

FIRE HYDRANT MAINTENANCE AGREEMENT

This Agreement ("Agreement") is made and entered into between the City of Jonesboro, Arkansas ("City") and City, Water, and Light Plant of the City of Jonesboro, Arkansas ("CWL"), a consolidated municipal improvement district organized under the laws of the State of Arkansas.

WHEREAS, CWL owns fire hydrants and related appurtenances located in the City of Jonesboro, Arkansas;

WHEREAS, the City has the personnel, equipment and expertise necessary to perform certain maintenance and repairs to fire hydrants; and

WHEREAS, CWL desires to contract with the City to provide inspection, minor operation and maintenance of the fire hydrants.

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1) DEFINITIONS

- a) Fire hydrants shall mean fire hydrants and appurtenances owned by CWL and located within the city limits of the City of Jonesboro, Arkansas.
- b) Minor operation and maintenance shall mean obstruction clearing, painting, lubrication, nozzle cap maintenance, O-ring and gasket replacement, etc. (requires removal of operating nut and bonnet/cover).
- c) Major operation, maintenance and repair shall mean fire hydrant replacement or disassembly of fire hydrant below bonnet/cover.

2) SERVICES TO BE PERFORMED BY CITY

- a) City agrees to inspect each fire hydrant on a routine basis to ensure satisfactory operation.
- b) City agrees to perform all routine minor operation and maintenance activities on the fire hydrants to keep them in a good state of repair and to ensure satisfactory operation.
- c) City agrees to keep all necessary inspection and minor operation and maintenance records to support the fire hydrant maintenance program.
- d) City agrees to report to CWL any condition that requires major operation, maintenance, repair or replacement of the fire hydrant.

- e) City agrees to paint fire hydrants on a routine basis to retard corrosion of the fire hydrant.
- f) City agrees to keep fire hydrants clear of obstructions and debris (landscaping, etc.) that impact the accessibility of the fire hydrant.
- g) City agrees to **NOT** flush the fire hydrants as part of the inspection and minor operation and maintenance services provided for in this agreement without the permission of CWL.
- h) City agrees to perform the services in a good and workmanlike manner and in compliance with all federal, state and local law, and ISO Fire Insurance Rating requirements.
- i) City shall provide and maintain all necessary equipment and tools necessary to render the services.
- j) City represents that it has and shall maintain all licenses and permits necessary to perform the services.

3) OBLIGATIONS OF CWL.

- a) CWL will continue to perform the initial inspection of fire hydrants to insure that the fire hydrant was installed in accordance with acceptable standards and specifications.
- b) CWL agrees to notify City of newly installed fire hydrants and transfer necessary fire hydrant information to City.
- c) CWL will continue to perform major operation, maintenance, repair or replacement of the fire hydrants.
- d) CWL will continue to perform routine flushing as part of its overall flushing program.

4) TERM OF AGREEMENT

- a) Initial Term. The initial term of this agreement shall commence on July 28, 2009 and shall terminate on December 31, 2011.
- b) Renewal Terms. At the end of the initial term, this agreement shall automatically renew for successive one (1) year terms unless written notice of nonrenewal is given by either party hereto at least ninety (90) days prior to expiration of the term then in effect (each annual renewal term is referred to herein as a "Renewal Term")

- c) Termination for Cause. Either party shall be entitled to terminate this Agreement upon the occurrence of a material breach by the other party of this Agreement. Provided, however, neither party shall be entitled to terminate this Agreement under this section unless written notice of material breach has been given to the other party and the party receiving the notice has failed to cure such material breach within thirty (30) days of the date of receipt.
- d) Effect of Termination. In the event this Agreement is terminated by CWL pursuant to the provisions of Section (4)(c) above, the City shall be obligated to refund to CWL any unearned portion of the fees described in Section 5 below. The unearned portion of the fee shall be equal the total fee paid by CWL for the term then in effect multiplied by a fraction, the numerator of which is the remaining days in the term and the denominator of which is the total number of days in the originally included in the term. By way of example only, if termination occurs on the 90th day of a Renewal Term, the amount of refund to CWL would be computed as follows: $\$60,000 \times 275/365 = \$45,205.47$. Any such refund required to be made by City under this section shall be made within thirty (30) days of notice from CWL.

5) **COMPENSATION.**

a) Initial Term. CWL will pay City a lump sum fee of \$150,000 to cover the inspection and minor operation and maintenance services to be provided by the City during the Initial Term. The fee shall be due and payable on or before August 4, 2009.

b) Renewal Term. CWL will pay City an annual fee of \$60,000 to cover the inspection and minor operation and maintenance services to be provided by the City during each Renewal Term. The fee shall be paid on or before January 31st of each year.

6) **INDEPENDENT CONTRACTOR STATUS.** City shall perform all obligations imposed by this Agreement to CWL as an independent contractor. Nothing in this Agreement shall be construed to create the relationship of employer and employee between CWL and City nor any employee of City and CWL and no employee of City shall be entitled to receive employee benefits from CWL. CWL shall not have or exercise any control or direction over the manner, means and methods by which City shall perform the services. CWL's sole interests (i) shall be the result of the services performed by City pursuant to this Agreement and (ii) shall be to assure that the services are performed in a competent, efficient and satisfactory manner, conforming to applicable federal, state and local laws and regulations. City at all times:

- a) shall be an independent contractor of CWL;
- b) shall have no authority to bind CWL in any manner; and

c) shall not hold itself out as agent of CWL.

7) **INSURANCE AND INDEMNITY.**

a) **Insurance.** City shall secure and maintain, or cause to be maintained, during the term of this Agreement, Worker's Compensation providing at least statutory limits in coverage.

b) **Indemnification.** City shall hold harmless and indemnify CWL, its successors and assigns, and its agents, employees and contractors, from and against any and all claims, actions, causes of action, verdicts, demands, orders, judgments, settlements, liabilities, losses, costs, obligations, damages, expenses, offsets, deductions, refunds, recoupments, or penalties (including court costs and attorney's fees) resulting from or attributable to any act or omission of City in providing any services under this Agreement. This agreement to indemnify and hold harmless shall survive the termination or expiration of the Agreement for any reason.

CWL shall hold harmless and indemnify City, its successors and assigns, and its agents, employees and contractors, from and against any and all claims, actions, causes of action, verdicts, demands, orders, judgments, settlements, liabilities, losses, costs, obligations, damages, expenses, offsets, deductions, refunds, recoupments, or penalties (including court costs and attorney's fees) resulting from or attributable to any act or omission of CWL in providing any Services under this Agreement. This agreement to indemnify and hold harmless shall survive the termination or expiration of the Agreement for any reason.

8) **MODIFICATIONS.** This agreement shall not be modified or amended except by a written document executed by both parties.

9) **ASSIGNMENT.** This agreement may not be assigned by any party, without the prior written consent of the other party.

10) **NOTICE.** Any notices required pursuant to the provisions of this Agreement shall be in writing and shall be delivered in person or sent by first class, certified or registered United States mail, postage prepaid, return receipt requested, addressed to such party:

If to CWL, to: City Water and Light Plant of Jonesboro, AR
 Attn: Manager
 400 East Monroe Street
 Jonesboro, AR 72401

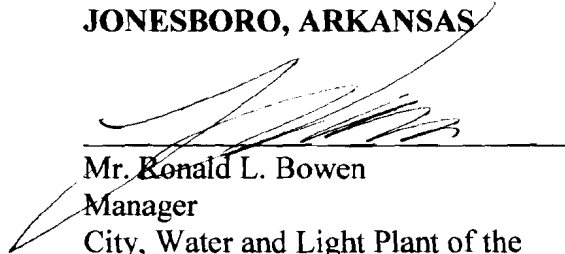
If to City, to: City of Jonesboro Fire Department
 Attn: Fire Chief
 3215 E. Johnson
 Jonesboro, AR 72401

Either party hereto may designate a substitute address for the receipt of notices by a notice given pursuant to the provisions of this Section 10.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on this 22 day of July, 2009.

**CITY OF JONESBORO,
ARKANSAS**

**CITY, WATER AND LIGHT
PLANT OF THE CITY OF
JONESBORO, ARKANSAS**



Mr. Ronald L. Bowen
Manager

City, Water and Light Plant of the
City of Jonesboro, Arkansas