

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)
Missouri-American Water Company,)
for the approval of an Agreement with the) File No. _____
City of O’Fallon, Missouri to Sell and Deliver)
Water for Resale and a Related Tariff Sheet)

**APPLICATION FOR THE APPROVAL OF AGREEMENT AND TARIFF
AND MOTION FOR WAIVER**

COMES NOW Missouri-American Water Company ("MAWC" or “Company”) and, in support of its Application for the approval of an agreement with the City of O’Fallon, Missouri (hereinafter "City") to sell and deliver water for resale, and a related tariff sheet, respectfully represents and states:

BACKGROUND

1. MAWC is a Missouri corporation, active and in good standing with the Missouri Secretary of State, with its principal office and place of business at 727 Craig Road, St. Louis, Missouri 63141. Pursuant to Commission regulation 20 CSR 4240-2.060(1)(G), MAWC incorporates by reference the certified copies of its articles of incorporation and its certificate of good standing previously filed in File No. WO-2020-0190.

2. MAWC currently provides water service to approximately 474,000 customers and sewer service to approximately 16,500 customers in several counties throughout the state of Missouri. MAWC is a "water corporation," a "sewer corporation" and a "public utility" as those terms are defined in Section 386.020 and is subject to the jurisdiction and supervision of the Commission as provided by law. MAWC has no overdue Commission annual reports or assessment fees. There is no pending action or final unsatisfied judgment or decision against MAWC from any state or federal agency or court which involves customer service or rates, which

action, judgment, or decision has occurred within three years of the date of this Application.

3. Pleadings, notices, orders and other correspondence concerning this Application should be addressed to:

Missouri-American Water Company
727 Craig Road
St. Louis, MO 63141
Attention: Tim Luft

Telephone 314-996-2279
tim.luft@amwater.com

4. The statutory provisions under which MAWC makes this Application are Sections 393.140 and 393.150, RSMo. Section 393.140 gives Commission general jurisdiction over and access to the company books and records, and Section 393.150 states in pertinent in part:

393.150. Commission may fix rates after hearing-stay increase-burden of proof.--

1. Whenever there shall be filed with the commission by any...water corporation...any new form of contract or agreement...relating to...any privilege...the commission shall have, and it is hereby given, authority, to enter upon a hearing concerning the propriety of such... form of contract or agreement...; and after full hearing; whether completed before or after the...form of contract or agreement...goes into effect, the commission may make such order in reference to such...form of contract or agreement...or practice as would be proper in a proceeding ...

Case law indicates that the Commission may act upon such an application without a hearing under the file and suspend provisions of Section 393.150, when it so determines.

PROPOSED TRANSACTION

5. The City has requested to supplement its water supply and purchase water from MAWC at wholesale to be sold and delivered for resale by the City. MAWC has water supply available in its St. Charles district for this purpose and is agreeable to providing the water supply desired to the City. The rate the City will pay MAWC per the agreement covers the Company's net marginal cost of water production and will thus be of benefit to existing customers.

6. Attached hereto as **Appendix A** is the City of O'Fallon Resolution No. 08 11 2022A dated August 11, 2022 approving the Agreement on behalf of the City. Included with that Resolution is the proposed agreement between MAWC and the City (the "Agreement"). Attached hereto as **Appendix B** is a proposed tariff sheet - "Rate P Special Retail Sale Contract Rate" - which is designed to implement the provisions of the Agreement.

7. MAWC requests that the Commission authorize it to enter into and perform in accordance with the Agreement.

8. The Agreement is in the public interest because MAWC has the water available, the City benefits in that it will obtain a reliable source of supply at reduced costs when compared to its current vendor, and the agreed price is greater than MAWC's marginal cost to produce the water. Accordingly, the Agreement will offset certain existing fixed costs and thereby benefit existing MAWC customers.

MOTION FOR WAIVER

10. Commission Rule 20 CSR 4240-4.017(1) provides that "(a)ny person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case." A notice was not filed 60 days prior to the filing of this Application. As such, and to the extent required, MAWC seeks a waiver of the 60-day notice requirement.

11. Rule 20 CSR 4240-4.017(1)(D) provides that a waiver may be granted for good cause. In this regard, MAWC declares (as verified below) that it has had no communication with the Office of the Commission (as defined by Commission Rule 20 CSR 4240-4.015(10)) within the prior 150 days regarding any substantive issue likely to be in this case, other than those pleadings filed for record. Accordingly, for good cause shown, MAWC moves for a waiver of the 60-day notice requirement of Rule 20 CSR 4240-4.017(1) and acceptance of this Application

at this time.

WHEREFORE, MAWC respectfully requests that the Commission issue its Order:

(a) Granting MAWC's Motion for Waiver;
(b) Authorizing MAWC to enter into an Agreement in substantial form as that included with **Appendix A**;

(c) Authorizing MAWC to file the tariff sheet attached hereto as **Appendix B**;
and,

(d) Granting such further relief as is consistent with this application.

Respectfully Submitted,

//s// Timothy W. Luft
Timothy W. Luft, MBE #40506
Rachel Niemeier, MBE #56073
Corporate Counsel
MISSOURI-AMERICAN WATER COMPANY
727 Craig Road
St. Louis, MO 63141
(314) 996-2279 telephone
(314) 997-2451 facsimile
timothy.luft@amwater.com
rachel.niemeier@amwater.com

Dean L. Cooper, Mo. Bar #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Telephone: (573) 635-7166
Facsimile: (573) 635-0427
dcooper@brydonlaw.com

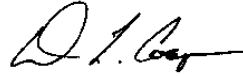
ATTORNEYS FOR MISSOURI-AMERICAN
WATER COMPANY

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 12th day of December 2022, to:

General Counsel's Office
staffcounsel@psc.mo.gov

Office of the Public Counsel
opc@opc.mo.gov




D. J. Coyle

VERIFICATION

State of Missouri)
) ss
County of St. Louis)

I, Timothy W. Luft, under penalty of perjury, and pursuant to Section 509.030, RSMo, state that I am Vice-President - Legal of Missouri-American Water Company, that I am duly authorized to make this affidavit on behalf of MAWC, that I have knowledge of the matters stated herein, and that said matters are true and correct to be best of my knowledge and belief.

Additionally, no representative of MAWC has had any communication with the office of the Missouri Public Service Commission as defined in Commission Rule 20 CSR 4240-4.015(10) within the immediately preceding 150 days regarding the subject matter of this Application.



RESOLUTION NO. 08 11 2022A

APPENDIX A

A RESOLUTION AUTHORIZING AN AGREEMENT WITH MISSOURI AMERICAN WATER COMPANY, PROVIDING FOR THE WHOLESALE PURCHASE OF WATER.

WHEREAS, the City of O'Fallon wishes to be able to supplement its water supply with the wholesale purchase of water from Missouri American Water Company (WAWC); and

WHEREAS, the proposed agreement will provide reduced costs when compared to the current vendor; and


WHEREAS, City Staff has reviewed all conditions lined out in the agreement and recommends approval of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF O'FALLON, MISSOURI, AS FOLLOWS:

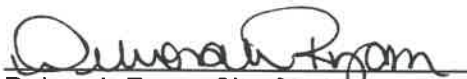
SECTION 1: The City Council approves on behalf of the City an agreement with Missouri American Water Company for wholesale water purchases, in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The City Administrator and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

PASSED BY THE CITY COUNCIL FOR THE CITY OF O'FALLON, MISSOURI, THIS 11TH DAY OF AUGUST 2022.

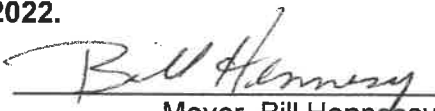
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Presiding Officer

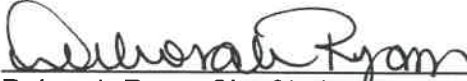
Attest:


Deborah Ryan, City Clerk

APPROVED BY THE MAYOR THIS 12TH DAY OF AUGUST 2022.


Mayor, Bill Hennessy

Attest:


Deborah Ryan, City Clerk



Approved as to Form:


Kevin M. O'Keefe, City Attorney

AGREEMENT TO SELL AND DELIVER WATER FOR RESALE

This agreement made and entered into this _ day of _____, 2022, by and between **MISSOURI-AMERICAN WATER COMPANY**, a corporation organized and existing under the laws of the State of Missouri, hereinafter referred to as "MAWC", and the **CITY OF O'FALLON, MISSOURI**, existing under and by virtue of the laws of the State of Missouri, hereinafter referred to as "O'Fallon."

WHEREAS, O'Fallon owns, operates and maintains a public, potable water supply system for the benefit of its residents and the public in general and, in order to accomplish this purpose, O'Fallon desires to purchase additional supplies of potable water at location(s) and in amounts in accordance with the terms and conditions set forth herein; and,

WHEREAS, MAWC owns and operates a water supply distribution system with additional capacity to supply O'Fallon under the terms of this agreement; and,

WHEREAS, O'Fallon hereby contracts to purchase from the MAWC, its successors and assigns, and MAWC hereby contracts with O'Fallon to sell and deliver to said O'Fallon, subject to the terms, conditions and limitations hereinafter provided, a potable supply of water, said water to be delivered from the existing plant of MAWC; and

For and in consideration of the mutual covenants, agreements, and conditions contained herein, it is agreed by and between MAWC and O'Fallon as follows:

ARTICLE I

POINT(S) OF SERVICE

O'Fallon will purchase water from Water Company, in accordance with the provisions of this agreement, at the connection to be made on Belleau Creek Rd. as shown on Exhibit "A", attached.

ARTICLE II

WATER SUPPLY

1. Upon approval of this Agreement by the Missouri Public Service Commission, O'Fallon hereby contracts to purchase from MAWC, its successors and assigns, and MAWC hereby contracts with O'Fallon to sell and deliver to O'Fallon, subject to its ability to do so and to the terms, conditions and limitations hereinafter provided, all of the water required by O'Fallon, except as provided hereinafter, said water to be delivered from the existing plants of MAWC and to be of the same quality as that furnished and supplied to consumers of MAWC

in its current service area which includes St. Charles County.

2. During the period of time in which this Agreement is in effect, unless prohibited due to factors beyond O'Fallon's control, O'Fallon agrees to purchase an average of four hundred thousand (400,000) gallons of water per day, spread evenly throughout each month, from MAWC in a billing cycle, or pay MAWC the equivalency of such usage. The failure of O'Fallon to receive less than an average of 400,000 gallons per day will not be deemed as a breach of this agreement. See appendix "A" for minimum bill calculation. The total volume of water to be delivered by MAWC to O'Fallon shall not exceed a delivery rate of one million five hundred thousand (1,500,000) gallons per day. However, the total volume may be exceeded or increased provided both MAWC and O'Fallon mutually agree in writing. During periods of peak usage, or at other times that MAWC's remaining customers experience inadequate pressures, MAWC shall have the right to restrict O'Fallon's purchases.

3. MAWC shall not be required by this Agreement to provide or maintain water pressures within said O'Fallon and it is expressly understood to be the obligation of O'Fallon to provide and maintain such pressures by boosting devices, standpipes, elevated tanks, or by such other means, as may be required or necessary to provide and maintain satisfactory pressure in the water mains and pipes of O'Fallon. The obligation of MAWC to supply water hereunder is further limited by the understanding that MAWC shall undertake to use reasonable care and diligence in order to prevent and avoid interruptions and fluctuations in the supply, but that it cannot and does not guarantee that such interruptions and fluctuations will not occur or that because of emergencies due to breaks, leaks, defects or necessary repairs in its facilities, or caused by fires, strikes, act of God or other causes beyond its control, there may be periods during which the supply may be curtailed or interrupted.

4. O'Fallon shall maintain all pipelines and facilities owned and installed by it in said O'Fallon and MAWC shall be under no obligation to furnish water service to individual consumers located within the legal boundaries of O'Fallon's water system. O'Fallon further understands that the water delivered to it by MAWC shall be for the use of O'Fallon and its direct retail customers and is not to be re-sold on a sale for resale basis. The forgoing provision shall not apply to sales to the City of Wentzville or under circumstances where O'Fallon shall deliver water via emergency interconnects to other public water suppliers experiencing a bona fide emergency. O'Fallon agrees it will notify MAWC of any instances in which it provides and/or sells water to other public water suppliers on an emergency basis.

ARTICLE III

METERING EQUIPMENT AND PRESSURE REDUCING/SUSTAINING VALVE(S)

1. For the purposes of measuring water delivered to O'Fallon, MAWC, at its own expense, shall construct and install the necessary connection piping as well as a water meter or

meters of sufficient size and capacity in a meter vault on Belleau Creek Rd. south of Veterans Memorial Parkway constructed and maintained by and at the expense of MAWC. The plans for the connection shall be mutually agreeable to both parties.

2. MAWC shall, at its own expense, install all piping, valves, and fittings necessary to connect the MAWC water system to meter vault and will be maintained by and at the expense of MAWC. During construction MAWC will install a section of pipe at the outlet side of the meter vault for O'Fallon to make connection.

3. O'Fallon shall, at its own expense, install all piping, valves and fittings necessary to connect O'Fallon's water system to outlet of meter vault and maintain by and at the expense of O'Fallon.

4. O'Fallon shall, at its own expense, install a device used to control flow(volume) at the connection inside of the meter box and maintained by and at the expense of O'Fallon. This device must be approved by MAWC prior to installation.

5. The necessary valves to meet cross-connection regulations will be included with the project constructed by MAWC.

6. If the limits of MAWC's PSC certificated area should be extended to include any of the territory in which the mains, pipe lines, and facilities of O'Fallon have been installed, and from which service is then being rendered, and MAWC is permitted/required by certification, franchise, a contract or otherwise, to furnish domestic, industrial, and/or public fire hydrant service in such territory, nothing in this Contract shall be held to prevent the rendition of such domestic, industrial, and/or public fire hydrant service by MAWC from its own water mains now or hereafter installed in said territory in accordance with the Rules and Regulations as filed with the Missouri Public Service Commission.

ARTICLE IV

RATES AND TERMS

1. The initial term of this agreement shall be for term of ten (10) years, commencing on the first day of [REDACTED]. Upon expiration of the initial ten-year term, this agreement will automatically renew for one year terms, unless a minimum of thirty day notice is provided prior to expiration of the initial term, or any subsequent term. O'Fallon agrees to pay for such service according to metered billings rendered for the Point of Service according to the commodity charges for water service in effect on the Service Date and as set forth on Appendix A, attached hereto and made a part hereof, as fully as though the same were copied herein (the "Original Rate"), or as such bulk water commodity charges may hereafter be revised in accordance with the provisions of Appendix B, attached hereto and incorporated by reference as though fully set forth herein. Bills shall be presented by MAWC to O'Fallon monthly, at or near the end of each and every calendar month, and paid for promptly, not later than the thirtieth (30th) day of the

month succeeding the delivery of such water. O'Fallon agrees to set its own rates to its customers or appropriate other revenue of the City to produce sufficient revenue to meet this obligation and other necessary expenses of O'Fallon under this agreement.

ARTICLE V
ASSIGNMENT AND APPROVAL

The rights, duties and obligations herein provided for shall be binding upon O'Fallon and its successors and assigns, and upon MAWC and its successors and assigns. This contract is subject to the approval of the Missouri Public Service Commission.

ARTICLE VI
MISCELLANEOUS

1. The execution of this agreement shall be duly authorized by proper resolution by the Mayor and City Council of O'Fallon and the President of MAWC, attested to by its corporate secretary.

2. All notices provided for herein shall be in writing and shall be given by ordinary mail, and any notice to O'Fallon shall be addressed to:

City of O'Fallon
100 N. Main St.
O'Fallon, MO 63366

Attention: City Administrator

Any notice to MAWC shall be addressed to:

Missouri-American Water Company
727 Craig Road
St. Louis, Missouri 63021

Attention: Legal Department

3. The failure of either party to insist upon the performance of any of the terms of this Agreement or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term or the futures exercise of such right.

4. MAWC may require regulatory approval of this Agreement from the Missouri Public Service Commission, and such approval shall be in a form and substance acceptable to MAWC in its sole and absolute discretion.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be

executed by their authorized officers the day and year first above written.

MISSOURI-AMERICAN WATER COMPANY

By: -----
Richard Svindland, President

Attest:

Corporate Secretary

City of O'Fallon, Missouri

By:

Attest:

Clerk

Commodity Charge & Billing Calculation

The Original Commodity Charge shall be \$1.40/1,000 gallons

Billing: The water meter(s) shall be read monthly and bills for water services shall be submitted to the City of O'Fallon monthly, and City of O'Fallon agrees to make payment therefor within thirty (30) days of receipt of such bill.

Billing Calculation:

Missouri-American Water Company Monthly Invoice = Metered Volume (million-gallons) divided by the total number of days in the metering period (MGD) x the commodity charge

Example Calculation:

Metered Volume: 12,000,000 gallons

Number of days since previous reading: 30-days

$12\text{-MG}/30\text{-days} = 0.40\text{-MGD}$

0.40-MGD is billed at \$1.40 per 1,000-gals

Therefore, bill is calculated:

$12,000,000 \text{ gallons} / 1000 \times \$1.40 = \underline{\$16,800}$

Appendix B

Commodity Charge Adjustment

The parties understand and agree that the “commodity charge” will be adjusted in each calendar year on the anniversary of the Service Date by multiplying the Original Rate by a fraction, the numerator of which shall consist of the average of the *Handy Whitman Index for Water Treatment Plant, Structures and Improvements for the North Central Region* on the anniversary of the Service Date and on the two immediate years prior thereto, added to the average of the *Handy Whitman Index for Distribution Plant Mains – Average All Types for the North Central Region* on the anniversary of the Service Date and on the immediate two years prior thereto, and adding thereto the average of the *Consumer Price Index, U.S. City Average, for Water and Sewerage Maintenance – Seasonally Adjusted* on the anniversary of the Service Date and on the immediate two years prior thereto, with that sum divided by three. The denominator shall consist of the average of the *Handy Whitman Index for Water Treatment Plants, Structures and Improvements for the North Central Region*, the *Handy Whitman Index for Distribution Plant Mains – Average All Types for the North Central Region*, and the *Consumer Price Index, U.S. City Average, for Water and Sewerage Maintenance – Seasonally Adjusted*, for the month and year of the Service Date. For illustration, the following is an example of the commodity charge escalation:

$$\text{New Rate} = \text{Original Rate} \times \left(\frac{\text{Avg}(X \text{ Year1}, X \text{ Year2}, X \text{ Year3}) + \text{Avg}(Y \text{ Year1}, Y \text{ Year2}, Y \text{ Year3}) + \text{Avg}(Z \text{ Year1}, Z \text{ Year2}, Z \text{ Year3})}{3} \right) \\ \text{Avg}(X \text{ 2022}, Y \text{ 2022}, Z \text{ 2022})$$

Definitions:

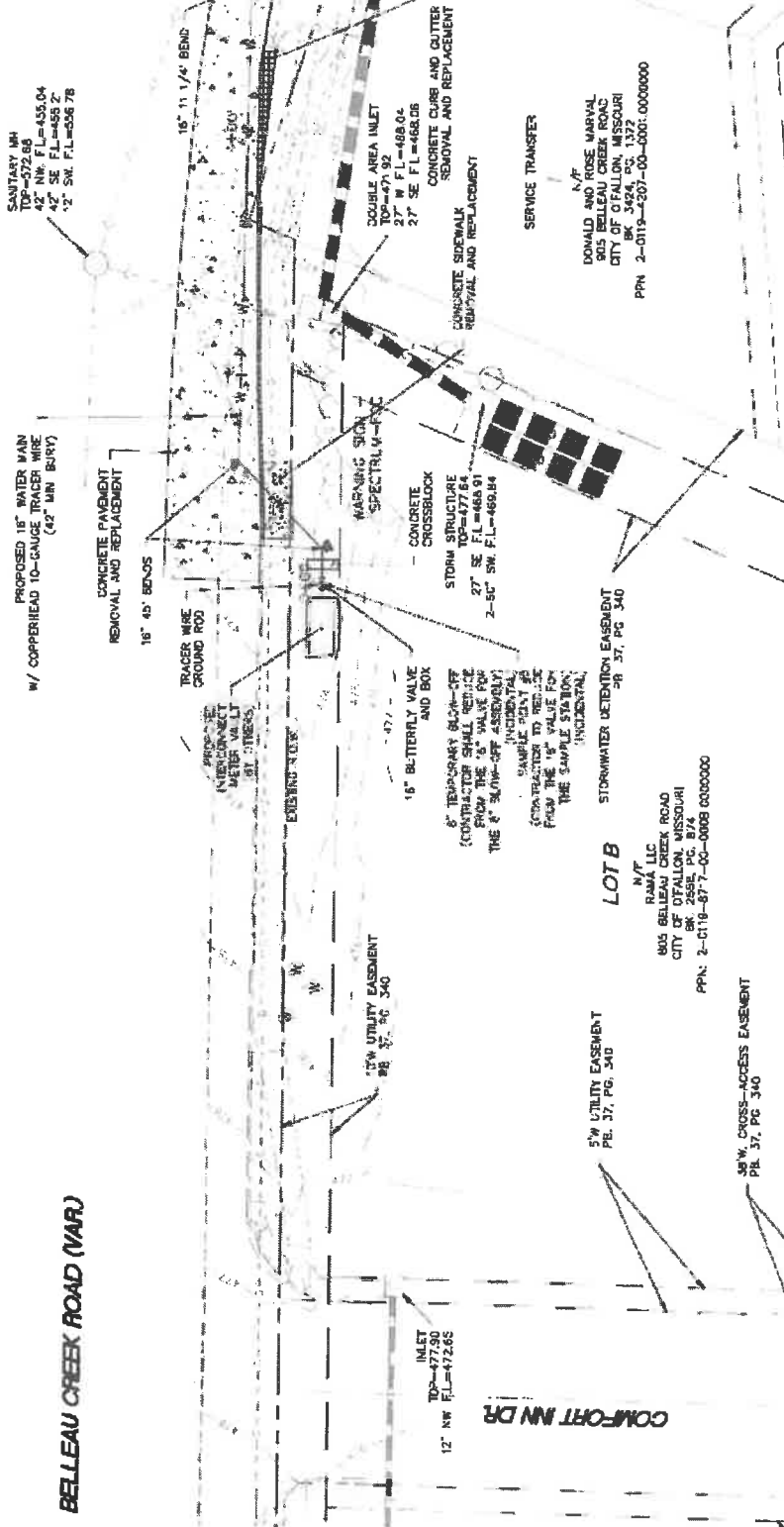
- X= Handy Whitman Index for Water Treatment Plants, Structures and Improvements for the North Central Region
- Y= Handy Whitman Index for Distribution Plant Mains-Average All Types for the North Central Region
- Z= Consumer Price Index, U.S. City Average for Water and Sewerage Maintenance-Seasonally Adjusted
- Year 1 and Year 2 are the two immediate years prior to the year of adjustment
- Year 3 is the year of adjustment
- Original Rate is the cost of water sold at the time the City begins taking water supply from the Company on the Service Date

Exhibit A



NOTE:
 PROPOSED WATER MAIN ALIGNMENT DESIGNED ACCORDING TO PVC WATER MAIN MANUFACTURER'S RECOMMENDED INSTALLATION GUIDELINES. NO VERTICAL OR HORIZONTAL PIPE DEFLECTION SHALL BE ALLOWED IF INSTALLING 8" WATER MAIN.

MATCHLINE - SHEET 5



MATCHLINE - SHEET 5

Missouri-American Water Company
Name of Issuing Corporation

For

St. Charles County, MO
Community, Town or City

Rate P Special Retail Sale Contract Rate	
<u>City of O’Fallon, MO</u>	*
<u>AVAILABILITY</u> - This rate is available for service provided to the City of O’Fallon pursuant to the <u>Agreement to Sell and Deliver Water for Resale</u> (Contract).	* *
The Company will provide service pursuant to rates to be generated by the provisions of the Contract. The rates generated by the provisions of the Contract may not be modified without Commission approval.	* *

* *Indicates new rate or text*

+ *Indicates change*

Date of Issue: December , 2022 Effective Date: January , 2023

Issued By: Rich C. Svindland, President
727 Craig Road, St. Louis, MO 63141