

**MINNEAPOLIS - JOINT WATER COMMISSION
WATER AGREEMENT - 2004**

This agreement made and entered into as of the 1st day of January, 2004, by and between the City of Minneapolis, a municipal corporation in Hennepin County, Minnesota, and the Joint Water Commission (“JWC”), a joint powers board formed pursuant to Minn. Stat. §471.59 by the cities of Golden Valley, Crystal and New Hope, Minnesota, all municipal corporations in Hennepin County, Minnesota,

WITNESSETH

RECITALS

WHEREAS, the City of Minneapolis operates a municipal water system known as the Minneapolis Water Works (“MWW”);

WHEREAS, it is deemed desirous by the City of Minneapolis and the JWC that the City of Minneapolis, through the MWW, sell water to the JWC pursuant to Minn. Stat. 471.59 and that the JWC receive water produced by the MWW;

WHEREAS, the MWW produces water in quantities sufficient to meet the obligations of this Agreement;

WHEREAS, the JWC has in place a water works system that serves the cities of New Hope, Crystal and Golden Valley;

WHEREAS, the City of Minneapolis has for many years via the MWW sold water to the JWC under arrangements that have served to the mutual advantage of the parties;

WHEREAS, the parties have a demonstrated history of mutual cooperation in the administration of the past agreement for the delivery of water by the City of Minneapolis through the MWW to the JWC;

WHEREAS, it is convenient for the purpose of this Agreement to refer to the City of Minneapolis in connection with the delivery of water hereunder and the other obligations pursuant to this Agreement as the MWW;

NOW THEREFORE, it is mutually agreed as follows:

1. Definition of Capitalized Terms.

- A. “Agreement” means this Agreement between the City of Minneapolis and the Joint Water Commission.
- B. “AWWA” means the American Water Works Association presently headquartered in Denver, Colorado.
- C. “Base - Extra Capacity Method” – see cost of service methodology defined below.
- D. “Base Needs”. The average daily water demand of JWC customers collectively during the months of December, January and February, as defined for emergency purposes in Section 6B.
- E. “Cost of Service Methodology”. The methodology to be used by MWW to determine the cost of providing water to the JWC. It refers specifically to the “Base - Extra Capacity Method” of allocating Cost of Service as described in the M1 Manual of Water Supply Practices published by the AWWA. As applied to this Agreement, “Cost of Service Methodology” defines the revenue requirements of the MWW on a utility basis as set forth in the M1 Manual and will be implemented using the cost of service analysis described in Section 6(B) in determining applicable water rates. The utility basis defines the costs of service as the sum of operations and maintenance costs, an allowance for depreciation and an allowance for return on capital. However, as used herein the definition of “Cost of Service Methodology” limits the revenue requirements of the MWW to operations and maintenance costs plus an allowance for depreciation but with return on capital set equal to zero. In other words, no allowance for return on capital.

- F. “Energy Surcharge”. A charge levied by a supplier of energy to a customer in response to exceedence of a negotiated maximum level of energy usage during times of peak energy demand control.
- G. “Extra Ordinary Transfer”. The transfer of funds from the Water Works Fund to any other fund of the City of Minneapolis without the receipt of services in return therefore or the transfer to the Water Works Fund from any other fund of the City of Minneapolis where no services are provided in return for the transfer.
- H. “JWC”. The Joint Water Commission formed by the cities of Golden Valley, Crystal and New Hope in Hennepin County, Minnesota, pursuant to Minn. Stat. §471.59.
- I. “Minneapolis Inside City Residential Rate”. The published price charged to residential customers living within the Minneapolis city limits expressed on a dollars per hundred cubic feet (HCF) basis. The published price may involve a rate structure involving more than a single rate per HCF, based upon season, volume of water consumed or any other variable factor that is reasonable. The JWC rate will be based on the percentage of the Minneapolis Inside Residential Rate as determined by the “Cost of Service Methodology” as described in Section 1(E) using the Cost of Service analysis of Section 6(B).
- J. “MWW”. The City of Minneapolis, a municipal corporation in Hennepin County, Minnesota, as the operator of the Minneapolis Water Works.
- K. “Off Peak”. A restriction of water delivery to those times of the day of lowest Minneapolis internal water demand.
- L. “Points of Delivery”. The connection points of the MWW distribution system to the JWC facilities where water is delivered by the MWW to the

JWC. The points of delivery are those connection points which are immediately upstream of JWC metering stations located near the Golden Valley and Crystal reservoirs where water is delivered to the JWC.

- M. “Rate Index”. The water rate charged by MWW to JWC expressed as a percentage of the Minneapolis Inside City Residential Rate.
- N. “Total Revenue”. All sources of revenue presented on an audited income statement except borrowed funds, bond proceeds and other non-operating income such as federal, state, county or other outside revenue.
- O. “Water”. Water at a point of delivery that conforms to the Federal Safe Drinking Water Act as well as all applicable state or other environmental regulations relating to potable Water.
- P. “Customer“. As the term is used in this Agreement, Customer is a person, business, or entity recipient of water under this Agreement, other than the JWC or a municipality that is a member of the JWC.
- Q. “Outside Customer”. Persons, businesses, or entities outside the jurisdictional boundaries or corporate limits of the three cities constituting the JWC, Golden Valley, Crystal, and New Hope, but may include a municipality other than the members of the JWC at the time of the execution of this agreement.

2. Sale of Water.

- A. The MWW shall sell, furnish and deliver to JWC Water from the water works system of Minneapolis for the use of JWC within the corporate limits of the Cities of Golden Valley, Crystal and New Hope and to the limited extent hereinafter provided, outside those corporate limits, for a period of twenty (20) years in accordance with the terms and conditions of this Agreement.

- B. JWC shall resell Water purchased from the MWW exclusively to Customers located within the city limits of Golden Valley, Crystal and New Hope or other outside customers served by the JWC as of the execution date of this Agreement. On the date of execution of this Agreement, the JWC shall provide to the MWW, a written list that identifies the JWC's Outside Customers existing at the date of execution. The JWC shall obtain prior written approval from MWW to supply Water to additional new Outside Customers located outside the city limits of the three cities. Approval to supply water to additional Outside Customers, other than municipalities, shall not be unreasonably withheld.
- C. MWW shall provide Water to the JWC as meets the definition of Water set forth in Section 1(O) above. Should the quality of the Water deviate from the standard set forth in the definition of Water in Section 1(O) above, MWW shall promptly inform the JWC thereof and address the deviation within a reasonable period of time. The JWC may review any water quality data maintained by MWW upon one-week prior notice. In the event of operational or water quality problems in the JWC Water system, both parties pledge to work cooperatively to resolve them in a timely manner.

3. Supply of Water

- A. The MWW will deliver up to the maximum amount of 21 million gallons of Water per day. The parties agree to develop and maintain a daily delivery schedule with an emphasis on "Off Peak" delivery and considering the water demand profile of the JWC.
- B. The maximum amount to be delivered per day shall not be increased without subsequent written agreement executed by the parties, provided

however that if requested by the JWC, the MWW shall deliver Water on an intermittent but not sustained basis in excess of the 21 million gallons per day Off Peak provided such excess is available for delivery.

- C. In the event that the JWC develops a need to increase the maximum daily Water limit, the parties agree to negotiate in good faith a delivery schedule and rate to meet that need. The JWC understands however that MWW may be unable to meet that need due to the limited capacity in the MWW System. If such capacity is available, either On-Demand or Off Peak, MWW agrees to apply Cost of Service Methodology to determine an appropriate rate to apply to the sale of the additional Water.
- D. If increased maximum daily water limit requested under Section 3(C) is unavailable on a sustained basis, the JWC, after written notice to the MWW of the JWC's intent to supplement, may supplement water from sources other than the MWW. The JWC may develop an emergency backup water supply from other sources, including groundwater, should the MWW be unable to develop an emergency backup water supply similar to that envisioned in its plans to develop an interconnection with St. Paul. IF JWC develops an emergency backup water supply, this supply may be used only if the MWW notifies the JWC that the MWW is unable to supply the JWC's needs as defined in Sec. 3(A).
- E. The MWW shall deliver the Water to the JWC at the Points of Delivery.

4. Obligation of JWC

- A. JWC Facilities. JWC shall construct, own, operate and maintain the water distribution system and storage facilities necessary to supply Water to its consumers from the Points of Delivery. JWC shall make investments in, and own all facilities necessary to the metering,

transmission, storage and distribution of Water from the existing Points of Delivery. JWC shall finance and maintain, at no expense to the MWW, its entire water system from the Points of Delivery to and within JWC. Reliable records of construction and maintenance sufficient to identify the location of all parts of such system shall be kept, all of which shall be subject to inspection by the MWW upon one week prior notice.

- B. Measurement of Water. Water delivered pursuant to this Agreement shall be measured by meters to be furnished and maintained by the JWC at its own cost and expense at existing locations. Such meters shall be subject to periodic inspection and testing by the MWW and verified by the JWC according to the AWWA standards for frequency of testing, accuracy and tolerances of such meters. The cost of testing shall be paid by the JWC.

5. Operations

- A. Working in territory of the other. The MWW and the JWC shall follow the right of way ordinances and permitting requirements of the cities in which work is carried out.
- B. Temporary Suspension of Service by MWW. Subject to the conditions and limitations set forth herein, when necessary to make repairs to, or changes in, its lines or system, the MWW may, without incurring any liability therefore, suspend service for such periods as may reasonably be necessary. Unless such repairs or changes are due to an emergency, the MWW agrees to provide the JWC with reasonable advance notice of the suspension in service and the repairs and changes to be made, and to cooperate with the JWC to adjust the daily delivery schedule in anticipation of the suspension of service. The parties recognize that such emergency temporary service interruptions may involve restrictions that

apply to all Minneapolis customers. In accommodating the needs of the JWC during periods when service is suspended, both emergency and otherwise, the JWC shall receive the same consideration as given to Minneapolis inside-city customers. The MWW shall not incur any liability for interruptions in service which result from its failure to supply Water due to the inability to secure processing materials, breakdown or damage to processing, pumping, transmission or distribution facilities, acts of war, sabotage, work stoppage, labor disruptions or conditions or circumstances beyond the authority of the MWW to control.

6. Water Rate

- A. Rates for calendar years 2004 through 2008 inclusive. The rate for Water sold to the JWC by the MWW up to 21 million gallons per day shall for the period July 1, 2004 to December 31, 2008 be as set out in **Attachment A**, subject however to any applicable Energy Surcharge calculated pursuant to Section 7 or adjustments due to Extra Ordinary Transfers pursuant to Section 8.
- B. Establishing rates for period of the Agreement beyond 2008. For the period after the year 2008, Water purchased by the JWC shall be at rates which are fair and equitable, calculated in accordance with the Cost of Service Methodology. Utilizing the Cost of Service Methodology, the MWW shall conduct a Cost of Service analysis using the calendar year 2007 data to serve as the basis for establishing the Water rates that will apply for the five-year period beginning January 1, 2009. In establishing the Water rate for the JWC, all costs of service which are incurred to provide Water to other customers of the City of Minneapolis but which are not incurred in providing Water to the JWC shall be set aside. In this

fashion the rate to be charged to the JWC will be expressed as a percentage of the Minneapolis – Inside City Residential Rate, based upon the second- to-the-last year’s study of the preceding 5 year period. For example, if it is determined, utilizing Cost of Service Methodology using 2007 data, that it cost 45% less to provide Water to the JWC than to a Minneapolis resident customer, then the rate applicable to the JWC for years 2009 through 2013 shall be indexed at 55% of the Minneapolis – Inside Residential Rate for the five-year period beginning January 1, 2009 and through December 31, 2013. Thus whatever the Minneapolis – Inside City Residential Rate might be at any point during the five-year period, for purposes of this example the JWC rate would be 55% thereof. The five-year periods consist of calendar years 2004 through 2008, 2009 through 2013, and 2014 through 2018.

Similar Cost of Service studies utilizing in each case the Cost of Service Methodology, shall be conducted at five-year intervals through the term of this Agreement and shall be completed and submitted to the JWC by June 31 of the last year of each five-year period, circumstances permitting. The Cost of Service studies shall be subject to JWC review of accuracy of the methodology and costs.

Water sold to the JWC by the MWW in excess of 21 million gallons per day shall at any time during the course of this Agreement be priced at a surcharge of 15% applied to the entire daily purchase unless the maximum amount of 21 million gallons of Water a day has been increased to a higher maximum amount pursuant to a written agreement pursuant to the

provisions of Section 3, in which case the 15% surcharge shall be applied only if that new higher maximum rate is exceeded.

7. Energy Surcharge

- A. Calculating the Energy Surcharge. This section defines the circumstances under which the JWC would reimburse Minneapolis for the JWC's portion of any Energy Surcharge and how the JWC's portion would be calculated. The calculation of any Energy Surcharge shall be based on the total scheduled Water demand requirement of Minneapolis (hereinafter the "Cumulative Minneapolis Water Demand". The Cumulative Minneapolis Water Demand is comprised of (a) Minneapolis' own portion of this total Water demand, (b) the "JWC Water Demand", which is the scheduled Water demand of the JWC then in effect per the delivery schedule, and (c) the scheduled Water demand of other suburbs or individuals that contract with Minneapolis for Water. When the energy level required to deliver the Cumulative Minneapolis Water Demand exceeds the negotiated maximum level with the energy supplier during times of peak energy demand control, Energy Surcharges may be imposed by the energy supplier.
- B. Liability for Charges. When Energy Surcharges have been levied by the energy supplier, the JWC will be responsible for reimbursing Minneapolis for a portion of the surcharges if (1) deliveries of Water to the JWC have occurred on the dates and during the times surcharges are imposed, and (2) the gallonage of the deliveries to the JWC on those dates and times exceed the scheduled daily JWC water demand in effect at that time.
- C. JWC Share of Surcharge. When Energy Surcharges have been levied and the JWC has received Water deliveries in excess of the scheduled JWC

Water Demand as described above, the JWC will reimburse Minneapolis for JWC's pro-rata share of those surcharges. The JWC's pro-rata share is the ratio of the amount of Water delivered to the JWC in excess of the scheduled JWC Water Demand to the total amount of Water in excess of the Cumulative Minneapolis Water Demand. The Energy Surcharges to be paid pursuant to this Section are not a part of the rates or of the rate calculations described in other sections of this Agreement, but are one-time charges added to the regular monthly Water billings.

- D. Notice. In the event that the JWC requests delivery of Water in excess of the scheduled delivery during times when Energy Surcharges are in effect, the MWW will inform the JWC of the surcharge requirement.
- E. Access to Records. The JWC shall have reasonable access to the records used to determine the surcharge apportionment described above.

8. Adjustment in Rates Due to Transfers of Water Funds

- A. The rates for Water sold by Minneapolis to the JWC shall be adjusted as necessary to reflect any Extra Ordinary Transfers. Though such transfers are not anticipated or intended, this Section will describe the adjustment of rates which shall occur in those events. In the event that Extra Ordinary Transfers occur the MWW shall notify the JWC of that fact within thirty (30) calendar days of the approval of a budget or budget change that relates to such a transfer of monies. Adjustments to the rate charged to the JWC shall thereafter be made as follows:
- B. The amount of the Minneapolis Water Works revenues transferred to the Minneapolis General Fund, or the amount of Minneapolis General Fund monies transferred to the Minneapolis Water Works Fund, whichever may be applicable, shall first be expressed as a percentage of the Total Revenue

of the approved budget to Minneapolis Water Works in the calendar year of the transfer.

- C. In response to an Extra Ordinary Transfer, the MWW shall adjust the Rate index accordingly through the application of the Cost of Service Methodology and the revenue requirements defined therein.

9. Consumer Volume Restrictions

Any restrictions imposed by the MWW upon its own consumers shall be simultaneously imposed by the JWC upon its consumers providing the cities of Golden Valley, Crystal, and New Hope are timely notified by the MWW. MWW will not require the JWC to impose any restriction on JWC customers that are not imposed on MWW customers except in the event of routine JWC exceedance of contract limits defined in Sec. 3 (A), and for nonpayment of water bills as required pursuant to Sec. 10, and in emergencies such as a pipe rupture affecting JWC customers but not other MWW customers. The JWC shall make reasonable efforts to achieve a goal of 18 million gallons per day (mgd) maximum daily purchase.

10. Meter Reading and Billing

Meter reading and billing for services provided under this contract shall be in accordance with current MWW practices as established by the MWW and are subject to change at any time by the MWW. Such services shall be provided to the JWC by the MWW without discriminating against the JWC. However, payments for billed services shall be made by JWC to the MWW within thirty days of the invoice date for water purchased during the previous calendar month.

11. Indemnification by JWC

JWC agrees to indemnify and save Minneapolis harmless from any and all claims

or demands for damages arising out of JWC's operations or the actions or neglect of JWC's officers, employees or agents, relating to this Agreement or relating to the transport, use or disposal of Water supplied pursuant to this Agreement, or from the use, installation, maintenance and repair of JWC's facilities downstream from the points of delivery of Water to the JWC as set forth in this Agreement, and will assume the defense of any actions arising therefrom in which Minneapolis is made party defendant; Minneapolis shall give JWC prompt notice of any such action. The foregoing indemnification, and any liability assumed by JWC as a result thereof, shall be subject to the limits of liability and other provisions set forth in Minnesota Statutes, Chapter 466.

Nothing in this Agreement constitutes a waiver of defenses or liability limits available to the JWC under law.

12. Indemnification by Minneapolis

Minneapolis agrees to indemnify and save JWC harmless for any and all claims based on the quality of the Water supplied to JWC by Minneapolis to the points of delivery, as described in Section 1(L) of this Agreement, which claims arise or may result from Minneapolis' operations or the actions or neglect of Minneapolis' officers, employees or agents pursuant to this Agreement, or from the use, installation, maintenance and repair of Minneapolis facilities inside or outside of Minneapolis or the reading of JWC's master meters by Minneapolis personnel, and will assume the defense of any actions arising therefrom in which JWC is made a party defendant. JWC shall give Minneapolis prompt notice of such action. The foregoing indemnification, and any liability assumed by Minneapolis as a result thereof, shall be subject to the limits of liability and other provisions set forth in Minnesota Statutes, Chapter 466, and subject to the limitations on MWW liability contained in Sec. 5(B).. Nothing in this Agreement constitutes a waiver of defenses or liability limits available to the MWW

under law.

13. Amendment, Modification or Waiver

No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or their duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by either party of any breach or default of this Agreement shall not impair or prejudice any right arising from any other breach or default.

14. This Agreement supercedes all other agreements and understandings between the JWC and MWW.

15. Default or Breach and Remedies

A. In the event that either party determines that the other is in default of, or has breached any of the terms or provisions of this Agreement, that party shall provide written notice to the other party. Notice shall state in particular the manner in which the Agreement has been violated. The party so notified shall have a reasonable period of time to correct the conditions specified in the notice, however the parties acknowledge that Minnesota Statutes §471.425, subd.2 (c) requires prompt payment by a joint powers organization within 45 days of receipt of the invoice.

B. Should the alleged default or breach relate to a matter of public health or safety, and the required correction is not made within a reasonable period of time, then the party alleging the default or breach shall have the option to immediately seek injunctive or other judicial relief to enforce the making of the correction.

C. Should the alleged default relate to the non-payment by the JWC of services billed pursuant to Section 10 of this Agreement, MWW shall have the right to seek payment by any lawful means and as provided by this contract, at its

discretion, including by obtaining and enforcing money judgments and levying property taxes against the JWC for the amount owing. The MWW shall have the right to terminate water service to the JWC in the event that the JWC fails to make payments lawfully due and noticed pursuant to the provisions of Sections 10 and 15(A). Failure of the JWC to make such payments will subject the JWC to cancellation or suspension of services as stated in Section 15. None of these remedies are waived by failure to assert them for any previous non-payment. The MWW's right to terminate delivery and to terminate this Agreement is not subject to the mediation provisions of this Agreement. The MWW may terminate this Agreement for repeated non-payment or late payments upon 6 months written notice notwithstanding any other provisions of this Section.

D. If the default or breach has not been cured within a reasonable period of time after the notice as required in subsection A of this Section 15, then in addition to, or in lieu of the remedies provided for in subsection B and C of this section 15, the party that has determined that a breach has occurred and given the required notice shall have the right to terminate this Agreement upon five years written notice. Provided, however, the parties agree that prior to initiation of termination they will be required to participate in mediation in good faith with the goal of resolving whatever conflict or issue that would otherwise give the right to terminate as provided therein. The mediation shall be led by a mutually-acceptable, independent third party. Should the parties agree that mediation has reached an impasse, or when mediation has been underway for six months without resolution, then the party seeking to terminate this Agreement may proceed to terminate this Agreement with five years written notice.

16. Joint Planning and Governance

The parties agree to participate in a joint MWW/JWC water task force that will

meet regularly over the next three years to consider a stronger governance role for the JWC in the MWW water system, emergency interconnections with neighbors of the JWC, conjunctive use of JWC groundwater and MWW river water, development of an emergency backup water supply, and the use of JWC groundwater to augment MWW's supplies. The parties agree to prepare an interim reports to the cities within two years and a final report or reports within three years. Such reports to be prepared either jointly or separately.

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

WITNESSETH:

CITY OF MINNEAPOLIS
A Municipal Corporation

JOINT WATER COMMISSION

Printed Name of Department Head

By: _____

Signature of Department Head

Its _____

Approved as to Form:

Attest: _____

City Attorney/ Assistant City Attorney

Printed Name of Finance Officer/Designee

Signature of Finance Officer/Designee

MINNEAPOLIS – JOINT WATER COMMISSION WATER AGREEMENT

Attachment “A”

Water rates for water sold by the MWW to the JWC, up to 21 million gallons per day, shall be as follows:

Year	Water Rate, per hundred cubic feet	Water Rate, per thousand gallons	Percentage Increase
2004	\$1.31	\$1.75	
2005	1.41	1.88	7.6
2006	1.50	2.00	6.6
2007	1.54	2.06	2.9
2008	1.59	2.12	2.8

(Based on 55.0% of the inside city rate in 2004. Before any adjustments due to transfers to or from the Water Works Fund.)