

MEMORANDUM OF UNDERSTANDING

This **Memorandum of Understanding** (“MOU”) is entered into this _____ day of _____, 2023, by and between the City of Republic, Missouri, a municipal corporation and Charter City located in Greene County, Missouri, being duly organized and existing under the laws of the State of Missouri (“City”), and the Southwest Missouri Joint Municipal Water Commission (“JMUC” and/or “the Commission”), regarding the reallocation of surface water from Stockton Lake for potential use as public water utility. The City and JMUC are referred to together herein as “the Parties.”

WITNESSETH:

WHEREAS, JMUC is a Joint Municipal Utility Commission formed under the Joint Municipal Utility Commission Act, Section 393.700 *et seq.* of the Revised Statutes of Missouri; and

WHEREAS, City is a member of JMUC; and

WHEREAS, JMUC was created to develop water supply projects for Southwest Missouri to meet projected future needs for User and other members; and

WHEREAS, JMUC has been working with the U.S. Army Corps of Engineers (“Corps”) for many years to secure a “storage contract” that would authorize JMUC and its members to use certain waterways and bodies of water for water supply/utility purposes;

WHEREAS, JMUC reasonably believes that the Corps’ leadership will sign a Record of Decision authorizing execution of the storage contract referenced herein above; and

WHEREAS, JMUC anticipates the storage contract will grant permanent right to utilize 92,250 acre-feet of storage space in Stockton Lake to store water for municipal and industrial water supply purposes; a storage volume that is expected to provide a safe yield of approximately 38 million gallons per day (“mgd”); and

WHEREAS, JMUC further anticipates the storage contract will obligate JMUC to make annual payments to the Corps of approximately \$2.5 million, annual payments to cover “operations and maintenance costs” and occasional payments for “repair, rehabilitation, and maintenance costs,” as needed; and

WHEREAS, before executing any contract with the Corps, JMUC must have agreements in place with participating members in order to ensure available funding to pay the aforementioned costs; and

WHEREAS, JMUC anticipates entering into “pass-through” subcontracts with its members to suballocate a portion of JMUC’s storage space to the respective members in exchange for an agreement to pay a portion of JMUC’s costs; and

WHEREAS, to finalize the subcontracts and advance its negotiations with the Corps, JMUC must have information regarding the anticipated amount of storage each of its members is prepared to take, even if the storage volumes that will be contracted to each member may change; and

WHEREAS, JMUC has requested that each of its members make a *non-binding* commitment to enter into a subcontract as referenced above, for a specific volume of storage at a specific price; and

WHEREAS, while the requested commitment in this MOU is explicitly non-binding, the City understands that JMUC will rely on the MOU for planning purposes and that any departure from it could jeopardize JMUC's ultimate ability to secure any contract with the Corps.

NOW, THEREFORE, in consideration of the mutual promises, conditions, and agreements set forth herein, JMUC and City mutually agree as follows:

1. **Consideration.** On terms to be agreed upon in the City's subcontract as referenced herein above, the City anticipates contracting for _____ acre-feet of storage space, which amounts to _____% of the total storage space available to JMUC and is expected to provide a safe yield of approximately 2.5 million gallons per day on an average annual basis.

A. In exchange for the storage rights specified in this paragraph above, the City anticipates paying _____% of JMUC's annual costs in addition to other costs specified by the Draft Subcontract, which are estimated to be approximately \$_____ per year.

B. The term shall commence as of the date on which all Parties have signed this MOU and shall continue until either of the Parties terminates this MOU through written notice provided to the non-terminating Party at least thirty (30) days in advance of such termination.

2. **Non-Binding.** This MOU, including all promises, obligations, duties and rights set forth herein, is *non-binding* upon the Parties and shall not, in any way, bind either of the Parties to the promises, obligations, duties and rights set forth herein, but rather, is merely entered into as a show of good faith by the Parties of their mutual intentions to negotiate and work toward an agreeable subcontract and corresponding participation in the project.

3. **Public Entity Immunity.** The City preserves all immunities, sovereign, governmental and otherwise, recognized by law. Nothing in this MOU or any transactions under this MOU shall be construed or deemed in any way as a waiver by the City of sovereign immunity or governmental immunity recognized under common law, state law, ordinances, regulations, the Missouri Constitution, or the United States Constitution, including but not limited to § 537.600 RSMo., *et seq.*

4. **Law and Venue.** This MOU shall be governed by the laws of the State of Missouri. Any lawsuit, claim, or other action filed by or against one or both of the Parties to this MOU relating in any way to the interpretation of this MOU or to the exercise of rights and/or duties under this MOU, shall have proper venue solely in the Circuit Court of Greene County, Missouri.

5. **Severability.** A determination by a court of competent jurisdiction or other authoritative decision-making body that any clause, sentence, paragraph, section, or part of this MOU is unconstitutional, invalid or otherwise unenforceable shall not affect in any way the validity or enforceability of the remaining clauses, sentences, paragraphs, sections or parts of this MOU.

[The remainder of this page is intentionally left blank. Signatures appear on the following page, number 3 of 3]

CITY OF REPUBLIC, MISSOURI

**SOUTHWEST MISSOURI JOINT MUNICIPAL
WATER COMMISSION**

By: _____
David Cameron, City Administrator

By: _____
Roddy Rogers, Executive Director

Date: _____

Date: _____

ATTEST:

Laura Burbridge, City Clerk

Date: _____

APPROVED AS TO FORM:

Megan McCullough, City Attorney

Date: _____