

CITY COUNCIL

READ FILE COVER SHEET

Subject: **Ordinance 1104 concerning Approving, Affirming, and Ratifying the Agreement to Supply Municipal Water to the City of Aberdeen (Public Hearing)**

Date: **4/5/2023**

Notice: Any comments made after 5:00 p.m. on the Thursday before the Council Meeting will not be seen in the agenda packet.

- Purpose:
- FYI
 - Read and Comment as Needed**
 - Action Required by April 17, 2023**
 - In Confidential File Drawer

Approve:

Casi Boyer Yes No No Comment

Comment: _____

Dave Martin Yes No No Comment

Comment: _____

Jim Ringsaker Yes No No Comment

Comment: _____

Jason Robertson Yes No No Comment

Comment: _____

Tammy Lynn Schneegas Yes No No Comment

Comment: _____

Carolyn Zinner Yes No No Comment

Comment: _____

Note: N/A

CITY COUNCIL
OF
HAVRE DE GRACE, MARYLAND

ORDINANCE NO. 1104

Introduced by _____ Council President Ringsaker

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF HAVRE DE GRACE ADOPTED PURSUANT TO THE AUTHORITY OF ARTICLE XI-E OF THE MARYLAND CONSTITUTION, THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND AND SECTIONS 33 AND 34 OF THE HAVRE DE GRACE CITY CHARTER, FOR THE PURPOSE OF APPROVING, AFFIRMING, AND RATIFYING THE AGREEMENT TO SUPPLY MUNICIPAL WATER TO THE CITY OF ABERDEEN

On: April 3, 2023
at: 7:00 p.m.

Ordinance introduced, read first time, ordered posted and public hearing scheduled.

PUBLIC HEARING

A Public Hearing is scheduled for April 17, 2023 at 7:00 p.m.

EXPLANATION
Underlining indicates matter added to existing law.
[Bold Brackets] indicate matter deleted from existing law.
Amendments proposed prior to final adoption will be noted on a separate page with line references or by handwritten changes on the draft legislation.

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82 Introduced/First Reading: 4/3/2023
83 Public Hearing:
84 Second Reading/Adopted:
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86 Effective Date:
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88 Legislative History:
89 See Minutes of City Council Meetings dated January 6, 2020, June 16, 2020, January 24, 2021,
90 March 1, 2021, and October 7, 2022.

Public Hearing

EXHIBIT A

Aberdeen – Havre de Grace

Memorandum of Agreement

Water Purchase

THIS MEMORANDUM OF AGREEMENT (Agreement”), made this 16th day of June, 2020, and entered into between the **CITY OF ABERDEEN**, a municipal corporation of the State of Maryland (hereinafter “the Purchaser”) and the **MAYOR AND CITY COUNCIL OF HAVRE DE GRACE**, a municipal corporation of the State of Maryland (hereinafter the “Provider”) (the “Purchaser” and the “Provider” individually referred to as a “party” and collectively referred to as the “parties”).

WHEREAS, the Purchaser and the Provider recognize that an available water supply is prerequisite to continued economic growth and that continued economic growth is in the best interest of both parties; and

WHEREAS, through mutual cooperation and coordination, both parties wish to optimize their respective water production and supply capabilities to meet water demands associated with economic growth; and

WHEREAS, both parties desire to provide for the design and construction of a water transmission and distribution line and related appurtenances between the City of Aberdeen corporate limits and the City of Havre de Grace (“the Provider Capital Improvements”); and

WHEREAS, the water transmission and distribution line (“Transmission Line”) will include construction of a line between Blenheim Run Road at Bulle Rock to Robinhood Road at the intersection of Old Post Road/Route 40 and a portion of the Transmission Line and related appurtenances to be installed as part of the Provider Capital Improvements will serve other properties in the City of Havre de Grace in addition to serving Purchaser; and

WHEREAS, the Purchaser desires to provide an interconnection and receive, and the Provider desires to provide, an interconnection and furnish potable water for use of the Purchaser through this water transmission and distribution line in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Provider will need to design and construct the Provider Capital Improvement in order to transmit and distribute potable water for the use of Purchaser; and

WHEREAS, the Purchaser will need to design and construct a water distribution line and related appurtenances (“the Purchaser Capital Improvements”) in order to receive and distribute to its customers potable water furnished by Provider; and

WHEREAS, the Provider Capital Improvements and the Purchaser Capital Improvements collectively are referred to as “the Capital Improvements.”

NOW THEREFORE, in consideration of the foregoing Recitals that are a material part of this Agreement and other good and valuable considerations, the Provider and the Purchaser agree as follows:

THE PROVIDER OBLIGATIONS AND REQUIREMENTS:

1. **OBLIGATION TO FURNISH:** The Provider agrees to furnish the Purchaser at the Point of Delivery (near the intersection of Route 40 and Robin Hood Road, Aberdeen, Maryland, as depicted on Exhibit A to this Agreement), during the term of this Agreement potable, treated finished water

meeting the applicable drinking water standards of the Maryland Department of Environment, from time to time, in such quantity as agreed by both the Purchaser and Provider. The Provider's obligation to furnish water and the Purchaser's obligation to receive water furnished by Provider are dependent and contingent upon the design, construction and acceptance of the Capital Improvements as provided for in this Agreement.

- a. **CAPACITY:** The Provider agrees to provide an initial daily amount as requested by Purchaser of no less than 500,000 gallons of water per day (GPD - 347 GPM), and, as provided in paragraph 1.b., up to a maximum of 900,000 gallons of water per day (GPD - 624 GPM), at a reasonably consistent delivery pressure rate of at least eighty (80) psi.
 - b. **ADDITIONAL CAPACITY:** The Provider agrees to provide up to an additional 400,000 GPD to the Purchaser, for a maximum of 900,000 GPD, upon written notification by the Purchaser to the Provider as specified in Paragraph 1.d.
 - c. **ESTABLISHED DAILY REQUIREMENT:** The capacity provided to the Purchaser under Paragraph 1.a. and the additional capacity requested by and provided to the Purchaser under Paragraph 1.b. comprise the Purchaser's Established Daily Requirement.
 - d. **DECREASE AND INCREASE OF USAGE (NON-EMERGENCIES):** The parties agree that the Purchaser may request, and the Provider shall grant, an increase in the Established Daily Requirement not to exceed 900,000 GPD subject to availability of capacity, or a decrease in the Established Daily Requirement. Any change in the Established Daily Requirement shall be subject to a corresponding rate adjustment under Paragraph 6 below. Any decrease or increase shall be in increments of 50,000 gallons. The Purchaser and Provider may agree to increase the Established Daily Requirement above 900,000 GPD by amendment in accordance with paragraph 24 of this Agreement. The Purchaser shall provide the Provider ninety (90) days prior written notice of the effective date of any requested change in the Established Daily Requirement.
2. **REQUIRED WATER PRESSURE:** The Provider agrees to furnish water at a reasonably constant pressure of eighty (80) psi at the Point of Delivery (which Point of Delivery is depicted on Exhibit A attached hereto). Water delivery system failures of pressure or supply as a result of unforeseen events such as power failure, flood, fire, use of water to fight fire, earthquake or other catastrophes shall excuse the Provider from the requirement of this paragraph for such a reasonable period of time as may be necessary to restore full service. The Provider shall make every reasonable effort to restore the system to the defined operating parameters as quickly as possible and keep the Purchaser apprised of the efforts towards restoration.
 3. **MEASUREMENT OF WATER:** The Provider agrees to purchase, furnish and maintain the necessary equipment and required devices of standard type for measuring and recording the quantity and pressure of water delivered to the purchaser at the Point of Delivery.
 4. **INVOICING:** The Provider shall furnish the Purchaser a monthly itemized invoice for the amount of water delivered to the Purchaser during the previous month. The invoice shall be payable within thirty (30) days of Purchaser's receipt of the invoice or such later date as otherwise stated on the invoice.

THE PURCHASER REQUIREMENTS AND OBLIGATIONS:

5. **OBLIGATION TO PAY:** The Purchaser agrees to pay the Provider for water delivered in accordance with the established rate schedule below and reasonable payment terms in effect at the time of invoicing and agreed to by Purchaser.

6. **INITIAL RATE SCHEDULE:** The Purchaser agrees to pay for the quantity of water delivered to Purchaser's system by the Provider, and metered at the Point of Delivery, utilizing the following rate structure:
 - a. The first 500,000 gallons per day @ \$4.00/1,000 gallons so long as at least 500,000 gallons are purchased.
 - b. The next 50,000 gallons per day @ \$3.90/1,000 gallons.
 - c. The next 50,000 gallons per day @ \$3.80/1,000 gallons.
 - d. All remaining gallons per day @ \$3.70/1,000 gallons.
 - e. These standard usage charges set forth in subsections a through d above include any operation and maintenance costs to produce and deliver finished water to the Point of Delivery, any Provider Capital Improvement, and any other costs incurred to deliver finished water to the Point of Delivery during the billing period.
 - f. Provider may adjust the water usage rate solely in proportion to the percentage change in rate of tariff charged to Provider's citizens as determined and approved by the Havre de Grace City Council, in accordance with provisions established by law. Any change in the water usage rates are subject to the Purchaser's approval or Purchaser's right to terminate this Agreement pursuant to the procedure set forth in Paragraph 18 of this Agreement.
 - g. . At least 60 days before the effective date of any change in the water usage rate the Provider shall provide to the Purchaser a copy of the water usage rate study and any other documentation that establishes the basis and justification for the rate adjustment for water provided to Purchaser.

EXAMPLE OF RATE CALCULATION:

- a. 500,000 gal/day would be calculated at: $500,000 \text{ gal/day} \times \$4.00/1,000 \text{ gal}$
- b. 550,000 gal/day would be calculated at: $500,000 \text{ gal/day} \times \$4.00/1,000 \text{ gal} + 50,000 \text{ gal/day} \times \$3.90/1,000 \text{ gal}$
- c. 600,000 gal/day would be calculated at: $500,000 \text{ gal/day} \times \$4.00/1,000 \text{ gal} + 50,000 \text{ gal/day} \times \$3.90/1,000 \text{ gal} + 50,000 \text{ gal/day} \times \$3.80/1,000 \text{ gal}$
- d. 650,000 gal/day would be calculated at: $500,000 \text{ gal/day} \times \$4.00/1,000 \text{ gal} + 50,000 \text{ gal/day} \times \$3.90/1,000 \text{ gal} + 50,000 \text{ gal/day} \times \$3.80/1,000 \text{ gal} + 50,000 \text{ gal/day} \times \$3.70/1,000 \text{ gal}$

GENERAL CONDITIONS

7. **CONSERVATION:** Provider may at any future time institute a water conservation program to protect its water resources or to avert a water shortage due to a system calamity. If such a program is instituted, the Purchaser shall comply with the same water conservation measures as relate to water drawn from the Point of Delivery by the Purchaser that apply to all users within the city limits of Provider.

8. **TRANSFERABILITY:** This Agreement is not transferable or assignable, in whole or in part. Water purchased pursuant to the terms of this Agreement may not be sold or distributed to any business, residence, or agency of any kind outside of the city limits of Aberdeen without the express written consent and approval of Provider.
9. **CONTINUOUS SERVICE:** This Agreement does not guarantee that the Provider will supply an uninterrupted water supply meeting the requirements of this Agreement in the event of a system failure or act of God. A temporary loss of finished water caused by the Provider's maintenance operation, a broken water line or deficiencies in the water source or in the water treatment process shall not be considered a material breach of this Agreement, provided that the same is not caused by the negligence or willful act or omission by the Provider.
10. **QUALITY OF FINISHED WATER:** The finished water supplied to the Point of Delivery shall meet all parameters required by the Safe Drinking Water Act (SDWA), the Environmental Protection Agency (EPA), Maryland Department of the Environment (MDE), and the Provider's operation specific to Public Water System (PWS) Identification Number 012-0012. If any finished water supplied by the Provider does not meet SDWA, EPA or MDE required parameters, the Provider will notify the Purchaser within twenty-four (24) hours of occurrence or when the Provider is aware of the nonconformance or when directed by any of the agencies with oversight including the SDWA, EPA or MDE.
11. **OWNERSHIP, MAINTENANCE AND SERVICE RESPONSIBILITIES:**
 - a. The Provider's responsibility for service and maintenance of the water distribution system shall include all of the pipe, components, meters and valves upstream (Eastward) from the Point of Delivery.
 - b. The Purchaser's water system distribution system responsibility for service and maintenance shall include the meter vault and the pipe exiting the meter vault at the Point of Delivery and everything in the delivery system downstream from the Point of Delivery, including the nearby booster station.
 - c. If the criteria requiring public notification specified in COMAR 26.04.01.20 (Public Education for Lead) are met, the Provider will notify the Purchaser. The Provider will supply monthly operating reports regarding water quality to the Purchaser in a timely manner.
 - d. Any additional requirements by the Purchaser, downstream of the Point of Delivery, as per SDWA, EPA, MDE or Purchaser's Department of Public Works, shall be the responsibility of the Purchaser. Such additional requirements may include but not be limited to, specific corrosion control, system bacteriological monitoring, lead and copper monitoring, chlorine residual requirements or any other distribution system specific needs.
12. **OPERATION & MAINTENANCE RECORDS:** The Purchaser shall have the right to review and reproduce the Provider's operation and maintenance procedures and reports for Provider's Water Treatment Plant. Any costs incurred for such review and reproduction shall be borne exclusively by the Purchaser.

13. **INSPECTION OF PROVIDER'S WATER FACILITIES & RECORDS:** The premises of the Provider's water facility may be entered and inspected by the Purchaser with prior written notice from the Purchaser and consent by the Provider, accompanied by an authorized Provider representative, during normal business hours. The Purchaser shall have access to plant operations and flow data, meter records, water plant and pipeline maintenance records and schedules, and all costs records and files related to the Provider's water facility for review purposes only. Any costs or expenses incurred to provide such records to the Purchaser shall be paid by the Purchaser. The Purchaser agrees to exercise prudence and caution with the information that it reviews and hold such information confidential, understanding that this information could compromise the safe and secure operation of the Provider's facility and system.
14. **EMERGENCY SITUATION:** Water Plant equipment failure, transmission line break, or some other similar catastrophic event within the water production or delivery system could cause an emergency situation. In that type of event, the Director of Public Works for either the Provider or Purchaser or their designee may declare a water state of emergency. In such an event, the Directors of Public Works agree to coordinate efforts to maintain essential services by utilizing all water sources or limiting the amount of water sales through the interconnection.
15. **DESIGN AND APPROVAL OF THE CAPITAL IMPROVEMENTS:** Provider and Purchaser each shall select and pay for their respective engineering consultants ("Consultants") to design and provide construction plans and specifications and construction bid documents for the Provider Capital Improvement and the Purchaser Capital Improvement in accordance with the following:
 - a. The selection and engagement of the Consultants shall require the Consultants to complete all work under the engagement within 365 days after the date of this Agreement.
 - b. The Provider and Purchaser both must approve and accept the work of the Consultants, and neither may withhold approval unreasonably.
 - c. If Provider and Purchaser are unable to approve and accept Consultants' work, either party, by written notice to the other, may terminate this Agreement. In the event of termination of this Agreement under this paragraph after Consultants have commenced work, Provider and Purchaser shall remain liable for payment of their respective Consultant's costs.
16. **JOINT CONSTRUCTION OF CAPITAL IMPROVEMENTS:** This paragraph 16 applies if Provider and Purchaser agree to undertake the Capital Improvements jointly. Upon completion and acceptance of construction plans and specifications and construction bid documents for the Provider Capital Improvements and the Purchaser Capital Improvements, Provider and Purchaser jointly shall select and pay for a construction contractor ("Contractor") to construct the Capital Improvements and a Project Administrator ("Administrator") to oversee the construction of the Capital Improvements, in accordance with the following:
 - a. Within 90 days after the date of this Agreement, Provider and Purchaser shall agree on a procurement process to select the Contractor and Administrator. The procurement process shall comply with procurement requirements of Provider and Purchaser.

- b. Provider and Purchaser shall share the fees of the Contractor and Administrator as follows:
 - i. Provider shall be responsible for paying the portion of the Contractor's and Administrator's fees attributable to their respective work for the Provider's Capital Improvements;
 - ii. Purchaser shall be responsible for paying the portion of the Contractor's and Administrator's fees attributable to their respective work for the Purchaser's Capital Improvements; and
 - iii. Purchaser and Provider shall share equally the portion of the Contractor's and Administrator's fees attributable to their respective work that Provider and Purchaser agree is of common benefit to the Provider's Capital Improvements and the Purchaser's Capital Improvements.
 - iv. The Provider and Purchaser shall agree, in writing, to the apportionment of fees set forth in subparagraphs i, ii and iii.
- c. The selection and engagement of the Contractor and Administrator shall require the completion of all work under the engagement within 365 days after the issuance of a notice to proceed with the work.
- d. The Provider and Purchaser each shall designate one individual to be that party's representative to oversee the Contractor's and Administrator's work, although the Provider's representative shall be primarily responsible for overseeing the work associated with the Provider's Capital Improvements and the Purchaser's representative shall be primarily responsible for overseeing the work associated with the Purchaser's Capital Improvements.
- e. The Provider and Purchaser both must approve any revision to the Contractor's or Administrator's contracts that increases the cost of work or time for performance.
- f. Provider and Purchaser both must approve and accept the work of the Contractor and the Administrator.

17. CONSTRUCTION OF CAPITAL IMPROVEMENTS – NOT JOINT: This paragraph 17 applies if Provider and Purchaser do not agree to undertake the Capital Improvements jointly. Upon completion and acceptance of construction plans and specifications and construction bid documents for the Provider Capital Improvements and the Purchaser Capital Improvements, Provider and Purchaser each shall select and pay for its own construction contractor ("Contractor") to construct the Provider Capital Improvements and Purchaser Capital Improvements, respectively, and Project Administrators ("Administrator") to oversee the construction of the Provider Capital Improvements and the Purchaser Capital Improvements, in accordance with the following:

- a. Unless, and to the extent that, Provider and Purchaser agree otherwise in writing, Provider and Purchaser shall be responsible for all costs and expenses of their respective Contractors and Administrators.

- b. The selection and engagement of the Contractors and Administrators shall require the completion of all work under the engagement within 365 days after the issuance of a notice to proceed with the work.
- c. The Provider and Purchaser each shall designate one individual to be that party's representative to oversee those portions of the Contractors' and Administrators' work as necessary to ensure the proper interconnection of the Provider's Capital Improvements and the Purchaser's Capital Improvements, although the Provider's representative shall be primarily responsible for overseeing the work associated with the Provider's Capital Improvements and the Purchaser's representative shall be primarily responsible for overseeing the work associated with the Purchaser's Capital Improvements.
- d. Provider and Purchaser both must approve and accept the work of the Contractors and the Administrators.

18. TERMINATION OF AGREEMENT FOR CONVENIENCE AND RECOUPMENT:

- a. This Agreement shall continue in full force and effect for no less than two hundred forty (240) months beginning on the first day of the first billing cycle and continuing without interruption, terminating at the end of the 240 month period of time unless Provider or Purchaser terminates this Agreement sooner pursuant to paragraph 18.b. or paragraph 19.
- b. Except as otherwise provided in this Agreement, Purchaser may terminate this Agreement for convenience upon one year prior written notice, except that Purchaser may not terminate this Agreement for convenience until Provider has recovered the debt service for all engineering, permitting and construction costs incurred by the Provider for the construction of those portions of the Provider Capital Improvements that are for the exclusive benefit of Purchaser ("the recoupment amount"), or until Purchaser and Provider agree upon terms for Purchaser to pay any remaining balance of the recoupment amount, reduced as provided in paragraph 18.c., over the remainder of the 240 month period of time specified in paragraph 18.a.
- c. Before Provider commences the delivery of water to Purchaser under this Agreement, the Purchaser and Provider shall agree upon the recoupment amount. The recoupment amount shall be reduced by (i) charges for water paid by Purchaser under Paragraph 5 of this Agreement, (ii) any capital recovery fees collected by the Provider from other parties connecting to the water transmission line based on standards and rates in effect from time to time applicable to users of the Provider's water system, and (iii) other revenues provided or available to Provider to pay down debt service (collectively "recoupment credits").
- d. Provider annually, but not later than March 31, shall provide Purchaser with an accounting of recoupment credits from the prior calendar year and the amount of debt service remaining to be recovered. Purchaser, at its expense and with 30 days prior written notice to Provider, may review and obtain copies of Provider's books, records and accounts as reasonably necessary to verify the accuracy of Provider's accounting.

19. **TERMINATION OF AGREEMENT FOR MATERIAL BREACH:** The Purchaser or Provider may terminate this Agreement as a result of a material breach by the other party as provided in this paragraph. A party shall provide to the breaching party written notice of the breach, the action required to cure the breach, the effective date of termination if the breach is not cured, and a reasonable period of time, not to exceed 30 days, within which the breaching party may cure the breach and rescind the termination. The termination of this Agreement shall be deemed rescinded if the breach is cured within the time specified in the written notice.
20. **DISPUTE RESOLUTION:** In the event of a dispute between Provider and Purchaser regarding the interpretation of this Agreement, or the rights and obligations of the parties under this Agreement, including any breach of this Agreement, the parties first shall attempt to resolve the dispute through non-binding mediation under the auspices of the American Arbitration Association, or such other organization or individual as the parties may agree. If the parties are unable to resolve the dispute through mediation, the dispute shall be submitted to binding arbitration under the auspices of the American Arbitration Association, or such other organization or individual as the parties may agree, unless the parties agree in writing to submit the dispute to resolution through State courts having jurisdiction in Harford County. The costs of any mediation or arbitration shall be divided equally between the parties, except that each party shall pay its own attorney fees. The parties shall pay their own costs and expenses, including attorney fees, in any judicial proceeding except as otherwise may be taxed or awarded by the court.
21. **TIME OF ESSENCE:** Time is of the essence in this Agreement.
22. **SUBJECT TO APPROPRIATION:** The financial obligations of the parties under this Agreement are subject to appropriation of funds by their respective City Councils.
23. **EFFECTIVE DATE:** This Agreement shall become effective upon due execution by Provider and Purchaser following the adoption of any legislation approving this Agreement and authorizing its execution by the City Council of the City of Aberdeen and the Mayor of the City of Havre de Grace.
24. **AMENDMENT:** This Agreement may only be amended in writing and signed by both Parties. Material amendments may require subsequent approval by the Parties' respective legislative bodies. Amendments related to Paragraph 1.d. of this Agreement shall not be deemed material amendments.
25. **COUNTERPARTS:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have signed their names and affixed their seals on the day and year first above written.

[signatures follow on next page]

WITNESS/ATTEST

Patrick Sypolt

MAYOR AND CITY COUNCIL OF
HAVRE DE GRACE

By: William T. Martin
William T. Martin
Mayor

CITY OF ABERDEEN

SANDY E. JOBERSON
CITY MGR

By: Patrick McGrady
Patrick McGrady
Mayor

FOR MAYOR AND CITY COUNCIL OF HAVRE DE GRACE

Approved as to form and legal
Sufficiency this 16th day of
June, 2020

April Ishak
April Ishak, Esq.
City Attorney

Recommended for approval this
16 day of June, 2020

Tim Whittie
Tim Whittie, P.E.
Director of Public Works

Approved for financial sufficiency this
16 day of JUNE, 2020

George DeHarity
George DeHarity
Director of Finance

Reviewed and concurred on this
16 day of JUNE, 2020

Patrick Sypolt
Patrick Sypolt
Director of Administration