

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

CITY OF O'FALLON, MISSOURI,)	
)	
Complainant,)	File No. WC-2010-0010
)	
vs.)	
)	
MISSOURI-AMERICAN WATER)	
COMPANY, and)	
)	
PUBLIC WATER SUPPLY DISTRICT)	
NO. 2 OF ST. CHARLES COUNTY,)	
MISSOURI,)	
)	
Respondents.)	

MOTION TO DISMISS COMPLAINT

COMES NOW Complainant, the City of O'Fallon, Missouri ("O'Fallon") pursuant to 4 CSR 240-2.080 and for its Motion to Dismiss Complaint states:

1. O'Fallon filed this Complaint on July 8, 2009, against Missouri-American Water Company ("MAWC") and the Public Water Supply District No. 2 of St. Charles County, Missouri ("District #2").

2. O'Fallon and District #2 have recently entered into a water supply contract dated January 28, 2010 and executed by District #2 on February 3, 2010, (Exhibit A attached) which resolves its water supply issues and obviates the need for the Commission to reopen the Territorial Agreement between MAWC and District #2.

WHEREFORE, Complainant O'Fallon voluntarily moves to dismiss its Complaint filed on July 8, 2009.

Respectfully Submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Leland B. Curtis

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Attorneys for City of O'Fallon, Missouri

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing documents was either faxed, emailed, or mailed by U.S. Mail postage paid this 9th day of February, 2010, to the person on the attached list.

/s/ Leland B. Curtis

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WATER SUPPLY CONTRACT

This **CONTRACT** made and entered into this 28th day of January, 2010, by and between Public Water Supply District No. 2 of St. Charles County, Missouri, a political corporation of the State of Missouri, organized and existing under the provisions of Chapter 247 RSMo. 2000, as amended, also referred to herein as "District", and the City of O'Fallon, Missouri, a charter city and municipal corporation of the State of Missouri located in St. Charles County, Missouri, also referred to herein as "City".

WITNESSETH:

WHEREAS, the District is a political corporation of the State of Missouri organized and existing under the provisions of Chapter 247 RSMo. 2000, as amended, and is authorized to make possible 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, and thereby promote public health and sanitation, make available conveniences not otherwise possible, and for the general public welfare, and

WHEREAS, the City is a charter city and municipal corporation of the State of Missouri, and

WHEREAS, the City owns and operates a water supply and distribution system (the "City System") serving users within its corporate limits, and

WHEREAS, the District owns and operates a water supply and distribution system (the "District's Water System") serving users in St. Charles and Warren Counties, and

WHEREAS, the City desires to purchase water from the District for distribution and resale to the City's customers, and

WHEREAS, the District desires to sell water to the City for distribution and resale to the City's customers, and

WHEREAS, the District is authorized by the provisions of Section 247.050 (15) RSMo. 2000, as amended, "(t)o sell and distribute water to ... consumers outside the (D)istrict, delivered within or at the boundaries of the (D)istrict", and

WHEREAS, the City is authorized by the provisions of Sections 91.010 RSMo. 2000 as amended, et. seq. to operate waterworks and to supply the inhabitants thereof with water; , and

WHEREAS, Section 70.220 RSMo. 2000, as amended, permits the City and the District to contract and cooperate with each other for a common service, and

WHEREAS, the sale of water to the City, in accordance with the terms and conditions set forth in this CONTRACT, was approved by the City by an ordinance^{Resolution} adopted on the 28 day of JANUARY, 2010 and was approved by the District by a resolution adopted on the 3rd day of FEBRUARY, 2010.

NOW THEREFORE, DISTRICT and CITY mutually agree on the following items:

ARTICLE 1. NATURE OF SERVICE

A) The District agrees to furnish and sell and the City agrees to purchase water from the District in accordance with the terms as set forth herein.

The District agrees to exercise reasonable diligence and foresight to repair, replace and maintain the District's Water System so as to provide the flow of water as defined in ARTICLE 6 herein at the point of the City's interconnections as identified in ARTICLE 4 herein during the life of this Contract. Temporary or partial failure to deliver water shall be remedied as quickly as is reasonably possible. In the event of a natural catastrophe or other failure rendering the District's Water System unusable for an extended period of time, or in the event of an extended shortage of water, the supply of water to the City shall be reduced or diminished in the same ratio or proportion as the supply to other District customers of the District's Water System. The District shall notify the City as soon as reasonably possible of any event which causes a reduction in pressure or quantity of water to the City.

The District may interrupt water service to the City when such interruptions are necessary to make repairs, changes or adjustments in the District's Water System provided that, when reasonable and practicable, the District has given the City prior notice of said repairs, changes or adjustments. The District shall not be liable for interruptions of service or any loss or damage resulting therefrom due to such repairs, changes or adjustments.

The District shall not be liable for any other failure, interruption or shortage of water or any loss or damage resulting therefrom occasioned in whole or in part by any cause beyond the direct, sole and reasonable control of the District.

B) The City agrees to furnish and sell and the District shall be permitted to purchase water from the City on an emergency basis in accordance with the terms as set forth in this Section.

The District shall not take water from the City unless notification is given to the City and the City approves said taking of water. In no event shall the District be allowed to take water from the City if the City determines that its own water supply would be unduly hindered by said taking.

ARTICLE 2. PRICING

The City agrees to pay for water at a rate equal to forty-three percent (43%) of the then current residential rate charged by the District to its own individual residential customers, as such rate may be amended from time to time by the District.

If the District purchases water from the City on an emergency basis as described in Article 1, Part B, the District agrees to pay for water at a rate equal to forty-three percent (43%) of the then current residential rate charged by the City to its own individual residential customers, as such rate may be amended from time to time by the City.

ARTICLE 3. PAYMENT

The purchaser of water agrees to pay the seller on a monthly basis (i.e., Billing Month) for all purchases of water under this CONTRACT. All purchases shall be billed monthly, within fifteen (15) days after rendition of service. All such bills shall be due and payable without discount within thirty (30) days after date of bill.

Should any bill remain unpaid for a period of thirty (30) days after written notice from the seller to the purchaser that the same bill is past due and that the purchaser has failed to make such payment within the period of notice, then the seller may, at its option and upon ten (10) days written notice to the purchaser discontinue all service to the purchaser and all bills then delinquent shall carry interest at the rate of twelve (12%) per annum from date due. However, if the purchaser's nonpayment is due to a billing dispute between the purchaser and the seller, the seller shall not discontinue service during the period of good faith discussions or during any period in which the purchaser disputes said billing before an administrative or judicial body, provided, the purchaser continues to pay to the seller on a monthly basis for each month a billing dispute exists an amount equal to the amount the purchaser paid for the month immediately preceding the month when the billing dispute arose.

ARTICLE 4. CONNECTIONS AND METERING

Water to be supplied hereunder by the District to the City shall be supplied at the existing points of metered connection as shown on Exhibit A attached hereto and incorporated herein by reference, and at other future points of metered connections as may be mutually agreed on in writing from time to time by both the District and the City in accordance with Article 12 of this Contract. In order to permit said delivery:

A) The District agrees, at its own cost and expense, to purchase and maintain all existing and replacement meters located in facilities constructed and maintained for the purposes of this CONTRACT.

B) The District, at times chosen by the District and at its cost, shall test or cause to be tested the meters which register the amount of water for which the District will bill

the City. In addition, the City, at its cost, has the right at all times to test the meters which register the amount of water for which the District will bill the City. A meter registering not more than two percent (2%) fast or two percent (2%) slow shall be deemed to be accurate. The previous readings of any meter disclosed by tests to be inaccurate shall be corrected in accordance with the percentage of inaccuracy found by such tests for the intervening period from when the meter was last tested and found to be accurate and the date when the meter was tested and found to be inaccurate, not to exceed the prior twelve (12) months. If a meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the period immediately prior to the failure, unless the City and the District shall agree upon a different amount. If the District's test determines that repairs to or recalibrations of the meter(s) is required, the repairs or recalibrations shall be at the District's expense. If any meter cannot be repaired or recalibrated so that it registers not more than two percent (2%) fast or two percent (2%) slow, the District will replace the meter at its cost.

C) The City shall grant to the District such easements of the City property as the District and the City mutually agree are necessary to maintain existing facilities or to construct new facilities required for any and all metered connection points. Granting of said easement by the City shall not be unreasonably withheld.

D) All pipe, valves, fittings, meter pits, pump station and appurtenances which are paid for and installed by the District shall be owned and maintained by the District. All pipe, valves, fittings, meter pits, pump station and appurtenances which are paid for and installed by the City shall be owned and maintained by the City.

E) The District shall have the right to operate such valves as necessary to maintain and test meters and to ensure payment for rendition of service and will assume operating and maintenance responsibility for the isolation valves at the metered connection points. The District and City may install such equipment as needed to obtain continuous information flows and pressures.

F) All pipe, valves, fittings and appurtenances installed by the District or the City shall be designed and constructed in accordance with recognized water works industry standards. The District shall have the right to review and approve all plans and specifications of pipe valves, fittings, meter pits, pump station and appurtenances which the City proposes to install at or adjacent to the metered connection points. In addition, all work or construction performed or undertaken by the City shall be subject to the supervision and approval of the District.

ARTICLE 5. CHARLEMAGNE BOOSTER STATION AND OTHER DISTRICT IMPROVEMENTS

A) The District will provide additional water for fire protection to the City through a proposed new connection to the City's existing water system near the intersection of Bryan Road and Mexico Road.

B) In addition, the District will begin design and construction of improvements to its existing Charlemagne Booster Pump Station within thirty (30) days of the execution of the CONTRACT in order to provide additional water to the City through an existing connection located near Sunny Ridge Drive.

ARTICLE 6. QUANTITY AND QUALITY OF WATER

The District agrees to sell water to the City as the City desires to purchase in such quantities as the City requires subject to the following maximum flow rates: two (2) million gallons per day. If the City desires a higher maximum flow rate in the future, the flow rate can be increased upon written approval by the District which approval will not be unreasonably withheld.

Water supplied by the District to the City shall meet the treated water quality standards of the Missouri Department of Natural Resources and/or United States Environmental Protection Agency or such other successor agency. The District and the City understand water pressure may fluctuate lower during peak demand. Emergency failures of pressure or supply due to water main breaks, equipment failures, power failures, flood, fire, earthquakes or other catastrophe, shall temporarily excuse the District from providing water to the City.

ARTICLE 7. COMMUNICATION BETWEEN DISTRICT AND CITY

In order to assure the City has adequate information relative to the operation of the District, as a minimum the following documents shall be provided to the City: (i) annual Consumer Confidence Report and (ii) other pertinent documents as mutually agreed.

ARTICLE 8. EFFECTIVE DATE OF CONTRACT

This CONTRACT, subject to ARTICLE 9, shall be in full force and effect until July 1, 2026 (the "Original Term"). Upon expiration of the Original Term, the CONTRACT will automatically renew for two (2) separate and additional terms of ten (10) years each upon the same terms and conditions as the Original Term (each a "Renewal Term") unless terminated by written notice as described in Article 9 below.

ARTICLE 9. TERMINATION

The District has the right and option to cancel and terminate this CONTRACT upon expiration of the Original Term or any Renewal Term and thereafter all rights and obligations hereunder shall cease, provided, the District provides the City not less than three (3) years notice of such decision to cancel and terminate upon expiration of the Original Term or any Renewal Term.

The City has the right and option, upon one (1) or more years written notice to the District, to cancel and terminate this CONTRACT, and thereafter all rights and obligations hereunder, other than easement rights conveyed by separate instruments, shall cease. The City further shall have the right to terminate upon thirty (30) days written notice and the District's failure to cure the District's breach of the terms of this CONTRACT.

ARTICLE 10. DISPUTES OR CLAIMS

It is expressly understood between the parties that any disputes or claims arising out of this CONTRACT, resulting in a cause of action, shall only be brought in the Circuit Court of St. Charles County, Missouri.

ARTICLE 11. TAXES AND FEES

The rates provided herein include no allowance for taxes and fees which may be assessed at the effective date of this CONTRACT on the sale of water furnished by the District to the City. The parties understand that the sale of water is currently not taxable. In the event the sale of water furnished to the City is taxable in the future or is subject to the imposition of any fee the District shall increase the charges resulting from the water sold in an amount equal to such taxes or fees and the City shall be obligated to pay such additional amount as part of the charges provided herein.

In the event of reduction of taxes or fees attributable to the sale of water furnished to the City the District shall decrease the charges resulting from the water sold in an amount equal to such reduction in taxes or fees as is attributable to water sold during the billing period.

ARTICLE 12. AMENDMENTS

This CONTRACT may only be changed, altered or amended by mutual agreement of the parties, in writing and duly approved and executed by both parties.

ARTICLE 13. MISCELLANEOUS PROVISIONS

Service under this CONTRACT is subject to all lawful orders, rules and regulations of duly constituted governmental authorities having jurisdiction over either party or both.

Failure of either party hereto to exercise any right hereunder shall not be deemed a waiver of such party's right and shall not affect the right of such party to exercise at some future time said right or rights or any other right it may have hereunder.

None of the remedies provided for under this CONTRACT need to be exhausted or exercised as a prerequisite to resort to further relief to which the party may then be

entitled in the event of an emergency situation or an imminent threat to health or property.

This CONTRACT may not be assigned by either party without the written consent of the other party.

The benefits and burdens of this CONTRACT shall be binding upon the respective legal representatives, successors and assigns of the parties hereto.

This CONTRACT supersedes any and all previous agreements between the parties hereto including the Agreement dated March 9, 1988 and Amendments dated January 6, 2000 and July 10, 2008. Notwithstanding the foregoing, this CONTRACT does not supersede any of the terms of that certain Water Supply Agreement dated January 17, 1985 as amended by the First Amendment to Water Supply Agreement dated June 10, 2004 and any amendments thereto.

The provisions of this CONTRACT are hereby declared to be severable. If any provision of this CONTRACT is deemed invalid by a court of competent jurisdiction the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year above written.

Public Water Supply District No. 2
of St. Charles County, Missouri

City of O'Fallon, Missouri

By: Virginia L. Bowden
President

By: Bill Hornsby
Mayor

SEAL:

SEAL:

ATTEST:

ATTEST:

By: T. H. [Signature]
Clerk

By: City Clerk
Clerk
Patricia L. Clement





BASEMAP INFORMATION PROVIDED BY:
St. Charles County GIS Information Systems Department
201N Second St., St. Charles, MO 63301
Telephone (636) 949-7417, Facsimile (636) 949-7483,
www.sccmo.org

EXHIBIT A

- 1 INTERCONNECTION - PWS02 / OFALLON - VETERANS MEMORIAL PKWY
- 2 INTERCONNECTION - PWS02 / OFALLON - SUNNY RIDGE
- 3 INTERCONNECTION - PWS02 / OFALLON - TURTLE CREEK
- 4 INTERCONNECTION - PWS02 / OFALLON - MEXICO RD
- 5 PROPOSED INTERCONNECTION - PWS02 / OFALLON - BRYAN RD & MEXICO RD

WATER LEGEND

WATER STORAGE		WELL	
PUMP STATION		PRV	
INTERCONNECTION		METER	

UNDER 4" MAINS

4" MAINS

6" MAINS

8" MAINS

10" AND UP MAINS

