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ATTORNEYS AT LAW

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June 26, 2000

FILED²

JUN 26 2000

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Re: Water Service Area Territorial Agreement
Public Water Supply District No. 2 of St. Charles County/City of Wentzville

WO-2000-849

Dear Mr. Roberts:

Please find enclosed for filing an original and eight (8) copies of the Joint Application For Approval Of A Territorial Agreement filed on behalf of Joint Applicants Public Water Supply District No. 2 of St. Charles County and the City of Wentzville. Also please find enclosed the filing fee check in the amount of \$400.00 made payable to the Director of Revenue as required by 4 CSR 240-51.

Copies of this filing have been sent this date to the General Counsel's Office and the Office of the Public Counsel. Thank you.

Sincerely,

Brent Stewart

Brent Stewart

CBS/bt

Enclosure

cc: General Counsel
Office of the Public Counsel
Mark Piontek
Robert M. Wohler

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILE
JUN 26 2000

Missouri Public
Service Commission

In the Matter of the Joint Application of)
the Public Water Supply District No. 2 of)
St. Charles County, Missouri and the City)
of Wentzville, Missouri for Approval of)
a Territorial Agreement Concerning)
Territory Encompassing part of St. Charles)
County, Missouri.)

Case No. WO-2000-249

JOINT APPLICATION FOR APPROVAL OF A TERRITORIAL AGREEMENT

COME NOW Joint Applicants Public Water Supply District No. 2 of St. Charles County, Missouri and the City of Wentzville, Missouri, pursuant to Section 247.172 RSMo 1994, 4 CSR 240-2.060 (13), and 4 CSR 240-51, and for their Joint Application For Approval Of A Territorial Agreement, respectfully state as follows:

1. Applicant Public Water Supply District No. 2 of St. Charles County, Missouri ("District") is a public water supply district organized and existing under Chapter 247 RSMo 1994 with its principal office and place of business located at 100 Water Drive, O'Fallon, Missouri 63366. The District currently provides water service at retail and at wholesale to customers located within the District's water service area in and around St. Charles County and Warren County, Missouri.

2. Applicant City of Wentzville, Missouri ("City") is a political subdivision of the State of Missouri and a fourth class city organized and existing under Chapter 79 RSMo 1994. The City is located in St. Charles County, Missouri and it operates a municipally-owned water utility. The City's principal office is located at 310 Pearce Blvd., Wentzville, Missouri 63385.

3. All communications, correspondence, notices, orders and decisions regarding this application should be addressed to:

Charles Brent Stewart
STEWART & KEEVIL, L.L.C.
1001 Cherry Street, Suite 302
Columbia, Missouri 65201
(573) 499-0635
(573) 499-0638 (Fax)

with a copy sent to:

Mark C. Piontek
LEWIS, RICE & FINGERSH, L.C.
216 West Main
P.O. Box 1040
Washington, Missouri 63090
(636) 239-7747
(636) 239-8450 (Fax)

Robert M. Wohler
Attorney at Law
225 S. Main Street, Suite 100
O'Fallon, Missouri 63366
(636) 272-6601
(636) 272-3405

4. On February 9, 2000, and after several months of negotiations, the Joint Applicants executed a water service territorial agreement (the "Agreement") pursuant to Section 247.172 RSMo 1994. Pursuant to 4 CSR 240-2.060(13), a copy of the Agreement is attached hereto and incorporated herein by reference as **Appendix A**.

5. The Agreement specifically designates the mutually agreed to water service areas of the Joint Applicants. The Agreement also sets forth any and all powers granted to the District by the City to operate within the corporate municipal boundaries of the City and any and all powers granted to the City to operate within the boundaries of the District.

6. As the Agreement only will apply to *new* customers, no existing customers of either the District or the City will have their water service supplier changed by the Agreement.

7. The Agreement will enable the Joint Applicants to avoid wasteful and costly

duplication of water utility services within the specified service areas, is consistent with the provisions of Section 247.172 RSMo 1994, and is not, therefore, detrimental to the public interest. In fact, the Agreement is in the public interest because it displaces destructive competition to the benefit of the Joint Applicants' respective ratepayers.

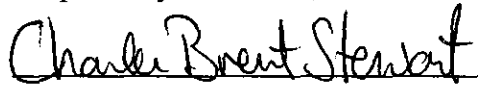
8. The Agreement in no way affects or diminishes the rights and duties of any water supplier not a party to the Agreement to provide service within the boundaries designated in the Agreement.

9. Because Joint Applicants are publicly-owned political subdivisions of the State of Missouri and are otherwise not subject to regulation by the Commission, the provisions of 4 CSR 240-2.060(13) (B) and (D) do not apply for purposes of this Joint Application. Pursuant to 4 CSR 240-2.060(13)(A), Joint Applicants are required to include with the Agreement a legal description designating the boundaries under the Agreement. Joint Applicants' engineers have been working on and are currently completing such a legal description although it is not yet finalized. As such, pursuant to 4 CSR 240-2.060(2) Joint Applicants' request a temporary waiver of this portion of 4 CSR 240-2.060(13)(A), until such time as the engineers provide the legal description to Joint Applicants and same can be filed in this proceeding.

10. Concurrent with this filing, Joint Applicants have submitted a check in the amount of four hundred dollars (\$400.00) pursuant to 4 CSR 2.060(13) (E) and 4 CSR 240-51.

WHEREFORE, Joint Applicants Public Water Supply District No. 2 of St. Charles County, Missouri and the City of Wentzville, Missouri respectfully request that the Commission approve Joint Applicants' territorial agreement as expeditiously as possible.

Respectfully submitted,



Charles Brent Stewart, MoBar# 34885

STEWART & KEEVIL, L.L.C.

1001 Cherry Street, Suite 302

Columbia, Missouri 65201

(573) 499-0635

(573) 499-0638 (fax)

Stewart499@aol.com

ATTORNEY FOR JOINT APPLICANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Joint Application and appendices has been sent to the Office of the Public Counsel and to the Commission's General Counsel's Office, by hand-delivery, this 26th day of June, 2000.



STATE OF MISSOURI)
) ss
COUNTY OF ST. CHARLES)

JAMES T. BLAIR

~~Catherine Cobb~~, of lawful age, being duly sworn, states that she is the **VICE** President of Applicant Public Water Supply District No. 2 of St. Charles County, Missouri, that she has read the above and foregoing Joint Application, including appendices attached thereto, and that the statements made therein and the contents of the appendices attached thereto are true and correct according to his best information and belief.

James T. Blair V.P.

Subscribed and sworn to before me this 13th day of June, 2000.

[Signature]
Notary Public

[seal]

My commission expires:

My Commission Expires: August 20, 2001
St. Charles County
STATE OF MISSOURI
Notary Public - Notary Seal
DAVID B. RENDLEMAN

STATE OF MISSOURI)
) ss
COUNTY OF ST. CHARLES)

_____, of lawful age, being duly sworn, states that he is the _____ of Applicant City of Wentzville, Missouri, that he has read the foregoing Joint Application, including appendices attached thereto, and that the statements made therein and the contents of the appendices attached thereto are true and correct according to his best information and belief.

Subscribed and sworn to before me this ____ day of June, 2000.

Notary Public

[seal]

My commission expires:

STATE OF MISSOURI)
) ss
COUNTY OF ST. CHARLES)

Catherine Cobb, of lawful age, being duly sworn, states that she is the President of Applicant Public Water Supply District No. 2 of St. Charles County, Missouri, that she has read the above and foregoing Joint Application, including appendices attached thereto, and that the statements made therein and the contents of the appendices attached thereto are true and correct according to his best information and belief.

Subscribed and sworn to before me this _____ day of June, 2000.

Notary Public


[seal]

My commission expires:

STATE OF MISSOURI)
) ss
COUNTY OF ST. CHARLES)

ROBERT M. WOHLER, of lawful age, being duly sworn, states that he is the CITY ATTORNEY of Applicant City of Wentzville, Missouri, that he has read the foregoing Joint Application, including appendices attached thereto, and that the statements made therein and the contents of the appendices attached thereto are true and correct according to his best information and belief.

Subscribed and sworn to before me this 12th day of June, 2000.



Notary Public

[seal]

My commission expires: 12-20-2001

WATER TERRITORIAL AGREEMENT

**PUBLIC WATER SUPPLY DISTRICT NO. 2 OF ST. CHARLES COUNTY AND
CITY OF WENTZVILLE**

JUNE 26, 2000

APPENDIX A

TERRITORIAL AGREEMENT

INTERGOVERNMENTAL TERRITORIAL AGREEMENT

This Agreement made and entered into this 9 day of February, 2000 by and between Public Water Supply District No. 2 of St. Charles County, Missouri (hereinafter the "District") and the City of Wentzville, Missouri (hereinafter the "City").

Whereas, the 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 now denied such privileges thereby promoting public health and sanitation, and making available conveniences not otherwise possible for the general public welfare; and

Whereas, the City is a political subdivision of the State of Missouri organized and existing under Sections 79.010 to 79.400 RSMo. located in St. Charles County operating municipally owned utilities which purchases water for its inhabitants from the District; and

Whereas, the District's and the City's boundaries are not coequal but do overlap in certain portions of their respective areas; and

Whereas, Section 247.172 RSMo. provides that competition to sell and distribute water, as between and among public water supply districts and municipally owned utilities may be displaced by written territorial agreements upon approval of the Missouri Public Service Commission; and

Whereas, the District and the City desire to enter into this Agreement in order to avoid wasteful duplication of facilities, stranded investment and underutilized system

capacity and to allow orderly development, efficient planning for water system expansion and improvement, effective utilization of existing and future system capacity, efficient service and to minimize disputes which may result in higher costs in serving each party's respective inhabitants.

Now, Therefore, in consideration of the mutual covenants, conditions, obligations, promises, restrictions and agreements herein contained, the District and the City agree as follows:

1. For purposes of this Agreement the following terms shall have the following meaning:

a. City: the City of Wentzville, Missouri.

b. Customer: includes any natural person, firm, association, partnership, business trust, public or private corporation, political subdivision or any agency, board, department or bureau of the State of Missouri or the U.S. Government or any other legal entity which has requested or is receiving water service. Any customer who has requested or is receiving water service at more than one structure shall be a new and different customer at each structure at which water service has been requested.

c. Customer service lines: includes all water service lines from the water main to the customer.

d. District: Public Water Supply District No. 2 of St. Charles County, Missouri

e. Service: shall mean water supply service to a customer.

f. Structure: shall mean an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus. A "structure" shall include an original structure and any contiguous addition to or expansion thereto and a replacement of a previously existing structure.

2. 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

notwithstanding that any portion of said service area may be annexed by the City after the effective date of this Agreement.

3. 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.

4. Neither party may furnish, make available, render or extend service to a structure or customer or for use within the territory of the other party either directly, indirectly or through another entity controlled by the party, in whole or in part, excepting sales to each other.

5. The location of a structure or customer for purposes of this Agreement shall be the geographical location at which service is actually used, regardless of the metering point or point of delivery. The first owner of a new structure who requests and receives service at a structure which is located on or crossed by any mutual boundary line described in Paragraphs 2 and 3 dividing the service territories of the parties shall be permitted to choose either party for permanent service. Thereafter that party shall exclusively serve that structure.

6. The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the service area of the other.

Such Addendum referred to above shall be filed with the Executive Secretary of the Missouri Public Service Commission in the same manner as a motion or other pleading, with a copy submitted to the Office of Public Counsel.

Each Addendum shall consist of a notarized statement identifying the structure, the party to serve the structure and the justification for the Addendum and indicating that the parties support the Addendum.

Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served which acknowledges such customer's receipt of notice of the contemplated service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Public Service Commission and shall indicate the customer's consent to be served by the Party contemplated by the Addendum.

If the Staff of the Public Service Commission or Office of Public Counsel do not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties. However, if a pleading in opposition to the Addendum is filed by the above listed parties, the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff or Office of Public Counsel has forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.

Each party, pursuant to an executed Addendum, shall have the right to provide temporary service until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an Addendum until the effective date of an Order of the Commission or a court regarding the removal of same.

7 This Agreement shall become effective upon approval by the Missouri Public Service Commission pursuant to Section 247.172 RSMo. The term of this Agreement shall be twenty (20) years. Performance of the parties is contingent upon all of the following having occurred no later than May 1, 2000, unless such condition is waived, extended or modified by agreement in writing signed by an officer of each party hereto:

- a: All required approvals of the City's Board of Aldermen or City Council.
- b: All required approvals of the District's Board of Directors.
- c: Approval of the transaction by the Public Service Commission of Missouri.

8. The parties agree to undertake all actions reasonably necessary to implement this Agreement.

9. In the event any controversy or claim by or against either party arises out of this transaction or the subject matter hereof after the effective date of this Agreement, each party shall make available to the other copies of such relevant records as may reasonably be requested pertaining to the controversy or claim.

10. If either party shall default in their performance under this Agreement or in the event of a breach of this Agreement, which default or breach results in the expenditure of attorney's fees to enforce the terms of this Agreement or to recover damages for breach of this Agreement, then the prevailing party shall receive their reasonable and actually incurred attorney's fees and costs in addition to any other damages recovered. In the event of a breach or threatened breach by either party the

other party shall be entitled to seek an injunction restraining the breach or threatened breach in addition to any other remedies available at law or in equity.

11. If the Public Service Commission of Missouri does not approve the provisions of this Agreement, then it shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.

12. Neither 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.

13. This Agreement shall be binding on the parties and all successors, assigns or affiliates of the City and the District.

14. This Agreement shall in no way affect either party's right to construct such collection, distribution, treatment, storage, pumping, production and transmission facilities within the designated service area of the other as that party deems necessary, appropriate or convenient to provide service to its customers not inconsistent with the terms of this Agreement and as otherwise allowed by law. This Agreement shall in no way affect either party's right to construct, operate, maintain and repair such sanitary sewer collection and sanitary treatment facilities within the designated service area of the other as that party deems necessary, appropriate or convenient to provide sanitary sewer service to its customers as allowed by law.

15. This Agreement shall in no way affect that certain agreement between the parties entitled AGREEMENT FOR CONNECTION OF UTILITIES AND WATER PURCHASE CONTRACT dated September 10th, 1980.

16. This Agreement constitutes the entire agreement between the parties relating to the allocation of water service rights in the territory described herein.

IN WITNESS WHEREOF, the parties have executed this agreement this 9 day of February, 2000.

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

By: Catherine Cobb
Catherine Cobb, President

ATTEST:

Mike Dougherty
Mike Dougherty, Clerk

CITY OF WENTZVILLE, MISSOURI

By: Vickie Boederer
Mayor

ATTEST:

Vivian Skellman
City Clerk

STATE OF MISSOURI)
COUNTY OF St. Charles) SS:

On this 1st day of March, 2000, before me appeared Catherine Cobb to me personally known, who, being by me duly sworn, did say that she is the 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 Catherine Cobb acknowledged said instrument to be the free act and deed of said corporation.

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

Nancy A. Bertrand
Notary Public

My term expires:

Nancy A. Bertrand
Notary Public, State of Missouri
County of St. Charles
My Commission Expires 05/13/00

STATE OF MISSOURI)
COUNTY OF St. Charles) SS:

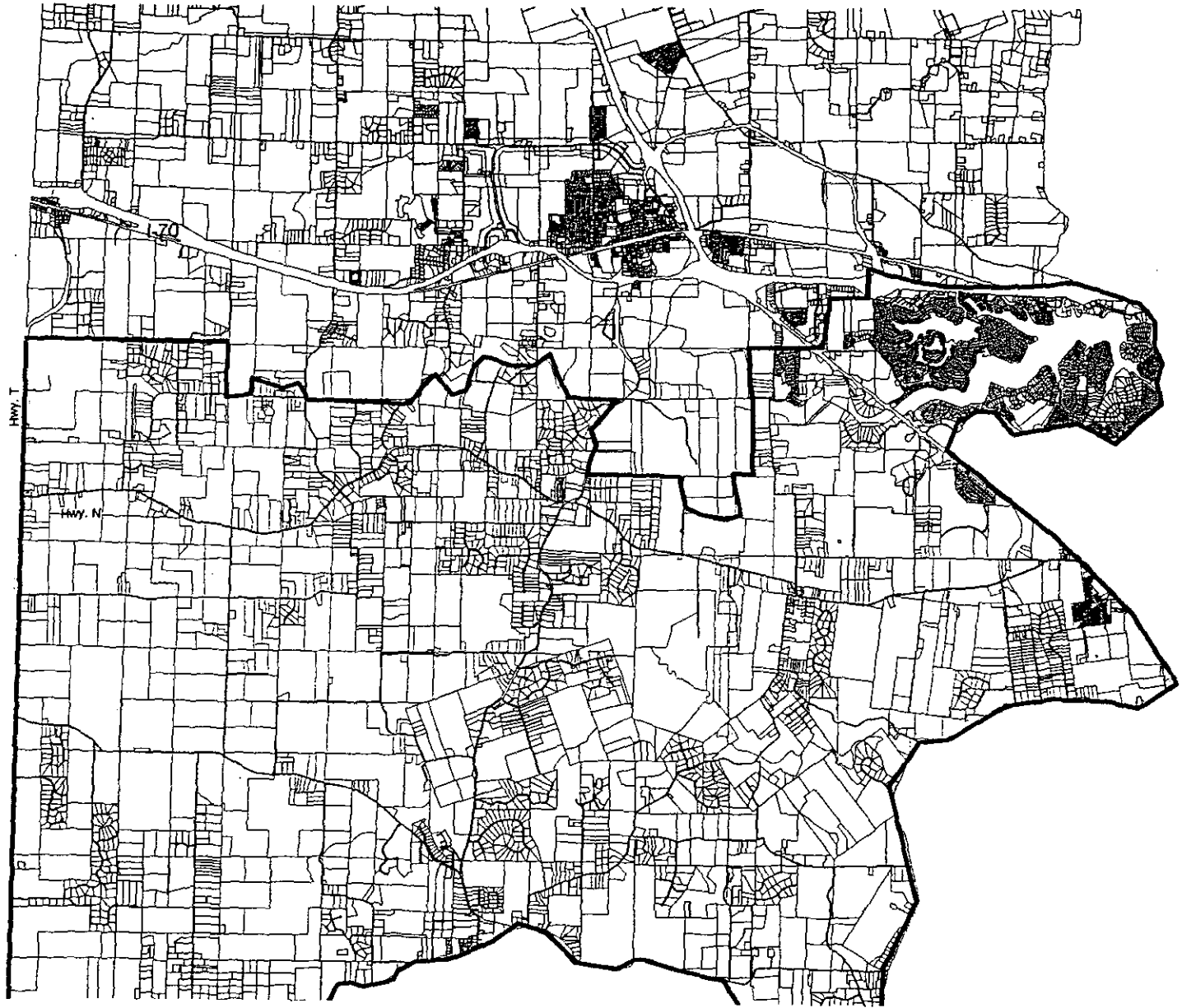
On this 10 day of February, 2000, before me appeared Vickie Boedeker to me personally known, who, being by me duly sworn, did say that (s)he is the Mayor of the City of Wentzville, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed on behalf of said City, by authority of its Board of Aldermen; and said Vickie Boedeker acknowledged said instrument to be the free act and deed of said City.

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

Vitula Skillman
Notary Public

My term expires:

"OFFICIAL SEAL"
Vitula Skillman, Notary Public
St. Charles County, State of Missouri
My Commission Expires 3/17/2001



Territorial Agreement
Water Service
City of Wentzville
and
Water District No.2

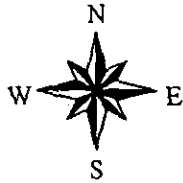


Exhibit A
Water District No. 2
Service Area

Territorial Agreement
Water Service
City of Wentzville
and
Water District No.2

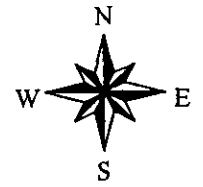
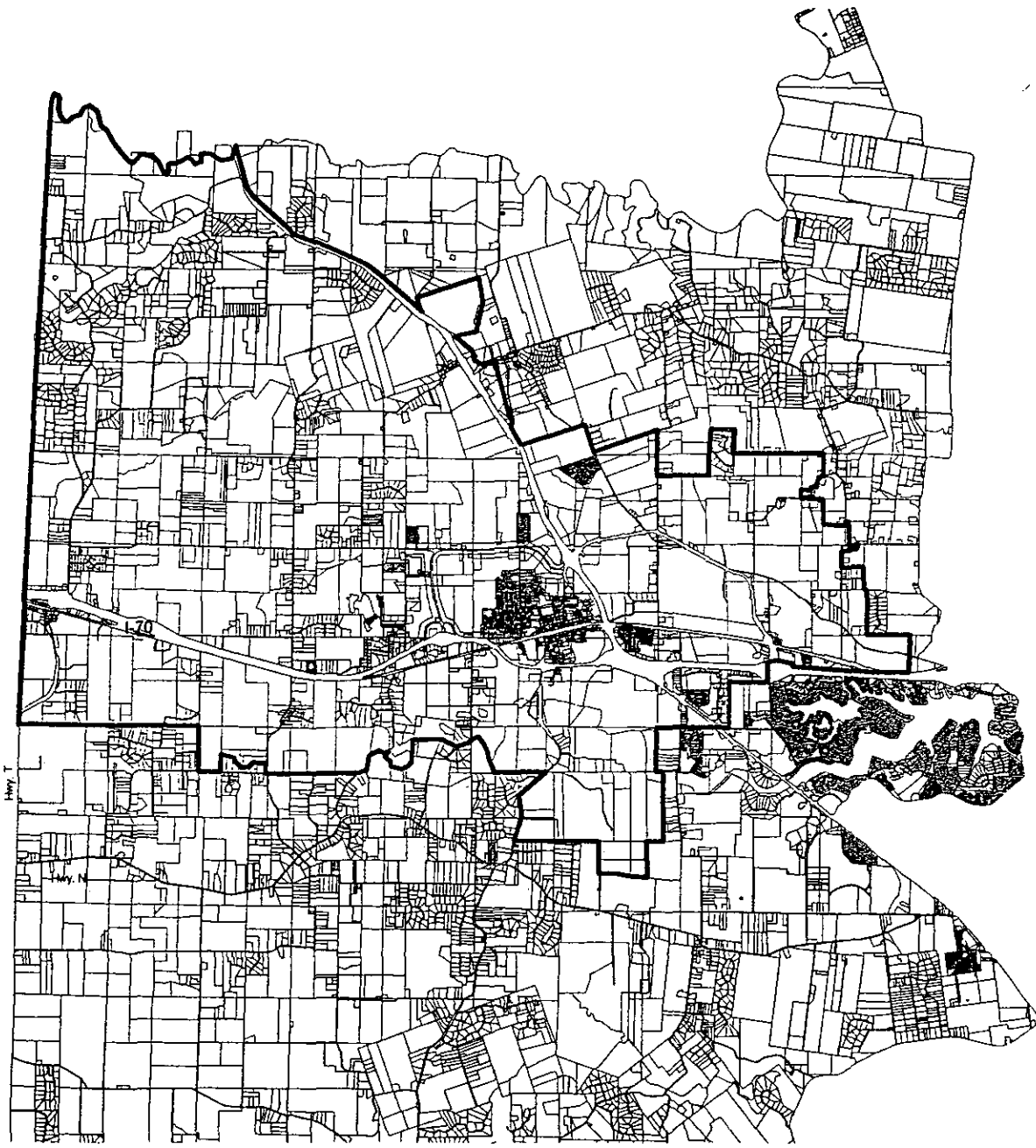


Exhibit B
City of Wentzville
Service Area