

DISCONTINUANCE AGREEMENT

THIS DISCONTINUANCE AGREEMENT (“Agreement”) is made and entered into as of this _____ day of _____, 2010 by and between **Caseyville Township Sanitary Sewer District** (“District”) and the **City of O’Fallon** (“City”).

RECITALS:

WHEREAS, the District is engaged in providing sewerage service to the residential and non-residential customers who reside within the service area provided by the District as shown by the current map attached hereto and made part hereof which sets forth the boundaries of the District ; and

WHEREAS, the map may be changed from time to time to accommodate a new service area, and if that occurs, a new map will be provided to the City and will replace the map currently attached hereto; and

WHEREAS, the District collects user charges from its users of the sewerage service (“users”) so served; and,

WHEREAS, the user of the sewerage service is defined as the person(s) who is/(are) the customer(s) of the water service and/or discharges wastewater into the sewerage system; and,

WHEREAS, the City is the owner and operator of a water distribution system serving customers in areas within the boundaries of the District;

WHEREAS, the City is authorized, at the request and direction of the Executive Director of the District, pursuant to the provisions of the Illinois Municipal Code, Section 11-141-7, 65 ILCS 5/11-141-7, to contract to shut off the supply of water from its system to any premises at which the User charges for sewer service supplied by the District are delinquent for more than thirty (30) days; and

WHEREAS, the City will, at the request and direction of the Executive Director of the District, shut off said water supply in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the sum of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. When the District determines in accordance with applicable law that a User’s charges remain unpaid and are in arrears for more than thirty (30) days after rendition of a written notice of such charge sent by first class mail to each User for a particular premise, and the District makes written request to the City to terminate water service to the District’s User until such time as the User charges and all related costs are paid, the District shall, by written certification signed by the Billing Department Office Manager of the District, certify to the City’s Utility Billing Office Manager:

Comment [AU1]: Do we want to take this out since there really is no exhibit A? attached just the process

- (a) the name and address of the User that is in arrears in payment of User charges;
- (b) the address of the premises where such sewer service was received;
- (c) that said User's charges are in arrears for more than thirty (30) days after sending written notice by first class mail;
- (d) that said User has been afforded written notice by first class mail of (i) the arrearage amount, and (ii) the District's intent to terminate sewer service by means of a written request to the City to discontinue said District's User's water service;
- (e) that the District's User has been afforded a right to be heard on the correctness of the District's record of arrearage;
- (f) that all Federal and State Constitutional as well as all Federal and State statutory prerequisites applicable to the collection of debt have been properly satisfied by the District; and
- (g) that the District has complied with its own policies and procedures.

2. Per the attached "District Shutoff / Release Procedure" and upon receipt of the written request and certification as set out in Section 1, the City shall, within twenty (20) days, send employees of the City to the premises as identified by the District and terminate the water service to such premises.

3. Notwithstanding anything to the contrary herein stated, the City reserves the exclusive right at its sole discretion to process the District's requests for termination of water service on such schedules and at such times as are usually convenient to the City consistent with the City's normal business practice and procedure.

4. The District shall pay to the City, within thirty (30) days of receipt of an invoice from the City, the sum of One-Hundred Dollars (\$100.00) to cover the City's cost of terminating the water supply to each premise, unless the termination occurs during after normal working hours due to the District's. If after hour termination is needed, the cost will be One-Hundred and Fifty Dollars (\$150). Such invoice shall be sent and payable following termination of service, even if restoration is not requested. In the event that more than one hour is required for either the termination or restoration of water service to any designated premises, the District shall pay the actual cost thereof to the City based on time, material, transportation and other fixed charges. If more than one hour is required to terminate or restore water service, the District shall be notified of the charges within two (2) business days of the additional charges. The fees fixed hereunder may be amended from time to time as agreed by the parties. Restoration of water service to any designated premises requiring less than one hour shall be accomplished within the sum of One-Hundred Dollars (\$100.00) or One-Hundred and Fifty Dollars (\$150) as stated above at no additional charge. Restorations requested by the District after 2:00 pm shall not be accomplished until the next regular workday. Requests for restoration shall be communicated to the City in writing, facsimile or electronic mail.

5. The District, in addition to the sums as set out in Section 4, shall pay to the City the estimated loss of water revenues resulting from each such termination made hereunder.

The estimated loss of water revenue for each termination of residential water service shall be as follows:

From Date of Shut Off up to 4 days = \$5.00

From Date of Shut Off to 5 - 35 days = \$40.00

From Date of Shut Off to 36 - 65 days = \$80.00

From Date of Shut Off to 66 days through 90 days = \$120.00

The estimated loss of water revenue for termination of a commercial water service shall be determined on a computation of the average daily usage for the service based on the previous three full months of billings prior to the service termination for non-payment of the sewerage User charges. The total loss shall be that average daily usage revenue loss by the number of days that service was not active due to the termination for non-payment of sewerage use.

The District shall pay monthly for the lost water revenue for the period beginning with the termination through the restoration of water services. For residential and commercial property, if the water service is required to be off for longer than ninety (90) days, the account shall be considered abandoned at the end of said ninety (90) days and the lost revenue charge to the District shall cease.

6. Notwithstanding the preceding, should a new customer who was not a User at the time the arrearage owed to the District was incurred at a terminated premises apply for water service to that premises, the City may provide such service and the District will not look to such new water customer for payment of the prior sewer arrearage.

7. The City shall not be liable for any loss, damage or other claim asserted by the District Users, the owner and/or tenant of the premises, the water customer, the District or any other person, corporation, or entity based upon or arising out of the termination of water service at the request of the District. As provided by statute, the District agrees to indemnify, defend and hold the City, and its affiliates, and any of their respective employees, directors, owners, agents, successors and assigns harmless from and against any and all claims (including attorneys' fees), complaints or causes of action (whether judicial, administrative, or otherwise) arising out of actions taken by the City pursuant to any of the District's "Instruction(s) to Terminate Service."

8. The District shall handle all User communications regarding service terminations implemented pursuant to this Agreement. Communications from customers and/or District Users to the City shall be referred and directed to the District at the phone number provided by the District.

9. The City's actions required under this Agreement shall be excused if due to matters beyond its control, including but not limited to employee work stoppages, strikes, inclement weather and emergencies requiring utilization of manpower or resources elsewhere. Termination will not be completed if a local board of health, District, fire district, court of competent jurisdiction or other governmental entity having jurisdiction issues an instruction to the City so stating. At such time, the City will relay such conflicting instructions to the District and the City will not knowingly take further actions toward termination until the District notifies the City in writing that it has resolved the conflicting instructions and provides written evidence thereof. Thereafter, the District shall indemnify, defend, and hold the City harmless for actions taken by the City based on the District's notification.

10. In no event shall the City be required to disconnect a fire line service without authorization from the governmental authority responsible for fire protection to the affected property, even in cases of combined fire and domestic service lines.

11. This Agreement may be terminated by either of the parties hereto by sixty (60) days written notice given to the other party at its principal place of business.

12. This Agreement may not be assigned by the District. This Agreement may be assigned to any affiliate or successor in interest to the City.

13. This Agreement shall be governed by the laws of the State of Illinois without respect to conflict of laws principles.

14. Subject to the right of each party to terminate under Section 12, this Agreement shall have a term of one (1) year and shall automatically renew for additional one year periods.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

DISTRICT

CITY

By: _____
Name: _____
Title: _____

By: _____

ATTEST

ATTEST

By: _____
Name: _____
Title: _____

Secretary: _____

District Shutoff/Release Procedure

To initiate shut-off process:

- The District will send appropriate notification to their customers that are delinquent under the provisions of the agreement.
 - When the District's customer of record is different than the City of O'Fallon's customer of record (i.e. owners and tenants of a multi-family dwelling), the District will also provide appropriate notification to the City of O'Fallon's customer of record.
- On the 2nd and 4th Tuesdays of the month, by noon, the District will fax a list of premise numbers to the O'Fallon Utility Billing Office at 618-624-4508 for generating shut-off orders.
 - A MAXIMUM NUMBER OF 10 ACCOUNTS WILL BE ACCEPTED FROM THE DISTRICT EVERY 2 WEEKS AND WILL BE WORKED INTO THE CITY'S NORMAL ACCOUNT SHUT-OFF PROCEDURES. SHUT-OFF REQUESTS BEYOND THE 10 WILL BE ACCOMMODATED; HOWEVER, DUE TO WORKLOAD, SUCH SHUT-OFFS MAY INCUR OVERTIME CHARGES TO THE DISTRICT AS DESCRIBED IN SECTION 4 OF THE AGREEMENT.
- The O'Fallon Utility Billing Office will enter the shut off orders to be worked on Wednesday into its tracking software..
- On Friday following the day of shut offs, the O'Fallon Utility Billing Office will review the list and note accounts that were shut off along with accounts turned back on. If an account was unable to be shut off that information will also be noted. The O'Fallon Utility Billing Office will then fax the list to the District.
- The O'Fallon Utility Billing Office will create a miscellaneous invoice to the District for the orders worked based off the list.

To initiate release for turn on after customer has paid bill:

- The District will fax a request to the O'Fallon Utility Billing Office the account information to arrange for a water turn-on.
 - *Note: Customer turn-on is scheduled under the standard provisions for all City of O'Fallon water customers. Order will be scheduled for the same day if placed prior to 2:00 pm. If placed after 2:00 pm the order will be scheduled for the next business day. An adult must be present for turn on*
- The District will indicate in the fax, to request a turn-on, that the customer has paid the delinquent sewerage charges and provide a phone number that the O'Fallon Utility Billing Office can use to contact the customer to schedule the turn on of water to the premise.
- The O'Fallon Utility Billing Office will update the service order noting that the account has been released for turn on by the District. (This must be done immediately so that the representative can see the information when a customer calls in to schedule their turn on of water if a the first call from the O'Fallon Utility Billing Office is unsuccessful in reaching the customer.)