

Hannibal/Ralls Territorial Agreement

APPENDIX B

SALE CONTRACT

This Sale Contract ("Agreement") is made this 20th day of October, 2004 between Public Water Supply District No. 1 of Ralls County, Missouri ("District"), a Missouri political corporation, and the City of Hannibal, Missouri, acting by and through its Board of Public Works, a Missouri municipal corporation ("City").

RECITALS

- A. The City is a Constitutional Charter city in the Counties of Marion and Ralls, State of Missouri and is authorized by Section 71.014 RSMo. 2000 to annex territory outside of its current municipal boundaries.
- B. The District is a public water supply district organized and existing pursuant to 247.010—247.220 RSMo.
- C. The District's and the City's boundaries are not coequal but do overlap in certain portions of their respective areas.

AGREEMENT

In consideration of the mutual covenants herein contained and other good and valuable consideration (the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties by their execution hereof), the parties agree as follows:

1. Territorial and Escrow Agreement. Upon execution of this Agreement, the City and the District will enter into the Territorial Agreement attached as Exhibit A and incorporated herein by reference ("Territorial Agreement"). Upon approval of the Territorial Agreement, the City and the District will enter into the Escrow Agreement attached as Exhibit B and incorporated herein by reference ("Escrow Agreement").
2. Use of Easements. The District shall have the right to occupy and use the City's public utility easements in the same manner and to the same extent as the City permits other utilities subject to applicable state laws.
3. Materials. The District shall install or require that all water mains connected to the District's system and located within the City limits as they now or hereafter exist shall be constructed of not less than Class 200 PVC or the same or similar materials and meet City fire flow requirements. Any development or individual connection for which plans have been approved by the District or the District's engineers outside the City limits that is subsequently annexed into the City shall be required to meet the District's standards for materials and line size requirements.
4. Compensation. As compensation to the District for the City to acquire the right to provide water service to the area described in the Territorial Agreement the City shall pay the District the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) upon approval of the

Territorial Agreement by the Missouri Public Service Commission ("PSC") and execution of the Escrow Agreement. The remainder of the total Purchase Price of One Million Five Hundred Thousand Dollars (\$1,500,000.00) shall be paid by the City to the District in accordance with the terms of the Escrow Agreement.

5. Upgrades. The District shall not be required to fund upgrades within the District's territory regardless of whether the territory is subsequently annexed or acquired through a territorial agreement by the City.

6. Releases.

(a) Release of City. The District, for itself, for its past, present and future directors, officers, employees, agents, attorneys and representatives, and for them and their predecessors, successors and assigns (collectively the "Section 6(a) Releasor"), hereby finally, unconditionally, irrevocably and absolutely releases, acquits, remises and forever discharges the City and their past, present and future employees, agents, attorneys and representatives, and their predecessors, successors and assigns (collectively the "Section 6(a) Releasee") from any and all manner of actions, suits, debts, sums of money, interest owed, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, guaranties, promises, undertakings, variances, trespasses, credit memoranda, charges, damages, judgments, executions, obligations, costs, expenses, fees (including attorneys' fees and court costs), counterclaims, claims, demands, causes of action and liabilities, and hereby finally, unconditionally, irrevocably and absolutely waive any and all offsets and defenses, in each case whether known or unknown, absolute or contingent, matured or unmatured, presently existing or hereafter discovered, at law, in equity or otherwise, whether arising by statute, common law, in contract, in tort or otherwise, that the Section 6(a) Releasor may now have or that might subsequently accrue to it against the Section 6(a) Releasee. This release does not include claims or causes of action arising after the date of this agreement, including claims or causes of action arising out of a breach of this agreement, the Territorial Agreement, the Water Purchase Contract or Escrow Trust Agreement entered into by the City and the District concurrently herewith.

(b) Release of District. The City, for itself, for its past, present and future employees, agents, attorneys and representatives, and for their predecessors, successors and assigns (collectively the "Section 6(b) Releasor"), hereby finally, unconditionally, irrevocably and absolutely releases, acquits, remises and forever discharges the District, its past, present and future directors, officers, employees, agents, attorneys and representatives and them and their predecessors, successors and assigns (collectively the "Section 6(b) Releasee") from any and all manner of actions, suits, debts, sums of money, interest owed, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, guaranties, promises, undertakings, variances, trespasses, credit memoranda, charges, damages, judgments, executions, obligations, costs, expenses, fees (including attorneys' fees and court costs), counterclaims, claims, demands, causes of action and liabilities, and hereby finally, unconditionally, irrevocably and absolutely waives any and all offsets and defenses, in each case whether known or unknown, absolute or contingent, matured or unmatured, presently existing or hereafter discovered, at law, in equity or otherwise, whether arising by statute, common law, in contract, in tort or otherwise, that the Section 6(b) Releasor may now have or that might subsequently accrue to him against the Section 6(b) Releasee. This release

does not include claims or causes of action arising after the date of this agreement, including claims or causes of action arising out of a breach of this agreement, the Territorial Agreement, the Water Purchase Contract or Escrow Trust Agreement entered into by the City and the District concurrently herewith.

7. Representations. Each of the parties hereto makes the following representations and warranties to the other parties:

(a) Authorization. Such party has full right, power and authority to enter into this Agreement and to consummate or cause to be consummated all of the transactions and to fulfill all of the obligations contemplated hereunder. The execution and delivery of this Agreement and the due consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action. This Agreement constitutes a legal, valid and binding agreement of such party enforceable against it in accordance with its terms.

(b) No Conflict or Violation. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby nor compliance by such party with any of the provisions hereof will result in: (i) a breach of or default under any term, condition or provision of any contractual obligation or permit to which such party is a party or by which any of its assets is bound or affected, or an event which, with the giving of notice, lapse of time, or both, would result in any such breach or default, (ii) a violation of any applicable law, or order, judgment, writ, injunction, decree or award, or an event which, with the giving of notice, lapse of time, or both, would result in any such violation, or (iii) any person having the right to enjoin, rescind or otherwise prevent or impede the transactions contemplated hereby or to obtain damages from the other parties or to obtain any other judicial or administrative relief as a result of any transaction carried out in accordance with the provisions of this Agreement.

(c) Litigation and Proceedings. There is no action, suit, proceeding, or investigation pending or, to the knowledge of the District and the City, any threatened action, suit, proceeding, or investigation which challenges the validity of this Agreement or the transactions contemplated hereunder, or otherwise seeks to prevent, directly or indirectly, the consummation of such transactions.

(d) Consents and Approvals. No consent, approval or authorization of any person, nor any declaration, filing or registration with any governmental authority or other person, is required to be made or obtained by such party in connection with the execution, delivery and performance by it of the transactions contemplated hereunder, except as set forth in paragraph 19.

(e) No Assignment. Such party has not assigned or transferred to any person or entity any claim that would be released pursuant to this Agreement but for such assignment or transfer.

8. Amendment and Modification. No amendment, modification, supplement, termination, consent or waiver of any provision of this Agreement, nor consent to any departure herefrom, will in any event be effective unless the same is in writing and is signed by the party against whom enforcement of the same is sought. Any waiver of any provision of this Agreement

and any consent to any departure from the terms of any provision of this Agreement is to be effective only in the specific instance and for the specific purpose for which given.

9. Assignments. No party may assign or transfer any of its rights or obligations under this Agreement to any other person without the prior written consent of the other parties.

10. Counterparts. This Agreement may be executed by the parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

11. Entire Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, letters of intent, understandings, negotiations and discussions of the parties, whether oral or written.

12. Further Assurances. The parties will execute and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement.

13. Governing Law. This Agreement and the rights and obligations of the parties hereunder are to be governed by and construed and interpreted in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within Missouri, without regard to choice or conflict of laws rules.

14. No Reliance. Except as specifically set forth in this Agreement, each party hereto has relied solely on its own knowledge and judgment and/or upon advice from its own counsel in entering into this Agreement and has not received or relied upon advice from any other party.

15. Remedies Cumulative. Each and every right granted hereunder and the remedies provided for under this Agreement are cumulative and are not exclusive of any remedies or rights that may be available to any party at law, in equity, or otherwise.

16. Successors and Assigns. All provisions of this Agreement are binding upon, inure to the benefit of, and are enforceable by or against, the parties and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

17. Survival. The representations and warranties contained herein survive the execution and delivery of this Agreement.

18. Signatory Warranty. Each person executing this Agreement warrants that he is authorized to do so on behalf of the party for whom he signs this Agreement.

19. Contingencies. This Agreement, shall become effective upon approval of the Territorial Agreement by the Missouri Public Service Commission pursuant to Section 247.172 RSMo. no later than September 30, 2005, approval by the United States Department of Agriculture, Rural Development, no later than November 30, 2004, all required approvals of the City's Council, and all required approvals of the District's Board of Directors.

**PUBLIC WATER SUPPLY DISTRICT NO. 1
OF RALLS COUNTY, MISSOURI**

By: Elbert Nease
Title: Board Pres.

Attest: Ronda Calen
Title: District Clerk

CITY OF HANNIBAL, MISSOURI

By: Ray G. Hawk
Title: Mayor

Attest: M. B. Brundenthal
Title: City Clerk

HANNIBAL BOARD OF PUBLIC WORKS

By: George W. Dumbrell
Title: President

Attest: Thomas W. Lerner
Title: Sec.

EXHIBIT A

TERRITORIAL AGREEMENT

EXHIBIT B
ESCROW AGREEMENT

ESCROW TRUST AGREEMENT

Dated as of [January 1, 2004]

Among the

**CITY OF HANNIBAL, MISSOURI,
acting by and through its
BOARD OF PUBLIC WORKS**

and

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

and

[ESCROW AGENT]

**Providing for the Payment of Obligations
Pursuant to a Sale Contract between
Public Water Supply District No. 1 of Ralls County, Missouri, and the City of Hannibal, Missouri**

ESCROW TRUST AGREEMENT

THIS ESCROW TRUST AGREEMENT dated as of [January 1, 2004] (the "**Agreement**"), among the **CITY OF HANNIBAL, MISSOURI**, acting by and through its **BOARD OF PUBLIC WORKS** (the "**City**"), **PUBLIC WATER SUPPLY DISTRICT NO. 1 OF RALLS COUNTY, MISSOURI** (the "**District**") and **[ESCROW AGENT]**, a national banking association located in St. Louis, Missouri, and having full trust powers, as Escrow Agent (the "**Escrow Agent**").

RECITALS:

1. On _____, 2004, the City entered into a Sale Contract (attached as **Exhibit A** hereto) with the District, pursuant to which the City agreed to acquire the right to provide water service to the area described in the Sale Contract for the sum of \$1,500,000.

2. Under the Sale Contract, the City has heretofore paid \$150,000 of the cost of acquiring such rights, and is obligated to pay the remaining portion of the acquisition price (\$1,350,000.00) in the amounts and at the times shown on **Schedule 1** hereto (such amounts aggregating the "**Purchase Price**").

3. The City intends to provide for the payment of the Purchase Price through the appropriation of funds sufficient to make the payments in the amounts and at the times shown on **Schedule 1** hereto. The City has agreed to secure its obligation to pay the remainder of the Purchase Price by the deposit of cash and Escrowed Securities into an escrow account to be established under this Escrow Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth below, the parties to this Agreement agree as follows:

Section 1. Definitions. The following capitalized words and terms used in this Agreement have the following meanings:

"**City**" means the City of Hannibal, Missouri, acting by and through its Board of Public Works.

"**Escrow Agent**" means [Escrow Agent], St. Louis, Missouri, and its successor or successors at the time acting as Escrow Agent under this Agreement.

"**Escrow Fund**" means the fund by that name referred to in **Section 3** of this Agreement.

"**Escrowed Securities**" means any of the following securities, if and to the extent the same are at the time legal for investment of the City's funds:

- A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.
- B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank) --Direct obligations or fully guaranteed certificates of beneficial ownership
 2. Farmers Home Administration (FmHA) -- Certificates of Beneficial Ownership
 3. Federal Financing Bank
 4. Federal Housing Administration Debentures (FHA)
 5. General Services Administration -- Participation Certificates
 6. Government National Mortgage Association (GNMA or Ginnie Mae) guaranteed mortgage-backed bonds or pass-through obligations
 7. U.S. Maritime Administration -- Guaranteed Title XI financing
 8. U.S. Department of Housing and Urban Development (HUD) -- Project Notes; Local Authority Bonds; New Communities Debentures - U.S. government guaranteed debentures; U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds
- C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies which are not backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):
1. Federal Home Loan Bank System -- Senior debt obligations
 2. Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac) Participation Certificates; Senior debt obligations
 3. Federal National Mortgage Association (FNMA or Fannie Mae) -- Mortgage-backed securities and senior debt obligations
 4. Student Loan Marketing Association (SLMA or Sallie Mae) -- Senior debt obligations
 5. Resolution Funding Corp. (REFCORP) obligations
 6. Farm Credit System -- Consolidated systemwide bonds and notes

"**Payment Date**" means any date on which any component of the Purchase Price pursuant to the Sale Contract is due and payable, as shown on **Schedule 1** hereto.

"**Special Securities**" means (1) U.S. Treasury Obligations (State and Local Government Series), (2) non-callable U.S. Treasury Bills, Notes or Bonds, or (3) other non-callable direct obligations of the United States of America.

Section 2. Creation of Escrow Fund. There is hereby created and established with the Escrow Agent the following special and irrevocable separate trust fund to be held in the custody of the Escrow Agent and designated as the "Escrow Fund for the City of Hannibal, Missouri, Acquisition from Public Water Supply District No. 1 of Ralls County, Missouri" (the "**Escrow Fund**").

Section 3. Deposits to the Escrow Fund.

(a) The City herewith deposits with the Escrow Agent, and the Escrow Agent acknowledges receipt and deposit into the Escrow Fund of funds of the City in the amount of \$ _____. Upon written direction of the City, the Escrow Agent will apply all or a portion of such amount to purchase Escrowed Securities, which shall be delivered to and deposited in the Escrow Fund.

(b) On or before January 20 of each year, the City shall cause Gilmore & Bell, P.C. (or another firm experienced in structuring municipal finance transactions, which is acceptable to the District) to provide to the City, the District and the Escrow Agent a schedule showing the cost of a portfolio of Special Securities that will mature in amounts and at times sufficient to make the payments shown on **Schedule 1** hereto on all remaining Payment Dates. Such schedule will show the security type, par amount, interest rate, maturity date, dollar price, cost, yield and accrued interest, if any, for each Security. The total cost of such Special Securities shall be referred to as the "**Required Value**".

(c) On or before February 1 of each year, the Escrow Agent shall notify the City and the District of the market value of the cash and Escrowed Securities in the Escrow Fund. If such value exceeds 120% of the Required Value, then on or before February 5 of such year, the Escrow Agent shall pay any such excess to the City. If such value is less than 120% of the Required Value, then on or before February 5 of such year the Escrow Agent shall notify the City and the District via facsimile of the amount required to increase the value of the Escrowed Securities to 120% of the Required Value, and on or before February 10 of such year the City shall pay such amount to the Escrow Agent in immediately available funds. If by February 15 of any calendar year, the City has failed to pay to the Escrow Agent the amount required, if any, by the preceding sentence, then the Escrow Agent shall (unless otherwise directed in writing by the District) immediately transfer to the District all cash and Escrowed Securities on deposit in the Escrow Fund.

(d) In addition to the foregoing remedies, if by February 15 of any calendar year the City has failed to pay to the Escrow Agent the amount required by the preceding paragraph, the District shall be entitled, in the City's name, to immediately notify in writing the following entities of such event: (i) Bloomberg Municipal Repository, 100 Business Park Drive, Skillman, New Jersey 08558 Phone: (609)279-3225, Fax: (609) 279-5962, DPC Data Inc., One Executive Drive, Fort Lee, New Jersey, 07024 Phone: (201) 346-0701, Fax: (201)947-0107, FT Interactive Data Attn: NRMSIR, 100 William Street, New York, New York 10038 Phone: (212) 771-6999 Fax: (212) 771-7390 (Secondary Market Information), (212) 771-7391 (Primary Market Information), and Standard & Poor's Securities Evaluations, Inc., 55 Water Street, 45th Floor, New York, New York, 10041, Phone: (212) 438-4595 Fax: (212) 438-3975 and (ii) each nationally recognized rating agency which then maintains a rating on any of the City's outstanding bonds.

Section 4. Agreement to Pay Purchase Price; Creation of Lien.

(a) The District hereby acknowledges receipt on the date hereof of payment from the City in the amount of \$150,000.00 in partial satisfaction of the Purchase Price payable under the Sale Contract. The City hereby agrees to pay the District the sum of \$1,350,000.00, being the remainder of the Purchase Price that is payable pursuant to the Sale Contract, in the amounts and at the times shown on **Schedule 1**.

hereto. The City is securing its obligation to make such payments through the creation and funding of the Escrow Fund.

(b) The escrow created hereby is irrevocable. The District is hereby given an express lien on and security interest in the Escrowed Securities and the cash in the Escrow Fund and all earnings thereon until used and applied in accordance with this Agreement.

(c) The matured principal of and earnings on the Escrowed Securities and any cash in the Escrow Fund are hereby pledged and assigned and must be applied solely for the payment of the Purchase Price, except as provided by **Section 3(c)** and **Section 5** of this Agreement.

Section 5. Application of Cash and Escrowed Securities in the Escrow Fund.

(a) Except as otherwise expressly provided in this Section or in **Section 3** of this Agreement, the Escrow Agent will have no power or duty to invest any money held hereunder or to sell, transfer or otherwise dispose of any Escrowed Securities.

(b) At least one business day prior to each Payment Date, the City shall either (i) transfer to the Escrow Agent in immediately available funds an amount sufficient to make the payment required on the Payment Date, as shown in **Schedule 1** hereto, or (ii) direct the Escrow Agent to redeem or otherwise dispose of Escrowed Securities in an amount sufficient to make the payment required on the Payment Date. Unless otherwise directed in writing by the District, the Escrow Agent shall pay such amount by electronic transfer on each Payment Date to the District as follows:

[Bank]
ABA Routing No.: _____
BNF Name: _____
BNF Account No.: _____
Reference: _____

If the City has not either transferred funds as provided in (i) above, or provided direction to the Escrow Agent as provided in (ii) above, then the Escrow Agent is hereby authorized to redeem or otherwise dispose of Escrowed Securities in such amounts as may be required in order to make the payment required on the Payment Date. The liability of the Escrow Agent to make the payments required by this subsection (b) is limited to the money and Escrowed Securities in the Escrow Fund.

If the City has provided direction to the Escrow Agent as provided in (ii) above, and the Escrow Agent has not made the payment required on the Payment Date, then the Escrow Agent's failure to act in accordance with the provisions hereof shall not constitute a default by the City hereunder unless (1) the District notifies the City in writing, by registered or certified mail or overnight delivery, of the Escrow Agent's failure to make the payment required on the Payment Date and (2) the City fails, within 10 days after receiving such notice, to make the payment required. The Escrow Agent shall be liable to the City pursuant to the terms of **Section 7**.

(c) At the written request of the City, the Escrow Agent shall sell, transfer, request the redemption of or otherwise dispose of any of the Escrowed Securities then held in the Escrow Fund and substitute for such Escrowed Securities solely cash or other Escrowed Securities. The Escrow Agent shall purchase such other Escrowed Securities with the proceeds derived from the sale, transfer, disposition or redemption of the Escrowed Securities then held in the Escrow Fund, together with any other funds provided by the City for such purpose.

(d) Upon the payment in full of the Purchase Price, all remaining money and Escrowed Securities in the Escrow Fund, together with any interest thereon, shall be paid without further authorization to the City.

(e) Absent written direction from the City, cash held from time to time in the Escrow Fund shall, to the extent practical, be invested at the discretion of the Escrow Agent in (i) noncallable direct obligations of the United States of America, or (ii) a money market fund, and in each case, maturing on or before the next Payment Date that such cash will be needed. Cash held uninvested in the Escrow Fund shall, to the extent required by law, be fully collateralized by noncallable direct obligations of the United States of America maturing on or before the next Payment Date that such cash will be needed.

Section 6. Reports of the Escrow Agent. As long as any portion of the Purchase Price has not been paid in full, the Escrow Agent shall, at least 15 days prior to each Payment Date, determine the amount of money which will be available in the Escrow Fund to pay the portion of the Purchase Price that will become due on the next Payment Date and, if the amount so determined is less than the amount necessary to make the aforesaid payment, certify in writing to the City and the District (1) the amount so determined, and (2) a list of the money and Escrowed Securities held by it in the Escrow Fund on the date of such certification, including all money held by it which were received as interest or profit from Escrowed Securities.

Section 7. Liability of Escrow Agent.

(a) The Escrow Agent will not be liable for determining the appropriateness of the Escrowed Securities. The Escrow Agent will not be liable for any loss resulting from any investment, sale, transfer or other disposition made in compliance with the provisions of this Agreement. The Escrow Agent will have no lien whatsoever on any of the money or Escrowed Securities on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement or otherwise.

(b) The Escrow Agent will not be liable for the accuracy of the calculations as to the sufficiency of the Escrowed Securities and money to pay the Purchase Price. So long as the Escrow Agent applies the Escrowed Securities and money as provided herein, the Escrow Agent will not be liable for any deficiencies in the amounts necessary to pay the Purchase Price caused by such calculations. Notwithstanding the foregoing, the Escrow Agent will not be relieved of liability arising from and proximate to its failure to comply fully with the terms of this Agreement.

(c) If the Escrow Agent fails to account for any of the Escrowed Securities or money received by it, said Escrowed Securities or money will be and remain the property of the City in trust for the District, and, if for any reason such Escrowed Securities or money are not applied as herein provided, the assets of the Escrow Agent will be impressed with a trust for the amount thereof until the required application is made.

(d) The Escrow Agent nor any of its directors, officers or employees shall not be liable to anyone for any action taken or omitted to be taken by it or any of its directors, officers or employees hereunder except in the case of negligence, bad faith or willful misconduct. The City covenants and agrees to indemnify the Escrow Agent and hold it harmless without limitation from and against any loss, liability or expense of any nature incurred by the Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, including, but not limited to, legal fees and expenses and other costs and expenses of defending or preparing to defend against any claim of liability in the premises, unless such loss, liability or expense shall be caused by the Escrow Agent's negligence,

bad faith or willful misconduct. In no event shall the Escrow Agent be liable for indirect, punitive, special or consequential damages.

Section 8. Fees and Costs of the Escrow Agent.

(a) The aggregate amount of the costs, fees and expenses of the Escrow Agent in connection with the creation of the escrow described in and created by this Agreement and in carrying out any of the duties, terms or provisions of this Agreement is an initial fee of \$_____ and an annual fee in the amount of \$_____, which amounts shall be paid by the City upon receipt of an invoice from the Escrow Agent.

(b) Notwithstanding the preceding paragraph, the Escrow Agent will be entitled to reimbursement from the City of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms or provisions of this Agreement. Claims for such reimbursement may be made to the City and in no event will such reimbursement be made from funds held by the Escrow Agent pursuant to this Agreement.

(c) If the Escrow Agent resigns prior to the expiration of this Agreement, the Escrow Agent shall rebate to the City a ratable portion of any fee previously paid by the City to the Escrow Agent for its services under this Agreement.

Section 9. Resignation or Removal of Escrow Agent; Successor Escrow Agent.

(a) The Escrow Agent may at any time resign and be discharged from its duties and responsibilities under this Agreement by giving written notice, by registered or certified mail, to the City and the District at least 60 days before the date when the resignation is to take effect. Such resignation will take effect immediately upon:

- (1) the appointment of a mutually agreed upon successor Escrow Agent (which may be a temporary Escrow Agent) by the City and District;
- (2) the successor Escrow Agent's acceptance of the terms, covenants and conditions of this Agreement;
- (3) the transfer of the Escrow Fund, including the money and Escrowed Securities held therein, to the successor Escrow Agent; and
- (4) the completion of any other actions required for the principal of and interest of the Escrowed Securities to be made payable to such successor Escrow Agent instead of the resigning Escrow Agent.

(b) The Escrow Agent may be removed by the City or the District if the Escrow Agent fails to make timely payment on any Payment Date to the District of the amounts required to be paid by it on such Payment Date by **Section 5(b)** of this Agreement. Any removal pursuant to this paragraph will become effective upon:

- (1) the City or the District sending, by registered or certified mail, on or before the date of such removal, written notice to the Escrow Agent and to the other party;
- (2) the appointment by the City and District of a successor Escrow Agent (which may be a temporary successor Escrow Agent);

(3) the acceptance of such successor Escrow Agent of the terms, covenants and conditions of this Agreement;

(4) the transfer of the Escrow Fund, including the money and Escrowed Securities held therein, to such successor Escrow Agent; and

(5) the completion of any other actions required for the principal of and interest on the Escrowed Securities to be made payable to such successor Escrow Agent instead of the Escrow Agent being removed.

(c) If the Escrow Agent resigns or is removed, dissolved, or in the course of dissolution or liquidation, or otherwise becomes incapable of acting hereunder, or if the Escrow Agent is taken under the control of any public officer or officers, or of a receiver appointed by a court, the City and District shall appoint a mutually agreed upon temporary Escrow Agent to fill such vacancy until a successor Escrow Agent is appointed by the City and District in the manner above provided, and any such temporary Escrow Agent so appointed by the City and District will immediately and without further act be superseded by the successor Escrow Agent so appointed.

(d) If no appointment of a successor Escrow Agent or a temporary successor Escrow Agent has been made pursuant to the foregoing provisions of this Section within 60 days after the Escrow Agent has given written notice of its resignation to the City and the District, the retiring or removed Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it deems proper, appoint a successor Escrow Agent.

(e) Any successor Escrow Agent must be a bank or trust company with trust powers authorized to do business in the State of Missouri and organized under the banking laws of the United States or the State of Missouri and have at the time of appointment capital and surplus of not less than \$25,000,000, or be a direct or indirect subsidiary of such corporation, or a member of a bank holding company group, having a combined capital and surplus or consolidated net worth of at least \$100,000,000, and such subsidiary or member itself shall have a capital and surplus of at least \$8,000,000. If such institution publishes reports of conditions at least annually pursuant to law or regulation, then for the purposes of this Section the capital and surplus of such institution shall be deemed to be its capital and surplus as set forth in its most recent report of condition so published.

(f) Every successor Escrow Agent appointed under this Agreement shall execute, acknowledge and deliver to its predecessor, the City and the District an instrument in writing accepting such appointment hereunder, and thereupon such successor Escrow Agent without any further act, deed or conveyance will become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor. Such predecessor shall, nevertheless, on the written request of the successor Escrow Agent, the City or the District, execute and deliver an instrument transferring to the successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor Escrow Agent shall deliver all securities and money held by it in the Escrow Fund to its successor. Should any transfer, assignment or instrument in writing from the City or the District be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing will, on request, be executed, acknowledged and delivered by the City or the District.

(g) Any bank or trust company into which the Escrow Agent, or any successor to it of the duties and responsibilities created by this Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any bank or trust company resulting from any merger, conversion, consolidation or reorganization to which the Escrow Agent or any successor to it may be a party, or any entity to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business, will, unless the City or the District objects, be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of the parties hereto. If the City or the District files with the Escrow Agent a written objection to such succession within 30 days of notice to the City and District of the merger, conversion, consolidation or reorganization, then the Escrow Agent will be treated as though it has resigned under the terms of paragraph (a) of this Section.

Section 10. Limitation on Liability of the City. The City will not be liable for any acts of the Escrow Agent, except as described in Section 7(d). Notwithstanding any provision hereof to the contrary, the Escrow Agent's failure to act in accordance with the provisions hereof shall not constitute a default by the City hereunder and shall not give rise to any liability on the part of the City.

Section 11. Amendments to this Agreement. This Agreement is made for the benefit of the City and the District, and it may not be repealed, revoked, altered or amended without the written consent of the City and the District.

Section 12. Termination. This Agreement terminates when all payments required to be made by the Escrow Agent under the provisions of this Agreement have been made.

Section 13. Notices. Except for notices to the Escrow Agent (which shall not be deemed given until the notice is actually received by the Escrow Agent), it is sufficient service of any notice, request, complaint, demand or other paper required by this Agreement to be given to or filed with the following parties if the same is duly mailed by certified or registered mail, return receipt requested, addressed:

- | | |
|-----------------------------|---|
| (1) To the City at: | Board of Public Works
3 Industrial Loop
Hannibal, Missouri 63401
Attention: General Manager |
| (2) To District at: | Public Water Supply District No. 1
of Ralls County, Missouri
3316 Market Street
Hannibal, Missouri 63401
Attention: President |
| (3) To the Escrow Agent at: | [Escrow Agent]

Attention: _____ |

Section 14. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the City, District or the Escrow Agent is determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement is required to be construed to be severable from the remaining covenants and agreements hereunder and will in no way affect the validity of the remaining provisions of this Agreement.

Section 15. Successors and Assigns. All of the covenants, promises and agreements in this Agreement contained by or on behalf of the City, District or the Escrow Agent are binding upon and inure to the benefit of their respective successors and assigns whether so expressed or not.

Section 16. Governing Law. This Agreement is governed by the applicable law of the State of Missouri.

Section 17. Counterparts. This Agreement may be executed in several counterparts, all or any of which are regarded for all purposes as one original and constitute the same instrument.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers or elected officials and their corporate seals to be hereunder affixed and attested as of the date first above written.

CITY OF HANNIBAL, MISSOURI

By: _____
Roy Hark, Mayor

ATTEST:

Mary Beth Baudendistel, City Clerk

THE BOARD OF PUBLIC WORKS OF THE CITY OF HANNIBAL, MISSOURI, hereby accepts, approves and agrees to be bound by the terms and conditions contained in this Escrow Agreement.

**THE BOARD OF PUBLIC WORKS
OF THE CITY OF HANNIBAL, MISSOURI**

By: _____
Name: George Danforth
Title: President

ATTEST:

By: _____
Name: Tom Lennon
Title: Secretary

**PUBLIC WATER SUPPLY DISTRICT
NO. 1 OF RALLS COUNTY, MISSOURI**

By: _____
Title: _____

(Seal)

ATTEST:

Title: _____

□□[ESCROW AGENT]

as Escrow Agent

(Seal)

By: _____
Title: _____

ATTEST:

Title: _____

EXHIBIT A
SALE CONTRACT

**SCHEDULE 1
TO ESCROW TRUST AGREEMENT**

PAYMENT SCHEDULE

<u>Payment Date</u>	<u>Amount</u>
03/01/04	\$33,750
09/01/04	33,750
03/01/05	33,750
09/01/05	33,750
03/01/06	33,750
09/01/06	33,750
03/01/07	33,750
09/01/07	33,750
03/01/08	33,750
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09/01/19	33,750
03/01/20	33,750
09/01/20	33,750
03/01/21	33,750
09/01/21	33,750
03/01/22	33,750
09/01/22	33,750
03/01/23	33,750
09/01/23	33,750