

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND THE CITY OF INDEPENDENCE, MISSOURI, FOR THE PROVISION OF UP TO 7.5 MILLION GALLONS A DAY OF WATER SUPPLY.

WHEREAS, the City of Independence ("Independence") owns, operates, produces and supplies water on a regional basis and is willing to provide the City of Lee's Summit ("City") with water pursuant to certain terms and conditions; and,

WHEREAS, Independence water meets or exceeds the federal and state drinking water standards; and,

WHEREAS, the City has purchased water from the Independence since 1986; and,

WHEREAS, the City has identified a need to purchase water from the Independence; and,

WHEREAS, Section 70.220, RSMo., authorizes cooperative agreements between municipalities and other political subdivisions; and,

WHEREAS, both the City and Independence desire to enter an agreement regarding the provision of water to the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

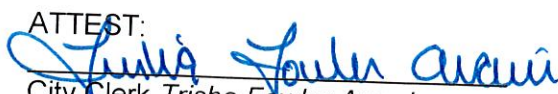
SECTION 1. The Intergovernmental Agreement, which is attached as Exhibit A and incorporated herein by reference (the "Agreement"), for the provision of water to the City of Lee's Summit to purchase a minimum of 3.2 million gallons a day with a maximum of 7.5 million gallons a day is hereby approved and the Mayor is authorized to execute an agreement in substantially the same form as the attached Agreement by and on behalf of the City.

SECTION 2. This Ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

SECTION 3. Should any section, sentence, or clause of this Ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences or clauses.

PASSED by the City Council of the City of Lee's Summit, Missouri, this 17th day of November, 2020.

ATTEST:

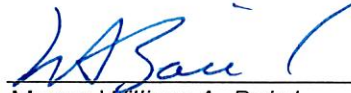

City Clerk Trisha Fowler Arcuri


Mayor William A. Baird

BILL NO. 20-216

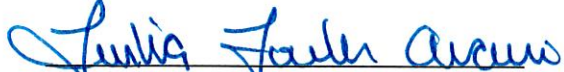
ORDINANCE NO. 9008

APPROVED by the Mayor of said city this 17th day of November, 2020.



Mayor William A. Baird

ATTEST:



City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:



City Attorney Brian W. Head

**CONTRACT FOR SUPPLY OF WATER FROM THE CITY OF INDEPENDENCE,
MISSOURI TO THE CITY OF LEE'S SUMMIT, MISSOURI**

THIS CONTRACT, made and entered into this ____th day of November 2020, by and between the City of Lee's Summit, Missouri, a municipal corporation (hereinafter called "City"), and the City of Independence, Missouri, a municipal corporation (hereinafter called "Independence"),

WITNESSETH:

WHEREAS, City owns and operates a water distribution system, and currently receives water from Independence under Contract For Supply of Water dated January 4, 2001; and,

WHEREAS, City desires to enter into a new Contract for Supply of Water with Independence; and,

WHEREAS, Independence is willing to provide said supply of water pursuant to the terms and conditions contained in this Contract, which will replace said Contract for Supply of Water dated January 4, 2001.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows: (The following terms have separate, distinct definitions herein and are not to be confused: "Independence's 20-inch Main ", "City's 20-inch Main", "Independence's 16-inch Main", "City's 16-inch Main", "20-inch Connection Point", "16. inch Connection Point", "20-inch Metering Point", and "16-inch Metering Point".)

1. Independence owns a 20-inch ductile iron water main complete in place, with all necessary valves and fittings and with proper connection to Independence's general distribution system, (herein called "Independence's 20-inch Main"), in the following locations:

Beginning at a point on the West side of Pleasant Grove School Road, said beginning point being approximately 150 feet North of the Southeast corner of the

Southwest Quarter of the Northwest Quarter of Section 29, Township 49, Range 31, in Independence, Jackson County, Missouri; thence South to the South side of U.S. Highway No. 40; thence continuing South in easement parallel to the East line of the West Half of the Southwest Quarter of said Section 29 to a point 10 feet South of the Southeast corner of said Half of Quarter Section; thence East and parallel with the North line of Section 32, Township 49, Range 31, 600 feet more or less to a point on the East or right bank of the relocated channel of the Little Blue River, in Lee's Summit, Jackson County, Missouri.

2. A. The City at its sole cost and expense will continue to provide, operate, maintain and replace the necessary piping, fittings, valves, reducing valves, and vaults of design and construction approved by Independence for the connection, housing and protection of a water meter or meters which Independence will continue to furnish and maintain at Independence's cost and expense located at a point approximately 1,250 feet West and 150 feet North of the Southeast corner of the Northeast Quarter of the Southeast Quarter of Section 31, Township 49, Range 31 in Lee's Summit, Jackson County, Missouri, (hereafter referred to as the "16-inch Metering Point") said point being approximately 1,450 feet South of the centerline of the Little Blue River (hereafter referred to as the "16-inch Connection Point") as measured along the existing Lee's Summit supply main (hereafter referred to as the "City's 16-inch Main").

B. The City at its sole cost and expense will continue to provide, operate, maintain and replace the necessary piping, fittings, reducing, control and line valves, and vaults, of design and construction approved by Independence for the connection, housing and protection of a water meter or meters which Independence will continue to furnish and maintain at Independence's cost and expense located at a point approximately 925 feet East and 550 feet North of the Southwest corner of the Southeast Quarter of Section 32, Township 49, Range 31, Lee's Summit, Jackson County, Missouri, (hereafter referred to as the "20-inch Metering Point") said point being

approximately 210 feet West of the West right-of-way line of I-470 and approximately 5,600 feet east, south and west from the "20-inch Connection Point" of Independence's 20" water main, as measured along the centerline of the 20-inch Lee's Summit supply main (hereafter referred to as the "City's 20" Main").

C. City, at its sole cost and expense, will provide, install, operate and maintain any water transmission and distribution system it deems necessary to transport and distribute water from the "16-inch Connection Point" and the "20-inch Connection Point".

3. Title to both Independence's existing 16-inch Main which is not described herein but which terminates at the "16-inch Connection Point" described in subparagraph A below (herein called "Independence's 16-inch Main") and "Independence's 20-inch Main": which were installed by Missouri Water Company shall at all times be and remain Independence's. Independence shall have the right to make further extension to and lay lateral mains from said mains. Independence shall also have the right to connect fire hydrants and customer service lines to said mains.

The parties agree that the following special provisions will apply to the supply mains of the City in the taking of the water supply under this contract:

A. "Independence's 16-inch Main" terminates at the "16-inch Connection Point" at the centerline of the Little Blue River, said centerline also being the North City Limits of Lee's Summit; City owns, operates and maintains "City's 16-inch Main" from the "16-inch Connection Point" southward, which is all within the City Limits of Lee's Summit, Missouri. The "16-inch Metering Point" is established at a point 150 feet North of Velie Road, being the first accessible site South of the Little Blue River, leaving approximately the first 1,450 feet of "City's 16-inch Main" that is to have priority maintenance from City to avoid loss of unmetered water, and City shall not make or

allow any form of tap or connection to allow withdrawal of water ahead of the "16-inch Metering Point".

B. City will continue to own, operate and maintain "City's 20-inch Main" from the City's general distribution system Northward to connect with the end of "City's 20-inch Main" at the "20-inch Connection Point", said point being 600 feet East and 10 feet South of the Northwest corner of the Northeast Quarter of the Northwest Quarter of Section 32, Township 49, Range 31, in Lee's Summit, Jackson County, Missouri. The "20-inch Metering Point" will be along the "City's 20-inch Main" at a point approximately 5,600 feet east, south and west from the end of "Independence's 20-inch Main", which is the "20-inch Connection Point", as measured along the centerline of the "City's 20-inch Main". City will give priority maintenance to City's 5,600 feet of main to guard against any leakage or loss of unmetered water. In as much as City has intended "City's 20-inch Main" to serve solely as a supply main, City agrees that no water-using connections will be allowed on "City's 20-inch Main" between the "20-inch Connection Point" and the "20-inch Metering Point", a total distance of approximately 5,600 feet. Should the City be required to service future water customers in this area, the mains necessary to service such future customers must be attached to the City's distribution system and not to "City's 20-inch Main".

4. Independence agrees to deliver to City under the terms of this Contract and City agrees to purchase from Independence not less than 50 per cent of the City's entire supply of water, subject to the following provisions and limitations (and including paragraph 5):

A. Independence will supply and the City will purchase from Independence not less than 50 percent of City's entire supply of water subject to the following provisions and limitations:

a. Maximum

City shall not withdraw water from the 16" and 20" transmission main connection metering points at rates in excess of 2,500,000 gpd and 5,000,000 gpd, respectively, except as a result of a major pipeline break, and then only for a brief duration until the break is promptly valved off,

b. Minimum

The minimum purchase requirement from the 16" and 20" metering points shall in no event be less than 1,700,000 gpd and 1,500,000 gpd, respectively.

If, during the terms of this Contract, the total usage by City during any full calendar year shall be less than said minimum, the difference shall be paid by City to Independence within ten days after receipt by City from Independence of a bill for said difference.

B. In addition to these maximum and minimums limitations at the "16-inch Metering Point" and the "20-inch Metering Point", there is a "Usage Limitation" which restricts the combined "Rate of Usage" which the City may withdraw concurrently from the "16-inch Metering Point" and the "20-inch Metering Point" (hereinafter collectively the "Metering Points"). This restriction is defined as follows:

"Rate of Usage" is defined as the total flow during any minute, hour, or multiple of hours to be selected by Independence from time to time, expressed in million gallons per day, at which City is taking water in combination through the "Metering Points".

"Usage Limitation" is defined as the maximum total "Rate of Usage" that the City may use in combination through the "Metering Points" and it is determined

on a monthly basis at the end of each "Billing Month", for application prospectively to the forthcoming month by calculating the average total daily water use (MGD) through the "Metering Points" throughout the preceding 12 Billing Months multiplied by 1.5; but in no event will this limitation exceed 7.5 MGD.

"Billing Month" is defined as an approximate 30-day period between regularly scheduled meter reading dates selected by Independence.

5. In the event that during the life of this Contract the City's daily total water demand from all sources exceeds 15 million gallons per day and Independence cannot or will not provide additional supply, or the City and Independence cannot mutually agree on an additional water supply contract, the City's commitment to purchase not less than 50 per cent of City's entire supply of water from Independence will not apply to water demand in excess of 15 million gallons per day.

6. The obligation of Independence to sell and deliver water pursuant to this Contract shall be subject to its ability to do so and its obligations to its current customers. Independence shall not be obligated to furnish the supply of water provided for herein when Independence is unable to do so as a result of causes that are beyond its control.

If at any time Independence cannot furnish the supply of water provided for herein as aforesaid, the limitations and requirements in paragraph 4 shall be temporarily suspended. Should conditions exist which, in the sole judgment of Independence, require it to place restrictions upon the use of water by its customers, City agrees that upon receipt of notice thereof from Independence, City shall forthwith place the same restrictions upon the use of water by City's customers unless City shall be able to obtain during said period of restriction a temporary supplementary supply of water from some other source which is approved by the Missouri Department of Natural Resources, which may make unnecessary the imposition of such restrictions

on City's customers. Independence shall make every reasonable effort to correct promptly any malfunction of its water works system which adversely affects the supply of water from Independence to City. Immediately following correction of the then cause for temporary limitation and reinstitution of the water supply contemplated herein, the requirements and limitations in paragraph 4 shall again apply. Independence will make reasonable efforts to temporarily provide City with a sufficient supply to restore its needed storage upon terms and conditions at Independence's sole discretion.

Subject to the conditions hereinbefore set forth, Independence shall maintain positive pressure in its mains at the "16-inch Connection Point" and the "20-inch Connection Point". Should negative pressure occur at such point, City shall notify Independence of such fact and Independence shall restore positive pressure at said point as soon as it reasonably is able to do so.

7. The City shall provide the necessary storage and shall operate its system in such a manner that the quantity of water delivered to the City by Independence through the "16-inch Metering Point" and the "20-inch Metering Point" shall be further limited as follows:

During any 24-hour period from 7:00 A.M. to 7:00 A.M. when the air temperature, as measured at the City Hall, at 2:00 P.M. reaches or exceeds 80 degrees F., the quantity of water delivered to the City by Independence during any hour between 4:00 P.M. and 10:00 P.M. of that period shall not exceed the average hourly rate of water delivered during the said 24-hour period from 7:00 A.M. to 7:00 A.M. In the event that City shall fail or refuse to regulate its withdrawal of water from Independence's mains as hereinbefore set forth in paragraphs 4 and 7, Independence shall have the right to purchase and install, at City's sole cost and expense, flow-regulating devices selected by Independence to achieve any limitation of maximum rate of withdrawal which had been violated. City shall reimburse Independence the cost of purchasing and installing such flow regulating devices within 10 days after receipt from Independence of a bill therefor,

8. Any and all facilities which may be necessary for City to provide for periodic abnormal water demands of City's customers, and which are required to distribute and use properly the supply of water furnished by Independence to City, including, but not limited to, such items as mains, fittings, valves, reducing valves, fire hydrants, surface storage facilities, elevated storage tanks and pumping equipment shall be provided, installed, maintained and operated by and at the sole cost and expense of City.

9. If City, during the period of this Contract, desires more water than the Contract provides, it shall give written notice to Independence of its desire.

Independence then shall determine whether it wishes to provide the additional supply of water, whether through existing or new facilities. If Independence determines that it wishes to supply the additional water, Independence shall determine what, if any, installations are required and the costs of any such installations and then by written notice notify City of any costs associated with the extra supply.

After notice, City will determine whether it wishes to purchase the additional water from Independence. If City decides to purchase the water from Independence, it will enter into a new twenty (20) year water contract if the additional supply requires additional installations.

If City and Independence do not agree on terms for supplying the additional water, City shall be able to obtain the additional supply of water from any other source, provided that additional supply shall have been approved by the Missouri Department of Natural Resources. In the event City does elect to take water from another source as provided herein, the parties shall continue to be bound by the terms of this Contract.

10. The water purchased under this Contract is to be delivered to City at the connection(s) and meter installation described in paragraph 2, and the total usage recorded by said meter(s) must be

paid for by City within fifteen (15) days after the date of billing therefor by Independence, in accordance with the following schedule of rates:

SCHEDULE OF RATES FOR WATER DELIVERED*
AS DETERMINED BY METER(S)

*Minimum purchases described in paragraph 4.

RATE COMPONENTS: The rate charged under this tariff is the sum of the customer charge component plus the commodity charge component.

CUSTOMER CHARGE - for water service continuously available to customer through facilities of Independence; listed below opposite each respective meter size.

<u>Meter Size</u>	<u>Monthly Customer Charge (1)</u>
5/8" Water Meters	\$9.60
3/4" Water Meters	10.75
1 " Water Meters	11.50
1-1/2" Water Meters	13.30
2" Water Meters	18.50
3 " Water Meters	56.50
4" Water Meters	70.00
6" Water Meters	103.00
8" Water Meters	211.21

(1) COMMODITY CHARGE - \$1.55 per 100 cubic feet for all water used as determined by meters.

Said monthly bills are due and payable and City agrees to pay the same within fifteen (15) days from and after the date of each such bill, City shall pay daily interest at the rate of eight percent (8%) per year on all late payments.

Any proposed rate increase by Independence shall be made in accordance with the Base-Extra Capacity Method (using the Utility basis), as described in the American Water Works Association M1 Manual, Seventh Edition, as amended and revised. The rate study shall be obtained by Independence from a qualified independent engineering consultant

acceptable to Independence. Independence will provide notification of any such proposed rate increase, together with a copy of the said rate study at least 75 days prior to the effective date of the proposed rate increase.

City shall notify Independence of any disagreement with the proposed increase at least thirty (30) days prior to the effective date of the proposed increase. City shall provide Independence with the reason or reasons for its disagreement.

The proposed rate increase shall go into effect upon the effective date, provided, however, that if City continues to disagree with the rate increase, it may request that the increase be submitted to arbitration. Such rate arbitration shall be performed upon the following terms and conditions:

a. City shall designate at the time of its request for arbitration an arbitrator who is a qualified independent utility consultant.

b. The independent engineering consultant retained by Independence for the purpose of the rate change shall serve as the arbitrator for Independence.

c. If the two arbitrators are unable to resolve the issue, then the two shall select a third arbitrator who shall be a person possessing the qualifications as determined by the said two arbitrators. A decision by the majority of the three shall be the arbitration decision. Should the two original arbitrators be unable to decide upon the third, then the presiding Judge of the Circuit Court of Jackson County, Missouri, shall be requested to appoint the third arbitrator, who shall have qualifications equivalent to the two original arbitrators,

d. The person or persons so named in paragraphs a, b, and c shall comprise the arbitration panel and shall conduct the arbitration.

e. The arbitration panel shall complete its inquiry and deliberation and render its final decision upon the proposed rate increase within sixty (60) days following the effective date of said proposed rate increase.

f. Should the final arbitration award be for a reduction of the rate change, Independence shall refund any excess which it has collected together with interest at the rate of the most recent thirty (30) day Treasury Bills, minus financial service charges, if any.

g. The costs of the arbitration shall be divided equally between City and Independence.

h. Either party may seek review of the arbitration decision in the Circuit Court of Jackson County, Missouri.

i. In the event no review of the arbitration decision is sought by either party, such arbitration decision shall be final and binding upon the parties.

Wholesale users shall have reasonable access during regular business hours to the books and records of Independence relevant to the administration of the water utility.

Independence covenants that in any rate increase proposed by a cost-of-service study, it will adopt a rate structure which will treat all wholesale customers on a fair and equitable basis, and without favoritism for retail customers within Independence.

Independence agrees that the capital costs attributable to plant expansion and well-field expansion (after date of this Contract) made necessary by higher usage demands of other wholesale or retail customers will not be used in the calculation of the rate base for the purpose of determining the rates to be charged the City.

11. City may sell water to anyone it chooses, provided that it will not sell water to customers within the City limits of Independence, Missouri, without the prior written permission of

Independence. It is expressly agreed that City may buy water from or sell water to Kansas City and/or other wholesale customers of Independence. City currently has a water supply contract with Kansas City, Missouri, and Independence recognizes this fact and consents thereto. City may, in the future, enter an agreement with Tri-County Water Authority ("Tri-County") or Public Water Supply District No. 13 of Jackson County ("PWSD#13"). Independence recognizes this fact and consents to any such agreement with Tri-County or PWSD#13, subject to paragraph 4 herein.

It is further agreed by the parties hereto that City may sell water to operators of water tank trucks for use outside the City's corporate boundaries, provided that such water is delivered to said tank trucks within said corporate boundaries of City.

12. "Independence's 20-inch Main" cost is being amortized by Independence over a 100-year period at the rate of 1 per cent per year. At the expiration of this agreement, City agrees to pay to Independence the remaining unamortized "Independence's 20-inch Main" cost. However this contract may be renewed under the same terms and conditions herein stated at the end of each twenty year term hereof at the option of the City, which option can be exercised by the City giving Independence written notice at least 120 days prior to the termination of this contract, of City's intention to renew said contract. In the event of renewal, City shall not be required to pay to Independence the aforesaid unamortized "Independence's 20-inch Main" cost and Independence shall continue to amortize said costs until the expiration of each subsequent 20 year renewal. On the expiration of each renewal City shall again have the option afore described.

13. All notices provided for herein shall be in writing and shall be given by ordinary mail, and any notice to City shall be addressed to the City Attorney at 220 SE Green Street, P.O. Box 1600, Lee's Summit, Missouri 64063, and any notice to Independence shall be sent to the City Manager, 111 East Maple, Independence, Missouri 64050.

14. This Contract shall be renewed under the same terms and conditions herein stated at the end of each twenty (20) year term hereof at the option of the City, which option can be exercised by the City giving Independence written notice at least 120 days prior to the termination of any existing term of this Contract of City's intention to renew said Contract.

15. The terms and conditions herein constitute the entire agreement of the parties (or their predecessors) and supersede all prior written and oral agreements and understandings relating to the subject matter hereof, and this Contract may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

16. All of the covenants, agreements, conditions, terms and provisions of this Contract shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, to the same extent and effect as the same are binding upon and inure to the benefit of said parties.

Independence and City agree that each party hereto may assign its privileges and responsibilities under the provisions of this Contract to a successor party including a wholesale water district or other entity upon sixty (60) days written notification to other contracting party of such assignment.

17. Independence agrees that in all respects it will treat City fairly and upon the same basis as other wholesale customers. Should Independence grant any favorable contract provisions of general application to other wholesale customers it will make such contract provisions available to the City.

18. This Contract shall be governed by and construed according to the laws of the State of Missouri.

19. No waiver of any condition or covenant contained in this Contract or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

20. If any term or provision of this Contract is held invalid or unenforceable, the remainder of the Contract shall not be affected and each other term and provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

21. This Contract shall be deemed to have been jointly drafted by the parties and shall not be construed more strongly against any party hereto.

22. Independence and City agree that each has enacted all necessary ordinances and has done everything necessary and appropriate to permit each to validly enter into this contract.

IN WITNESS WHEREOF, the City of Lee's Summit, Missouri, has caused this instrument to be executed by its Mayor and the same to be attested by its City Clerk, both being thereunto duly authorized by the Council of the City of Lee's Summit, Missouri, by Ordinance No. 9008, and Independence has caused this instrument to be executed by its City Manager and the same to be attested by its City Clerk, both being thereunto duly authorized by the Council of the City of Independence, Missouri, by Ordinance No. _____, as of the date first above written.

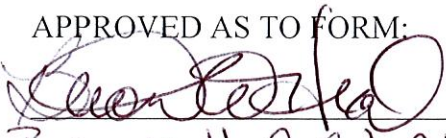
CITY OF LEE'S SUMMIT, MISSOURI

By 

ATTEST:



APPROVED AS TO FORM:


Brian W. Head, City Attorney



CITY OF INDEPENDENCE, MISSOURI

By _____

Zachary C. Walker, City Manager

ATTEST:

Becky Behrens, City Clerk

APPROVED AS TO FORM ONLY:

Shannon Marcano, City Counselor