
AGENDA ITEM SUMMARY

Subject: Valero – Water Usage agreement

Background Summary:

Our lease purchase agreement and subsequent water usage agreement with Valero expired in December 2020. Attached is a new 2 ½ year agreement for supplying water. Price per gallon is increased to \$1.80 /1,000. This is a high user rate which is substantially reduced from what is in our City Code lowest rate. City Code for water users outside of city limits for volumes over 500,000 gallons per year is \$3.48 per 1,000 gallons. Valero as per this agreement will need to purchase 100MM gallons per year. Additionally there are monthly meter charges of: 2 inch = \$80.50 and 10 inch = \$1,046.85.

Agreement covers initial 6 months until July 1, 2021. At that point and the year following the water rate per 1,000 gallons will increase based on the change in CPI.

Draft usage agreement is enclosed.

CITY OF CHARLES CITY

WATER USAGE AGREEMENT

WHEREAS, the City of Charles City, Iowa (“the City”) and Valero Renewable Fuels Company, LLC (“Valero”), as successor in interest to VeraSun Charles City, LLC, are parties to a Water Usage Agreement executed by the parties July 24, 2006 and August 9, 2006, respectively, which defines the various rights and responsibilities of the City and Valero in respect to the Water Extension Project (as defined therein); and

WHEREAS, the term of the Water Usage Agreement began upon execution of the Agreement by the parties, and continues until transfer of ownership of Water Extension Project assets to the City; and

WHEREAS, the parties contemplate that the assets of the Water Extension Project will be transferred to the City on or around **December 10, 2020**; and

WHEREAS, the parties desire to enter into a Water Usage Agreement effective January 1, 2021, which Usage Agreement includes a guarantee of annual water purchase by Valero and which also-includes water usage rates for Valero.

NOW, THEREFORE, IN IMPLEMENTATION OF THE COMMITMENTS UNDERTAKEN BY THE UNDERSIGNED PARTIES IN THE MEMORANDUM OF AGREEMENT, IT IS HEREBY AGREED AS FOLLOWS:

1. Rates. During the term of this Usage Agreement, the City shall provide water to Valero at the following rates:

- Beginning January 1, 2021, through June 30, 2021, at the rate of \$1.80 per 1,000 gallons, plus a monthly water meter fee, with payment due on the first business day of each month for the billing issued on the 10th day of the prior month.
- Beginning July 1, 2021, through June 30, 2022, the rate will be increased by the annual change in Consumer Price Index (CPI) from the previous year per 1,000 gallons, plus a monthly water meter fee, with payment due on the first business day of each month for the billing issued on the 10th day of the prior month.
- Beginning July 1, 2022, through June 30, 2023, the rate will be increased by the annual change in Consumer Price Index (CPI) from the previous year per 1,000 gallons, plus a

monthly water meter fee, with payment due on the first business day of each month for the billing issued on the 10th day of the prior month.

Interest shall accrue from the due date at the rate of 18% per annum.

2. Supply Guarantee. During the term of this Usage Agreement, but subject to the limitations set forth herein, the City shall provide Valero with sufficient water to meet its production needs. More specifically, the City shall be able to supply at least 100 million gallons of water per year at an instantaneous peak flow rate not to exceed 1,200 gallons per minute at a pressure of 45 p.s.i. at the Valero master meter located in the fire water building. This commitment to supply water is subject to the following limitations and contingencies:

- a. The City shall in no case be required to provide in excess of 1.3 million gallons of water per day, or 35 million gallons of water per month, or 420 million gallons of water per year; and
- b. The City shall be entitled to temporarily suspend water service to Valero as necessary for repairs to the water system infrastructure, including, but not limited to, repairs made necessary by natural disaster or act of vandalism to the infrastructure. (In the event of a suspension of service, the City will diligently pursue repair and/or reconstruction of the infrastructure as necessary to minimize the period of disruption in water service to the company. The City will, when possible, provide Valero with at least 30 days' prior written notice of any planned repairs that will result in suspension or disruption of service and will, to the extent possible, determine a mutually agreeable date(s) to perform necessary repairs and maintenance); and
- c. The City shall be entitled to suspend water service to Valero in the event Valero defaults in making timely payment of its water bills and fails to cure said default within 10 days after written notice of default as provided herein.
- d. During condition when the supply of water to the water system becomes depleted causing the City Council to declare a public emergency water shortage under Chapter 93 of the Charles City Code of Ordinances, the City is authorized, after giving notice and opportunity for hearing to Valero, to reduce the flow of water to Valero proportional to the reduction in water sought from

the community through the implementation of the measures described in Chapter 93, Charles City Code of Ordinances.

- e. At such time that Valero determines that its production needs will require it to consume water at a peak rate of 1,200 gallons per minute for three or more consecutive hours, it shall notify the City Water Superintendent of this anticipated use and its best estimate of the period of time during which consumption will continue at this peak rate of consumption.

3. Payment Guarantee. During the term of this Usage Agreement, Valero shall pay for not less than 100 million gallons of water each year beginning on the 1st day of January, 2021, regardless of actual consumption.

4. Term of Agreement. This Usage Agreement shall become effective on January 1, 2021 and shall terminate on June 30, 2023. This Usage Agreement may be amended or terminated by written agreement between parties.

5. Notice. Any notice required by the terms of this agreement shall be directed by certified mail to the part at the address given below, and such notice shall be deemed given when deposited in the U.S. mail with appropriate postage:

City of Charles City
105 Milwaukee Mall
Charles City, IA 50616

Valero Renewable
1787 Quarry Rd
Charles City, IA 50616

6. Water Equipment on Valero Property. Valero shall maintain a meter vault (or building) upon its property to specifications approved by the City to house a master meter which shall be provided, owned and maintained by the City. Valero shall provide, install and maintain all equipment appurtenant to the master meter, as approved by the City, including, but not limited to, piping, valves, backflow prevention device, meter by-pass testing branch, meter shut-off valves and sample tap connected to a frost-free above-ground sampling port within a weather-protected enclosure. Valero shall provide access to the meter vault (or building) by the City at all times for the purpose of monitoring water usage and providing maintenance to the master meter within the facility. Valero shall grant easements to the City incorporating these access rights at such time as the permanent location has been determined and legal descriptions can be developed.

7. Binding Effect. This Usage Agreement shall be binding upon the heirs, successors in interest and assigns of all signatories to this Usage Agreement.

8. Authority. All parties warrant that they have full and sufficient authority to execute this Usage Agreement and each party will sign whatever document is necessary to effectuate this Usage Agreement.

9. Dispute Resolutions. All disputes between the parties to this Usage Agreement and which they are unable to resolve through voluntary mediation shall be resolved by the Iowa District Court in and for Floyd County unless the parties otherwise agree in writing to a resolution through and alternative such as binding arbitration.

10. Contingency. This Usage Agreement shall become effective upon transfer of the ownership of the Water Extension Project assets to the City, upon approval of the City Council of Charles City, Iowa, and upon execution of this Usage Agreement by the parties.

CITY OF CHARLES CITY

VALERO RENEWABLE FUELS
COMPANY, LLC

By _____

By _____

STATE OF IOWA)
)ss
COUNTY OF FLOYD)

On this ___ day of _____, 2020, before me, a notary public in and for the State of Iowa, personally appeared _____ and _____, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Charles city, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution adopted by the City Council, under Resolution No. ___ of the City Council on the ___ day of _____, 20__, and that _____ and _____ acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

STATE OF _____)

