RESOLUTION NO. 2014-12

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PURCHASE CONTRACT WITH SCHULTE SUPPLY INC. FOR THE PURCHASE OF CERTAIN MATERIALS NECESSARY FOR A WATER SERVICES PROJECT

WHEREAS, the City duly advertised for bid proposals for the supply to the city of certain materials necessary for a water services project (the "Product");

WHEREAS, the City received and opened and read aloud the bids for the Product on February 13, 2014 at Pacific City Hall, 300 Hoven Drive, Pacific, MO 63069;

WHEREAS, bids were reviewed by staff for compliance to the bid specifications and after determining all qualified bids, staff recommends awarding the Product contract to Schulte Supply, the lowest, qualified bidder, in the amount of $23,469.24;

WHEREAS, the City of Pacific finds it to be in the best interest of the City to enter into a purchase contract with Schulte Supply Inc. for the Product; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF PACIFIC, MISSOURI, AS FOLLOWS:

Section 1: The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a Purchase Contract with Schulte Supply Inc. for the purchase of the Product in substantially the form of Exhibit A incorporated herein by reference ("Purchase Contract") for a sum of $23,469.24.

Section 2: This Resolution shall take effect and be in full force from and after its passage by the Board of Aldermen.

Adopted by the Board of Aldermen and approved by the Mayor the 18th day of February 2014.

_____
Herbert C. Adams, Mayor

ATTEST:

_____

Exhibit A

Purchase Contract

City of Pacific, Missouri
PURCHASE CONTRACT

DEPARTMENT Administration

JOB NO. 2014-001

CONTRACT NO. 2014 - 001

DATE: _____

THIS PURCHASE CONTRACT, made and effective as of February ____, 2014, by and between the **City of Pacific,** a Missouri municipal corporation, hereinafter referred to as City, and Schulte Supply Inc., located at 5998 Redbud Lane, Edwardsville, IL 62025 with registered agent at 3660 South Geyer Road, Suite 320, St. Louis, Mo. 631227 hereinafter referred to as "SELLER,"

WITNESSETH: That the parties hereto, for the considerations hereinafter set forth, agree as follows:

I. DESCRIPTION OF PRODUCT

Seller shall supply the City with certain materials necessary for a water services project and as more specifically set forth in the attached **Exhibit A** incorporated herein (the "Product"). The Product shall be provided by the Seller in accordance with all the provisions of the Purchase Contract and attached **City of Pacific Purchase Contract General Conditions,** incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein or as part of any other attachment or exhibit.

II. DELIVERY

The Product fully complying with this Purchase Contract shall be delivered from the Seller to the City at City Hall, 300 Hoven Drive, Pacific, Missouri 63069 no later than 45 days from the date the City places the order.

III. COMPENSATION

The City hereby agrees to pay the Seller, as full, complete and sole compensation for the complete and satisfactory performance of this Purchase Contract, and all expenses and costs related thereto:

[X] the sum of $ 23,469.24

or (if above box is not checked):

[ ] such amount as is set forth on an attached **Exhibit A** that is incorporated herein and subject to any such limits as established therein and in approving authorization.

IV. TIME AND MANNER OF PAYMENTS

All invoices complete with necessary support documentation shall be submitted in triplicate to the City and payment shall be made by City in a lump sum within thirty (30) days of receipt of an invoice received after satisfactory delivery of the Product.

IN WITNESS WHEREOF, the parties hereto have signed this Purchase Contract as of the effective date of Purchase Contract first above written.

SELLER

By: _____

Title: _____

DATED: _____

CITY OF PACIFIC, MISSOURI

By: _____
[City Administrator/Mayor]

DATED: _____

ATTEST:

_____

CITY OF PACIFIC, MISSOURI
PURCHASE CONTRACT GENERAL CONDITIONS

Compliance with Laws. The Seller shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Purchase Contract. If applicable, the provisions and requirements of section 290.250 R.S.Mo. shall apply and are incorporated herein. In the event of a conflict between laws, codes, and regulations of various governmental entities having jurisdiction over the Product, the Seller shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the Seller in an effort to resolve any such conflict.

Indemnification. To the fullest extent permitted by law, the Seller agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from breach of the Purchase Contract or related warranties, or claims relating thereto, and including but not limited to the City's reliance on or use of the Products provided by the Seller under the terms of this Purchase Contract. The Seller shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, Seller agrees that this indemnification requires Seller to obtain insurance in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions and that Seller has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

Nondisclosure. The Seller agrees that it will not divulge to third parties without the written consent of the City any non-public information or information designated as confidential obtained from or through the City in connection with the performance of this Purchase Contract.

Changes. No change in this Purchase Contract shall be made except in writing executed by all parties. The Seller shall make any and all changes in the Product without invalidating this Purchase Contract when specifically ordered to do so in writing by the City. The Seller, prior to the delivery of such changed or revised Product, shall submit promptly to the City, a written cost or credit proposal for such revised Product. If the City and the Seller shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of the Seller, upon written notice from the City, to immediately proceed with such alteration or change, and the Seller shall be compensated the reasonable value of such Product. **No delivery of Product or change shall be undertaken or compensated for without prior <u>written</u> authorization from the City executed by Seller.**

Termination. The City shall have the right to terminate the Purchase Contract at any time for any reason by giving the Seller written notice to such effect. The City shall pay to the Seller in full satisfaction and discharge of all amounts owing to the Seller under the Purchase Contract an amount equal to the cost of all Product delivered by the Seller up to such termination date, less all amounts previously paid to the Seller. The Seller shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Seller for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Product.

Product. The Product as described in the Seller's proposal shall be delivered to the City and no other substitute product shall be delivered without written approval of the City.

Warranty of Title. The title conveyed shall be good and its transfer rightful and shall not unreasonably expose the City to litigation because of any colorable claim to or interest in the Product. The Product shall be delivered free from any security interest or other lien or encumbrance.

Express Warranties. Any affirmation of fact or promise made by the Seller which relates to the Product and becomes part of the basis of the bargain creates an express warranty that the Product shall conform to the affirmation or promise. Any description of the Product which is made part of the basis of the bargain creates an express warranty that the Product shall conform to the description. Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the Product shall conform to the sample or model. It is not necessary to the creation of an express warranty that the Seller use formal words such as "warrant" or "guarantee" or that the Seller has specific intention to make a warranty.

Implied Warranty. A warranty that the Product shall be merchantable is implied. Products to be merchantable must at least: be delivered in accordance with the Purchase Contract description; and in the case of fungible products, (a) are of fair quality within the description; (b) are fit for the ordinary purposes for which product of that description are used; (c) run, within the variations permitted by the agreement, of even kind, quality of quantity within each unit and among all units involved; (d) are adequately contained, packaged, and labeled as the Agreement may require; and (e) conform to the promise or affirmation of fact made on the container or label if any. Other implied warranties may arise from the course of dealing or usage of trade. Because Seller knows the particular purpose for which the Product is required and that the City is relying on the Seller's skill or judgment to select or furnish suitable products, there is an implied warranty that the Product shall be fit for such purpose.

Right to Inspect. The City has a right before payment or acceptance to inspect the Product at any reasonable place and time and in any reasonable manner. The inspection may also be within a reasonable time after delivery. Expenses for inspection may be recovered from the Seller if the Product does not conform and are rejected.

Rights on Improper Delivery. If the Product delivered fails in any respect to conform to the Purchase Contract, the City may: (a) reject the whole; (b) accept the whole; or (c) accept any units and reject the rest and the Seller must adjust such Purchase Contract price accordingly.

Revocation of Acceptance. The City may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the City if the City has accepted it: (a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; (b) revocation was within a reasonable time after delivery; or (c) without discovery of the nonconformity if the City's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the Seller's assurances. In the case of revocation, the City has the same rights and duties as if the City had rejected the Product.

Remedies. If the Seller fails to make delivery or the City rightfully rejects, the City may in addition to recovering so much of the price as has been paid: (a) "cover" and receive damages of the cost difference between the cost of cover and the contract price for all the Product affected plus incidental or consequential damages; or (b) recover as damages for non-delivery the difference between the market price at the time the City learned of the breach and the Purchase Contract plus any incidental and consequential damages. If the Seller fails to deliver or repudiates, the City may also recover the Product, obtain specific performance, or replevy the Product. In the event of breach or failure to make delivery, the City is also entitled to liquidated damages as described in the executed Purchase Contract. Nothing in this Purchase Contract shall be deemed to be a waiver of the City's sovereign immunity or permit a cause of action against the City for damages relative to any claim against the City, and any remedy against the City shall be limited to specific performance as may be available under existing law.

Compliance with State Immigration Statutes. Pursuant to Section 208.009 R.S.Mo., the Seller shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Seller is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Seller (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Seller and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

Multi-year contracts; Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Purchase Contract during the next occurring fiscal year (an "Event of Nonappropriation"), this Purchase Contract will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Contract in any subsequent fiscal year shall not be deemed a breach by any party. If applicable, this Purchase Contract may be annually renewed at each fiscal year by inclusion of specific appropriation for this Purchase Contract, from year to year not to exceed the maximum renewal period or term as set forth in the Purchase Contract.

Accounting. During the period of this Purchase Contract, the Seller shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Seller.

Representations. The Seller agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Purchase Contract. The parties agree the Purchase Contract represents the entire agreement between the parties.

Governing/Choice of Law. This Purchase Contract shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws.

Counterparts. This Purchase Contract may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

Exhibit A

The Product

Part Description	Quantity	Unit	Unit Price $	Extended Price $
3/4" Corporation Stop	48	Each	24.26	1,164.48
8" x 3/4" Brass Saddle for C900 Pipe	48	Each	47.72	2,290.56
3/4" Ball Valve Curb Stop (Minneapolis Pattern)	48	Each	53.63	2,574.24
Curb Box - St. Louis Style - PVC with Metal Top	48	Each	60.00	2,880.00
5/8" x 3/4" Coppersetter Ball Valve Inlet with Single Check Outlet	48	Each	107.47	5,158.56
2" x 1-1/2" Threaded Bushing (MPT x FPT)	48	Each	2.65	127.20
18" x 30" Heavy Weight Meter Box	48	Each	25.50	1,224.00
18" Bingham & Taylor C32 Nonrecessed Frame (BTC-32)	48	Each	29.95	1,437.60
11-1/2 Bingham & Taylor C32 Cover Only w/Large Nut, dual encoder pad receptacle, feature universal, accepts new V2 radio transmitter (BTC3L-WS-V2)	48	Each	21.95	1,053.60
3/4" Type K Soft Copper	1,700	LF	3.27	5,559.00

Bid Total: $ $23,469.24

Bid Total Twenty three thousand four hundred sixty nine dollars & 24/100
(written out)

[illegible]hulte Supply, Inc.
1 [illegible]0-843-3711