

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 10th 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 1st and January 1st during the term of the Agreement as extended commencing on July 1st, 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 9th day of March, 1988, and the First Amendment



thereto dated the 6th 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 22ND 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