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2015 APR 10 AM 11:00
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April 10, 2015

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

Re: Case No UWI-W-15-02

Dear Ms. Jewell:

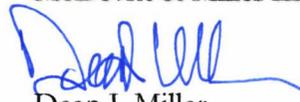
Enclosed for filing please find an original and seven (7) copies of United Water Idaho Inc.'s and City of Boise's Application and Request for Modified Procedure.

Also enclosed are the original and nine (9) copies of the Testimony of Gregory P. Wyatt and Neal Oldemeyer. One copy of each of these Testimonies has been designated as the "Reporter's Copy." In addition, a disk containing MS Word versions of the Testimonies is enclosed for the Reporter.

If you have any questions, please do not hesitate to contact me.

Kindly return a stamped copy.

Very Truly Yours,
McDevitt & Miller LLP


Dean J. Miller

DJM/hh

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2015 APR 10 AM 11:00

IDAHO PUBLIC UTILITIES COMMISSION

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Attorney for City of Boise

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT
APPLICATION OF UNITED WATER
IDAHO INC., AND THE CITY OF BOISE,
IDAHO FOR APPROVAL OF AN
AGREEMENT FOR REPLACEMENT AND
OPERATION OF FIRE HYDRANTS AND
RELATED RATE MAKING TREATMENT

Case No. UWI-W-15-02

**APPLICATION AND REQUEST
FOR MODIFIED PROCEDURE**

COME NOW United Water Idaho Inc., (“United Water”) and the City of Boise, Idaho (“Boise”), pursuant to RP 52. *et. Seq.*, and apply to the Commission for the issuance of the Orders requested herein, and in support thereof, respectfully show as follows, to wit:

PARTIES

1. United Water is a water corporation within the meaning of the Idaho Public Utility Law and is subject to the jurisdiction of the Commission. For over a hundred years United Water, and its predecessors, has provided domestic water within the City of Boise and surrounding areas of Ada County, Idaho. It's Certificate of Public Convenience and Necessity, on file with the Commission, is 146, as amended.

2. Boise is a municipal corporation organized under the laws of the State of Idaho with authority to provide the health, safety and welfare of its citizens. Boise has the statutory authority to franchise and contract with water utility providers operating within the City of Boise.

FACTUAL BACKGROUND

3. Boise owns, operates and maintains approximately 6,700 fire hydrants within its municipal boundaries. United Water provides water in sufficient pressures to activate the fire hydrants in the event of a fire emergency.

4. As explained in the accompanying Direct Testimony of Boise's Director of Public Works, Mr. Neal Oldemeyer, the arrangement described above is an anomaly in Idaho. In the normal circumstance, the entity that provides water for fire suppression also owns, operates and maintains the associated fire hydrants. This anomalous relationship has existed for many years and neither Boise nor United Water has been able to find historical documents explaining the origins of the arrangement.

THE AGREEMENT

5. Boise and United Water have entered into an *Agreement for Replacement and Operation of Fire Hydrants* (“Agreement”) a true and correct copy of which is attached hereto as Exhibit 1.

6. Pursuant to the Agreement, United Water will, over a period of years, assume ownership and operation of fire hydrants within the Boise municipal limits. More specifically, in each calendar year Boise will identify existing hydrants that are approaching the end of their useful life. United Water will then install replacement hydrants, thereafter operate, and maintain the replacement hydrants.

7. The replacement cycle is based on an assumed useful life of fire hydrants of forty (40) years. The parties estimate that in each calendar year on average approximately 168 fire hydrants will be replaced. United Water estimates that its initial annual capital investment in replacement fire hydrants will be \$765,000.

8. The obligation of the parties to perform the terms of the Agreement is contingent upon approval by the Commission, including approval of United Water’s proposal for rate making treatment of its investment in replacement hydrants, which is set forth below.

RATIONALE FOR THE AGREEMENT

9. The accompanying direct testimony of Neal Oldemeyer explains the rationale for the Agreement, which is generally to provide operations consistent with other communities in the state; to create equity among taxpayers and ratepayers; to make available capital funding for fire protection infrastructure and other essential services; to conform with the intent of the franchise agreement; and to vest ownership of the hydrants with the entity that owns the infrastructure connected to the hydrants with the experience and expertise to maintain them.

PROPOSED RATE MAKING TREATMENT

10. United Water requests a determination by the Commission that the investments incurred in conformity with the Agreement are prudently incurred and that the Commission provide an assurance that they will be fully included in rate base (not 13-month averaged) and in rates in United Water's subsequent general rate proceedings over the life of the Agreement. United Water proposes the Commission allow the Company to continue the calculation and accrual of post-closing AFUDC on the investments anticipated by the Agreement until such time as those investments are fully accounted for and included in rates in subsequent general rate case determinations over the life of the Agreement.

11. The rationale for these requested treatments is explained in the accompanying Direct Testimony of Gregory P. Wyatt.

12. United Water estimates that the annual revenue requirement associated with the initial capital investment in fire hydrants of approximately \$765,000, when included in rates, will equate to approximately \$1.45 per customer, or about \$0.24 a bill.

REQUEST FOR MODIFIED PROCEDURE

13. Boise and United Water do not believe a hearing is necessary to consider the matters presented herein and request that this Application be processed by Modified Procedure. If, however, the Commission determines a hearing is required, Boise and United Water are prepared for immediate hearing, based on the direct testimonies accompanying this Application.

PRAYER FOR RELIEF

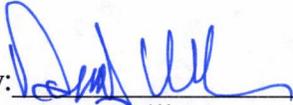
WHEREFORE, United Water and Boise respectfully request that:

1. The Commission enter its Order approving Modified Procedure;
2. That the Commission enter its Order approving the Agreement;

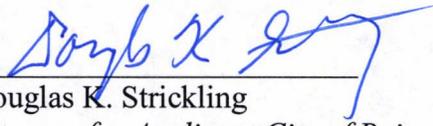
3. That the Commission enter its Order approving the rate making treatment proposed herein;
4. That the Commission enter its Order granting such other and further relief as is appropriate in the circumstance.

DATED this 10 day of April, 2015.

UNITED WATER IDAHO INC.

By: 
Dean J. Miller
Attorney for Applicant United Water

THE CITY OF BOISE, IDAHO

By: 
Douglas K. Strickling
Attorney for Applicant City of Boise

RETURN TO CITY CLERK

314-14

AGREEMENT FOR REPLACEMENT AND OPERATION OF FIRE HYDRANTS

BETWEEN

UNITED WATER IDAHO INC.

AND

THE CITY OF BOISE

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AGREEMENT FOR REPLACEMENT AND OPERATION OF FIRE HYDRANTS

THIS AGREEMENT FOR REPLACEMENT AND OPERATION OF FIRE HYDRANTS (Agreement) is made by and among **UNITED WATER IDAHO INC.**, an Idaho corporation (hereinafter referred to as "United Water") and **THE CITY OF BOISE**, an Idaho municipal corporation, (hereinafter referred to as "Boise").

RECITALS

- A. Boise owns, operates and maintains approximately 6,400 fire hydrants ("Hydrants") with associated valves and pipes within its municipal limits.
- B. United Water owns, operates, operates and maintains fire hydrants in Ada County and other Ada County municipalities outside of Boise.
- C. Boise and United Water believe United Water has the experience and resources as the primary water provider to Boise citizens to own, operate and maintain fire hydrants within Boise.
- D. In order to improve fire hydrant maintenance and utilize United Water's experience, Boise desires to transfer over a period of years the ownership, operation and maintenance of the Hydrants to United Water on an "as replaced" basis.
- E. Contingent upon requisite approval by the Idaho Public Utilities Commission ("Commission") United Water desires to assume ownership operation and maintenance of the Hydrants.
- F. Boise has historically followed 40-year Hydrant replacement schedules.
- G. On April 11, 1995, Boise adopted Ordinance No. 5623 granting to United Water a franchise to operate a water utility system within its boundaries (Franchise Agreement).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the terms, conditions and mutual covenants herein set forth, the parties hereto mutually covenant and agree as follows:

1. AGREEMENT FOR REPLACEMENT AND OPERATION

Boise agrees to transfer and convey the Hydrants, and United Water agrees to assume ownership and responsibility for the Hydrants subject to and upon each of the terms and conditions hereinafter set forth:

- (a) **Identification of Hydrants to be Replaced.** In each calendar year, commencing with the year this Agreement becomes effective, Boise shall identify those Hydrants that are near the end of their useful life and are scheduled for replacement, which schedule assumes a 40-year Hydrant life. To the degree it can be accomplished, the Hydrants identified for replacement shall be located in common geographical areas. Boise shall provide to United Water all available fire Hydrant locations and maintenance records appropriate to the identified Hydrants. This Agreement shall not apply to hydrants located within Boise municipal limits but in areas not served by United Water.
- (b) **Replacement of Identified Existing Hydrants.** Thereupon, United Water, at its cost and expense, shall install replacement Hydrants, which may include isolation valves and pipe extending from main lines. United Water may accomplish the Hydrant replacements using its own forces or an outside contractor. All replacement Hydrants, valves, and pipe, or those valves and pipes remaining in place if only a hydrant is replaced, shall become the sole property of United Water. Hydrant replacements shall occur in accordance with an efficient work plan as established by United Water throughout the calendar year. All old hydrants along with pipe, pipefittings and valves no longer in use shall remain the property of Boise and shall be hauled by Boise or the replacement contractor to a location designated by Boise.
- (c) **Hydrant Specifications.** The hydrants to be installed by United Water shall be Waterous Pacer Model No. WB67-250, red body, yellow nozzle cap, or equivalent successor model. This specification shall also apply in areas of new development such as new sub-divisions and infill projects.
- (d) **Installation of Hydrants in Areas of New Development.** Within Boise City limits, United Water shall install operate and maintain new Hydrants with associated valves and lateral pipes in areas of new development and as required to be installed by roadway improvements and fill-in development. United Water will provide Boise with all new Hydrant locations within 45 days of the Hydrants becoming operational, sooner if possible. The location information shall be mapped by United Water using GPS and GIS technologies, and the Hydrants shall be numbered based on specifications by United Water. Hydrant location information shall be provided to the Boise GIS Coordinator and the Boise Fire Logistics Division Chief.
- (e) **Liability.** United Water assumes no responsibility or liability for any Hydrant that it has not installed.

- (f) **Maintenance of Installed Hydrants.** Thereafter, United Water shall maintain installed Hydrants in accordance good utility practice and American Water Works Association Manual M17 Installation, Field Testing, and Maintenance of Fire Hydrants or its successor, and shall include:
- (i) Opening fully and closing of the Hydrant one (1) time per year at approximately equal intervals;
 - (ii) Periodic painting as required to minimize rust and maintain a neat, clean appearance;
 - (iii) Replacement Hydrants within Boise shall be painted red with yellow caps for visibility and standardization;
 - (iv) Lubrication and/or replacement parts as necessary to maintain fire protection functionality; and
 - (v) Recording of the required maintenance in United Water's maintenance tracking system, capable of being reviewed by Boise City as requested;
 - (vi) After coordinating with United Water, Boise may perform annual operational checks on up to five percent (5%) of the United Water hydrants to determine if additional maintenance may be required;
 - (vii) United Water shall notify the Boise Fire Department if Hydrants will be out-of-service and again when the Hydrants are placed back into service.
- (g) **Municipal Code Enforcement.** United Water shall have no obligation to enforce the provisions of Boise's municipal codes and Boise shall be responsible for the enforcement of its municipal code, particularly sections 508.5.4 and 508.5.5 as the same now exist or may hereafter be amended.
- (h) **Ownership Lists and Annual Reconciliation.** Boise shall maintain a GIS layer showing hydrant ownership including privately owned hydrants. Boise and United Water shall meet annually to reconcile the ownership lists and review maintenance records.
- (i) **Private Hydrants.** United Water shall have no obligation of any kind or nature to replace, operate, or maintain hydrants that are owned by private persons or entities.

2. CONDITION PRECEDENT

- (a) **Condition Precedent to United Water's Obligations.** Boise and United Water agree that consummation of the transaction contemplated by this Agreement is subject to United Water obtaining an approval and order from the Commission on terms that are acceptable to United Water, in its sole and absolute discretion, that, among other things:
- (i) Approves this Agreement;
 - (ii) Approves United Water's proposal for recovery of costs associated with ownership, operation and maintenance of the Hydrants;
 - (iii) Approves the accounting treatment of the costs associated with ownership, operation and maintenance of the Hydrants.
- (b) Notwithstanding anything contained in this Agreement to the contrary, the parties acknowledge and agree that the conditions precedent set forth in Paragraph 2(a) are paramount. Accordingly, if there is any portion of such ruling by the Commission that, in either United Water's or Boise's discretion, is substantially inconsistent with this Agreement or with United Water's Application to the Commission, United Water or Boise may, within ten (10) business days after receipt of such Commission ruling, provide the other party with written notice that this Agreement is null and void, and the parties shall have no further obligations or liabilities hereunder. If such notice is not given in the time permitted, the parties agree to amend this Agreement, within thirty (30) days of both parties' receipt of such ruling by the Commission, to the effect that this Agreement shall be made consistent with the Commission's ruling.
- (c) The parties agree to cooperate and will use their best efforts in 1) the preparation of such further documents and instruments as are necessary to complete the transaction contemplated hereby, 2) the processing and prosecuting of the filing for approval by the Commission, and 3) in connection therewith, Boise will support United Water's proposal for cost recovery.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF UNITED WATER

United Water hereby represents and warrants to Boise that as of the date hereof and/or as of the Closing Date:

- (a) **Authority.** That United Water is an Idaho corporation that has been duly organized and is validly existing and in good standing as a corporation under the laws of the State of

Idaho, and has full power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.

- (b) **Effect of Transactions.** That neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) result in a breach of or a default under any agreement, document or instrument to which United Water is a party or by which United Water is bound; or (ii) violate any existing statute, law, regulation, restriction, order, writ, injunction or decree of any court, administrative agency or governmental body to which United Water is subject.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BOISE CITY

Boise City hereby represents, covenants and warrants to United Water that as of the date hereof and as of the Closing Date:

- (a) **Authority.** That Boise is an Idaho municipal corporation which has been duly organized and is validly existing and in good standing the laws of the State of Idaho, and has full power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.
- (b) **Effect of Transactions.** That the execution and delivery of this Agreement by the signatories hereto on behalf of Boise and the performance of this Agreement by Boise have been duly authorized by Boise. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) result in a breach of or a default under any agreement, document or instrument to which Boise is a party or by which Boise is bound; or (ii) violate any existing statute, restriction, order, writ, injunction or decree of any court, administrative agency or governmental body to which Boise is subject.

5. DISPUTE RESOLUTION

In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, such Party shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.

6. TERM

This Agreement shall become effective thirty (30) days after a final non-appealable Order of the Commission approving the Agreement, subject to Section 2(b) of this Agreement, and shall remain in force and effect until the Franchise Agreement is re-negotiated and renewed at which time the terms of this Agreement shall be incorporated into the Franchise Agreement..

7. NOTICES

All notices required or desired to be given under this Agreement shall be in writing and delivered personally or sent by facsimile or by first class United States mail, postage prepaid, addressed as follows:

If to United Water: General Manager
 Gregory P. Wyatt
 United Water Idaho Inc.
 P.O. Box 190420
 Boise ID 83719-0420
 Tel. (208) 362-7327
 Fax. (208) 362-7069

With copies to:

And United Water Management & Services Inc.
 200 Old Hook Road
 Harrington Park, New Jersey 07640
 Attention: Legal Department
 Tel. (201) 767-9300
 Fax. (201) 767-7018

If to Boise: City of Boise
 Attn: Public Works Director
 150 North Capitol Blvd.
 Boise, ID 83602

or to such other address as either party may from time to time designate by written notice given to the other party in the manner provided herein. Any notice given in accordance with the foregoing shall be deemed to have been given (i) on the date upon which it shall have been delivered or (ii) three (3) days after being deposited in the United States mail, whichever is first. If sent by facsimile transmission, such notice shall be deemed to have been given when received prior to 5:00 p.m. on a business day; otherwise, at 9:00 a.m. on the next business day.

8. MISCELLANEOUS

- (a) This Agreement may not be assigned by any party without the consent of the other party hereto. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.
- (b) Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday or Legal Holiday, such time for performance shall be extended to the next business day.
- (c) This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same agreement.
- (d) The terms, provisions, covenants (to the extent applicable) and indemnities shall remain binding upon and for the parties hereto until fully observed, kept or performed.
- (e) This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof.
- (f) Boise and United Water shall each pay any attorney fees they have respectively incurred for the preparation, negotiation and review of this Agreement.
- (g) The captions at the beginning of the several paragraphs, respectively, are for the convenience in locating the context, but are not part of the text.
- (h) In the event any term or provision of this Agreement shall be held illegal, invalid or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.
- (i) This Agreement shall be governed by the laws of the State of Idaho.
- (j) By virtue of this Agreement, Boise does not, in any way or for any purpose, become a partner of United Water in the conduct of its business, or otherwise, or become a joint venture or a member of a joint enterprise with United Water.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the respective dates set forth below, effective as of July 15, 2014.

UNITED WATER IDAHO INC.

An Idaho Corporation

By: *Thyong P. Mitchell*

Title: VICE PRESIDENT

Date: 7-22-14

CITY OF BOISE
A Municipal Corporation

By: *David H. Bieter*

Title: David H. Bieter, Mayor

Date: 7/15/14

Jade Riley 7/15/14
ATTEST: Jade Riley, City Clerk

