONS**

Chairman Amos recessed the meeting at 4:25 p.m. to go into Executive Session. Chairman Amos reconvened the meeting at 5:13 p.m.

- a) Consideration of real estate matters, Tract 1. (Section 551.087, T.G.C)

Mr. Isaac Tawil, City Attorney recommends the Board to consider a motion authorizing the General Manager and City Attorney to negotiate the sale of Tract 1 on terms described of Executive Session

- b) Consultation with city attorney regarding pending litigation. (Section 551.071, T.G.C)

No action was taken

## **ADJOURNMENT**

There being no other business to come before the Board, the meeting was unanimously adjourned at 5:14 p.m.

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Charles Amos, Chairman

Attest:

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Juan J. Rodriguez  
Interim Utility Board Secretary/  
Assistant General Manager



**AGENDA ITEM**

**2.a.**

**PUBLIC UTILITY BOARD**

**DATE SUBMITTED**

**08/10/2023**

**MEETING DATE**

**8/15/2023**

**1. Agenda Item: Consider Approval of the First Amendment to the Contract for Water Services with the City of Hidalgo.**

**2. Party Making Request:  
J.J. Rodriguez, Assistant General Manager**

**3. Nature of Request:**

**4. Budgeted:**

**Bid Amount: \_\_\_\_\_**  
**Under Budget: \_\_\_\_\_**

**Budgeted Amount: \_\_\_\_\_**  
**Over Budget: \_\_\_\_\_**  
**Amount Remaining: \_\_\_\_\_**

**5. Reimbursement:**

**6. Routing:**  
**J.J. Rodriguez                      Created/Initiated - 8/10/2023**  
**J.J. Rodriguez                      Final Approval - 8/10/2023**

**7. Staff's Recommendation: Staff recommends approval of the First Amendment to the contract for water services with the City of Hidalgo.**

**8. City Attorney: Approve. IJT**

**9. MPU General Manager: Approved - MAV**

**10. Director of Finance for Utilities: Approved - MDC**



# Memo

**To:** Marco A. Vega, P.E., General Manager

**From:** Juan J. Rodriguez, Assistant General Manager

A handwritten signature in blue ink, appearing to be "JR", is written over the "From:" line.

**Date:** August 10, 2023

**Subject:** First Amendment to Contract for Water Service with the City of Hidalgo

McAllen Public Utility (MPU) entered into a contract to provide potable water service to the City of Hidalgo on August 21, 2014. The contract guaranteed a minimum volume of 50,000 per day on a "take or pay" basis. The rate, at the time, was for \$1.20 per 1,000 gallons of water metered and delivered to Hidalgo. Contract provisions stipulated that the rate would increase on the basis of the same percentage increase applicable to the percentage increase to MPU's residential customers. The contract is due to expire on August 31, 2023, and included a provision wherein the contract can be renewed or extended under such terms and conditions for an additional ten (10) year term after the original term.

Since then, MPU has undertaken several improvements to enhance services to Hidalgo. In particular, the addition of an interconnection located at the intersection of McColl Rd. and Dicker Rd. and relocation of our existing interconnection on 10<sup>th</sup> St. to the intersection of 23<sup>rd</sup> St. and Dicker Rd. Hidalgo continues to steadily take water beyond the minimum 50,000 gallons. In 2022, the volume was 76-million gallons for the year and thus far in 2023 it stands at 58.7-million gallons.

As you recall during our meeting in June with Julian Gonzalez, the Hidalgo City Manager, he confirmed their interest to continue with the current arrangements. The staff's recommendation is to extend the contract for a ten (10) year term with the same conditions as entertained in the original document. The attached amendment document effectuates the extension as well it denotes the current rate of \$1.53 per thousand gallons currently being paid by Hidalgo. Please note that the Hidalgo City Commission approved the amendment at their last meeting.

Please let me know if you have any questions or need additional information.

FIRST AMENDMENT TO  
CONTRACT FOR WATER SERVICE BETWEEN  
THE McALLEN PUBLIC UTILITY, TEXAS and  
CITY OF HIDALGO, TEXAS

This amendment is made and entered into by and between the MCALLEN PUBLIC UTILITY ("MPU") and the CITY OF HIDALGO, TEXAS ("CITY"). The parties hereby agree to the following amendments to that one certain CONTRACT FOR WATER SERVICE by and between the parties, dated AUGUST 21, 2014.

Whereas the undersigned parties wish further to promote the administration of the contract referred to above by the addition, deletion and/or modification of the following clauses of the contract:

The following provision of **Section 1 Terms and Conditions, Subsection 1.4**

**1.4.** The initial term of this Contract commences on August 4, 2014 and terminates on August 31, 2023. This contract may be renewed or extended under such terms and conditions for an additional 10 year term after original term. Should either party decide not to continue this agreement at any time after the original term, either party may terminate this agreement by giving 24 months notice in writing to the other party.

is **AMENDED** to provide as follows:

**1.4.** The term of this Contract commenced on August 4, 2014 for a term of ten (10) years terminating on August 31, 2023. This contract has been renewed and extended for a period of an additional ten (10) years. The renewal term of this contract commences on September 1, 2023, and terminates on August 31, 2033.

The following provision of **Section 5, Rates, Subsection 5.1**

**5.1.** The rates for the initial period of this contract shall be from the date of its execution through August 31, 2023, and shall be as follows:

- 1) Water Charge:
  - a) The Treatment, Pumping and Transmission Charge shall be \$1.20 per 1,000 gallons delivered to City, and;
  - b) City understands that McAllen City Commission, upon recommendation of the MPU board, has the right to annually revise the water rates charged to retail customers. Should the residential retail City rates be increased by the MPU during the term of this agreement then commencing on the monthly billing that occurs after the expiration of 90 days, City agrees to pay a charge equal to the same percentage increase applicable to the percentage of increase to the residential retail customers of MPU.

- 2) The Service Charge shall be \$25.00 per month per master meter.

is **AMENDED** to provide as follows:

**5.1.1.** The rates for the initial period of this contract shall be from the date of its execution through August 31, 2023, and shall be as follows:

- 1) Water Charge:
  - a) The Treatment, Pumping and Transmission Charge shall be \$1.20 per 1,000 gallons delivered to City, and;
  - b) City understands that McAllen City Commission, upon recommendation of the MPU board, has the right to annually revise the water rates charged to retail customers. Should the residential retail City rates be increased by the MPU during the term of this agreement then commencing on the monthly billing that occurs after the expiration of 90 days, City agrees to pay a charge equal to the same percentage increase applicable to the percentage of increase to the residential retail customers of MPU.

- 2) The Service Charge shall be \$25.00 per month per master meter.

**5.1.2.** The rates for the renewal period of this contract shall be from September 1, 2023 through August 31, 2033, and shall be as follows:

- 1) Water Charge:
  - a) The Treatment, Pumping and Transmission Charge shall be \$1.53 per 1,000 gallons delivered to City, and;
  - b) City understands that McAllen City Commission, upon recommendation of the MPU board, has the right to annually revise the water rates charged to retail customers. Should the residential retail City of McAllen rates be increased by the MPU during the renewal term of this agreement then commencing on the monthly billing that occurs after the expiration of 90 days from any such increase, City agrees to pay a charge equal to the Water Charge under Section 5.1.2 (1)(a), plus the same percentage increase applicable to the percentage of increase to the residential retail customers of MPU.
- 2) The Service Charge shall be \$25.00 per month per master meter.

This first amendment is effective as of the latter of the date signed by MPU or CITY. All other terms and conditions of the Contract for Water Service, as may be amended from time to time, shall remain in full force and effect.

**\*\*\*SIGNATURE PAGE FOLLOWS\*\*\***

**McALLEN PUBLIC UTILITY:**

By: \_\_\_\_\_  
Marco A. Vega, P.E.,  
General Manager

Date: August \_\_\_\_\_, 2023

**CITY OF HIDALGO, TEXAS**

By:  \_\_\_\_\_  
Julian Gonzalez  
City Manager

Date: August 7th, 2023

**APPROVED AS TO FORM ONLY:**

\_\_\_\_\_  
Isaac J. Tawil, City Attorney

EXHIBIT A  
(CONTRACT FOR WATER SERVICE)

# EXHIBIT A

## CONTRACT FOR WATER SERVICE BETWEEN THE MCALLEN PUBLIC UTILITY, TEXAS, AND CITY OF HIDALGO, TEXAS

STATE OF TEXAS       §  
COUNTY OF HIDALGO §

This contract and agreement is made and entered into this 21<sup>st</sup> day of August, 2014, by and between the McAllen Public Utility, the public utility for the City of McAllen located in Hidalgo County, Texas, acting by and through the McAllen Public Utility Board, hereinafter called "MPU," and the City of Hidalgo located in Hidalgo County, Texas, acting by and through the Mayor and City Council, hereinafter called "City."

**WHEREAS**, MPU has provided at its own expense, and now owns, operates and maintains facilities for processing and distributing a certain supply of surface water, and at the present time is qualified to furnish and deliver treated water, both within and without the corporate boundaries of the City of McAllen; and,

**WHEREAS**, City has provided at its own expense and now owns, operates and maintains a distribution system; and furnishes water service to the City's customers within its boundaries, and,

**WHEREAS**, by the execution of this contract, neither MPU nor City will surrender any of its rights to the ownership and operation of its present water production and distribution facilities; and,

**WHEREAS**, City desires to contract for the purchase of treated water and MPU desires to sell treated water to City; and

**WHEREAS**, Section 402.001 and 402.075 of the Texas Local Government Code, and Chapter 791 of the Texas Government Code authorize MPU and City to enter into this agreement;

### **NOW, THEREFORE, KNOW ALL BY THESE PRESENTS:**

That, for and in consideration of the mutual covenants, promises and agreements contained herein, MPU and City do hereby covenant and agree as follows:

#### **1. Terms and Conditions**

1.1 MPU agrees to furnish and sell to City treated potable water meeting all applicable governmental standards, delivered under the normal operating pressure prevailing in the MPU System at the point or points of delivery mutually agreed upon. City agrees to accept delivery under the conditions of this agreement and to pay for the same in accordance with the terms herein.

1.2 MPU, by and through the City of McAllen Ordinance, as identified in Chapter 106, sections 106.111 through 106.118 of the McAllen Code has provided for certain water conservation stages. Should MPU initiate a stage 3, 4 or 5 conservation restriction, the City agrees to implement substantially the same restrictions under its conservation ordinance. Should City fail to implement the restrictions then the maximum water to be delivered under Section 2.3 below shall be reduced by twenty, thirty, and fifty percent, respectively. If MPU shall ration the use of water within

McAllen's corporate limits, City agrees to institute and apply substantially the same rationing to the City's customers for so long as any part of the total water supply of the City is being furnished by MPU and MPU continues its rationing of treated water.

1.3 The potable water to be delivered hereunder shall be subject to the following guaranteed minimum quantities:

From the date of this contract through August 31, 2023:

- Minimum gallons per day\* 50,000

1.4 The initial term of this Contract commences on August 4, 2014 and terminates on August 31, 2023. This contract may be renewed or extended under such terms and conditions for an additional 10 year term after original term. Should either party decide not to continue this agreement at any time after the original term, either party may terminate this agreement by giving 24 months notice in writing to the other party.

1.5 In the event MPU is unable to deliver all of the water to City under Section 1.3 because of the low available water supply in the Rio Grande, the supply to the City will be reduced in the same proportions as such supply is reduced to MPU through its sources from the Rio Grande.

## **2. Location, Delivery and Maintenance of Lines and Meters**

2.1 All water furnished under this agreement by MPU shall be measured by one or more suitable meters equipped with continuous flow, chart-recording devices, and telemetering equipment connected with the MPU control center. All meters, recording devices, telemetering equipment and appurtenances shall be approved and installed by MPU. MPU shall pay all costs associated with the operation and maintenance of said equipment and shall pay for the replacement of said equipment as necessary, and they shall be a System Cost.

2.2 The point or points of delivery of treated water by MPU shall be at a connection point in the city's northernmost system for the purpose of delivery. The location of each meter shall be mutually agreed upon in writing by and between the parties hereto, and the meter or meters shall not be moved or relocated except by mutual consent in writing by the parties hereto.

2.3 Either party, at its own expense, may install a check meter to check or measure the volume of water passing the master meter, provided that, if such check meter is installed, the same rules and regulations relative to its operation, maintenance and reading shall apply as to the master meter being tested.

2.4 MPU will pay for, design and construct a transmission water line from the MPU southernmost transmission to the point or points of delivery.

2.5 City agrees to convey to MPU, all easements, and waterline infrastructure generally located north of Dicker Road more particularly described on Exhibit "A" attached hereto. City will retain ownership of waterline south of the proposed permanent interconnection location(s). City agrees to transfer any existing water customers currently being served by City and located north of Dicker Road to MPU. The subject conveyances of easements and infrastructure includes: real property rights waterlines, valves, fire hydrants, water meters, service lines and all related fittings and appurtenances.

### **3. Meters**

3.1 MPU shall routinely test for accuracy, and service and calibrate if necessary, the master meter(s) no less than once during each twelve (12) month period. Copies of the results of such calibration and all related information shall be provided, if requested, to City. City shall have access to the metering facilities at all reasonable times; provided, however, that any reading, calibration or adjustment to such metering equipment shall be done by employees or agents of MPU, or other mutually approved third party calibration agent, in the presence of representatives of City and MPU, if so requested by City. Notification of any proposed test shall be provided to the City at least seventy-two (72) hours prior to such test being conducted and City may observe such test, if so desired.

3.2 Upon any calibration, if it is determined that the accuracy envelope of such meter is found to be lower than ninety percent (90%) or higher than one hundred ten percent. (110%) expressed as a percentage of the full scale of the meter, the registration of the flow as determined by such defective meter shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable; or, if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months. All meters will be properly sealed, and the seals shall not be broken unless representatives of both parties have been notified and given a reasonable opportunity to be present.

3.3 If any meter used to determine the flow of treated water to City is out of service or out of repair so that the amount of water metered cannot be ascertained or computed from the reading thereof, the water delivered during the period such meter is out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. The basis for estimating such flow includes, but is not limited to, extrapolation of past patterns of flow for said metering station under similar conditions. In the event that the parties hereto cannot agree on the extrapolated estimate of water volume delivered, agreement on the flow volume will be determined by third party arbitration, as hereinafter provided.

### **4. Meter Reading and Billing**

4.1 MPU will read all meters provided for herein at monthly intervals, and the parties to this agreement shall have free access to read these respective meters daily, if either party so desires. It shall be the duty of the parties to give the other party immediate notice, and should any meter found to be not functioning properly, and, upon such notice, repairs to such meter shall be made within 24 hours by MPU.

4.2 All readings of meter shall be maintained by McAllen Public Utility. City shall have access to such records during reasonable business hours and shall be furnished with monthly readings for each point of delivery metering facility.

4.3 If City has more than one point of connection to the MPU System, the sum of all meter readings and rates of flow shall be used for the purpose of calculating the water Volume Charge and the Rate of Use Charge and all other terms and conditions here of relating to the volume of water delivered by MPU.

4.4 A review of water usage amounts by City for the past twelve (12) months shall be made during the presentation of the October bill each year.

4.5 Bills for water service shall be rendered to City monthly by MPU. All such bills shall be due and payable by City not more than ten (10) days from the billing date. The bills will show current charges, as well as past-due charges, if any. Past-due charges shall be the total amount unpaid from all prior billings as of the current billing date. Payments received by MPU shall first be applied to the past-due charges, if any, and thereafter to the current charges.

4.6 If City disputes a bill and is unable to resolve the difference informally, City shall notify the Utility Manager in writing. If the Utility Manager and City are unable to resolve the disputed bill, agreement on the bill will be determined by third party arbitration, as hereinafter provided. Dispute of a bill shall not be grounds for non-payment. In the event a payment is not paid as specified in this agreement, a finance charge of ten percent (10%) per annum will be calculated from the date which the payment was required to be made. In the event that a billing adjustment is agreed upon or established by arbitration the amount found to be incorrect will be credited to City's account together with an interest charge of ten percent (10%) per annum calculated from the date payment of the disputed bill was received.

4.7 City agrees to pay a minimum billing each month regardless of the water actually delivered by MPU equal to the minimum water delivery per month as set out in Section 1.3 of this Agreement.

## **5. Rates**

5.1 The rates for the initial period of this contract shall be from the date of its execution through August 31, 2023, and shall be as follows:

### **1) Water Charge:**

- a) The Treatment, Pumping and Transmission Charge shall be \$1.20 per 1,000 gallons delivered to City, and;
- b) City understands that McAllen City Commission, upon recommendation of the MPU Board, has the right to annually revise the water rates charged to retail customers. Should the residential retail City rates be increased by the MPU during the term of this agreement then commencing on the monthly billing that occurs after the expiration of 90 days, City agrees to pay a charge equal to the same percentage increase applicable to the percentage of increase to the residential retail customers of MPU.

### **2) The Service Charge shall be \$25.00 per month per master meter.**

5.2 The parties hereto agree that services obtained pursuant to this contract are essential and necessary to the operation of City's waterworks facilities and that all payments made by City hereunder shall constitute reasonable and necessary operating expenses of City's waterworks systems within the meaning of Article 1502.056, Vernon's Annotated Texas Statutes, and the provisions of any and all ordinances of City authorizing the issuance of any revenue bonds of City which are payable from its waterworks and wastewater systems.

## **6. Right-of-way**

City shall grant, without charge to MPU, such easements and rights-of-way along public highways or other property owned by City, as requested by MPU, in order to construct or maintain lines, mains or facilities within the service area of City to provide water to City and to other areas. MPU shall grant, without charge to City, such easements and rights-of-way along public highways or other property owned or controlled by MPU, as requested by City, in order to construct and maintain water mains or facilities within MPU to provide water to City. All work done by or on behalf of MPU under this paragraph will be performed in accordance with specifications equal to those applying to work of a similar nature performed within MPU, but neither party hereto will be required to restore the other's property to a condition exceeding its original condition, unless otherwise mutually agreed in writing. MPU and City agree to coordinate the location of the mains and/or facilities in the other's easements and rights-of-way in order to prevent further conflicts insofar as is reasonably practicable.

**7. State Health Department Approval**

The City System shall be approved by the Texas State Department of Health during the life of this contract. If at any time the City System is not approved by the Texas State Department of Health, or if City does not have an active cross-connection control program approved by the State of Texas, there shall not be any direct physical connection between the MPU System and the City System unless an approved backflow prevention device has been provided and installed and this installation has been approved by the Texas State Department of Health. All expenses to provide and install backflow prevention device(s) will be borne by City.

**8. Resale of Water**

8.1 City agrees that it will not share facilities for water system use with any other governmental or corporate entity outside of the corporate limits of City, commonly known and referred to as its service area, without the express written consent of MPU.

8.2 City agrees that it will not enter into any resale on a wholesale basis or transportation agreement to existing and future subscribers to its water system without express written consent of MPU.

**9. Sanitary Sewer System**

The City agrees that it will require all of its customers, who are provided water from the MPU system, to have adequate sanitary sewage facilities meeting state health department requirements.

**10. Termination**

10.1 This agreement may be terminated in whole or in part by the mutual consent of City and MPU. Notwithstanding anything contained herein to the contrary, any material breach by either party hereto to perform any of the duties or the obligations assumed by such party hereunder or to faithfully keep and perform any of the terms, conditions and provisions hereof shall be cause for termination of this agreement by the other party in the manner set forth in this paragraph. MPU shall deliver to City one hundred eighty (180) days prior written notice of its intention to so terminate this agreement if City fails to cure or adjust such material breach, including in such notice a reasonable description of the breach. If within said one hundred eighty (180) days City shall fail or refuse to cure such material breach to the satisfaction of MPU, then and in such event, MPU shall

have the right, without any liability whatsoever on the part of MPU, to declare this agreement terminated. In the event of termination of this agreement, all rights, powers, and privileges of City hereunder shall cease and terminate and City shall make no claim of any kind whatsoever against MPU, its agents or representatives, by reason of such termination or any act incident thereto, provided MPU acted reasonably and such termination was not unreasonable, arbitrary and capricious. MPU shall advise City in writing immediately upon acceptance of the cure of any breach. The obligation of City to pay for water delivered under the agreement shall specifically survive such termination.

10.2 City shall deliver to MPU one hundred eighty (180) days prior written notice of its intention to so terminate this agreement if MPU fails to cure or adjust any material breach, including in such notice a reasonable description of the breach. If within said ninety days, MPU shall fail or refuse to cure such material breach to the satisfaction of City, then and in such event, City shall have the right, without any liability whatsoever on the part of City, to declare the agreement terminated. In the event of termination of this agreement, all rights, powers, and privileges of MPU hereunder shall cease and terminate and MPU shall make no claim of any kind whatsoever against City, its agents or representatives, by reason of such termination or any act incident thereto, provided City acted reasonably and such termination was not unreasonable, arbitrary and capricious. City shall advise MPU in writing immediately upon acceptance of the cure of any breach.

10.3 Notwithstanding anything to the contrary, after the expiration of the original term either party can terminate this agreement, with or without cause by giving written notice to the other party of its intention to terminate.

10.4 The following breach, default or failure to perform a duty or obligation shall be considered to be a material breach by City:

- a. Failure to adopt and enforce any resolution or conservation measure or rationing required to be adopted and enforced herein;
- b. Failure to make any payment of any bill, charge or fee as provided for in this agreement;
- c. Making any connection to the MPU System at any point except as provided herein;
- d. Failure to correct any potentially hazardous connection in accordance with Section 7 after reasonable written notice.
- e. Failure to provide MPU ingress and egress for purposes of operation and maintenance of any metering facility;
- f. Failure to provide MPU rights-of-way as required herein.
- g. Failure to provide an approved backflow protection program.
- h. Sale of water to unauthorized customers or unauthorized sales.

10.5 Any failure by MPU to so terminate this agreement or the acceptance by MPU of any benefits under this agreement for any period of time after such material breach, default or failure by City shall not be determined to be a waiver by MPU of any rights to terminate this agreement for any subsequent material breach, default or failure.

10.6 Any failure by City to so terminate this agreement or the acceptance by City of any benefits under this agreement for any period of time after such material breach, default or failure by MPU shall not be determined to be a waiver by City of any rights to terminate this agreement for

any subsequent material breach, default or failure.

10.7 MPU's or City's termination under this Section shall not relieve City from any monetary obligation owed MPU and MPU may bring legal action to collect the same.

## **11. Ownership and Liability**

11.1 No provision of this agreement shall be construed to create any type of joint or equity ownership of any property, any partnership or joint venture, nor shall same create any other rights or liabilities and City payments (whether past, present, or future) shall not be construed as granting City partial ownership of, pre-paid capacity in, or equity in the MPU System.

11.2 Liabilities for damages arising from the proper treatment, transportation and delivery for all water provided hereunder shall remain with MPU to the point of delivery and, upon passing through the meter, liability for such damages shall pass to the City, save and except that MPU's sole responsibility is to provide to City water of a quality which meets state and federal drinking water standards. To the extent the law allows, each party hereto agrees to save and hold the other party harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the quality, transportation and delivery while water is in the control of such party. This covenant is not made for the benefit of any third party.

11.3 Contracts made and entered into by either City or MPU for the construction, reconstruction or repair of any Delivery Facility shall include the requirement that the independent contractor(s) must provide adequate insurance protecting both the City and MPU as co-insureds. Such contract must also provide that the independent contractor(s) covenant to indemnify, hold harmless and defend both the City and MPU against any and all suits or claims for damages of any nature arising out of the performance of such contract.

## **12. Force Majeure**

12.1 If by any reason of force majeure either party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this agreement, other than the obligation of the City to make payments required under the terms hereof, then if such parties shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

12.2 The term "force majeure", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or, military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and inability on the part of MPU to deliver water hereunder or the City to receive water hereunder on account of any other cause not reasonably in the control of the party claiming such inability.

## **13. Notices**

Any notice, communication, request, reply or advice herein provided or permitted to be

given, made or accepted by either party to the other party must be in writing to:

McAllen Public Utility:      General Manager  
                                         McAllen Public Utility  
                                         1300 Houston Avenue  
                                         Post Office Box 220  
                                         McAllen, Texas 78505-0220

City:                              City Manager  
                                         City of Hidalgo  
                                         704 East Texano Drive  
                                         Hidalgo, Texas 78557

The parties hereto shall indicate in writing any change that may occur in such respective addresses from time to time.

**14.    Inspection and Audit**

Complete records and accounts required to be maintained by each party hereto shall be kept for a period of five (5) years. Each party shall at all times, upon notice, have the right at reasonable times to examine and inspect said records and accounts during normal business hours; and further, if required by any law, rule or regulation, make said records and accounts available to federal and/or state auditors.

**15.    Miscellaneous**

15.1    At the request of the MPU's General Manager, City agrees to furnish water to areas and premises situated adjacent to the boundary of City and within the boundaries of MPU. The metered quantity of water used in this area each month by MPU shall be the total of all individual City meter readings. At the option of City or MPU, a master meter may be installed where practicable at the expense of MPU to meter all water used by MPU under the terms of this section.

15.2    The metered quantity of water furnished by City to MPU shall be deducted from the total quantity of water withdrawn from the MPU System by the City before the charge for water service to City is computed in accordance with the payment computations set forth and based on the Volume Charge described herein and the quantity of water so withdrawn from the MPU System.

15.3    This agreement is subject to all applicable federal and state laws and any applicable permits, amendments, orders, or regulations of any state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, order, rule or regulation in any forum having jurisdiction.

15.4    City agrees to abide by any changes in this agreement made necessary by any new, amended, or revised state or federal regulation.

15.5    Upon prior notice by MPU, any duly authorized employee of MPU bearing proper credentials and identification shall notify City of need for access to any premises located within City's service area or served by City as may be necessary for the purpose of inspections and observation, measurements, sampling and testing and/or auditing, in accordance with the provisions of this contract. City may elect to accompany the MPU representative. To the extent permitted by

law, MPU agrees to indemnify City for any damage or injury to person or property caused by the negligence of such duly authorized employee while such employee is in the course and scope of his employment.

15.6 If requested by MPU's General Manager, City shall provide quarterly the following data:

- a. Actual number of City accounts consuming directly or indirectly from the City System within its service area;
- b. Classification of domestic and nondomestic accounts within its service area by number and percentage of accounts consuming directly or indirectly from City System within its service area;
- c. City water usage from all sources other than the MPU System, including, but not limited to, ground water, other surface water, and water supply agreements with other entities;
- d. Additional data which may assist MPU and/or City in developing methodology for cost of service studies and planning studies; provided, however, that neither party shall request data that will require either party to incur unreasonable expenses in providing such data.

15.7 City may not assign this agreement without the prior written consent of MPU. MPU may not assign this agreement without the prior written consent of City; provided, however, in the event MPU is designated as a regional water authority or agency by a duly authorized regulatory body, or if MPU should elect to contract with or assign this contract to a regional water authority to provide all or part of the services covered by this agreement, City agrees that any such regional water authority may, by way of assignment of this agreement, assume and receive the same obligations and responsibilities, the same benefits as MPU hereunder; further, City hereby grants to MPU the specific right to assign this agreement to such regional water authority.

15.8 No waiver by either party hereto of any term or condition of this agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

15.9 In addition to any other remedy as may be provided by law, this agreement shall be specifically enforceable by the parties hereto. Venue for any action shall be in Hidalgo County, Texas.

15.10 It is agreed that, in the event any term or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such term or provision shall in no way affect any other term or provision contained herein; further, this agreement shall then continue as if such invalid term or provision had not been contained herein.

15.11 This Agreement constitutes the whole agreement of the Parties relating to the subject matter hereto and there are no unwritten agreements covering such subject matter and it is further provided that any prior written agreements covering the subject matter between the parties is hereby superseded and replaced by this Agreement.

**IN WITNESS WHEREOF, EXECUTED** by the McAllen Public Utility and the City of Hidalgo, acting under the authority of their respective governing bodies in duplicate originals on the date indicated above.

**CITY OF HIDALGO**

704 East Texano Drive

Hidalgo, Texas 78557

Phone: (956) 843-2286

By: Mike R. Perez

Mike R. Perez, Interim City Manager

Date: 9/10/14

**ATTEST:**

By: Dorine Eliff

Hidalgo City Secretary

**MCALLEN PUBLIC UTILITY**

Post Office Box 220

1300 Houston

McAllen, Texas 78504-0220

Phone: (956) 681-1630

By: Marco A. Vega

Marco A. Vega P.E., General Manager

Date: August 21, 2014

**ATTEST:**

By: Nyla L. Flatau

Nyla L. Flatau, Board Secretary

**APPROVED AS TO FORM:**

By: Stephen Crain

Stephen Crain  
City Attorney City of Hidalgo

By: Gary Henrichson for K.P.

Kevin D. Pagan, City Attorney  
City of McAllen



**AGENDA ITEM**

**4.a.**

**PUBLIC UTILITY BOARD**

**DATE SUBMITTED**

**08/10/2023**

**MEETING DATE**

**8/15/2023**

**1. Agenda Item: Consultation with City Attorney relating to personnel matters (T.G.C. 551.071).**

**2. Party Making Request:**

**3. Nature of Request:**

**4. Budgeted:**

**Bid Amount:** \_\_\_\_\_  
**Under Budget:** \_\_\_\_\_

**Budgeted Amount:** \_\_\_\_\_  
**Over Budget:** \_\_\_\_\_  
**Amount Remaining:** \_\_\_\_\_

**5. Reimbursement:**

**6. Routing:**  
**Savannah Arredondo**

**Created/Initiated - 8/10/2023**

**7. Staff's Recommendation:**

**8. City Attorney: None. IJT**

**9. MPU General Manager: N/A - MAV**

**10. Director of Finance for Utilities: N/A - MDC**



**AGENDA ITEM**

**4.b.**

**PUBLIC UTILITY BOARD**

**DATE SUBMITTED**

**08/10/2023**

**MEETING DATE**

**8/15/2023**

**1. Agenda Item: Consideration of real estate matters, Tract 1. (Section 551.087, T.G.C.)**

**2. Party Making Request:**

**3. Nature of Request:**

**4. Budgeted:**

**Bid Amount:** \_\_\_\_\_  
**Under Budget:** \_\_\_\_\_

**Budgeted Amount:** \_\_\_\_\_  
**Over Budget:** \_\_\_\_\_  
**Amount Remaining:** \_\_\_\_\_

**5. Reimbursement:**

**6. Routing:**  
**Savannah Arredondo**

**Created/Initiated - 8/10/2023**

**7. Staff's Recommendation:**

**8. City Attorney: None. IJT**

**9. MPU General Manager: N/A - MAV**

**10. Director of Finance for Utilities: N/A - MDC**



**AGENDA ITEM**

**4.c.**

**PUBLIC UTILITY BOARD**

**DATE SUBMITTED**

**08/10/2023**

**MEETING DATE**

**8/15/2023**

**1. Agenda Item: Consultation with city attorney regarding pending litigation.  
(Section 551.071, T.G.C)**

**2. Party Making Request:**

**3. Nature of Request:**

**4. Budgeted:**

**Bid Amount:** \_\_\_\_\_  
**Under Budget:** \_\_\_\_\_

**Budgeted Amount:** \_\_\_\_\_  
**Over Budget:** \_\_\_\_\_  
**Amount Remaining:** \_\_\_\_\_

**5. Reimbursement:**

**6. Routing:**  
**Savannah Arredondo**

**Created/Initiated - 8/10/2023**

**7. Staff's Recommendation:**

**8. City Attorney: None. IJT**

**9. MPU General Manager: N/A - MAV**

**10. Director of Finance for Utilities: N/A - MDC**