

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 14<sup>th</sup> day of April, 2021.

In the Matter of the Joint Application of The	)	
Public Water Supply District No. 2 of St.	)	
Charles County, Missouri and the City of	)	<b><u>File No. WO-2021-0253</u></b>
Wentzville, Missouri for Approval of an	)	
Amendment to their Intergovernmental	)	
Territorial Agreement	)	

**REPORT AND ORDER APPROVING SECOND  
AMENDMENT TO TERRITORIAL AGREEMENT**

Issue Date: April 14, 2021

Effective Date: May 14, 2021

This order approves the Second Amendment to the territorial agreement between the Public Water Supply District No. 2 of St. Charles County, Missouri (the District) and the City of Wentzville (City) (collectively the “Joint Applicants”).

**Findings of Facts**

1. The City is a fourth class city, organized and operating under Chapter 79 of the Revised Statutes of Missouri.<sup>1</sup> The City operates a municipally-owned water utility in St. Charles County, Missouri. The City is a political subdivision of the state of Missouri and is not subject to regulation by the Commission except for purposes of this file. The City’s principal place of business is located at 1001 Schroeder Creek, Wentzville, Missouri 63385.

2. The District is a public water supply district organized under Chapter 247 of the Revised Statutes of Missouri. The District provides water service at retail and

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<sup>1</sup> All citations to RSMo are to the 2016 edition.

wholesale to customers located within the District's water service area in and around St. Charles County and Warren County, Missouri. The District is a political subdivision of the State of Missouri and is not subject to regulation by the Commission except for purposes of this application. The District's principal place of business is located at 100 Water Drive, O'Fallon, Missouri 63366.

3. On October 17, 2000, in File No. WO-2000-849, the City and the District received the Commission's approval of their original agreement. On November 14, 2011, the Commission approved the first amendment to the original agreement in its Report and Order issued in File no. WO-2012-0088. On February 9, 2021, the City and District filed a Joint Application for Approval of an Amendment to Intergovernmental Territorial Agreement (Application).

4. On February 10, 2021, the Commission ordered that notice of the application be provided to potentially interested persons and established February 25, 2021, as the deadline for submission of requests to intervene. No requests to intervene have been filed. The Commission also directed Staff to file a recommendation regarding the application no later than March 26, 2021.

5. On March 26, 2021, Staff filed a recommendation advising the Commission to approve the Second Amendment. No one has filed an objection, nor has anyone requested a hearing.

6. The Second Amendment provides that all provisions of the Original Agreement and the First Amendment shall remain and continue in full force and effect in all respects except as provided in the Second Amendment.

7. The Second Amendment extends the territorial agreement term an additional twenty years and modifies certain portions of the boundaries of the two water service areas that the City and the District will serve. The Second Amendment will not result in a change of supplier for any current customer of either the City or the District.

8. Based on the information provided in the application and Staff's recommendation, the Commission finds that the Second Amendment in total is not detrimental to the public interest.

### **Conclusions of Law**

a. The Commission has jurisdiction over territorial agreements for the sale and distribution of water under Section 247.172, RSMo. Section 247.172.1, RSMo, provides that “[c]ompetition to sell and distribute water, as between and among public water supply districts, water corporations subject to public service commission jurisdiction, and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.”

b. Section 247.172.4, RSMo, states that “[b]efore becoming effective, all territorial agreements entered into under the provisions of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligations of any party to an agreement, shall receive the approval of the public service commission by report and order.”

c. Pursuant to Section 247.172.5, RSMo, the Commission may approve a territorial agreement if the Commission determines that the territorial agreement in total is not detrimental to the public interest.

d. Section 247.172.5, RSMo, provides that the Commission must hold an evidentiary hearing on the proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since the City and the District filed a joint application therein stating that the parties agreed to the second amendment to the territorial agreement and no one has requested a hearing, no hearing is required.<sup>2</sup>

### **Decision**

Having considered the joint application and Staff's recommendation in support of approval of the application, the Commission finds that the parties have agreed to the terms and conditions of the Second Amendment and that otherwise no other person has objected thereto. The Commission concludes the Second Amendment between the parties in total is not detrimental to the public interest and will be approved.

#### **THE COMMISSION ORDERS THAT:**

1. The Second Amendment to the Territorial Agreement between the City of Wentzville, Missouri and Public Water Supply District No. 2 of St. Charles County, Missouri, is approved.
2. The City and District are authorized to provide water service to the property described in the Second Amendment, included with this order as Attachment A.
3. The City and District are authorized to do such other acts and things, including making, executing, and delivering any and all documents that may be

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<sup>2</sup> See also *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989), stating that the requirement for a hearing is met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence.

necessary, advisable, or proper to effect the terms and conditions of the Second Amendment and to implement the authority granted by the Commission in this order.

4. This order shall become effective on May 14, 2021.
5. This file shall be closed on May 15, 2021.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and Holsman CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Graham, Regulatory Law Judge

SECOND AMENDMENT TO INTERGOVERNMENTAL TERRITORIAL AGREEMENT

THIS SECOND AMENDMENT TO TERRITORIAL AGREEMENT, ("Second Amendment") made and entered into this 9 day of December, 2020 by and between the CITY OF WENTZVILLE, MISSOURI, a municipal corporation, 1001 Schroeder Creek Boulevard, Wentzville, Missouri 63385 (hereinafter referred to as "CITY"), and PUBLIC WATER SUPPLY DISTRICT NO. 2 OF ST. CHARLES COUNTY, MISSOURI, a public corporation, 100 Water Drive, O'Fallon, Missouri 63366 (hereinafter referred to as "DISTRICT"); WITNESSETH:

WHEREAS, CITY, is a political subdivision and municipal corporation of the fourth class in St. Charles County, Missouri organized and existing under Sections 79.010 to 79.400 RSMo., which operates municipally owned utilities which purchase water for its inhabitants from the DISTRICT; and

WHEREAS, 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; and

WHEREAS, the parties previously entered into a written Intergovernmental Territorial Agreement (hereinafter referred to as "Original Agreement") as authorized by Section 247.172, Revised Statutes of Missouri, to establish boundaries of the two water service areas that CITY and DISTRICT each will serve, which helped avoid wasteful duplication of services and undue costs to their respective customers, and which Original Agreement received the approval of the

Missouri Public Service Commission by Report and Order issued October 17, 2000 in Case No. WO-2000-849; and

WHEREAS, the parties previously entered into a First Amendment to Intergovernmental Territorial Agreement (hereinafter referred to as "First Amendment"); and

WHEREAS, Paragraph 12 of the Original Agreement states that "[n]either 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"; and

WHEREAS, the term of the Original Agreement was twenty (20) years effective upon approval by the Missouri Public Service Commission which approval was granted October 27, 2000; and

WHEREAS, the parties now desire to enter into this Second Amendment to said Original Agreement as authorized by Section 247.172, Revised Statutes of Missouri, to extend the term of the Original Agreement by an additional twenty (20) years and to modify certain portions of the boundaries of the two water service areas that the CITY and the DISTRICT each will serve, both to be effective upon approval by the Missouri Public Service Commission.

NOW, THEREFORE, CITY and DISTRICT agree as follows:

1. The term of the Original Agreement shall be extended by an addition twenty (20) years contingent upon all of the following occurring:
  - a. All required approvals of the CITY'S Board of Aldermen.
  - b. All required approvals of the DISTRICT'S Board of Directors.
  - c. Approval of this Second Amendment by the Missouri Public Service Commission.

2. Sections 2 and 3 of the Original Agreement provide that 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 attached to the Original Agreement and attached hereto notwithstanding that any portion of said service area may be annexed by the CITY after the effective date of the Original Agreement and the CITY shall have the exclusive right to provide service to all existing and future customers located within its service area shown on Exhibit B attached to the Original Agreement and attached hereto. The DISTRICT and CITY mutually desire to amend the boundaries of the exclusive service areas that each shall serve as shown on Exhibit C attached hereto with the black hachured area, which is more fully described below, being transferred from the CITY's service area to the DISTRICT's service area and the red hachured area, which is more fully described below, being transferred from the DISTRICT's service area to the CITY's service area.

a. The service area being transferred to the CITY, shown on Exhibit C as the red hachured area, is described as all land within the area to the east of the centerline of that portion of Penny Royal Lane and Wind Creek Drive running a distance of approximately 705 feet south of the existing Wentzville Water Territorial Boundary line, but only including the residences and water users located on Kelcross Drive, Paddington Street, Sturgeon Court, and English Manor Drive that have been constructed or platted as of November 1, 2020.

b. The service area being transferred to the DISTRICT, shown on Exhibit C and the black hachured area, is described as all land within the area described as starting at the northwest corner of the St. Charles County Boundary with Lincoln County and heading east along the County Boundary line to the intersection of the centerline of U.S. Highway 61, then continuing southeast along the U.S. Highway 61 centerline to the intersection of

Highway W, then continuing southwest along the centerline of Highway W approximately 1,200 feet, then south along the Highway W centerline approximately 4,600 feet, then west along the Highway W centerline approximately 3,200 feet, then heading north along the existing Wentzville Water Territorial Boundary line for approximately 8,170 feet, then west along the existing Wentzville Water Territorial Boundary line approximately 7,520 feet, then north along the existing Wentzville Water Territorial Boundary line approximately 940 feet, then west approximately 2,280 feet to the intersection of the St. Charles County Boundary line, then north along the St. Charles County Boundary line approximately 1,840 to the point of beginning.

3. In the event this Second Amendment is not approved by the Missouri Public Service Commission within one (1) year after the date of this instrument, this Second Amendment shall thereupon automatically become null and void.
4. All provisions of the Original Agreement and the First Amendment shall remain and continue in full force and effect in all respects, except as provided for herein.
5. This Second Amendment shall be binding upon the undersigned parties and their successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be first executed on the day and year first above written by their respective officers.

CITY OF WENTZVILLE, MISSOURI  
a Municipal corporation



By:

*Nickolas Guccione*  
Nickolas Guccione, Mayor

(CITY SEAL)

Attest:

Kathryn Bowman  
Kathryn Bowman, City Clerk

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

By:

Denis Raab, President

(SEAL)

Attest:

Kim Cantrell, Clerk



(SEAL)

Attest:

Kim Cantrell  
Kim Cantrell, Clerk

By: Darrell Dechant  
Darrell Dechant, Vice President

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared Nickolas Guccione, who being by me duly sworn did say that he is the Mayor of the City of Wentzville, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed on behalf of said City, by authority of its Board of Aldermen, and said Nickolas Guccione acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set me hand and affixed my official seal in the County and State aforesaid, the date and year first above written.

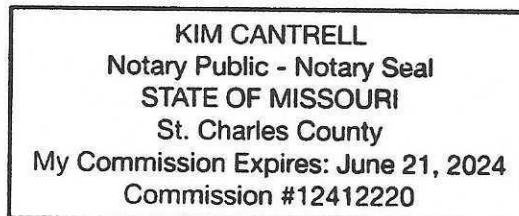
My Term Expires: \_\_\_\_\_  
Notary Public

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

On this 9th day of December, 2020 before me personally appeared Darrell Dechant, who being by me duly sworn did say that he is the Vice 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 Darrell Dechant acknowledged said instrument to be the free act and deed of said District.

IN TESTIMONY WHEREOF, I have hereunto set me hand and affixed my official seal in the County and State aforesaid, the date and year first above written.

My Term Expires: June 21, 2024 Kim Cantrell  
Notary Public



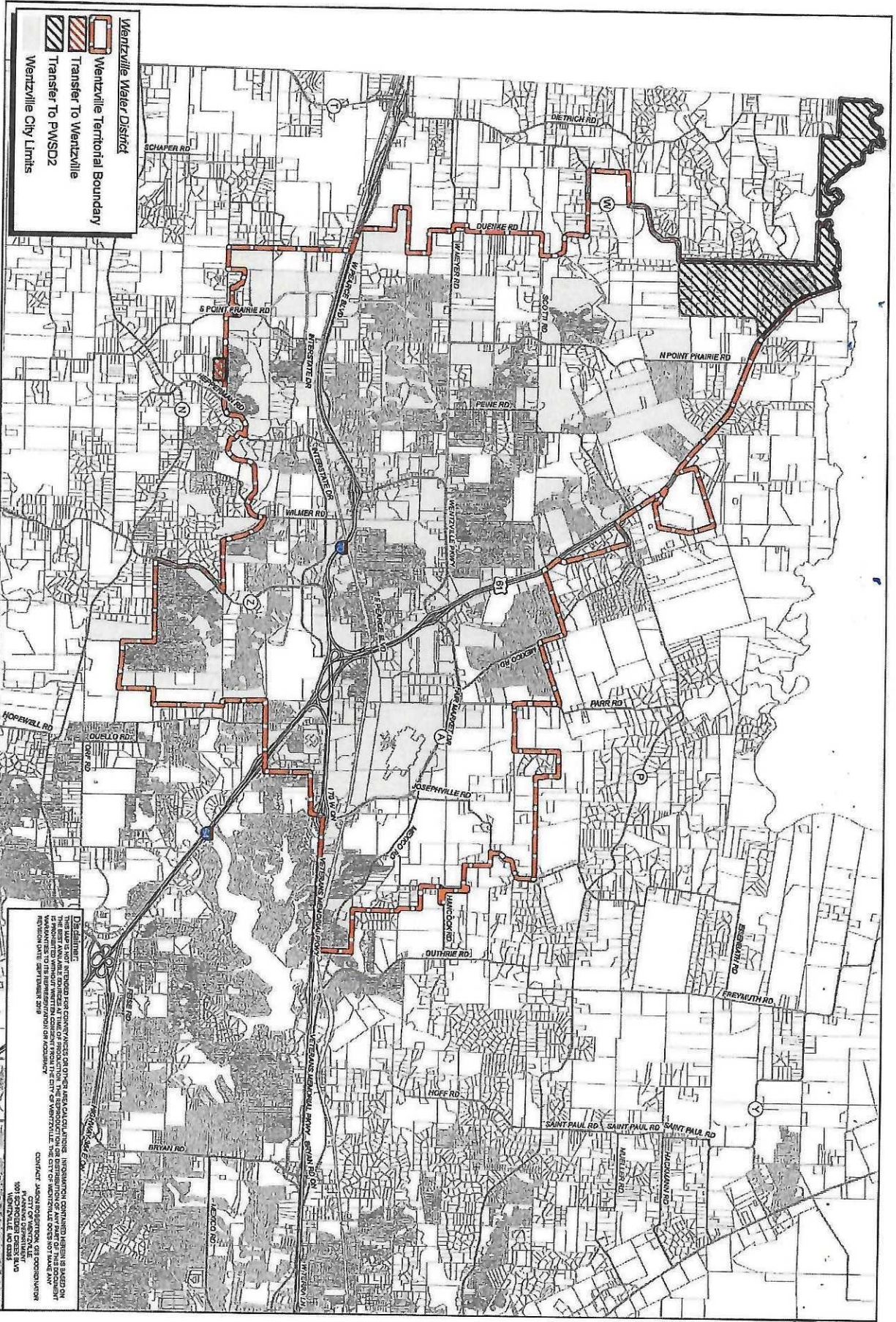


EXHIBIT C


**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 14<sup>th</sup> day of April, 2021.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**April 14, 2021**

**File/Case No. WO-2021-0253**

**Missouri Public Service  
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**Public Water Supply District No.  
2 of St. Charles County**  
Mark C Piontek  
1200 Jefferson Street  
Washington, MO 63090  
mpiontek@sandbergphoenix.com

**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.