

CONTRACT FOR SUPPLY OF WATER FROM THE CITY OF INDEPENDENCE, MISSOURI  
TO PUBLIC WATER SUPPLY DISTRICT NO. 2 OF JACKSON COUNTY MISSOURI

THIS CONTRACT, made and entered into this 9<sup>th</sup> day of September, 2020, by and between Public Water Supply District No. 2 of Jackson County, Missouri, a political corporation (hereinafter called "District"), and the City of Independence, Missouri, a municipal corporation (hereinafter called "Independence"),

WITNESSETH:

WHEREAS, District owns and operates a water distribution system, and currently receives water from Independence under Contract For Supply of Water From City Of Independence, Missouri to Public Water Supply District No. 2 of Jackson County, Missouri, dated February 21, 2001; and,

WHEREAS, Independence built in 1961 at its cost and expense and now owns and maintains a 12-inch water main in order to provide water service to District, 15,047 feet of which at the date of this Agreement serves only District, such 15,047 feet of main having an original cost of \$116,569.85; and,

WHEREAS, District installed in 1961 at its cost and expense and now owns and maintains a 12-inch main from a connection point with Independence's aforesaid main ("connection point") on Woodson Road where it intersects the north boundary of District as now existing to a metering point on the east side of Woodson Road just north of 67<sup>th</sup> Street ("metering point") and installed at its cost and expense and now owns and maintains a 12-inch main south of metering point to connect to District's water distribution system; and

WHEREAS, District desires to enter into a new Contract for Supply of Water with Independence; and,

WHEREAS, Independence is willing to provide said supply of water pursuant to the terms and conditions contained in this Contract, which will replace said Contract For Supply of Water dated February 21, 2001.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. Independence will continue at its sole cost and expense to maintain and operate its above described 12-inch main in order to provide water service to District. Title to Independence's said main shall at all times be and remain in Independence. Independence shall have the right to make further extensions to, lay lateral mains from, and connect fire hydrants and customer service lines to said main; provided, however, that the same shall not impair the water supply to District as herein agreed to.
2. District, at its sole cost and expense, will continue to maintain the necessary piping, fittings, valves, reducing valves and vault for the connection, housing and protection of a water meter or meters which shall continue to be located at metering point and all of which equipment shall at all times be in accordance with Independence standards. Independence, at its sole cost and expense, shall furnish, install and maintain a water meter or meters in said vault.
3. District will continue to maintain and operate, at its sole cost and expense, its 12-inch cast iron water main from the connection point south to the metering point and shall continue to maintain and operate its 12-inch cast iron main from the metering point south to District's Willow Reservoir. District agrees that no direct service connections or branch pipeline connections shall be made to that portion of District's main between the connection point and the metering point. District further agrees that it will give high maintenance priority to insure the integrity of the said portion of its main between connection point and metering point to prevent loss of unmetered water.

4. The parties agree that during the term of this Agreement, Independence will supply and District will purchase water from Independence not less than 50 percent of the District's entire supply of water, subject to the following provisions and limitations:

A. District will be limited on a daily basis to a water usage rate which shall be calculated by multiplying 2.0 times the average daily million gallons per day (MGD) use of water throughout the preceding 12 months. District shall be further limited to a maximum water usage rate of 1.5 MGD.

B. In no event shall the District use less than 30 percent of the maximum flow rate of 1.5 MGD ( $1.5 \text{ MGD} \times .30 = .45 \text{ MGD}$ ) or 13.7 million gallons per month. Should the District use less than 13.7 million gallons in any monthly billing period, the District shall be billed as a minimum the price of 13.7 million gallons.

C. The District shall provide the necessary storage and shall operate its system in such a manner that the quantity of water delivered to the District by Independence through the metering point shall be further limited as follows:

During any 24-hour period from 7:00 AM To 7:00 AM when the air temperature, as measured at the Office of the District, at 2:00 PM reaches or exceeds 80°F, the quantity of water delivered to the District by Independence during any hour between 4:00 PM and 10:00 PM of that period shall not exceed the average hourly rate of water delivered during the said 24-hour period from 7:00 AM to 7:00 AM. In the event that District shall fail or refuse to regulate its withdrawal of water from Independence's mains as hereinbefore set forth in paragraphs 4 and 5, Independence shall have the right to purchase and install, at District's sole cost and expense, flow-regulating devices selected by Independence to achieve any limitation of maximum rate of withdrawal which had been violated. District

shall reimburse Independence the cost of purchasing and installing such flow regulating devices within 10 days after receipt from Independence of a bill therefor.

5. The obligation of Independence to sell and deliver water pursuant to this Contract shall be subject to its ability to do so and its obligations to its current customers. Independence shall not be obligated to furnish the supply of water provided for herein when Independence is unable to do so as a result of causes that are beyond its control.

If at any time Independence cannot furnish the supply of water provided for herein as aforesaid, the limitations and requirements in paragraph 4 shall be temporarily suspended. Should conditions exist which, in the sole judgment of Independence, require it to place restrictions upon the use of water by its customers, District agrees that upon receipt of notice thereof from Independence, District shall forthwith place the same restrictions upon the use of water by District's customers unless District shall be able to obtain during said period of restriction a temporary supplementary supply of water from some other source which is approved by the Missouri Department of Natural Resources, which may make unnecessary the imposition of such restrictions on District's customers. Independence shall make every reasonable effort to correct promptly any malfunction of its water works system which adversely affects the supply of water from Independence to District. Immediately following correction of any such cause for temporary limitation and upon reinstitution of the water supply contemplated herein, the requirements and limitations in paragraph 4 shall again apply.

Subject to the conditions hereinbefore set forth, Independence shall maintain positive pressure in its mains at the connection point. Should negative pressure occur at the connection point, District shall notify Independence of such fact and Independence shall restore positive pressure at said point as soon as possible.

6. Any and all facilities which may be necessary for District to provide for periodic abnormal water demands of District's customers, and which are required to distribute and use properly the supply of water furnished by Independence to District, including, but not limited to, such items as mains, fittings, valves, reducing valves, fire hydrants, surface storage facilities, elevated storage tanks and pumping equipment shall be provided, installed, maintained and operated by and at the sole cost and expense of District.

7. If District, during the period of this Contract, requires more water than the Contract provides, it shall give written notice to Independence of its requirements. Independence then shall determine whether it wishes to provide the additional supply of water, whether through existing or new facilities. If Independence determines that it wishes to supply the additional water, Independence shall determine what, if any, installations are required and the costs of any such installations and then by written notice notify District of any costs associated with the extra supply.

After notice, District will determine whether it wishes to purchase the additional water from Independence. If District decides to purchase the water from Independence, it will enter into a new twenty (20) year water contract if the additional supply requires additional installations.

If District and Independence do not agree on terms for supplying the additional water, District shall be able to obtain the additional supply of water from any other source, provided that additional supply shall have been approved by the Missouri Department of Natural Resources. In the event District does elect to take water from another source as provided herein, the parties shall continue to be bound by the terms of this Contract.

8. The water purchased under this Contract is to be delivered to District at the connection and meter installation described in paragraph 2, and the total usage recorded by said meter(s) must be paid for by District within thirty (30) days after the date of billing therefor by Independence, in accordance with the following schedule of rates:

SCHEDULE OF RATES FOR WATER DELIVERED\*

AS DETERMINED BY METER(S)

RATE COMPONENTS: The rate charged under this tariff is the sum of the customer charge component plus the commodity charge component.

CUSTOMER CHARGE - for water service continuously available to customer through facilities of Independence; listed below opposite each respective meter size.

<u>Meter Size</u>	<u>Monthly Customer Charge (1)</u>
5/8" Water Meters	\$ 9.60
3/4" Water Meters	10.75
1 " Water Meters	11.50
1-1/2" Water Meters	13.30
2" Water Meters	18.50
3 " Water Meters	56.50
4" Water Meters	70.00
6" Water Meters	103.00
8" Water Meters	211.21

(1) COMMODITY CHARGE - \$1.55 per 100 cubic feet for all water used as determined by meters.

Said monthly bills are due and payable and District agrees to pay the same within thirty (30) days from and after the date of each such bill. District shall pay daily interest at the rate of eight percent (8%) per year on all late payments.

Any proposed rate increase by Independence shall be made in accordance with the Base-Extra Capacity Method (using the Utility basis), as described in the American Water Works Association M1 Manual, Seventh Edition, as amended and revised. The rate study shall be obtained

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\*Minimum purchases described in paragraph 4.

by Independence from a qualified independent engineering consultant such as Black & Veatch, Burns and McDonnell, or equal. Independence will provide notification of any such proposed rate increase, together with a copy of the said rate study at least 75 days prior to the effective date of the proposed rate increase.

District shall notify Independence of any disagreement with the proposed increase at least thirty (30) days prior to the effective date of the proposed increase. District shall provide Independence with the reason or reasons for its disagreement.

The proposed rate increase shall go into effect upon the effective date, provided, however, that if District continues to disagree with the rate increase, it may request that the increase be submitted to arbitration. Such rate arbitration shall be performed upon the following terms and conditions:

- a. District shall designate at the time of its request for arbitration an arbitrator who is a qualified independent utility consultant.
- b. The independent engineering consultant retained by Independence for the purpose of the rate change shall serve as the arbitrator for Independence.
- c. If the two arbitrators are unable to resolve the issue, then the two shall select a third arbitrator who shall be a person possessing the qualifications as determined by the said two arbitrators. A decision by the majority of the three shall be the arbitration decision. Should the two original arbitrators be unable to decide upon the third, then the presiding Judge of the Circuit Court of Jackson County, Missouri, shall be requested to appoint the third arbitrator, who shall have qualifications equivalent to the two original arbitrators.
- d. The person or persons so named in paragraphs a, b, and c shall comprise the arbitration panel and shall conduct the arbitration.

e. The arbitration panel shall complete its inquiry and deliberation and render its final decision upon the proposed rate increase within sixty (60) days following the effective date of said proposed rate increase.

f. Should the final arbitration award be for a reduction of the rate change, Independence shall refund any excess which it has collected together with interest at the rate of the most recent thirty (30) day Treasury Bills, minus financial service charges, if any.

g. The costs of the arbitration shall be divided equally between District and Independence.

h. Either party may seek review of the arbitration decision in the Circuit Court of Jackson County, Missouri.

i. In the event no review of the arbitration decision is sought by either party, such arbitration decision shall be final and binding upon the parties.

Wholesale users shall have reasonable access during regular business hours to the books and records of Independence relevant to the administration of the water utility.

Independence covenants that in any rate increase proposed by a cost-of-service study, it will adopt a rate structure which will treat all wholesale customers on a fair and equitable basis, and without favoritism for retail customers within Independence.

Independence agrees that the capital costs attributable to plant expansion and well-field expansion (after date of this Contract) made necessary by higher usage demands of other wholesale or retail customers will not be used in the calculation of the rate base for the purpose of determining the rates to be charged the District.

9. District may sell water to anyone it chooses, provided that it will not sell water to customers within the City limits of Independence, Missouri, without the prior written permission of



Independence. It is expressly agreed that District may buy water from or sell water to Kansas City and/or other wholesale customers of Independence. District currently has a water supply contract with Kansas City, Missouri, and Independence recognizes this fact and consents thereto.

It is further agreed by the parties hereto that District may sell water to operators of water tank trucks for use outside the District's corporate boundaries, provided that such water is delivered to said tank trucks within said corporate boundaries of District,

10. The cost of the 15,047 feet of 12-inch main (installed in 1961) necessary to provide service to the District is being amortized by Independence over a 100 -year period at the rate of 1 per cent per year. Should Independence be required to relocate said main, the cost of such relocation shall also be amortized at the rate of one per cent per year over the remaining term of this Agreement. At the expiration of this agreement, District agrees to pay to Independence the remaining unamortized main cost. However, this contract may be renewed under the same terms and conditions herein stated at the end of each twenty year term hereof at the option of the District, which option can be exercised by the District giving Independence written notice at least 120 days prior to the termination of this contract, of District's intention to renew said contract. In the event of renewal, District shall not be required to pay to Independence the aforesaid unamortized 12-inch main cost and Independence shall continue to amortize said costs until the expiration of each subsequent 20 year renewal. On the expiration of each renewal District shall again have the option aforescribed.

11. All notices provided for herein shall be in writing and shall be given by ordinary mail, and any notices to District shall be addressed to the President at the District's office at 6945 Blue Ridge Blvd., Raytown Missouri 64133, and any notice to Independence shall be sent to the City Manager, 111 East Maple, Independence, Missouri 64050.

12. This Contract may be renewed under the same terms and conditions herein stated at the end of each twenty (20) year term hereof at the option of the District, which option can be exercised by the District giving Independence written notice at least 120 days prior to the termination of any existing term of this Contract of District's intention to renew said Contract.

13. This Contract shall supersede all prior agreements between the parties (or their predecessors) for the supply of water.

14. All of the covenants, agreements, conditions, terms and provisions of this Contract shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, to the same extent and effect as the same are binding upon and inure to the benefit of said parties.

Independence and District agree that each party hereto may assign its privileges and responsibilities under the provisions of this Contract to a successor party including a wholesale water district or other entity upon sixty (60) days written notification to other contracting party of such assignment.

15. Independence agrees that in all respects it will treat District fairly and upon the same basis as other wholesale customers. Should Independence grant any favorable contract provisions of general application to other wholesale customers it will make such contract provisions available to the District.


16. The terms and conditions herein constitute the entire agreement of the parties (or their predecessors) and supersede all prior written and oral agreements and understandings relating to the subject matter hereof, and this Contract may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

17. This Contract shall be governed by and construed according to the laws of the State of Missouri.

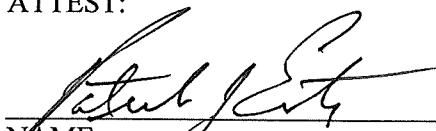
18. No waiver of any condition or covenant contained in this Contract or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
19. If any term or provision of this Contract is held invalid or unenforceable, the remainder of the Contract shall not be affected and each other term and provision of this Contract shall be valid and enforced to the fullest extent permitted by law.
20. This Contract shall be deemed to have been jointly drafted by the parties and shall not be construed more strongly against any party hereto.
21. Independence and District agree that each has enacted all necessary ordinances/resolutions and has done everything necessary and appropriate to permit each to validly enter into this Contract.

IN WITNESS WHEREOF, Public Water supply District No. 2 of Jackson County, Missouri, has caused this instrument to be executed by the President of said District and the same to be attested by the Manager of said District on the 9<sup>th</sup> day of September, 2020, and Independence has caused this instrument to be executed by its City Manager and the same to be attested by its City Clerk, both being thereunto duly authorized by the Council of the City of Independence, Missouri, by Ordinance No. \_\_\_\_\_, as of the date first above written.

PUBLIC WATER SUPPLY DISTRICT NO. 2  
OF JACKSON COUNTY, MISSOURI

  
\_\_\_\_\_  
NAME  
VICE President

ATTEST:

  
\_\_\_\_\_  
NAME  
DISTRICT MANAGER

APPROVED AS TO FORM:

CITY OF INDEPENDENCE, MISSOURI

By \_\_\_\_\_

Zachary C. Walker, City Manager

ATTEST:

\_\_\_\_\_  
Becky Behrens, City Clerk

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
Shannon Marciano, City Counselor