

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

CITY OF O'FALLON, MISSOURI,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. WC-2009-_____
	)	
MISSOURI-AMERICAN WATER	)	
COMPANY and ,	)	
	)	
PUBLIC WATER SUPPLY DISTRICT	)	
NO. 2 OF ST. CHARLES COUNTY,	)	
MISSOURI,	)	
	)	
Respondents.	)	

**COMPLAINT**

COMES NOW, the City of O'Fallon, Missouri (O'Fallon), pursuant to Section 386.390, RSMo, and 4 CSR 240-2.070, and, as its Complaint against Missouri-American Water Company (MAWC) and the Public Water Supply District No. 2 of St. Charles County, Missouri (the District), states as follows to the Missouri Public Service Commission (Commission):

**PARTIES**

1. O'Fallon is a Missouri Constitutional Home Rule Charter City under Article 6 Section 19 of the Missouri Constitution organized and existing under the laws of Missouri with its principal office located at 100 North Main Street, O'Fallon, Missouri 63366 O'Fallon is located in St. Charles County and has a population of approximately 76,000 residents. As is relevant to this Complaint, O'Fallon is engaged in the distribution of water for the benefit of its citizens and the public in general within a portion of its city limits.

2. MAWC is a Missouri corporation with its principal office and place of business located at 727 Craig Road, St. Louis, MO 63141. MAWC is a “water corporation”, “sewer corporation” and a “public utility” as those terms are defined in Section 386.020, RSMo, and is subject to the jurisdiction and supervision of the Commission as provided by law.

3. The District is a political corporation of the State of Missouri located in St. Charles and Warren Counties organized and existing under Sections 247.010, RSMo, et seq., for the purpose of providing water. The District’s principal office and place of business located at 100 Water Drive, O’Fallon, Missouri 63366.

4. Correspondence, communications, and orders in regard to this Complaint, insofar as Complainant is concerned, should be directed to:

Leland B. Curtis, #20550  
Kevin M. O’Keefe, # 23381  
130 South Bemiston, Ste. 200  
Clayton, MO 63105  
(314) 725-8788  
(314) 725-8789  
Attorneys for Defendant  
City of O’Fallon, Missouri

## **BACKGROUND**

5. MAWC and the District are authorized by law to provide water service within certain areas of Missouri, including portions of St. Charles County.

6. MAWC and the District entered into a Territorial Agreement dated October 4, 2000, involving the provision of retail water service to customers within certain tracts and subdivisions in St. Charles County, Missouri (Territorial Agreement) (**Exhibit A**). The Territorial Agreement was approved by an order of the Commission issued on May 15, 2001, in Commission Case No. WO-2001-441. (**Exhibit B**). The Territorial

Agreement designated the boundaries of the water service areas of each of the applicants within a portion of St. Charles County (the District's area was identified as Original Sheet No. E-8d and MAWC's area was identified as Original Sheet No. E-8e). However, it did not require the transfer of any existing customers between the District and MAWC.

7. O'Fallon was not a party to the Territorial Agreement. O'Fallon has provided retail water service within its city limits since approximately 1940 in areas located both within and without the areas that are subject to the Territorial Agreement. O'Fallon has approximately 12,500 customers located within the areas subject to the Territorial Agreement and approximately 12,500 customers in areas not addressed by the Territorial Agreement.

8. O'Fallon is seeking a new source of supply of water and desires to take wholesale service from MAWC. O'Fallon has informed MAWC that it desires to take service from MAWC pursuant to MAWC's rates for "Sale to Resale" water service now in effect for the St. Louis Metro District, or at such other rates as may hereafter be in force and effect, subject to the rules and regulations on file with, and approved by, the Commission.

9. MAWC has, thus far, not agreed to provide service because of uncertainty surrounding the Territorial Agreement. The District has taken the position that O'Fallon must take wholesale service from it, at a rate that is much higher than that which is available through MAWC. Both MAWC and the District would have to construct facilities in order to provide the desired service.

10. O'Fallon and the District entered into a Water Supply Agreement dated January 17, 1985 (**Exhibit C**) which was renewed and extended for an additional twenty

years by a First Amendment To Water Supply Agreement dated June 10, 2004 (**Exhibit D**). Under this Agreement the City agreed to extend to the District exclusive rights to provide retail water service within territory outlined in the Agreement, portions of which are located both within and without the areas that are subject to the Territorial Agreement. In seeking to purchase wholesale water from MAWC, O'Fallon has no intention to and will not provide water service to any customer within the area that is subject to its Supply Agreement with the District.

### **JURISDICTION**

11. Section 247.172.7, RSMo, states in part as follows:

The commission shall have jurisdiction to entertain and hear complaints involving any commission-approved territorial agreement. Such complaints shall be brought and prosecuted in the same manner as other complaints before the commission. The commission shall hold an evidentiary hearing regarding such complaints, except that in those instances where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties, such hearings may be waived by agreement of the parties. If the commission determines that a territorial agreement that is the subject of a complaint is no longer in the public interest, it shall have the authority to suspend or revoke the territorial agreement.

### **REQUEST**

12. MAWC's reluctance to provide sale for resale service to O'Fallon at MAWC's tariff rate is a violation of Section 393.130.3, RSMo, in that it subjects O'Fallon to an undue or unreasonable prejudice or disadvantage. O'Fallon requests that the Commission consider this Complaint and, thereafter, find either that the Territorial Agreement is no longer in the public interest and should be revoked or that the Territorial Agreement is unlawful and with no force or effect as to O'Fallon.

## **NO LONGER IN THE PUBLIC INTEREST**

13. At the time the Territorial Agreement was negotiated, executed and approved, St. Charles County was undergoing great growth in its undeveloped areas. In that circumstance, the parties saw a need to displace competition, in accordance with Section 247.172, RSMo, “in order to avoid wasteful duplication of facilities, stranded investment and underutilized system capacity and to allow orderly development, efficient planning for water 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.” Territorial Agreement, p. 1-2.

14. The first factor the Commission considered in deciding the appropriateness of the Territorial Agreement was the extent to which the agreement eliminated or avoided unnecessary duplication of facilities. The Manager of the Commission’s Water and Sewer Department testified at the hearing that the Agreement would preclude any wasteful and costly duplication of facilities and services in the areas that were the subject of the Agreement.

15. The Territorial Agreement was executed on October 4, 2000. In the over eight years that have passed since that time, there has been a substantial change in the character of the areas that were the subject of the Territorial Agreement. Where undeveloped areas once existed, now stand completed subdivisions, roads and businesses. The utility infrastructure has been largely built out in those areas and the potential for destructive competition between MAWC and the District no longer exists.

16. In this substantially changed circumstance, the Territorial Agreement no longer serves the public interest to the extent it could be used to block the purchase of

water by another water provider. This is especially the case here as whichever party supplies O'Fallon will have to construct facilities to do so. No duplication of facilities or stranded investment will result from providing wholesale water service to O'Fallon in this situation.

### **UNLAWFUL**

17. The territorial agreement statute states that the Territorial Agreement may have no effect on O'Fallon. Section 247.172.6, RSMo, states that "Commission approval of any territorial agreement entered into under the provisions of this section shall in no way affect or diminish the rights and duties of any water supplier not a party to the agreement to provide service within the boundaries designated in such territorial agreement." In fact, the Joint Application filed by MAWC and the District in Case No. WO-2001-441 affirmatively states that the "Agreement in no way affects or 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." Joint Application, para. 8.


18. An interpretation of the Territorial Agreement that would require O'Fallon to purchase wholesale water exclusively from the District at a price that is substantially greater than that for which it can purchase that water from MAWC would certainly affect or diminish the rights and duties of O'Fallon - a water supplier that was not a party to the agreement. Such a result would therefore be unlawful.

### **CONCLUSION**

19. MAWC's unwillingness to provide sale for resale service to O'Fallon at MAWC's tariff rate is a violation of Section 393.130.3, RSMo, in that it subjects O'Fallon to an undue or unreasonable prejudice or disadvantage for the reasons stated herein.

WHEREFORE, Complainant respectfully requests that the Commission issue its order finding that the Territorial Agreement between MAWC and the District is no longer in the public interest or, alternatively, that the Territorial Agreement is unlawful and has no force and effect as to O'Fallon.

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

  
\_\_\_\_\_  
Leland B. Curtis, #20550  
Kevin M. O'Keefe, # 23381  
130 South Bemiston, Ste. 200  
Clayton, MO 63105  
(314) 725-8788  
(314) 725-8789

Attorneys for Defendant  
City of O'Fallon, Missouri

#### **Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing Complaint was served by electronic mail or U.S. Mail, postage prepaid, this 8<sup>th</sup> day of July, 2009, upon the following:

Office of the Public Counsel  
Governor State Office Building, 6<sup>th</sup> Floor  
Jefferson City, Missouri 65101  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

Mark C. Piontek  
Lewis, Rice & Fingersh, L.C.  
1200 Jefferson  
P.O. Box 1040  
Washington, MO 63090  
Attorney for PWSD #2  
[mpiontek@lewisrice.com](mailto:mpiontek@lewisrice.com)

Office of the General Counsel.  
Missouri Public Service Commission  
Governor State Office Building, 8<sup>th</sup> Floor  
Jefferson City, Missouri 65101  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

Dean Cooper  
Brydon, Swearngen, England  
312 E. Capitol Ave.  
P.O. Box 456  
Jefferson City, MO 65102  
Attorney for Missouri American Water  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

  
\_\_\_\_\_

VERIFICATION

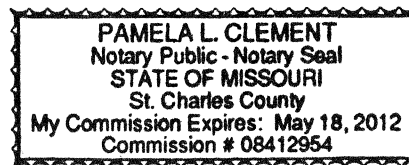
STATE OF MISSOURI       )  
  )ss  
COUNTY OF ST. CHARLES)

I, Gregory A. Smothers, state that I am employed by the City of O'Fallon (OFallon), as Assistant City Administrator; that I have read the above and foregoing document; that the statements contained therein are true and correct to the best of my information, knowledge and belief; and, that I am authorized to make this statement on behalf of O'Fallon.

Gregory A. Smothers  
Asst City Administrator

Subscribed and sworn to before me this 6 th day of July, 2009.

Pamela L. Clement  
\_\_\_\_\_, Notary Public





### TERRITORIAL AGREEMENT

This Agreement made and entered into this 4th day of October, 2000 by and between Public Water Supply District No. 2 of St. Charles County, Missouri (hereinafter the "District") and Missouri-American Water Company (hereinafter the "Company").

Whereas, the District is a political corporation of the State of Missouri located in St. Charles and Warren Counties 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 now denied such privileges thereby promoting public health and sanitation, and making available conveniences not otherwise possible for the general public welfare; and

Whereas, the Company is a corporation of the State of Missouri and is a water corporation as defined by Chapter 386 RSMo. and is authorized to sell and distribute water subject to regulation by the Missouri Public Service Commission ("PSC"); and

Whereas, the District's and the Company'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 water corporations subject to Missouri Public Service Commission jurisdiction may be displaced by written territorial agreements upon approval of the Missouri Public Service Commission; and

Whereas, the District and the Company 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 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 Company agree as follows:

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

- a. Company: Missouri-American Water Company.
- 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. 2 of St. Charles County, Missouri
- e. Service: shall mean water supply 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.

3. The Company shall have the exclusive right to provide service to all existing and future customers located within its service area shown on Exhibit B.

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 thirty (30) years. Performance of the parties is contingent upon all of the following having occurred no later than March 1, 2001, 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 Company's Board of Directors or parent corporation.

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. The parties also agree to share the cost of filing an application for approval of this Agreement, the cost of transcript fees, and other costs. Each party shall bear their own attorney's fees.

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 Company 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 4TH  
day of OCTOBER, 2000.

PUBLIC WATER SUPPLY DISTRICT  
NO. 2 OF ST. CHARLES COUNTY,  
MISSOURI

By: Catherine Cobb  
Catherine Cobb, President

ATTEST:

Mike Dougherty  
Mike Dougherty, Clerk

MISSOURI-AMERICAN WATER  
COMPANY

By: Dennis R. Wingertsahn  
Dennis R. Wingertsahn  
Vice President - Operations

ATTEST:

Robert D. Maul  
Robert D. Maul  
Assistant Secretary

STATE OF MISSOURI )  
COUNTY OF St Charles ) SS:

On this 4th day of October, 2000, before me appeared Catherine Cobb to me personally known, who, being by me duly sworn, did say that she is the President of Public Water Supply District No. 2 of St. Charles 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 Catherine Cobb 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.

Kim Cantrell  
Notary Public

My term expires:

June 20, 2004

KIM CANTRELL  
NOTARY PUBLIC - NOTARY SEAL  
STATE OF MISSOURI  
ST. CHARLES COUNTY  
MY COMMISSION EXPIRES: JUNE 20, 2004

STATE OF MISSOURI            )  
  ) SS:  
COUNTY OF ST. LOUIS        )

On this 26th day of September, 2000, before me appeared **Dennis R. Wingertsahn** to me personally known, who, being by me duly sworn, did say that he is the Vice President - Operations of **Missouri-American Water Company**, and that the seal affixed to the foregoing instrument is the corporate seal of said **Company**, and that said instrument was signed and sealed on behalf of said **Company**, by authority of its Board of Directors; and said **Dennis R. Wingertsahn** acknowledged said instrument to be the free act and deed of said **Company**.

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.

Staci A. Olsen  
Notary Public

My term expires:

Staci A. Olsen, Notary Public  
County Of St. Louis, State Of Missouri  
My Commission Expires March 20, 2001



BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

In the Matter of the Joint Application of )  
Missouri-American Water Company and )  
the Public Water Supply District No. 2 )  
of St. Charles County, Missouri for )  
Approval of a Territorial Agreement )  
Concerning Territory in St. Charles )  
County, Missouri. )

Case No. WO-2001-441

RECEIVED  
FILED<sup>2</sup>  
APR 16 2001  
Missouri Public  
Service Commission

RECEIVED  
APR 16 2001  
OFFICE OF THE PUBLIC COUNSEL

UNANIMOUS STIPULATION AND AGREEMENT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), Missouri-American Water Company ("MAWC" or "Company"), the Public Water Supply District No. 2 of St. Charles County, Missouri ("Water District"), and the Office of the Public Counsel ("OPC"), and for their Unanimous Stipulation and Agreement ("Stipulation") stipulate and agree as follows:

1. On October 4, 2000, the Water District and MAWC ("Applicants") executed a Territorial Agreement pursuant to Section 247.172, RSMo 2000. On February 13, 2001, the Applicants filed with the Missouri Public Service Commission ("Commission") a Joint Application for Approval of Territorial Agreement. Concurrent with the filing of this Joint Application, the Applicants submitted the required filing fee to the Commission. Thereafter, on February 23, 2001, the Commission issued an Order and Notice which required that notice of this proceeding be given to the County Commission of St. Charles County, the members of the General Assembly representing the Applicants' service areas and the newspapers that serve the Applicants' service areas. The Commission's Order set an intervention deadline date of March 15, 2001. The Order and Notice also ordered the Applicants, OPC and the Staff to file a proposed procedural schedule by no later than March 26, 2001, with a hearing to be held no later

than May 11, 2001.

2. No requests for intervention in the case were received by the intervention deadline date, nor have any late-filed requests for intervention been received.

3. On March 26, 2001, the Staff, on its own behalf and on behalf of the Water District, the Company and the OPC, filed a Proposed Procedural Schedule as directed by the Commission's Order and Notice. The proposed schedule stated that the parties would file a stipulation and agreement by no later than April 16, 2001, and it requested that the required evidentiary hearing be held on May 1, 2001.

4. On April 5, 2001, the Commission issued an Order Adopting Procedural Schedule wherein it scheduled an evidentiary hearing in this case for May 1, 2001, beginning at 1:30 p.m.

5. Since the Territorial Agreement will only apply to new customers of the Water District and the Company, it was not necessary for the Applicants to attach a listing of customers affected by the Territorial Agreement to the Joint Application.

6. The Territorial Agreement designates the boundaries of the respective water service areas of the Water District and the Company, as set forth in Appendix 4 attached to the Territorial Agreement.

7. The Territorial Agreement specifies any and all powers granted to the Water District by the Company to operate within the Company's certificated service area. The Territorial Agreement specifies any and all powers granted to the Company by the Water District to operate within the boundaries of the Water District.

8. The Territorial Agreement will enable the Applicants to avoid wasteful and costly duplication of water utility services within the affected service areas and will displace destructive competition between the Applicants, all to the benefit of the Applicants' respective customers.

9. The Joint Application acknowledges that the Territorial Agreement in no way affects or diminishes the rights and duties of any water supplier that is not a party to the Territorial Agreement to provide service within the boundaries designated in the Territorial Agreement.

10. The Parties agree that the Territorial Agreement meets the requirements of Section 247.172, RSMo 2000. The Parties further agree that the Territorial Agreement is not detrimental to the public interest and that the Commission should so find.

11. The Parties agree that the testimony to be provided at the evidentiary hearing for this case will be limited to the Staff calling one witness to provide testimony in support of the Joint Application, the Territorial Agreement and this Stipulation, unless otherwise requested by the Commission in advance of the hearing. The Applicants will, however, have representatives available at the evidentiary hearing to answer questions from the Commission and the presiding officer.

12. This Stipulation has resulted from negotiations among the Parties and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the Parties to take other positions in other proceedings.

13. Inasmuch as there will be an evidentiary hearing in this case, as required by statute, the Staff shall only submit a memorandum explaining its rationale for entering into this Stipulation if the Commission requests such a memorandum in advance of the evidentiary hearing for this case. Each Party to the case shall be served with a copy of any such

memorandum and shall be entitled to submit to the Commission, within five business days of receipt of Staff's memorandum, a responsive memorandum that shall also be served on all parties. All memoranda submitted to the Commission under the terms of this paragraph shall be considered privileged in the same manner as are settlement discussions under the Commission's rules and shall thus be maintained on a confidential basis by all Parties. Such memoranda shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding, whether or not the Commission approves and adopts this Stipulation. The contents of any memorandum submitted to the Commission under the terms of this paragraph by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation, whether or not the Commission approves and adopts this Stipulation.

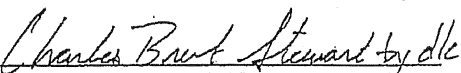
14. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

15. As noted above, the Staff will provide its testimony in support of the Joint Application, the Territorial Agreement and this Stipulation at the evidentiary hearing scheduled for May 1, 2001.

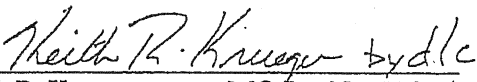
WHEREFORE, the parties respectfully request that the Commission issue its Order approving the Joint Application, the Territorial Agreement and this Stipulation.

Respectfully submitted,

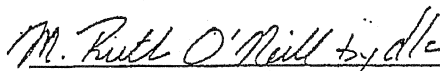
DANA K. JOYCE  
General Counsel

  
Charles Brent Stewart MO Bar No. 34885  
Stewart & Keevil, L.L.C.  
1001 Cherry Street, Suite 302  
Columbia, MO 65201  
573-499-0635 (telephone)  
573-499-0638 (facsimile)  
[Stewart499@aol.com](mailto:Stewart499@aol.com)

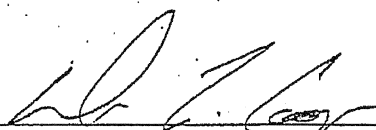
Attorney for the Water District

  
Keith R. Krueger MO Bar No. 23857  
Deputy General Counsel  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
573-751-4140 (telephone)  
573-751-9285 (facsimile)  
[krueger01@mail.state.mo.us](mailto:krueger01@mail.state.mo.us) (e-mail)

Attorney for the Staff of the  
Missouri Public Service Commission

  
M. Ruth O'Neill MO Bar No. 49456  
Assistant Public Counsel  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102  
573-751-1304 (telephone)  
573-751-5562 (facsimile)  
[roneill1@mail.state.mo.us](mailto:roneill1@mail.state.mo.us)

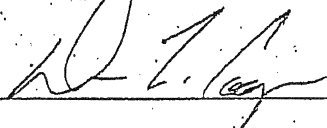
Attorney for the Office of the Public Counsel

  
Dean L. Cooper MO Bar No. 36592  
BRYDON, SWEARENGEN & ENGLAND  
P.O. Box 456  
312 E. Capitol Avenue  
Jefferson City, MO 65102-0456  
573-635-7166 (telephone)  
573-635-3847 (facsimile)  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

Attorneys for MAWC

#### Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 16<sup>th</sup> day of April 2001.



**SERVICE LIST**  
**CASE NO. WO-2001-441**

Charles Brent Stewart  
Stewart & Keevil, L.L.C.  
1001 Cherry, Suite 302  
Columbia, MO 65201

Keith R. Krueger  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

M. Ruth O'Neill  
Office of the Public Counsel  
P. O. Box 7800  
Jefferson City, MO 65102

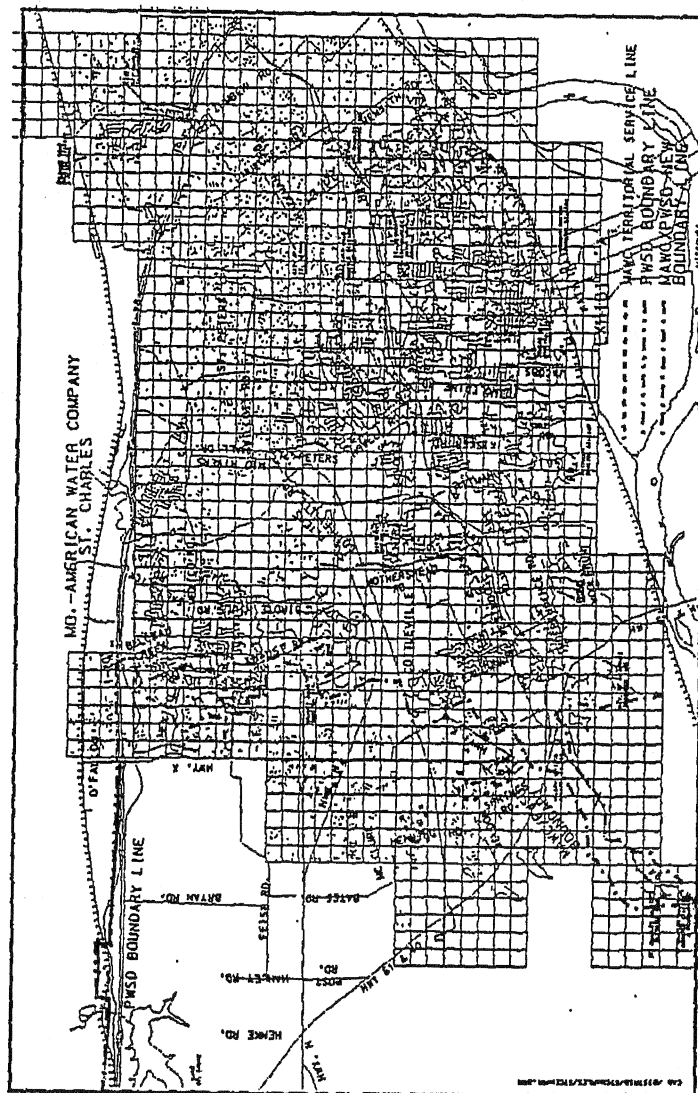


Missouri-American Water Company For St. Charles County

Missouri Public

REC'D JUN 25 2001

PWSD NO. 2 SERVICE AREA AS ESTABLISHED BY <sup>Service Commission</sup>  
TERRITORIAL AGREEMENT



Missouri Public

FILED JUL 25 2001

Service Commission

Date of Issue: June 25, 2001

Date Effective: July 25, 2001

Issued By: David P. Abernathy, Vice-President and General Counsel,  
535-N. New Ballas Road, St. Louis, MO 63141



JUNE 2004 EXHIBIT A

WATER SUPPLY AGREEMENT

Agreement made this 17<sup>th</sup> day of January, 1985, by and between City of O'Fallon, Missouri (City) and Public Water Supply District #2 of St. Charles County, Missouri (District).

WITNESSETH THAT:

WHEREAS, the City presently owns and operates a waterworks system primarily for the purpose of supplying its present inhabitants with water; and

WHEREAS, the City intends to expand its corporate boundaries in certain areas south of Interstate Highway 70 and desires to have a water supply available in such areas; and

WHEREAS, the City's present water supply is limited and expansion of its system into the areas described herein would require a substantial expenditure of funds; and

WHEREAS, the areas South of I-70 described herein are within the territory which the District is authorized to serve and the District has the present financial capability to expand its system at considerable cost savings; and

WHEREAS, the parties agree that the District is in a more advantageous position than the City to economically expand and extend its water system and to furnish a water supply at a reasonable cost in the areas described above; and

WHEREAS, the City desires to avoid the wasteful and needless expense of expanding its system to construct facilities in the areas described herein, if the District agrees to be the exclusive supplier of water in such areas during the next twenty (20) years of development.

NOW, THEREFORE, in consideration of the mutual promises and

EXHIBIT

C

convenants hereinafter set forth, the parties agree as follows:

1. The accompanying plat Exhibit "A" is made a part hereof by reference, and the outlined area shall be known as the "excepted area".

2. The District will be the exclusive supplier of water in the area south of Interstate Highway 70 within the present or future city limits of the City, except for the "excepted area"; and the City will not construct or extend facilities for the purpose of supplying water to said outlined area, or furnish or supply, or offer to furnish or supply, water within said area. The City further agrees that it will not enter into any agreement with any other person or legal entity to supply water in said area.

3. The District, as far as reasonably practical, will supply water to customers desiring service within the above described area; and agrees to waive the normal service connection fee for any customer within the corporate limits of the City.

4. The District's Tap Inspection and Meter Fees and its User Charges for water will be fair and reasonable, and will be consistent with its fees charged to other customers within the remaining portion of the District's territory.

5. The District will produce and furnish to the City water meter readings and other billing data necessary for City's sewer billing, and the City shall reimburse the District, at cost, for producing and furnishing data.

6. Should any potential customers within the city limits request that the District extend its water lines in order to serve said customer, and the District determines that the cost to

the District for the extension is not economically feasible, the District reserves the right to require the potential customer to pay all costs for the expansion or extension necessary to provide the water, and the District agrees to reimburse the potential customers in fifteen (15) equal annual payments without interest; further provided, however, that the District will not be required to enter into such a re-payment plan unless the City and the District mutually agree that such an expansion is economically feasible for the District with such an agreement.

7. The term of this agreement shall be twenty (20) years from the date of execution, and thereafter the term shall be extended on a year-to-year basis unless either party gives the other one hundred twenty (120) days prior written notice of their intention to terminate at the end of the current term.

CITY OF O'FALLON, MISSOURI

By

Jim Brown  
Mayor

ATTEST:

Glenn D. Galvin  
City Clerk

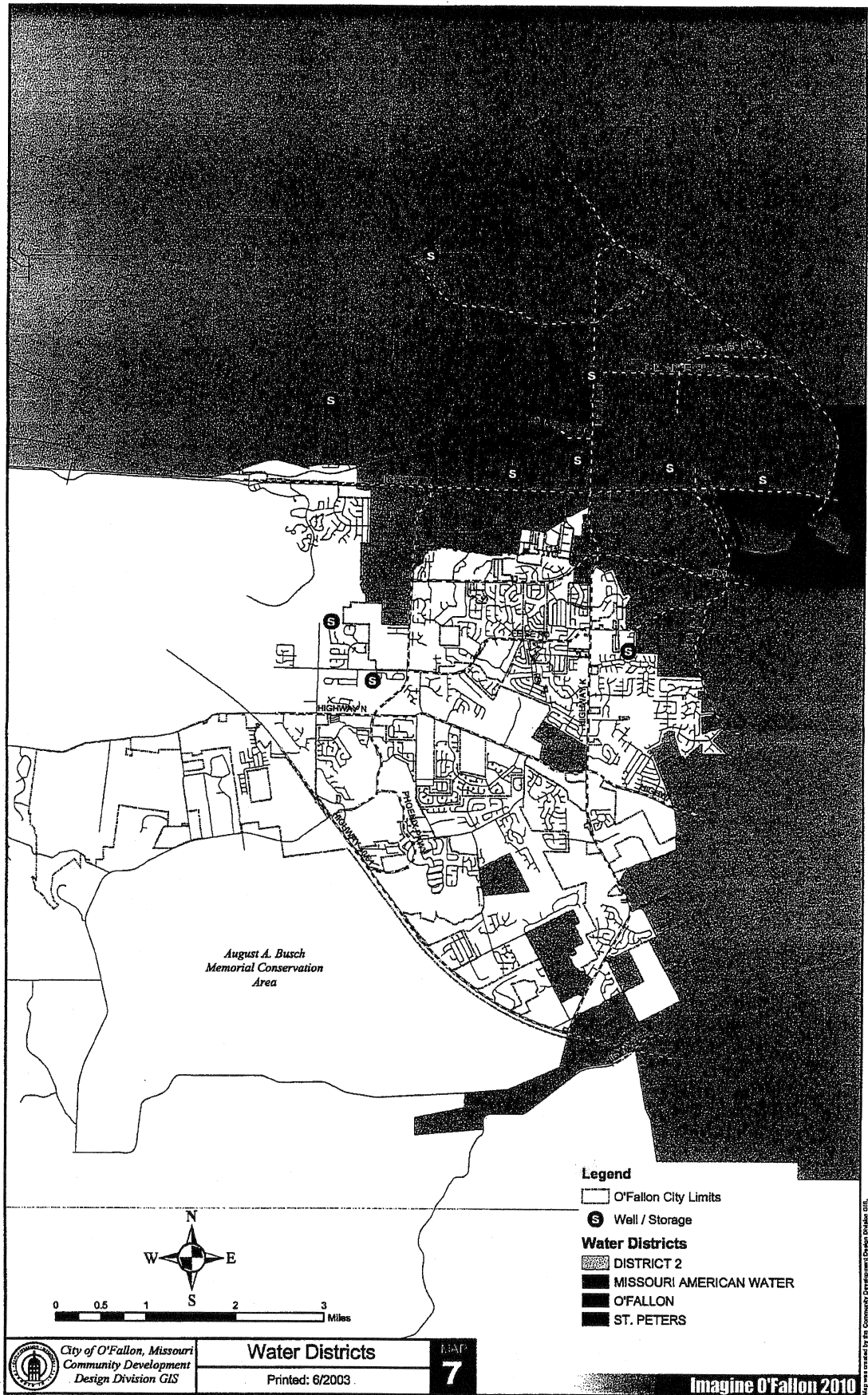
PUBLIC WATER SUPPLY DISTRICT  
#2 OF ST. CHARLES COUNTY, MO

By

Don C. Behr

ATTEST

Roberta Gray  
Clerk



CITY OF O'FALLON, MISSOURI

Mayor *William J. Brown*

TEST:

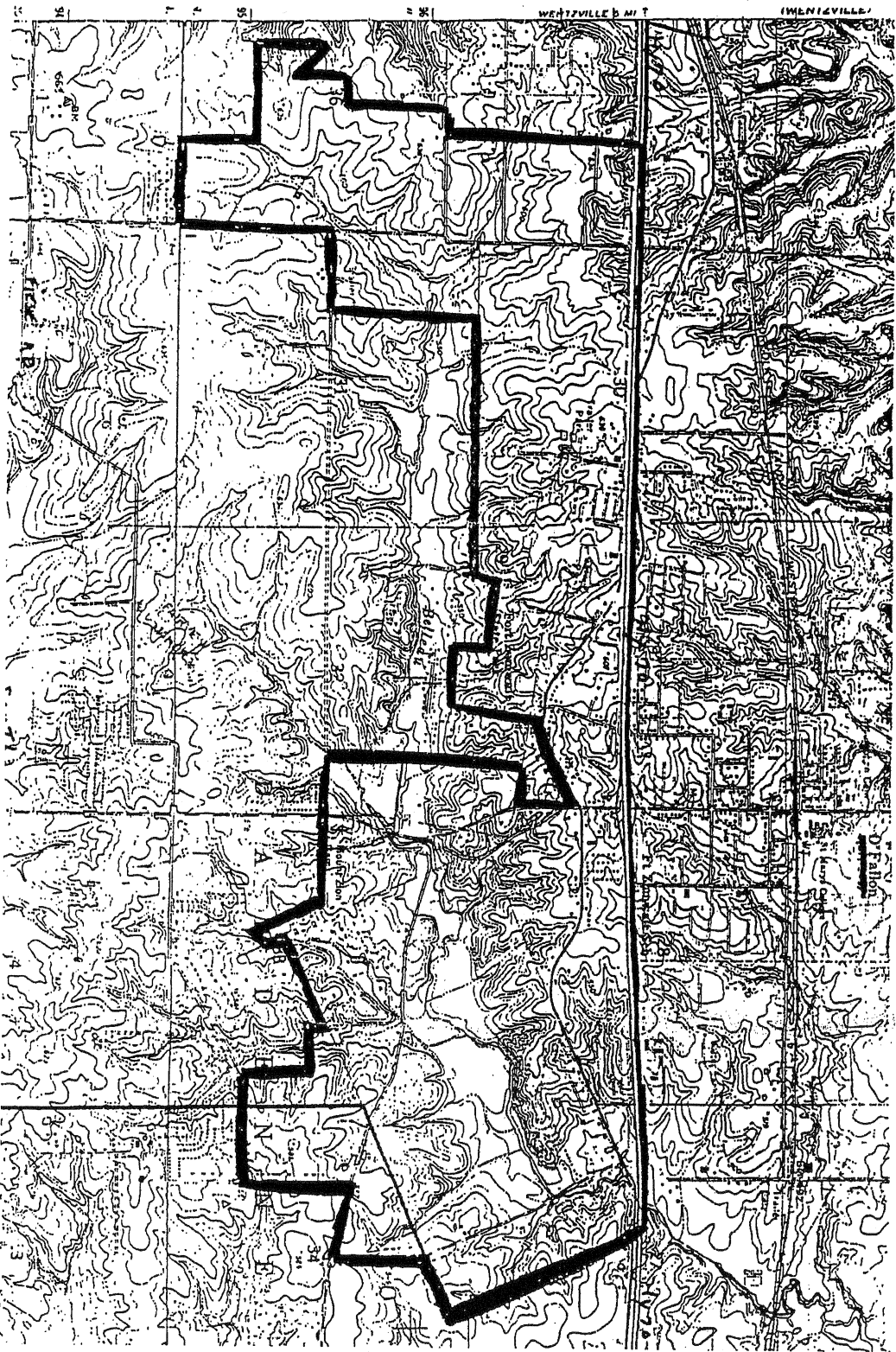
*Glenn D. Schaefer*  
Clerk

PUBLIC WATER SUPPLY DISTRICT #2  
T. CHARLES COUNTY, MISSOURI

*Samuel C. Beck*

TEST:

*Roberto Gray*  
Clerk



## FIRST AMENDMENT TO WATER SUPPLY AGREEMENT

This First Amendment to Water Supply Agreement dated January 17, 1985 (hereinafter the "First Amendment"), is made and entered into as of the 10<sup>th</sup> day of June, 2004, by and between the City of O'Fallon, Missouri, a fourth class city and a municipal corporation of the State of Missouri (hereinafter the "City"), and Public Water Supply District No. 2 of St. Charles County, Missouri, (hereinafter the "District").

WITNESSETH:

WHEREAS, the City and the District previously entered into a certain Water Supply Agreement dated January 17, 1985 (hereinafter the "Agreement"), for a term of twenty (20) years whereby the District would be the exclusive supplier of water in the area south of Interstate Highway 70 within the present or future limits of the City except for the "Excepted Area", which area was depicted on Exhibit A attached hereto; and

WHEREAS, the City had determined it was not economically feasible to provide water service to that area in 1985, and believes the duplication of water lines by the City would be economically unfeasible at this time, and

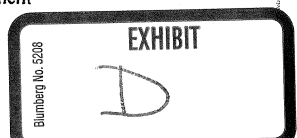
WHEREAS, the District is seeking an extension of the Agreement and is willing to pay the City fair consideration in order to retain the exclusive rights granted it by the Agreement; and

WHEREAS, the Revised Statutes of Missouri Sections 70.220 through 70.325 authorize political subdivisions, as defined therein to contract and cooperate with each other for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The term of the Agreement shall be extended for 20 years, ending January 16, 2025. In consideration of this 20 year extension, the District agrees to pay the City \$75,000.00 per year (the "Base Amount"), in semi-annual installments of \$37,500.00 each, which installments shall be due each July 1<sup>st</sup> and January 1<sup>st</sup> during the term of the Agreement as extended commencing on July 1<sup>st</sup>, 2005, with the final payment being due on July 1, 2024. At the end of the extended 20 year term provided herein, the Agreement as amended shall automatically be extended for additional one year periods unless either party provides the other a six month written notice of its intention not to renew.

2. The City agrees to extend, for the term hereof, the exclusive rights of the District, as defined in Section 2 of the Agreement, to provide water service within the area depicted on Exhibit "B" as "District 2" which is attached hereto and is incorporated by reference herein. The remaining terms of the Agreement except as modified hereby, will remain in full force and effect, as well as the Agreement dated the 9<sup>th</sup> day of March, 1988, and the First Amendment



thereto dated the 6<sup>th</sup> day of January, 2000. To the extent that any provision of these agreements and the amendments thereto appear to contain any consistency, the more recent document shall take precedence over the older document.

The annual amount due hereunder for each year after the first year of the extended term beginning on January 17, 2006, shall be an amount equal to the Base Amount times a fraction the numerator of which is the CPI (hereinafter defined) most recently published prior to the commencement date of the then applicable year and the denominator of which is the CPI most recently published prior to the beginning of January, 2005. Notwithstanding the foregoing, in no event shall the Base Amount increase by more than three percent (3%) over the immediate prior year. As used herein, "CPI" shall mean the Consumer Price Index - All Urban Consumers (CPI-U), U.S. City Average, All Items (1982-84=100) as published by the Bureau of Labor Statistics of the United States Department of Labor, or such successor index thereto as may be published by the U.S. government (or if not published the most comparable index thereto). If otherwise adjusted, such change or adjustment shall be appropriately accounted for in any comparison of applicable index figures.

3. All notices required or permitted under this First Amendment shall either be personally delivered or placed in the United States mail, properly addressed as set forth below, certified, return receipt requested, postage prepaid. Such notices shall be deemed received on the earlier of the date actually received or 48 hours after being mailed in the manner set forth above. Such notices shall be sent to the parties at the following addresses unless otherwise notified in writing;

To City:                      City of O'Fallon, Missouri  
                                    100 N. Main Street  
                                    O'Fallon, MO 63366

To District:                  Public Water Supply District No. 2  
                                    of St. Charles County, Missouri  
                                    100 Water Drive  
                                    O'Fallon, Missouri 63366

4.      Miscellaneous.

a.      **Effective Date.** The "Effective Date" of this First Amendment shall be the first date that this First Amendment has been duly executed by all the parties hereto; provided, however, notwithstanding the execution of this First Amendment by either party, this First Amendment shall not be effective nor binding until authorized by an Ordinance of the City duly passed and approved, and a Resolution by the Board of Directors of the District authorizing its execution.

b.      **Severability.** Whenever possible, each provision of this First Amendment and any related document, including the Agreement, shall be interpreted in such a manner as to be valid under Missouri law. If any of the foregoing provisions or provisions of any related document are deemed to be invalid or prohibited under applicable law, such

provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of the provision or the remaining provisions of this First Amendment or related document.

c. **Waiver.** No claim or waiver, consent or acquiescence with regard to any of the provisions of the Agreement, as amended hereby, shall be made against either party except on the basis of a written instrument executed by such party.

d. **Further Actions.** The City and District agree to execute such other and further documents and to take such further action as may be reasonably required to carry out the provisions and intent of this First Amendment or any document relating hereto or entered into in connection with this First Amendment.

e. **Last Day for Performance.** If the last day for performance of any obligation or satisfaction or waiver or any conditions or contingency under the Agreement as hereby amended is a Saturday, Sunday or legal holiday, then such last day will be extended to the next business day.

f. **Time of the Essence.** Time is of the essence with respect to the Agreement, as amended by this First Amendment.

g. **Entire Agreement.** The Agreement, as amended by this First Amendment constitutes the entire undertaking between the parties hereto and supercedes any and all prior agreements, arrangements and understandings, if any between the parties, except as set forth therein. The Agreement, as amended by this First Amendment, may only be further amended by a writing executed by the City and the District.

5. City and District each represent to the other that it has the full right, power and authority to enter into this First Amendment and to fully perform its obligations under the Agreement, as amended by this First Amendment. Each person executing this First Amendment warrants and represents that each has the authority to execute this First Amendment in the capacity stated and to bind the City and District, respectively, except as otherwise specifically set forth herein. Each party will furnish to the other such ordinances and resolutions as are necessary in order to confirm such authority and the capacity of City and District and of the persons who are to execute documents in connection herewith.



IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

PUBLIC WATER SUPPLY DISTRICT NO. 2  
OF ST. CHARLES COUNTY, MISSOURI



By Virginia Dowden  
Virginia Dowden, President

CITY OF O'FALLON, MISSOURI

SEAL

By Paul Renaud  
Paul Renaud, Mayor

STATE OF MISSOURI                     )  
  ) SS  
COUNTY OF ST. CHARLES            )

On the 10TH day of JUNE, 2004, before me appeared, Paul Renaud to me personally known, and who being by me duly sworn, did say that he is the Mayor of the City of O'Fallon, a municipal corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Alderman and Paul Renaud acknowledged said instrument to be the free act and deed of said corporation.

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

Sandra L. Stokes  
Notary Public

My Commission Expires:

Sandra L. Stokes  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Charles County  
My Commission Expires: Nov. 11, 2011

STATE OF MISSOURI                    )  
  ) SS  
COUNTY OF ST. CHARLES            )

On the 22<sup>ND</sup> day of June, 2004, before me appeared, Virginia Dowden to me personally known, and who being by me duly sworn, did say that she is the President of Public Water Supply District No. 2 of St. Charles County, Missouri, a corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and Virginia Dowden acknowledged said instrument to be the free act and deed of said corporation.

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

Kim Cantrell  
Notary Public

My Commission Expires: June 20, 2008

KIM CANTRELL  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI  
ST. CHARLES COUNTY  
MY COMMISSION EXPIRES  
JUNE 20, 2008