

STEWART & KEEVIL, L.L.C.
ATTORNEYS AT LAW

CHARLES BRENT STEWART
JEFFREY A. KEEVIL

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SUITE 302
COLUMBIA, MISSOURI 65201-7931

ORIGINAL

TELEPHONE (573) 499-0635
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November 19, 2002

FILED³

NOV 19 2002

Missouri Public Service Commission
Attn: Secretary of the Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102-0360

**Missouri Public
Service Commission**

Re: City of Union, Missouri/Public Water Supply District No. 1 of Franklin County,
Missouri Water Territorial Agreement

Dear Mr. Roberts:

Please find enclosed for filing an original and eight (8) copies of the Joint Application For Approval Of A Water Service Area Territorial Agreement filed on behalf of the City of Union, Missouri and Public Water Supply District No. 1 of Franklin County, Missouri. Also please find enclosed a filing fee check in the amount of \$500.00 made payable to the Director of Revenue as required by 4 CSR 240-51.010.

Copies of the filing have on this date been mailed or hand-delivered to the General Counsel's Office and the Office of the Public Counsel. Thank you.

Sincerely,


Brent Stewart

CBS/bt

Enclosure

cc: General Counsel
Office of the Public Counsel
Mark Piontek

FILED³

NOV 19 2002

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of the Joint Application of)
the City of Union, Missouri and)
Public Water Supply District No. 1 of)
Franklin County, Missouri for Approval of) Case No. _____
a Territorial Agreement Concerning)
Territory in Franklin County, Missouri.)

JOINT APPLICATION FOR APPROVAL OF
A WATER SERVICE AREA TERRITORIAL AGREEMENT

COME NOW the City of Union, Missouri ("City" or "Union") and Public Water Supply District No. 1 of Franklin County, Missouri (the "District") (collectively, the "Joint Applicants"), pursuant to Section 247.172, RSMo 2000, 4 CSR 240-2.060(13), and 4 CSR 240-51.010, and for their Joint Application For Approval Of A Territorial Agreement, respectfully state as follows:

1. Applicant Union is a city of the fourth class organized and existing under Chapter 79 RSMo 2000. Union owns and operates a waterworks public utility and provides water service to the public, pursuant to Section 91.450 RSMo 2000. Union is a political subdivision of the State of Missouri and is otherwise not subject to regulation by the Commission except for purposes of this Joint Application. Union's principal office and place of business is located at 500 East Locust Street, Union, Missouri 63084, its telephone number is (636) 583-3600, and its fax number is (636) 583-4091.

2. Applicant District is a public water supply district organized and existing under Chapter 247 RSMo 2000. The District provides water service at retail and at wholesale to customers located within the District's water service area in Franklin County, Missouri. The District is a political subdivision of the State of Missouri and is otherwise not subject to regulation by the Commission except for purposes of this Joint

Application. The District's principal office and place of business is located at 3017 Hwy A, Washington, Missouri 63090, its telephone number is (636) 239-2808, and its fax number is (636) 239-2588.

3. All communications, correspondence, notices, orders and decisions regarding this Application should be addressed to:

Charles Brent Stewart
STEWART & KEEVIL, L.L.C.
101 Cherry Street
Columbia, MO 65201

with a copy sent to:

Mark C. Piontek
LEWIS, RICE & FINGERSH, L.C.
1200 Jefferson
P.O. Box 1040
Washington, MO 63090

Mark Vincent
VINCENT & HOVEN, P.C.
316 E. Locust Street
P.O. Box 439
Union, MO 63084

4. On October 21, 2002, the Joint Applicants executed a water service territorial agreement (the "Agreement") pursuant to Section 247.172 RSMo 2000. Pursuant to 4 CSR 240-2.060(13)(A), a copy of the Agreement, including a legal description of the Joint Applicants' respective water service areas under the Agreement, is attached hereto and incorporated herein by reference as **Appendix A**.

5. The Agreement specifically designates the mutually agreed to water service areas of the Joint Applicants. The Agreement also sets forth any and all powers granted to the District by the City to operate within the corporate municipal boundaries of the City and any and all powers granted to the City to operate within the boundaries of the District.

6. Pursuant to 4 CSR 240-2.060(13)(D), Joint Applicants state that no existing customers of the District or the City will have their current water or sewer service supplier changed by the Agreement.

7. The Agreement resulted from a settlement of court litigation between Joint Applicants, will enable the Joint Applicants to avoid wasteful and costly duplication of water utility services within the specified service area, is consistent with the provisions of Section 247.172 RSMo 2000, and is not, therefore, detrimental to the public interest. In fact, the Agreement is in the public interest because it displaces destructive competition to the benefit of the Joint Applicants' respective ratepayers.

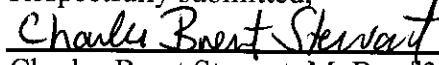
8. The Agreement in no way diminishes the rights and duties of any water supplier not a party to the Agreement to provide service within the boundaries designated in the Agreement.

9. Because Joint Applicants are publicly-owned political subdivisions of the State of Missouri and are otherwise not subject to regulation by the Commission, the provisions of 4 CSR 240-2.060(13)(B), and the provisions of 4 CSR 240-2.060(1) not heretofore already addressed herein, do not apply for purposes of this Joint Application.

10. Concurrent with this filing, Joint Applicants have submitted a check in the amount of Five Hundred Dollars (\$500.00) pursuant to 4 CSR 240-2.060(13)(E) and 4 CSR 240-51.010.

WHEREFORE, Joint Applicants the City of Union, Missouri and Public Water Supply District No. 1 of Franklin County, Missouri respectfully request that the Commission approve Joint Applicants' proposed territorial agreement.

Respectfully submitted,



Charles Brent Stewart, MoBar #34885

STEWART & KEEVIL, L.L.C.

1001 Cherry Street, Suite 302

Columbia, Missouri 65201

(573) 499-0635

(573) 499-0638 (fax)

Stewart499@aol.com

ATTORNEY FOR JOINT APPLICANTS
AND SIGNED ON BEHALF OF:

Mark C. Piontek, MoBar #36221

LEWIS, RICE & FINGERSH, L.C.

1200 Jefferson, P.O. Box 397

Washington, MO 63090

(636) 239-7747

(636) 239-8450 (fax)

mpiontek@lewisrice.com

ATTORNEY FOR APPLICANT PUBLIC
WATER SUPPLY DISTRICT NO. 1 OF
FRANKLIN COUNTY, MISSOURI

Mark S. Vincent, MoBar #31819

VINCENT & HOVEN, P.C.

316 E. Locust Street

Union, MO 63084

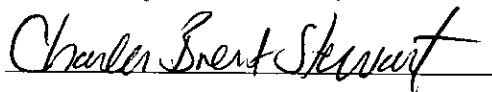
(636) 583-5760

(636) 583-3118

ATTORNEY FOR APPLICANT CITY OF
UNION, MISSOURI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Joint Application and appendices has been sent to the Office of the Public Counsel and to the Commission's General Counsel's Office, by hand-delivery, this 19th day of November, 2002.



VERIFICATION

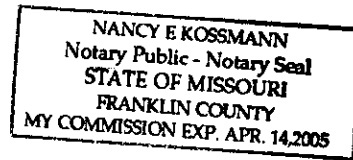
State of Missouri)
) ss
County of Franklin)

I, Glenn W. Van Leer, having been duly sworn upon my oath, state that I am the Mayor of the City of Union, Missouri, that I am duly authorized to make this affidavit on behalf of the City of Union, Missouri, that the matters and things stated in the foregoing application and appendices thereto are true and correct to the best of my information, knowledge and belief.

Glenn W. Van Leer
Glenn W. Van Leer, Mayor

Subscribed and sworn before me this 13 day of August, 2002.

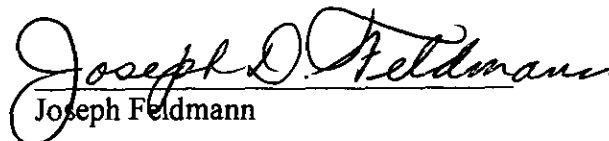
Nancy E. Kossmann
Notary Public



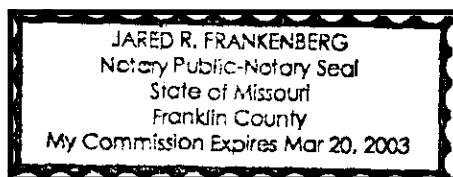
VERIFICATION

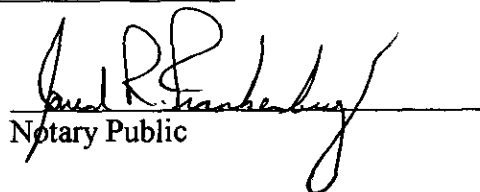
State of Missouri)
) ss
County of Franklin)

I, Joseph Feldmann, having been duly sworn upon my oath, state that I am the President of Public Water Supply District No. 1 of Franklin County, Missouri, that I am duly authorized to make this affidavit on behalf of Public Water Supply District No. 1 of Franklin County, Missouri, that the matters and things stated in the foregoing application and appendices thereto are true and correct to the best of my information, knowledge and belief.


Joseph Feldmann

Subscribed and sworn before me this 30th day of SEPTEMBER, 2002.




Notary Public



CITY OF UNION, MISSOURI/
PWSD #1 OF FRANKLIN COUNTY, MISSOURI
WATER TERRITORIAL AGREEMENT

APPENDIX A
TERRITORIAL AGREEMENT

TERRITORIAL AGREEMENT

This Agreement made and entered into this 21st day of October, 2002 by and between Public Water Supply District No. 1 of Franklin County, Missouri (hereinafter the "District") and the City of Union, Missouri (hereinafter the "City").

Whereas, the District is a political corporation of the State of Missouri located in Franklin County organized and existing under Sections 247.010 to 247.220 RSMo. for the purpose of providing conveniences in the use of water, ample in quantity for all needful purposes and pure and wholesome in quality, furnished from common sources of supply to many inhabitants of the District thereby promoting public health and sanitation, and making available conveniences not otherwise possible for the general public welfare; and

Whereas, the City is a political subdivision of the State of Missouri organized and existing under the laws of the State of Missouri and located in Franklin County; and

Whereas, the District's and the City's boundaries are not coequal but do overlap in certain portions of their respective areas; and

Whereas, Section 247.172 RSMo. provides that competition to sell and distribute water, as between and among public water supply districts and municipally owned utilities may be displaced by written territorial agreements upon approval of the Missouri Public Service Commission; and

Whereas, the District and the City desire to enter into this Agreement in order to avoid wasteful duplication of facilities, stranded investment and underutilized system capacity and to allow orderly development, efficient planning for water and sewer system expansion and improvement, effective utilization of existing and future system capacity,

efficient service and to minimize disputes which may result in higher costs in serving each party's respective inhabitants.

Now, Therefore, in consideration of the mutual covenants, conditions, obligations, promises, restrictions and agreements herein contained, the District and the City agree as follows:

1. For purposes of this Agreement the following terms shall have the following meaning:

- a. City: the City of Union, Missouri.
- b. Customer: includes any natural person, firm, association, partnership, business trust, public or private corporation, political subdivision or any agency, board, department or bureau of the State of Missouri or the U.S. Government or any other legal entity which has requested or is receiving water service. Any customer who has requested or is receiving water service at more than one structure shall be a new and different customer at each structure at which water service has been requested.
- c. Customer service lines: includes all water service lines from the water main to the customer.
- d. District: Public Water Supply District No. 1 of Franklin, Missouri
- e. Service: shall mean water and sewer service to a customer.
- f. Structure: shall mean an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus. A "structure" shall include an original structure and any contiguous addition to or expansion thereto and a replacement of a previously existing structure.

2. The District shall have the exclusive right to provide service to all existing and future customers located within its service area as shown on Exhibit A as it now exists or as it may exist in the future notwithstanding that any portion of said service area may be annexed by the City after the effective date of this Agreement.

3. The City shall have the exclusive right to provide service to all existing and future customers located within its service area shown on Exhibit B as it now exists or as it may exist in the future notwithstanding that any portion of said service area may be annexed by the City after the effective date of this Agreement.

4. Neither party may furnish, make available, render or extend service to a structure or customer or for use within the territory of the other party either directly, indirectly or through another entity controlled by the party or controlling the party, in whole or in part, excepting sales to each other.

5. The location of a structure or customer for purposes of this Agreement shall be the geographical location at which service is actually used, regardless of the metering point or point of delivery. The first owner of a new structure who requests and receives service at a structure which is located on or crossed by any mutual boundary line described in Paragraphs 2 and 3 dividing the service territories of the parties shall be permitted to choose either party for permanent service. Thereafter that party shall exclusively serve that structure.

6. The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the service area of the other.

Such Addendum referred to above shall be filed with the Executive Secretary of the Missouri Public Service Commission in the same manner as a motion or other pleading, with a copy submitted to the Office of Public Counsel.

Each Addendum shall consist of a notarized statement identifying the structure, the party to serve the structure and the justification for the Addendum and indicating that the parties support the Addendum.

Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served which acknowledges such customer's receipt of notice of the contemplated service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Public Service Commission and shall indicate the customer's consent to be served by the Party contemplated by the Addendum.

If the Staff of the Public Service Commission or Office of Public Counsel do not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties. However, if a pleading in opposition to the Addendum is filed by the above listed parties, the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff or Office of Public Counsel has forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.

Each party, pursuant to an executed Addendum, shall have the right to provide temporary service until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an Addendum until the effective date of an Order of the Commission or a court regarding the removal of same.

7. This Agreement shall become effective upon approval by the Missouri Public Service Commission pursuant to Section 247.172 RSMo. The term of this Agreement shall be permanent unless the parties agree in writing to limit the term. Performance of the parties is contingent upon all of the following having occurred no later than June 1, 2003, unless such condition is waived, extended or modified by agreement in writing signed by an officer of each party hereto:

- a: All required approvals of the City's Board of Aldermen or City Council.
- b: All required approvals of the District's Board of Directors.
- c: Approval of the transaction by the Public Service Commission of Missouri.

8. The parties agree to undertake all actions reasonably necessary to implement this Agreement.

9. In the event any controversy or claim by or against either party arises out of this transaction or the subject matter hereof after the effective date of this Agreement, each party shall make available to the other copies of such relevant records as may reasonably be requested pertaining to the controversy or claim.

10. If either party shall default in their performance under this Agreement or in the event of a breach of this Agreement, which default or breach results in the expenditure of attorney's fees to enforce the terms of this Agreement or to recover damages for breach of this Agreement, then the prevailing party shall receive their reasonable and actually incurred attorney's fees and costs in addition to any other damages recovered. In the event of a breach or threatened breach by either party the

other party shall be entitled to seek an injunction restraining the breach or threatened breach in addition to any other remedies available at law or in equity.

11. If the Public Service Commission of Missouri does not approve the provisions of this Agreement, then it shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.

12. Neither the boundaries described by this Agreement nor any term of this Agreement may be modified, repealed or changed except by a writing mutually approved by the respective parties and by the Missouri Public Service Commission.

13. This Agreement shall be binding on the parties and all successors, assigns, parent corporations or affiliates of the City and the District.

14. This Agreement shall in no way affect either party's right to construct such collection, distribution, treatment, storage, pumping, production and transmission facilities within the designated service area of the other as that party deems necessary, appropriate or convenient to provide service to its customers not inconsistent with the terms of this Agreement and as otherwise allowed by law. This Agreement shall in no way affect either party's right to construct, operate, maintain and repair such sanitary sewer collection and sanitary treatment facilities within the designated service area of the other as that party deems necessary, appropriate or convenient to provide sanitary sewer service to its customers as allowed by law.

15. This Agreement constitutes the entire agreement between the parties relating to the allocation of water service rights in the territory described herein.

IN WITNESS WHEREOF, the parties have executed this agreement this 21ST
day of OCTOBER, 2002.

PUBLIC WATER SUPPLY DISTRICT
NO. 1 OF FRANKLIN COUNTY,
MISSOURI

By: Joseph F. Feldmann
Joseph Feldmann, President

ATTEST:

Mary B. Voss
Clerk

CITY OF UNION, MISSOURI

By: Glenn W. Van Leer
Glenn W. Van Leer, Mayor



ATTEST:

Nancy Kossman
Nancy Kossman, City Clerk

Appendix A

STATE OF MISSOURI)
) SS:
COUNTY OF FRANKLIN)

On this 30th day of SEPTEMBER, 2002, before me appeared Joseph Feldmann to me personally known, who, being by me duly sworn, did say that he is the President of **Public Water Supply District No. 1 of Franklin County, Missouri**, and that the seal affixed to the foregoing instrument is the corporate seal of said District, and that said instrument was signed and sealed on behalf of said District, by authority of its Board of Directors; and said Joseph Feldmann acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My term expires:

MARCH 20, 2003


Notary Public

JARED R. FRANKENBERG
Notary Public-Notary Seal
State of Missouri
Franklin County
My Commission Expires Mar 20, 2003

STATE OF MISSOURI)
) SS:
COUNTY OF Franklin)

On this 13 day of August, 2002, before me appeared Glenn W. Van Leer to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **City of Union, Missouri**, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed on behalf of said City, by authority of its _____; and said Glenn W. Van Leer acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

NANCY E KOSSMANN
Notary Public - Notary Seal
STATE OF MISSOURI
FRANKLIN COUNTY
MY COMMISSION EXP. APR. 14, 2005
My term expires:

April 14, 2005


Notary Public

EXHIBIT A

The following described real estate situate in the County of Franklin, State of Missouri, to-wit:

Beginning at the northwest corner of Section 27, Township 44 North, Range 1 West, thence eastwardly along the north line of said Section 27 to the north quarter corner thereof; thence southwardly along the north-south centerline of Section 27 to the north quarter corner of Section 34; thence eastwardly along the north line of Section 34 to its intersection with the centerline of Missouri State Highway 47; thence southwardly along said centerline to its intersection with the east-west centerline of Section 23, Township 43 North, Range 1 West; thence westwardly along the east-west centerline of Sections 23 and 22 to the east quarter of Section 21; thence southwardly along the east line of Section 21 to the southeast corner thereof; thence westwardly along the south line of Sections 21, 20 and 19, Township 43 North, Range 1 West and the south line of Section 24, Township 43 North, Range 2 West to the southwest corner thereof; thence northwardly along the west line of Sections 24 and 13 to the northwest corner thereof; thence eastwardly along the north line of said Section 13 to the northeast corner thereof; thence northwardly along the west line of Sections 7 and 6, Township 43 North, Range 1 West and Section 31, Township 44 North, Range 1 West to the west quarter corner thereof; thence eastwardly along the east-west centerline of Section 31 to the west quarter corner of Section 32; thence northwardly along the west line of Section 32, 29 and 20 to the west quarter corner thereof; thence eastwardly along the east-west centerline of Section 20 and 21 to the center of Section 21; thence southwardly along the north-south centerline of Section 21 to the north quarter corner of Section 28; thence eastwardly along the north line of Section 28 to the point of beginning.

EXHIBIT B

The following described real estate situate in the County of Franklin, State of Missouri, to-wit:

All of Union Mobile Manor in Section 22, Township 43 North, Range 1 West and recorded in Book K, Page 65 of the Franklin County Recorder of Deeds office.

All of Eagleridge Estates in Section 22, Township 43 North, Range 1 West and recorded in Book P, Pages 303, 304, and 305 of the Franklin County Recorder of Deeds office.

ORIGINAL CHECK HAS A COLORED BACKGROUND PRINTED ON CHEMICAL REACTIVE PAPER - SEE BACK FOR DETAILS

LEWIS, RICE & FINGERSH, L.C.

500 N. BROADWAY, SUITE 2000
ST. LOUIS, MO 63102-2147

Bank of America
Missouri East

CHECK NO.

221332

4-3/810 MO

DATE **November 11, 2002**

PAY **Five Hundred & 0/100**

DOLLARS \$ **500.00**

VOID AFTER 90 DAYS

Director of Revenue

TO
THE
ORDER
OF

LEWIS, RICE & FINGERSH, L.C.


AUTHORIZED SIGNATURE

⑈ 221332⑈ ⑆081000032⑆ 01⑈0020059⑈9⑈