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FILED

NOV 27 2000

November 20, 2000

Missouri Public
Service Commission

Public Service Commission
State of Missouri
200 Madison Street, Suite 100
Jefferson City, MO 65101

Attn: Mr. Dale Hardy Roberts, Secretary

W0-2001-326

Re: Franklin County Public Water Supply District No. 3 in the City of Washington

Dear Mr. Roberts:

I am enclosing herewith an Application for Public Service Commission Review, a check for \$400 and three (3) copies of the Intergovernmental Territorial Agreement, dated August 7, 2000 between the Public Water Supply District No. 3 of Franklin County, Missouri and the City of Washington, Missouri along with a copy of each of these documents.

Would you be so kind as to return a file-stamped copy in the enclosed, self-addressed, stamped envelope.

Yours truly,

Joel D. Brett /sep

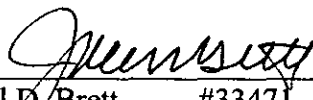
Joel D. Brett

Enclosures
JDB:sep

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**APPLICATION FOR PUBLIC SERVICE COMMISSION REVIEW**

COMES NOW the Public Water Supply District #3 of Franklin County, by and through its attorney and respectfully requests a Commission Review of the attached duly executed Governmental Territorial Agreement between the Franklin County Public Water Supply District #3 and the City of Washington. Three copies of the Intergovernmental Territorial Agreement are attached hereto and incorporated herein by reference as part of this application. Further, the Applicant encloses herewith sum of \$400 pursuant to 4 CSR 240-51.010. WHEREFORE, the undersigned requests a Commission Review and approval of said agreement.

BARKLAGE, BARKLAGE, BRETT,
MARTIN & WIBBENMEYER, P.C.


Joel D. Brett #33471
Attorneys for Franklin County Public Water Supply
District #3
211 North Third Street
St. Charles, Missouri 63301
(636) 949-2120
(636) 949-8786 (facsimile)

cc: Robert A. Zick
Attorney at Law

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Missouri Public
Service Commission

INTERGOVERNMENTAL TERRITORIAL AGREEMENT

THIS AGREEMENT made and entered into this 7th day of August, 2000, by and between Public Water Supply District No. 3 of Franklin County, Missouri (hereinafter the "District") and the City of Washington, 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 et seq. for the purpose of providing potable 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 previously denied such privileges 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 as a third class city located in Franklin County operating municipally owned utility systems, including water serving the City; and

WHEREAS, the District's and the City's boundaries do overlap in certain portions of their respective areas due to the annexation of certain areas to the City; and

WHEREAS, the District anticipates that the City will annex additional property within the District and said City will desire to provide water service to the District customers or would-be customers; 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 systems, 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 Washington, 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 or sewage collection and treatment service. Any customer who has requested or is receiving water service at more than one structure shall be a new a different customer at each structure at which water or sewage collection and treatment 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. 3 of Franklin County, Missouri.

e. Service: shall mean water supply 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 absolute and exclusive right to provide service to all existing and future customers located within the service area as shown on Exhibit "A" notwithstanding that any portion of said service area may be annexed by the City after the effective date of this Agreement; however, the City shall not provide or offer to provide water service to those areas so annexed and is barred from doing so under the terms of this Agreement.

3. The City shall have the exclusive right to provide service to all existing and future customers located within the area highlighted in Exhibit "B" if and when such areas highlighted in Exhibit "B" are annexed by the City; provided, however, that the City shall pay to the District the sum of \$100.00 per acre for those areas annexed and served by the City. For instance, the City

has annexed the development known as Stone Crest Subdivision comprised of 124 acres. The City shall pay to the District the sum of \$12,400.00 prior to providing service to said subdivision. The District may detach such areas as necessary to comply with this Agreement or may permit the area to remain within the District subject to this Agreement.

The rate of \$100.00 per acre payment to the District for annexation and service to those areas highlighted in Exhibit B shall apply during the first five (5) consecutive years from the date of this Agreement. Thereafter, the rate per acre shall increase \$10.00 per acre each year after the first five (5) years. For example, during year six, the price per acre shall be \$110.00 and so on. Payment is due at the time the annexation is approved and the City agrees to provide the water service.

Provided further, that the City/Developer may, at its option elect to proceed with detachment and annexation pursuant to the provisions of Sections 247.031 or 247.170 RSMo. or both or any similar statutory detachment in lieu of the per acre fee.

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, 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 Agreement shall be in writing.

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. There will be no filing fee for these Addenda.

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.

7. 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.

8. 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 perpetual. Performance of the parties is contingent upon all of the following having occurred no later than

_____, 2000, 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.

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

10. 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.

11. 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 including enjoining the annexation of or water service to any areas not so designated and

in violation of this Agreement, in addition to any other remedies available at law or in equity.

12. 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.

13. 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.

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

15. This Agreement shall in no way affect either party's right to construct such distribution, 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.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this
3rd day of August, 2000.

PUBLIC WATER SUPPLY DISTRICT
NO. 3 OF FRANKLIN COUNTY,
MISSOURI

By: G. Thomas Seener
G. THOMAS SEENER, President

ATTEST:

DeW Champlain
_____, Clerk

CITY OF WASHINGTON, MISSOURI

By: Walter E. Jann
_____, Mayor

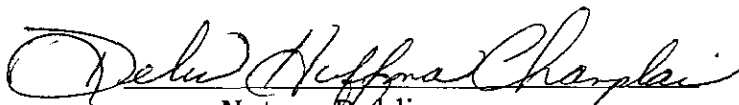
ATTEST:

Craig Weber
_____, City Clerk

STATE OF MISSOURI)
COUNTY OF Franklin) ss.

On this 3rd day of August, 2000, before me appeared C. Thomas Seener, to me personally known, who, being by me duly sworn, did say that (s)he is the President of Public Water Supply District No. 3 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 C. Thomas Seener acknowledged said instrument to be the free act and deed of said District.

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.


Notary Public

My Commission Expires:

DEBRA A HUFFMAN
NOTARY PUBLIC STATE OF MISSOURI
FRANKLIN COUNTY
MY COMMISSION EXP NOV 3,2000

STATE OF MISSOURI)
COUNTY OF Franklin) ss.

On this 7th day of August, 2000, before me appeared Walter E. Larson, to me personally known, who, being by me duly sworn, did say that (s)he is the Mayor of the City of Washington, 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 Council; and said Mayor 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.


Notary Public

My Commission Expires:

