
AGENDA ITEM SUMMARY

Subject: Valero – Water Usage agreement, Resolution - 04-21

Background Summary:

Our lease purchase agreement and subsequent water usage agreement with Valero expired in December 2020. Attached is the new 2 ½ year agreement for supplying water. Price will be \$1.80 /1,000 gallons used. This is a "high user" negotiated rate which is allowed for any entity that will use more than 100MM gallons per year, and is lower than the City Code lowest rate, which is \$3.48 /1,000 gallons used for entities using more than 500,000 gallons per year and is located outside of city limits. Valero as per this agreement will need to purchase at minimum 100MM gallons per year. Additionally there are monthly meter charges of: 2 inch = \$80.50 and 10 inch = \$1,046.85 for FY21 and adjusted as per City Code for subsequent years beyond.

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.

Final draft usage agreement is enclosed.

CITY OF CHARLES CITY

RESOLUTION NO. 04-21

RESOLUTION APPROVING WATER USAGE AGREEMENT BETWEEN THE CITY OF CHARLES CITY, IOWA AND VALERO RENEWABLE FUELS COMPANY, LLC

WHEREAS, the City of Charles City and Valero Renewable Fuels Company, LLC (Valero) are parties to a water usage agreement which defines the various rights and responsibilities of each party in respect to a water extension project, and

WHEREAS, said agreement terminated upon transfer of ownership of the water extension project to the city, which occurred in December, 2020, and

WHEREAS, the parties desire to enter into a new water usage agreement effective January 1, 2021

WHEREAS, an agreement has been prepared by the city attorney, reviewed by both parties and a draft is hereby attached to this resolution,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Charles City, Iowa, meeting in regular session on the 19th day of January, 2021, that the Water Usage Agreement between the City of Charles City and Valero be approved.

COUNCIL MEMBER moved the adoption of the foregoing Resolution;

COUNCIL MEMBER seconded the motion to adopt, and on roll call the voting was as follows:

AYES:

NAYS: _____

Passed and approved this 19th day of January, 2021.

Dean Andrews, Mayor

Attest:

Trudy O'Donnell, City Clerk

WATER USAGE AGREEMENT

WHEREAS, the City of Charles City, Iowa (“the City”) and Valero Renewable Fuels Company, LLC (“Valero”), through assignment, 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 Water Extension Project has been or is in the process of being transferred to the City, and 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 consideration of the foregoing and the promises, undertakings and mutual agreements contained herein, Owner and the City covenant and agree 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 per 1,000 gallons will be increased by the annual change in Consumer Price Index (CPI) from the previous year, 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. In the event the CPI reflects a negative adjustment, the rates will remain flat.
- Beginning July 1, 2022, through June 30, 2023, the rate per 1,000 gallons will be increased (from the July 1, 2021 through the June 30, 2022 rate) by the annual change in Consumer Price Index (CPI) from the previous year, 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. In the event the CPI reflects a negative adjustment, the rates will remain flat.

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 fiscal year (of July 1, through June 30) beginning on the 1st day of July, 2021 regardless of actual consumption. On each July 1 during the term of this Usage Agreement, payment shall be made by Valero to the City for any shortfall in fulfilling this guaranteed minimum purchase.

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 is conditioned upon approval of the City Council of Charles City, Iowa.

CITY OF CHARLES CITY

VALERO RENEWABLE FUELS
COMPANY, LLC

By _____

By _____

Dean Andrews, Mayor

Attest:

Trudy O'Donnell, City Clerk

STATE OF IOWA)
)ss
COUNTY OF FLOYD)

On this ____ day of _____, 2021, 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

