



ST. CHARLES  
SINCE 1834

### AGENDA ITEM EXECUTIVE SUMMARY

Title: Recommendation to Approve Contract for Water Service to Resident at 36W171 Indian Mound Road

Presenter: John Lamb

*Please check appropriate box:*

<input type="checkbox"/>	Government Operations	<input checked="" type="checkbox"/>	Government Services 06.25.12
<input type="checkbox"/>	Planning & Development	<input type="checkbox"/>	City Council
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	

Estimated Cost:	NA	Budgeted:	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>
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If NO, please explain how item will be funded:

**Executive Summary:**

A residential homeowner in the Wildrose Subdivision at 36W171 Indian Mound Road has requested City water service. This area is currently serviced by both City water and sanitary collection. However, not all homes in the area are on the services.

As a provision of the “Four Companies” Agreement adopted by the City in 1964 homeowners in the area can request either or both of the services. The Agreement states the City shall permit these requests and charge any applicable fees at the current City Ordinance rates. The Four Companies Agreement and the services contract have both been reviewed by the City attorney.

Staff is recommending approval of the contract for water services.

**Attachments:** *(please list)*

Contract for Water Service

**Recommendation / Suggested Action** *(briefly explain):*

Recommendation to approve contract for water service and a resolution authorizing the Mayor and Clerk to execute on behalf of the City of St. Charles.

*For office use only:*

*Agenda Item Number: 5.c*

## WATER SERVICE AGREEMENT

**THIS AGREEMENT** ("Agreement"), made and entered into this 2nd day of July, 2012, by and between the City of St. Charles, an Illinois municipal corporation (the "City"), and Darren Niemann ("Owners") (the Owners and the City being sometimes hereinafter referred to individually as "Party" and collectively as the "Parties").

### WITNESSETH:

**WHEREAS**, the Owners hold legal and equitable title to the property commonly known as 36W171 Indian Mound Road and legally described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Subject Realty"); and,

**WHEREAS**, the City owns and operates a waterworks system which is capable of providing water service to the Subject Realty; and,

**WHEREAS**, the Subject Realty is presently improved with a single-family residence and the Owners desire to connect the Subject Realty to the City's waterworks system as soon as practicable; and,

**WHEREAS**, the City is willing to provide water service to the Subject Realty and connect the Subject Realty to the City's waterworks system under the terms and conditions provided in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and in further consideration of the mutual covenants, conditions and agreements herein contained, the Parties hereto agree as follows:

**1. Water Service.** Owners shall connect to and receive water service from the City's waterworks system subject to the following terms and conditions:

A. Said connection shall be for a residential user and pursuant to a permit issued by the City under the City's Municipal Code (the "City Code").

B. Said connection to the City's waterworks system, and any future modifications thereto and all plumbing work in conjunction therewith shall be designed and made in accordance with the City Code. Any existing well(s) shall be capped in accordance with the City Code and governing law.

C. Owners shall apply for all permits, submit all documentation and pay any and all charges required by the City Code for connection to the City's waterworks system.

D. The provision of water service to the Subject Realty through the City's waterworks system, including, but not limited to, connection fees and usage charges, shall in all respects and at all times be in accordance with and subject to the City Code, as amended from time to time.

E. All unpaid and delinquent costs, fees and charges provided for in this Agreement and the City Code shall constitute a lien on the Subject Realty to the extent authorized by law with respect to user charges for the connection to and water service from the City's waterworks system.

2. **Annexation of Subject Realty.** Pursuant to 65 ILCS 5/7-1-1, *et seq.*, annexation of property to a municipality may be initiated by its owners (and electors, if any) by a petition ("Petition") filed with the municipality pursuant to 65 ILCS 5/7-1-8, or with the circuit court of the judicial circuit in which the property is located pursuant to 65 ILCS 5/7-1-2, *et seq.* or 65 ILCS 5/7-1-11, if applicable. Annexation of the Subject Realty to the City shall commence by the method chosen by the City, under either of the following circumstances:

- A. Within thirty (30) days after notice from the City that the Subject Realty is contiguous (individually or as part of a larger territory) to the City, and subject to the provisions of 65 ILCS 5/7-1-8, as amended, the Parties respectively agree, for themselves and their successors and assigns, to do all things necessary or appropriate to cause the Subject Realty to be duly and validly annexed to the City, including the filing of a properly executed Petition with the City by the Owners and/or their successors and assigns; and/or
- B. Within thirty (30) days after notice from the City to do so, and subject to the provisions of 65 ILCS 5/7-1-2 *et seq.* or 65 ILCS 5/7-1-11, as amended, the Owners and/or their successors and assigns shall join in, and properly execute, a Petition to be filed with the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois, and shall cooperate with the prosecution of the Petition before said court, provided, however, that the costs of any such litigation shall not be the responsibility of the Owners.
- C. The Parties agree that they shall fully cooperate in defending against any legal action challenging the City's annexation of the Subject Realty in accordance with this Agreement. Should a court of competent jurisdiction finally determine that annexation of the Subject Realty was defective because of the failure of the Parties to follow a procedural requirement of a proper annexation of the Subject Realty, the Parties, including the successors and assigns of the Owners, agree to promptly cause the Subject Realty to be reannexed to the City in a manner which satisfies all procedural requirements.

3. **Remedies; Venue.** This Agreement shall be enforceable in any court of competent jurisdiction by any of the Parties hereto by any appropriate action at law or in equity, including, without limitation, the right of any Party hereto to seek specific performance of the terms hereof. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois. In addition to the foregoing, and not by way of limitation, the City shall have the right to terminate water service to the Subject Realty in the event Owners, their successors or assigns:

- A. fail to meet regular payment obligations with respect to the provision of water

service to the Subject Realty; or

B. otherwise breach the provisions of this Agreement.

4. **Notices.** All notices hereunder shall be in writing and must be served either personally or by registered or certified mail, postage prepaid, to the following addresses or such other addresses as either party to this Agreement specify in writing to the other from time to time:

A. The City at:

City of St. Charles  
2 East Main Street  
St. Charles, IL 60174  
Attn: Environmental Services Manager

B. Owners at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. To any such other person or place which any Party hereto, by its prior written notice, shall designate for notice to it from the other Parties hereto.

5. **Incorporation of Recitals.** Each of the Parties hereto, for themselves, their successors, assigns, heirs, devisees and personal representatives, agrees that the warranties and recitals set forth in the preambles hereto are material to this Agreement, and the Parties hereby confirm and admit their truth and validity and hereby incorporate such representations, warranties and recitals into this Agreement, and the same shall continue during the term of this Agreement.

6 **Severability.** In the event any part or portion of this Agreement, or any provision, clause, wording or designation contained within this Agreement is held to be invalid by any court of competent jurisdiction, such part, portion, provision, clause, wording or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect the remaining portions hereof, provided the severance of such provision does not defeat the essential purpose of this Agreement.

7. **Miscellaneous.** Except as otherwise herein provided, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, successor owners of record of the Subject Realty, their assigns, lessees and upon any successor municipal authority of the City. It is hereby understood and agreed that this Agreement is a covenant running with the land and is binding thereon. All persons who take title to any part of the Subject Realty shall comply with the provisions of this Agreement. This Agreement may be amended from time to time with the consent of the Parties hereto. A copy of this Agreement shall be recorded with the Kane County Office of the Recorder.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date first above written.

CITY OF ST. CHARLES, an Illinois  
Municipal Corporation,

By: \_\_\_\_\_  
Mayor Donald P. DeWitte

ATTEST:

\_\_\_\_\_  
City Clerk

OWNER(S)

\_\_\_\_\_  
Darren Niemann

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF KANE         )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF KANE         )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald P. DeWitte, Mayor of the City of St. Charles, and Nancy Garrison, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF SUBJECT REALTY**

LOT 68 OF WILD ROSE ADDITION, UNIT NO. 1, BEING A SUBDIVISION OF PART OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF ST. CHARLES, KANE COUNTY, ILLINOIS.