

STATE OF MISSOURI)
In the Recorder's Office
COUNTY OF OSAGE)

FILED FOR RECORD
NO. 1141

INDEXED

I, Charlene J. Eisterhold, Recorder of said County, do hereby certify that the within instrument of writing was, on the 7th June, 2005, at 11 o'clock 10 minutes A M., duly filed for record in this office, and is recorded in the Records of this office in Book 354 Page 923-931.
In Witness Where of, I have hereunto set my hand and affixed my official seal, at Linn, Missouri.

CHARLENE J. EISTERHOLD, RECORDER

Cindy Hoffman DEPUTY

ORDINANCE NO. 05-1

AN ORDINANCE ESTABLISHING AN AGREEMENT BETWEEN THE CITY OF WESTPHALIA, COUNTY OF OSAGE, STATE OF MISSOURI, AND THE PUBLIC WATER SUPPLY DISTRICT #2 TO PROVIDE BILLING SERVICES FOR SEWER SERVICE CHARGES.

BE ORDAINED BY THE BOARD OF ALDERPERSONS OF THE CITY OF WESTPHALIA, MISSOURI, AS FOLLOWS:

AGREEMENT TO PROVIDE BILLING SERVICES

This Agreement made as of the 19th day of April, 2005, pursuant to the action of the City Council, authorizing this Agreement between the City of Westphalia, a municipal corporation, located in Osage County, State of Missouri, (hereinafter called "City"), and Public Water Supply District #2, a public water supply district established under Chapter 247, RSMo, (hereinafter called "District"):

WITNESSETH:

In consideration of the premises, and of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

1. The City does hereby employ the District as the City's sole agent to bill and receive payments for all sewer service charges as provided for in Ordinance No. 05-1, and any amendments thereto, of the City of Westphalia, Missouri, and the District does hereby accept said employment from the City as provided.

2. The City does hereby designate and appoint its City Clerk and Mayor as the City's representatives to whom all inquiries from the District with respect to the performance of

the District's obligations under this Agreement shall be referred, and the decisions of the said City Clerk and Mayor shall be final, binding upon the City and decisions upon which the District may fully rely.

3. After the effective date of this Agreement the District shall cause monthly bills to be rendered for sewer service charges pursuant to Ordinance 04-1 and any amendments thereto. In every instance in which a customer of the District is also a customer of the City, said current sewer service charges shall be billed as a separate item on the water bill rendered by the District to its customers. Between the 7th through 10th days of each month, the City shall furnish the District with a complete list of all new or discontinued accounts for its sewer service customers, who are not customers of the District, together with the sewer service charges to be billed to each of such customers and the period for which such charges shall be billed. The District shall bill such charges in accordance with directions received from the City. The District shall have no obligation whatsoever to render bills to any of the City's sewer service customers other than (1) those who are customers of the District, and (2) those who are not customers but whose names are set forth in the appropriate written list submitted by the City to the District as aforesaid. In all instances in which the District shall be in doubt with respect to the applicability and/or determination of sewer service charges, such matters shall be referred to the City which shall determine the same and shall transmit such determinations in writing to the District. The District shall thereafter cause to be rendered all applicable sewer service bills in accordance with such determinations. In every instance in which the City shall adjust the sewer service charge applicable to a given customer, the City shall notify the District thereof in writing and the District shall thereafter cause bills to be rendered for sewer service charges to such customer in

accordance with said determination so long as the City's request is received by the District at least thirty (30) days prior to the District rendering bills for such charges.

4. The District shall cause sewer service charges to be billed in accordance with the terms and provisions of said Ordinance No. 04-1, and any amendments thereto, and any rules and regulations promulgated thereunder. In the event that the City shall at any time, or from time to time, in the future make any change in the rate schedule of sewer service charges to be billed by the District, the City shall not make such changes effective sooner than thirty (30) days from and after the date upon which written notice thereof shall have been delivered by the City to the District.

The City agrees that adjustments, if any, to billings for over or under registration of the District's water meters as the District shall determine necessary to be made for the purpose of billing for water service shall likewise be made for the purpose of billing sewer service charges.

Nothing in this Agreement shall be construed to limit in any way the District's right to discontinue its service to any of its customers at any time in order to enable the District to enforce its own regulations relative to water service or to enforce payment or partial payment of water due and owing to the District. The District shall incur no liability whatsoever to the City as the result of any loss in sewer service charges resulting therefrom. The District will discontinue water service for its customer because of the non-payment of such customer of sewer service charges, pursuant to the provisions of Section 393.015, RSMo. Under such provision, no termination of water service may occur until the District provides notice to the non-paying customer and the waiting period for disconnection of water service expires. All costs associated

with the customer's termination and reestablishment of services by the District shall be reimbursed to the District by the City through charges assessed to the sewer service customer whose water service was disconnected.

5. Monthly bills rendered for sewer service charges shall be due and payable by drop off at City Hall or by remitting them to P.O. Box 67, Westphalia, Missouri 65085 at the same time that the District's monthly bills are due and payable. The District shall on or before the 5th day of each calendar month deposit with the City Clerk the full amount of all sewer service charges billed by the District during the preceding calendar month. The District also shall deliver to the City Clerk during the months of July and January of each year, or more often if the City desires, a list of all customers which have failed to pay sewer service charges and the amount of such customer's delinquency according to the books and records of the District, and the District shall credit against any amounts due the City the amount of sewer service charges which have been billed and not received by the District during the preceding accounting period, and which sewer service charges have been paid by the District to the City when billed. The District agrees that it will properly account for and transmit to the City all sewer service charges billed or collected by District for City. The District agrees to furnish the City a fidelity bond in the penal sum of Thirty Thousand Dollars and No Cents (\$30,000.00), countersigned by a surety company satisfactory to the City, which shall indemnify the City against any loss sustained by reason of the failure of the District to turn over to the City all sums of money billed or collected by the District and due the City under the terms of this Agreement. All premiums for such fidelity bond shall be paid by the City.

6. The District's liability under the terms of this Agreement between the District and the City relative to the collection of sewer service charges, shall be limited solely and exclusively to any loss sustained by the City by reason of the District's failure to bill and account for and transmit to the City all payments made to the District on account of sewer service charges. In consideration of the District's agreement to perform the duties and responsibilities imposed upon it by this Agreement, the City does hereby release and forever discharge the District of and from any and all claims, demands, damages, actions, causes of action, or suits at law or in equity, of whatsoever kind or nature, which the City may hereafter have against the District on account of any action whatsoever either taken or failed to be taken by the District under the performance of the District's duties and obligations under the terms of this Agreement, except the District's obligation to bill and account for and transmit to the City all payments of sewer service charges received or billed by the District. As further consideration of the District agreeing to bill and receive payment of sewer service charges as provided in this Agreement, the City hereby covenants and agrees, to the extent permitted by law, that it will indemnify and save harmless the District from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind or nature, that result from information given to the District by the City or actions directly taken by the City, including attorney's fees which the District shall or may at any time sustain or incur by reason or in consequence of any alleged act or alleged failure to act by the District in performance of the District's duties and obligations under the terms of this Agreement, except for the District's obligation to bill and account for and transmit to the City all payments of sewer service charges billed and received by the District.

Unless otherwise provided in any Discontinuance of Water Service Agreement between the City and the District pursuant to Section 393.015 RSMo, it shall be the sole and exclusive obligation of the City, through its duly authorized officers and agents, to enforce collection for nonpayment of sewer service charges.

In the event a customer of the District shall make a partial payment on a bill which contains charges for both water and sewer service charges, the District shall, in accordance with 4 CSR 240-13.020(11), apply any such partial payment of the charges to the water and related charges due first and, should water and related charges be paid in full, shall apply any remaining partial payment balance to any sewer service charges due.

7. In consideration of the District's rendering bills for and receiving payments of sewer service charges, as provided in this Agreement, and transmitting to the City such sewer service payments billed and furnishing to the City lists of all customers which are delinquent in the payment of sewer service charges, the City shall pay the District the sum of Two Dollars and No Cents (\$2.00) for each Customer receiving sewer services from the City. Such administrative fee shall be paid from the City to the District on a monthly basis as hereinafter provided. In the event the City requests the District to render any service other than one of those hereinbefore set forth in this Agreement, such as, but not limited to, providing the City with data to be used for the adjustment and/or collection of sewer service charges, sending out delinquency notices on the City's forms, or making reclassifications of accounts which are required to be made as a result of (a) special instructions received by the District from the City or (b) amendments made by the City to said Ordinance No. 04-1, and any amendments thereto, or (c) changes in any rules and regulations promulgated under said Ordinance, the District shall render such additional service to

the City and shall make a separate charge therefore. Such additional charge shall be reasonably related to the cost of providing the service and shall be charged at no greater than an hourly rate of Twenty Dollars and No Cents (\$20.00) per hour. The District shall compute the total sum due it for services rendered by it over and above the sum of Two Dollars and No Cents (\$2.00) per customer per month and the amount so computed shall be billed by the District to the City Clerk in the month after it is incurred and billed with the City's regular monthly charges. At the same time that each monthly deposit of sewer service charges billed is made by the District, the District shall notify the City of its charges for the services rendered under this Agreement and the City Clerk shall then reimburse, by check, the District's charges.

8. The charges for billings of Two Dollars and No Cents (\$2.00) per sewer service customer per month and all other charges billed at no greater than an hourly rate of Twenty Dollars and No Cents (\$20.00) per hour are based upon the 2005 charges per bill. Beginning on the 19th day of April, 2005, and on said date in each subsequent year of the term hereof, said base and hourly charges will be automatically adjusted, either upward or downward, by not more than 10% per annum, in accordance with the change, if any, in the Consumer Price Index for All Items, as published by the United States Department of Labor, Department of Economic Analysis, between the index figure for the preceding year, and the index figure for the current year. All changes in charges to the City shall be rounded to the nearest one-tenth of a cent. Such change in the base or hourly charges, if any, would be effective beginning with billings prepared following the month of approval by the District.

9. The term of this Agreement shall commence on the 19th day of April, 2005 and terminate on the 18th day of April, 2006 provided, however, after the termination date, the term of this Agreement shall continue on a year to year basis until changed or terminated as hereinafter provided. The City or the District shall have the right to terminate this Agreement without cause, effective on the first day of any calendar month, provided that the City or the District shall give written notice of the District's or the City's intention to cancel said Agreement at least ninety (90) days prior to the effective date of such cancellation.

10. The District and City agree that they will develop consistent policies for the billing and collection of water and sewer service charges in the furtherance of this Agreement.

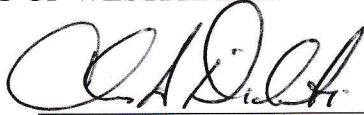
11. The construction of the sewer service system by the City is being financed by revenue bonds from the United States of America, acting through Rural Development of the United States Department of Agriculture. Since said bonds will be repaid from sewer service revenues, the proceeds under this Agreement are pledged as security pursuant to the closing documents for such bond transaction.

12. If City or District shall default in the performance or observance of any term or condition of this Agreement, the non-defaulting party shall give the defaulting party notice specifying the default to the address set forth below, and if the defaulting party shall not have cured such default within twenty (20) days of the notice, then and in any such event the non-defaulting party may, at its election, terminate this Agreement by giving the defaulting party written notice thereof.

13. This Agreement supersedes all terms in previous agreements between the District and the City and is binding upon the parties hereto and upon their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed the foregoing instrument on the 19th day of April, 2005.

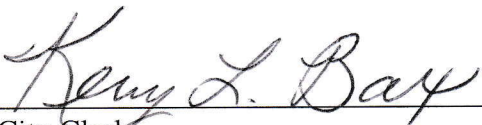
CITY OF WESTPHALIA

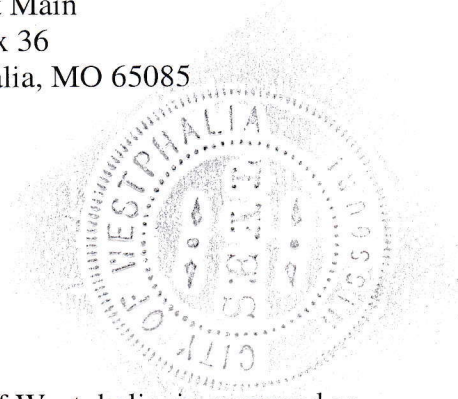
By 
Christopher A. Dickneite
Mayor

Notice Address:

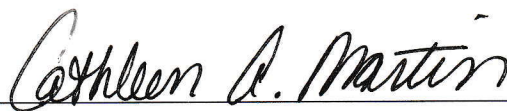
City of Westphalia - City Hall
116 East Main
P.O. Box 36
Westphalia, MO 65085

ATTEST:


City Clerk





This Agreement when approved by the Council of the City of Westphalia, is approved as to form and legality.



City Attorney

PUBLIC WATER SUPPLY DISTRICT #2

By 
Title: 

Notice Address:

Public Water Supply District #2
P.O. Box 67
Westphalia, MO 65085

ATTEST:

