

AGREEMENT BETWEEN McCAIN FOODS USA, INC AND THE CITY OF
OTHELLO, WASHINGTON, REGARDING MUNICIPAL WATER
USED BY MCCAIN FOODS USA, INC.

1 **Preamble.** This agreement is made and entered into effective September 16, 2003, by and between McCain Foods USA, Inc, a Delaware corporation (McCain) and the City of Othello, Washington, a municipal corporation (The City).

2 **Recitals.**

2.1 McCain owns and operates a food processing plant located within the City, which is connected to the City's potable water system. These connections are for potable water to be used for personal consumption by personnel at the plant and for standby fire protection.

2.2 The City operates a potable water utility within the City limits, which delivers potable water to residents of the City, including McCain.

2.3 McCain and the City desire to establish by this agreement the scope of City potable water to McCain's plant and the charge to be assessed for such connections and the potable water consumed by McCain.

2.4 McCain is in possession of a ground water withdrawal permit issued by the Washington Department of Ecology (DOE) permitting is to withdraw ground water of Washington State for industrial purposes of processing food stuffs and personal use by McCain personnel within its plant.

3 **Consideration and Covenants.** It is mutually agreed and covenanted as follows:

3.1 McCain has current potable water connections to the City's water utility for personnel use purposes, which are metered. McCain will pay for water used on these lines and meters at the rates established by City ordinance for the consumption of potable water by commercial users for the actual water consumed as evidenced by the meter readings from those meters. The rate for such use is as established by ordinance of the City for meters of that size and in that use.

3.2 McCain has a current potable water connection to the City's water utility for production purposes, which is metered on a ten-inch (10") line. Effective September 16, 2003, service through this meter shall be terminated, whether or not the meter is removed, and the City shall only bill McCain and McCain shall

only be required to make any payment on the basis of readings taken from this meter for quantities used, at commercial rates. This service line may be converted to a separately metered 2" potable water service and all use shall be based on the readings of that 2" meter.

3.3 McCain has current standby fire suppression water connections to a ten (10") inch main, which is part of the City's water distribution system. These connections are for fire suppression purposes. McCain's connections to the 10-inch main are three (3) branch connections that feed the fire suppression tank and booster pumps.

3.3.1 For the first thirty-six (36) months of this agreement, McCain shall pay three thousand dollars (\$3,000) per month for fire suppression water; provided that, the monthly payment shall be adjusted annually on January 16th by the change in the September to September All West Coast CPI, or its successor, for the proceeding year, but in no event shall the monthly rate be increased by more than four percent (4%) in any year.

Commencing on month thirty-seven and continuing to the end of this Agreement, the monthly payment shall be reduced and McCain shall pay Two Thousand Dollars (\$2,000.00) per month for fire suppression water; provided that the new monthly payment shall be adjusted annually on January 16th by the change in the September to September All West Coast CPI, or its successor, for the preceding year, but in no event shall the monthly rate be increased by more than four percent (4%) in any year.

3.3.2 If these branch connections are used to provide water for other than fire suppression purposes, McCain will be deemed to have used the water for consumption purposes and shall be billed ten thousand dollars (\$10,000) for every month any such consumption through this connection occurs.

3.4 The City acknowledges that McCain is vested in a water withdrawal permit issued by DOE under water right certificate number #G300246C. The City makes no claim to any right of ownership, nor any right to take water from any water source identified in such permit.

3.5 Future Improvements.

3.5.1 In the event McCain desires a different metered connection to the City's water utility, such shall be provided by the City upon the same terms and conditions such connections are provided to other customers of the City's

water utility, in the same class of service, as such classes of service exist, at the time a completed application for such service is received.

3.5.2

In the event McCain desires a different service or connection related to the unmetered connection to the City's water utility, the parties agree to meet and negotiate in good faith any change in the terms and conditions of this Agreement desired or necessary to implement such a change.

4 **Operational Control.** The operational control of the water utility of the City shall remain with the City or its successor in interest as a municipal water utility.

5 **Relationship of the Parties.** The City is the operator of a municipal water utility and McCain is a customer of that utility. No other relationship is intended. No agent, official, employee, servant, or representative of one party shall be deemed an officer, employee, agent, servant or representative of the other party for any purpose.

6 **Transfer of Interest.** Either party may transfer its interest in this agreement to a successor in interest by means of sale or lease provided that the City may transfer its interest in this Agreement only to another municipal water purveyor or to a private water purveyor authorized to do business as a water purveyor in the State of Washington.

7 **Notice.** Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepaid, addressed to:

McCain Foods USA, Inc
Attn: Factory Manager
100 E. Lee Street
Othello WA 99344

And, to:

McCain Foods USA, Inc
Attn: Senior Vice President of Manufacturing and
Director of Environmental Engineering
PO Box 10
Plover WI 54467

And, to:

City of Othello
Attn: The Mayor
500 E Main

Othello WA 99344-1195,

Or at such other address as either party may designate to the other in writing from time to time. All notices to be given with respect to this agreement shall be in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.


- 8 **Applicable Law.** This agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- 9 **Venue.** Venue of any action to enforce the provisions of this Agreement, including arbitration or the place for the taking of all depositions, shall lie in Adams County, Washington.
- 10 **Attorney Fees.** In the event either party hereto institutes any action to enforce the provisions of this agreement or for any cause arising out of this agreement, except for dispute resolution as provided for herein, the prevailing party in such action shall be entitled to reimbursement by the losing party for all of its court costs, reasonable attorney's fees, including such costs and fees that are incurred on appeal or in the enforcement of any judgment.
- 11 **Invalidity.** Any provision of this agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any of the other provisions hereof and such other provisions shall remain in full force and effect despite such invalidity or illegality.
- 12 **Modification.** No changes or additions to this agreement shall be valid or binding upon either party unless such change or addition be in writing, executed by both parties.
- 13 **Duration.** This Agreement shall be in force and effect on September 16, 2003, and shall remain in effect until September 15, 2016, unless this Agreement is terminated earlier as provided herein.
- 14 **Renewal.** Any time within 12 months of the termination date of this Agreement, either party may request to enter negotiations to extend this Agreement upon such terms and conditions as the parties may agree.
- 15 **Termination.** The City may terminate this agreement only for cause, including but not limited to, failure to make payment, use of fire suppression water for non-fire suppression purposes, failure to abide by the ordinances and rules of the City related to

the operation of the City's potable water system and its protection. McCain may terminate this agreement upon six- (6) month's notice to the City in the event McCain discontinues operation of its Othello processing facility. All unmetered connections from the City's water utility to McCain facilities shall be terminated on or before the effective date of the termination of this Agreement at McCain's expense.

- 16 **Entire Agreement.** This agreement constitutes the entire agreement of the parties and supersedes all prior agreements, contracts, and understanding, written or oral. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this agreement. Any and all previous agreements, understandings, and the like, oral or otherwise, are hereby revoked.
- 17 **Construction of Agreement.** In the event of a dispute between the parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any party nor in favor of any party.

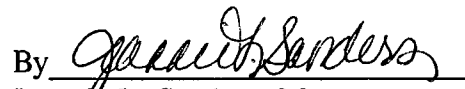
Dated: November 3, 2003

McCAIN FOODS USA, INC

By 
Daniel Paradis, General Manager

Dated: October 28, 2003

CITY OF OTHELLO

By 
Jeannie L. Sanders, Mayor

FIRST AMENDED AGREEMENT BETWEEN McCAIN FOODS USA, INC.
AND THE CITY OF OHELLO, WASHINGTON,
REGARDING MUNICIPAL WATER USED BY McCAIN FOODS USA, INC.

1 **Preamble.** This is the first amendment to an agreement effective September 16, 2003, by and between McCain Foods USA, Inc., a Maine corporation (McCain) and the City of Othello, Washington, a municipal corporation (City), is effective September 1, 2004.

2 **Recitals.**

2.1 McCain owns and operates a food processing plant located within the City, which is connected to the City's potable water system. These connections are for potable water to be used for personal consumption by personnel at the plant and for standby fire protection.

2.2 The City operates a potable water utility within the City limits, which delivers potable water to residents of the City, including McCain.

2.3 McCain and the City desire to establish by this agreement the scope of City potable water to McCain's plant and the charge to be assessed for such connections and the potable water consumed by McCain.

2.4 McCain is in possession of a ground water withdrawal permit issued by the Washington Department of Ecology (DOE) permitting it to withdraw ground water of Washington State for industrial purposes of processing food stuffs and personal use by McCain personnel within the plant.

3 **Considerations and Covenants.**

3.1 McCain has current potable water connections to the City's water utility for personnel use purposes, which are metered. McCain will pay for water used on these lines and meters at the rates established by City ordinance for the consumption of potable water by commercial users for the actual water consumed as evidenced by the meter readings from those meters. The rate for such use is as established by ordinance of the City for meters of that size and in that use.

3.2 McCain has a potable water connection to the City's water utility for production purposes, which is metered on a ten inch (10") line. Regular service through this meter has been terminated, and McCain uses water from its own wells for production purposes. To provide the availability of stand by production water, consistent with the ability of the City's water system to provide such water, this connection shall remain in place. Use of water from this connection shall be

available to McCain on an as needed basis. City personnel shall make water available to McCain through this connection upon the request of McCain as expeditiously as circumstances permit at the time of the request. An effort shall be made to begin water delivery within one hundred twenty minutes of the receipt of such a request from McCain. McCain shall provide the City with a list of persons authorized to request the delivery of water to McCain through this connection. In the event potable water is delivered through this connection to McCain, the City shall only bill McCain and McCain shall only be required to make any payment on the basis of readings taken from this meter for quantities used, at commercial rates as set forth in the ordinances of the City. McCain shall pay Eight Hundred Thirty-three Dollars and Thirty-three cents (\$833.33) per month beginning with September 2004 to the City as a stand by fee for the availability of potable water for production purposes through this meter.

3.3 McCain has current standby fire suppression water connections to a ten (10") inch main, which is part of the City's water distribution system. These connections are for fire suppression purposes. McCain's connections to the 10-inch main are three (3) branch connections that feed the fire suppression tank and booster pumps.

3.3.1 For the first thirty-six (36) months of this agreement, beginning with September 2003, McCain shall pay three thousand dollars (\$3,000.00) per month for the availability of fire suppression water; provided that the monthly payment shall be adjusted annually on January 16th by the change in the September to September All West Coast CPI, or its successor, for the proceeding year but in no event shall the monthly rate be increased by more than four percent (4%) in any year.

Commencing, September 2006, on month thirty-seven and continuing to the end of this Agreement, the monthly payment shall be reduced and McCain shall pay Two Thousand Dollars (\$2,000) per month for fire suppression water; provided that the new monthly payment shall be adjusted annually on January 1st by the change in the September to September All West Coast CPI, or its successor, for the proceeding year but in no event shall the monthly rate be increased by more than four percent (4%) in any year.

3.4 The City acknowledges that McCain is vested in a water withdrawal permit issued by DOE under water right certificate number #G300246C. The City makes no claim to any right of ownership, nor any right to take water from any water source identified in such permit.

3.5 **Future Improvements.**

3.5.1 In the event McCain desires a differed metered connection to the City's water utility, such shall be provided by the City upon the same terms and conditions such connections are provided to other customers of the City's water utility, in the same class of service, as such classes of service exist, at the time a completed application for such service is received.

3.5.2 In the event McCain desires a difference service or connection related to the unmetered connection to the City's water utility, the parties agree to meet and negotiate in good faith any change in the terms and conditions of this agreement desired or necessary to implement such a change.

4 **Operational Control.** The operational control of the water utility of the City shall remain with the City or its successor in interest as a municipal water utility.

5 **Relationship of the Parties.** The City is the operator of a municipal water utility and McCain is a customer of that utility. No other relationship is intended. No agent, official, employee, servant, or representative of one party shall be deemed an officer, employee, agent, servant or representative of the other party for any purpose.

6 **Transfer of Interest.** Either party may transfer its interest in this agreement to a successor in interest by means of sale or lease provided that the City may transfer its interest in this agreement only to another municipal water purveyor authorized to do business as a water purveyor in the State of Washington.

7 **Notice.** Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepared, addressed to:

McCain Foods USA, Inc.
Attn: Factory Manager
100 E Lee Street
Othello WA 99344

And to:

McCain Foods USA, Inc.
Attn: Senior Vice President of Manufacturing and
Director of Environmental Engineering
PO Box 10
Plover WI 54467

And to:

City of Othello
Attn: The Mayor
500 E Main
Othello WA 99344-1195

Or at such other address as either party may designate to the other in writing from time to time. All notices to be given with respect to this agreement shall be in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

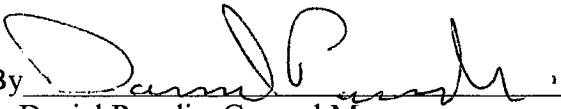
- 8 **Applicable Law.** This agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- 9 **Venue.** Venue of any action to enforce the provisions of this agreement, including arbitration of the place for the taking of depositions, shall lie in Adams County, Washington.
- 10 **Attorney Fees.** In the event either party hereto institutes any action to enforce the provisions of this agreement or for any cause arising out of this agreement, except for dispute resolution as provided for herein, the prevailing party in such action shall be entitled to reimbursement by the losing party for all of its court costs, reasonable attorney's fees, including such costs and fees that are incurred on appeal or in the enforcement of any judgment.
- 11 **Invalidity.** Any provision of this agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any of the other provisions hereof and such other provisions shall remain in full force and effect despite such invalidity or illegality.
- 12 **Modification.** No changes or additions to this agreement shall be valid or binding upon either party unless such change or addition be in writing, executed by both parties.
- 13 **Duration.** This agreement shall be in force and effect on September 16, 2003, and shall remain in effect until September 15, 2016, unless this Agreement is terminated earlier as provided herein.
- 14 **Renewal.** Any time within 12 months of the termination date of this agreement, either party may request to enter negotiations to extend this agreement upon such terms and

conditions as the parties may agree.

- 15 **Termination.** The City may terminate this agreement only for cause, including but not limited to, failure to make payment, use of fire suppression water for non-fire suppression purposes, failure to abide by the ordinances and rules of the City related to the operation of the City's potable water system and its protection. McCain may terminate this agreement upon six (6) months notice to the City in the event McCain discontinues operation of its Othello processing facility. All unmetered connections from the City's water utility to McCain facilities shall be terminated on or before the effective date of the termination of this Agreement at McCain's expense.
- 16 **Entire Agreement.** This agreement constitutes the entire agreement of the parties and supersedes all prior agreements, contracts, and understandings, written or oral. The parties agree that there are not other understandings, oral or otherwise, regarding the subject matter of this agreement. Any and all previous agreements, understandings, and the like, oral or otherwise, are hereby revoked.
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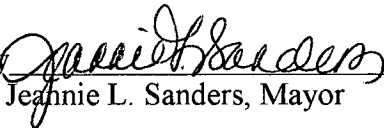
Dated: 8/29/04

McCAIN FOODS USA, INC.

By 
Daniel Paradis, General Manager

Dated: 8/23/04

CITY OF OTHELLO

By 
Jeannie L. Sanders, Mayor