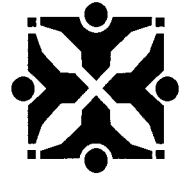


City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: R 197-15

Department Source: City Utilities - Water & Light

To: City Council

From: City Manager & Staff

Council Meeting Date: 12/21/2015

Re: Extension Agreement to a 2007 Local Site Generator Agreement with MBS Textbook Exchange, Inc

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Extension Agreement

Supporting documentation includes: None

Executive Summary

Staff has prepared for Council consideration of a resolution authorizing the City Manager to execute an agreement with MBS Textbook Exchange, Inc. to extend the terms and conditions of the 2007 Local Site Generator Agreement with MBS Textbook Exchange, Inc until June 30, 2016.

Discussion

In 2007, the City entered into an agreement with MBS Textbook Exchange, Inc (MBS) to install diesel generators on their property. The initial purpose of these generators was to benefit both the City of Columbia's electric system by providing additional generation capacity and energy during times of peak electric demand and to provide MBS with standby/emergency generation for their facility in the event of a loss of power on the City's electric distribution system.

In May of 2013 new environmental regulations for stationary Compression Ignition (CI) Reciprocating Internal Combustion Engines (RICE) went into effect. These new regulations limit the operations of CI-RICE engines like the diesel generators mentioned above. These new regulations remove the ability of the City to claim these generators as generation capacity and significantly limit the ability to produce energy for non-emergency purposes. The regulations do not limit the ability for these generators to be utilized as standby generation for end use customers at this time.

Because of the loss of capacity and energy production capabilities, the City no longer receives its portion of the benefits from these diesel generators. In April 2015, staff recommended that the City not renew its agreements with customers like MBS and in June, MBS was notified of the City's intent not to renew its agreement with them. Because the generators may still be utilized as standby/emergency power sources, staff proposes to work with MBS to negotiate an agreement to transfer ownership of these generators to them.

Since June of 2015, staff has been working with MBS to develop terms for the transfer ownership of these generators to them. This extension agreement will allow the additional time necessary to finalize these terms and conditions and bring a transfer agreement before City Council.

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Fiscal Impact

Short-Term Impact: None

Long-Term Impact: None

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Not Applicable

Strategic Plan Impact: Not Applicable

Comprehensive Plan Impact: Not Applicable

Suggested Council Action

Staff recommends the approval of a resolution authorizing the City Manager to execute an agreement with MBS Textbook Exchange, Inc. to extend the terms and conditions of the 2007 Local Site Generator Agreement with MBS Textbook Exchange, Inc. until June 30, 2016.

Legislative History

April 2, 2007 - B112-07 Council Bill Authorizing Local Site Generator Agreement with MBS Textbook Exchange, Inc

April 6, 2015 - REP 42-15 Report recommending not renewing Local Site Generator Agreements.


Department Approved


City Manager Approved

Introduced by _____ Council Bill No. _____ R 197-15

A RESOLUTION

authorizing a first addendum to the local site generator
agreement with MBS Textbook Exchange, Inc.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS
FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a first addendum to
the local site generator agreement with MBS Textbook Exchange, Inc. The form and
content of the addendum shall be substantially as set forth in "Attachment A" attached
hereto and made a part hereof.

ADOPTED this _____ day of _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

**FIRST ADDENDUM TO AGREEMENT
LOCAL SITE GENERATOR AGREEMENT
MBS Textbook Exchange, Inc.
EXTENSION AGREEMENT**

THIS ADDENDUM is made by and between the City of Columbia, Missouri (hereinafter “City”) and MBS Textbook Exchange, Inc. (hereinafter “MBS”) and is entered into on the date of the last signatory below.

WHEREAS, City and MBS entered into a “Local Site Generator Agreement” dated July 12, 2007 (hereinafter “Original Agreement”);

WHEREAS, City provided to MBS six (6) months’ written notice to terminate Original Agreement; and

WHEREAS, City and MBS would now like additional time under the Original Agreement to consider the future of the Generators as defined by Original Agreement (hereinafter “Generators”) on MBS property;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Parties hereto agree as follows:

Except as expressly provided in this Addendum, the terms of the Original Agreement, attached hereto as Exhibit A, will remain in full force and effect until June 30, 2016.

This Agreement will automatically terminate upon either of the following, whichever comes first: (a) the City’s sale of the Generators to MBS, or (b) the Parties’ mutual consent to the City’s removal of the Generators from MBS Property.

The parties hereby adopt, ratify and confirm the Original Agreement as it is amended by this Addendum. This Addendum shall be binding on, and inure to the benefit of, the Parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the day and year indicated below.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor

MBS TEXTBOOK EXCHANGE, INC.

By: _____
Andrew R. Gungor

Title: CFO

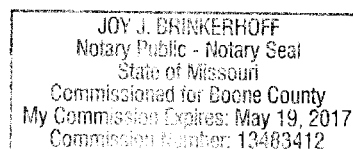
Date: 11-24-15

ATTEST:

By: _____
Joy J. Brinkerhoff

Title: Notary

Date: 11/24/15



**LOCAL SITE GENERATOR AGREEMENT
MBS Textbook Exchange, Inc.
AGREEMENT**

THIS AGREEMENT is entered into on this 12th day of July, 2007, between the City of Columbia, Missouri ("City") and **MBS Textbook Exchange, Inc.** (hereinafter "**MBS**").

WHEREAS, MBS has determined it is in its best interest to have standby electrical generation service on site; and

WHEREAS, the City believes its electric utility would benefit from having additional peak load capacity.

NOW, THEREFORE, in consideration of the mutual covenants set out herein, the parties agree as follows:

The City shall use all commercially reasonable efforts to acquire 2000 kilowatts of diesel generator capacity, configured in either two (2) self contained diesel generating units, each of 1000 kilowatt capacity or one (1) unit of 2000 kilowatts of capacity, along with transformers and necessary switching gear (collectively, the "Generators"), to be located at the MBS headquarters building at 2711 West Ash, Columbia, MO 65201.

The Generators shall be installed on concrete hard pads constructed by the City at a site, to be designated by MBS, on MBS grounds (the "Site"). The City shall pay the pad construction costs and the costs to set up and install the Generators. The City will be responsible for the costs associated with any fuel oil or petroleum products spill or contamination occurring at the Site caused by the City or any of its employees, agents or contractors. The City retains any and all ownership rights to the Generators and MBS shall execute such documents as may be requested from time to time by the City to acknowledge the ownership rights of the City.

MBS shall pay the costs of relocating any and all water and gas utilities which shall be made necessary by the location of the concrete pads. Upon installation of the generator units, transformers and switch gear, MBS shall be responsible for landscaping and berming at the Site. MBS shall retain any and all ownership rights to the pads and Site and is responsible for the pads and Site upon termination of this agreement, to restore or leave as it deems appropriate.

The City shall, at City expense, make application for all permits necessary to build, install and operate the Generators. The City shall own all rights associated with such permits and the emissions generated by the Generators.

The parties shall execute simultaneous herewith an easement, to be recorded, by which the rights of the parties hereto are acknowledged, and in particular, whereby MBS grants to the City or its contractor or agent the right to access and enter the Site to access the Generators at any time for purposes of fueling, maintenance or operation of the Generators.

MBS shall pay the City the amount of \$2,731 per month as the standby and overhead costs of the Generators. The Generators shall be designed to automatically start and come on line in the event MBS experiences an electric power outage.

From time to time, as peak electric demand or as contingency conditions demand, the City shall be entitled to run the Generators to supplement the City's electric generating capacity. MBS shall not be entitled to any payment or reduction in monthly charges for those times the City is using the generator for purposes set out in this paragraph.

The term of this agreement shall be seven years from the date of the commencement of operations of the Generators at the Site. This agreement shall automatically renew for two additional five year terms unless the agreement is terminated by one party giving the other party notice of its intent to terminate the agreement at least six months prior to the expiration of the current term.

If MBS gives notice to the City, as contemplated above, of its desire to terminate the agreement before the initial term of seven years has passed and requests that the City remove the Generators, MBS shall reimburse to the City any costs associated with the removal and reinstallation of the Generators including permitting fees, pad construction, transportation and wiring. If MBS gives notice to the City of its desire to terminate the agreement before the initial term of seven years have passed and does not require the City to remove the Generators there will be no cost to MBS. The City may, under any circumstances, remove the Generators at its option upon termination of this agreement.

MBS acknowledges and agrees that although the City will maintain the Generators in good working order in the normal course of business, it cannot guarantee that the units will be in perfect working order or that they will work as contemplated at any particular time. MBS acknowledges that this is consistent with the City's position on electric power generation system-wide and is the existing standard in the electric utility industry.

In the event that the actions of any governmental entity or any legal decision operates to prevent the use of the Generators or revokes any necessary permits or removes emissions rights, this agreement shall automatically terminate upon the date on which it becomes unlawful or improper to operate the Generators.

To the extent permitted by law, the City agrees to indemnify and hold harmless MBS from and against any and all claims, demands, damages, suits or judgments resulting from property damage or personal injury or death of any person arising out of the presence or operation of the generator units transformers or switch gear on MBS's property which is caused by the acts or omissions of the City, its officers, agents or employees, except for damages, claims or losses to MBS or any other party arising out of the failure of the electrical power supply or the failure of the Generators to operate as designed at any particular time or in any particular manner.

This agreement shall inure for the benefit of the parties only and not for the benefit of any third party.

This agreement shall not be assigned to any third party without the express written consent of the nonassigning party.

IN WITNESS WHEREOF, the City and MBS have caused this document to be duly executed on the day and year first above written by their respective duly authorized officers.

CITY OF COLUMBIA, MISSOURI

By: 

W. William Watkins, City Manager

ATTEST:



Sheela Amin, City Clerk

APPROVED AS TO FORM:



Fred Boeckmann, City Counselor

MBS Textbook Exchange, Inc.

By: 

ATTEST: