

Ordinance No. 10- 4

AN ORDINANCE APPROVING A WHOLESALE WATER AGREEMENT

BE IT ORDAINED BY THE SOUTH SANGAMON WATER COMMISSION, AS FOLLOWS:

SECTION 1: That Wholesale Water Agreement between the Village of New Berlin and the South Sangamon Water Commission, a copy of which is attached hereto, is hereby approved.

SECTION 2: The Chairman of the Commission is authorized and directed to approve said contract on behalf of the Commission, and the proper officers of the Commission are authorized and directed to carry out the agreement by its terms.

SECTION 3: This Ordinance is effective immediately.

PASSED this 24 day of March, 2010.

Delmord
CHAIRMAN

ATTEST:

ing Zudell
Village Clerk

AYES: Pfeiffer Hall McLord

NAYS: _____

PASSED: 3/24/10

APPROVED: 3/24/10

ABSENT: _____

WHOLESALE WATER AGREEMENT

This Agreement is between the South Sangamon Water Commission, an Illinois municipal corporation, ("Commission"), and the Village of New Berlin, an Illinois municipal corporation ("Village"). The parties agree as follows:

1. Authority

This Agreement is authorized and is entered into pursuant to Division 135 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* ("Division 135"), the Intergovernmental Cooperation article of the Illinois Constitution and the Intergovernmental Cooperation Act, all of which are incorporated herein by reference.

2. All-Requirements Contract

During the term of this Agreement, Commission shall sell to Village, and Village shall purchase from Commission, all potable water to be resold by Village to retail customers of Village's water system, including customers located both within and without the corporate limits of Village. This is an "all requirements" contract.

3. Conditions of Service.

The water shall meet applicable purity standards of the Illinois EPA. The initial metering point shall be _____. Water shall be delivered to the metering point or to such other points as may be agreed on by the parties from time to time. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire, use of water to fight fires, earthquake or other events beyond the control of Commission shall excuse Commission from this provision for such reasonable period of time as may be necessary to restore service.

4. Metering

Commission shall be responsible at its sole expense for installing the meter at the delivery point at such time as the transmission main to Village is constructed. Commission shall own the meter and all water lines and works on its side thereof, and shall be responsible for maintenance and replacement thereof. Village shall own all water lines and works on its side of the meter and shall be responsible for maintenance and replacement thereof. Commission shall calibrate the meter from time to time at its discretion or upon the request of Village, but not more frequently than once every 12 months. A meter registering not more than 2% above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the 6 months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the parties agree upon a different amount.

5. Rates

Pursuant to Section 5 of Division 135, Commission shall from time to time establish such charges and rates for water supplied to Village and other member municipalities as will be sufficient at all times (a) to pay the cost of operation and maintenance of the common source of supply of water, (b) to provide an adequate depreciation fund therefor, (c) to pay the principal of and interest on the bonds issued by Commission, (d) to comply with the covenants of the ordinance or resolution authorizing the issuance of such bonds, and (e) to carry out the corporate purposes and powers of Commission pursuant to Division 135. The price charged for water at the delivery point shall be the same for all municipalities which are members of Commission,

and shall at all times be less than or equal to the price charged by Commission to any other customer of Commission. Commission shall give Village at least 60 days prior notice of any rate adjustment and an opportunity to audit and dispute Commission's calculations.

6. Village's Responsibility for Bills

As required by Section 5 of Division 135, during the term of this Agreement, Village shall pay the charges and rates established by Commission for the sale of water by Commission to Village. Water delivered to Village will be billed monthly, and paid within 30 days, and will bear interest at 1% per month if not paid within 30 days. If Village contests a bill, it shall nevertheless pay the bill, and the parties shall promptly consult pursuant to paragraph 11 of this Agreement to determine if any refund is appropriate.

7. Village's Other Responsibilities

As required by Section 5 of Division 135, Village shall establish such charges and rates for water supplied to its consumers as will be sufficient at all times (a) to pay the cost of operation and maintenance of the waterworks system of Village, or if combined with the sewer system, of the combined water/sewer system of Village; (b) to provide an adequate depreciation fund therefor, (c) to pay the principal of and interest on all bonds of the Village payable from the revenues of its waterworks system (or combined waterworks and sewerage system); and (d) to pay the charges and rates established by the Commission for water sold to Village by the Commission.

8. Water and New Customer Restrictions

8.1. Due to drought, equipment failures, acts of God, or other reasons, Commission may from time to time impose rationing or other restrictions on its wholesale and retail customers. In such event, and upon Commission's request, Village shall impose similar

restrictions on Village's retail customers. Commission may, during periods of announced shortages and rationing, curtail the amounts of water delivered to Village, but only after consultation with Village, and only in a nondiscriminatory manner. Whenever such curtailment occurs, Village may seek additional water supplies from other sources, and in such event will not be deemed to be in violation of the all requirements clause of this agreement. Whenever during a curtailment situation Commission declares a moratorium on new retail customers, Village shall do the same unless Village can arrange alternative wholesale supplies for such new customers.

8.2. Whenever in the judgment of the Commission, the water treatment plant is nearing or at capacity, it may restrict Village from adding new customers to the Village's system until the Commission can add treatment capacity to its plant. Such restrictions, if imposed, shall also apply to all other member municipalities and wholesale customers, and the Commission itself shall add no new retail customers during any period during which such restrictions are in effect. During the period of such restrictions on new customers: (a) Village may obtain additional water supplies from other sources sufficient to serve new customers, and in such event the restrictions shall not apply as to Village, and Village shall not be deemed to be in violation of the all requirements clause of this agreement; and (b) Commission shall use best efforts to add capacity to render such customer restrictions unnecessary.

8.3. Commission shall give Village at least 10 days prior notice of any scheduled maintenance (such as tank cleaning) which would require the cessation of operations at the treatment plant, and the parties shall cooperate in arranging storage of water supplies anticipated to be needed during any such period of scheduled maintenance.

9. Effective Date and Term

9.1 This Agreement shall become effective on the date Commission initially issues

bonds to defray the cost of the design and construction of its water production facility and transmission mains and expenses incidental thereto ("Project Expenses"). Commission may also repay the Village of Chatham from the bond proceeds all funds advanced by Chatham for Project Expenses, including interest thereon, prior to the date of the bond issue. However, Commission shall have no obligation to provide water, and Village shall have no obligation to take water, until the IEPA issues all required operating permits and the treatment plant commences operation. The initial term of the agreement shall be through December 31, 2040, or 5 years after the expiration of the original issue of Commission's bonds, whichever is later. A prepayment of the initial bond issue shall not affect the initial termination date.

9.2 Should Commission issue additional or refunding bonds during the term of this Agreement, this Agreement shall be automatically extended until the date of expiration of such additional or refunding bonds. However, no additional or refunding bonds shall be issued without at least 60 days prior notice to Village and other member municipalities of Commission.

9.3 After expiration of the initial or any extended or renewal term, this Agreement shall automatically renew in successive five-year increments, unless at least three years before the expiration of the original term or any extended or renewal term, either party serves written notice upon the other of an intention not to renew.

10. Consultations and Exchanges of Information

During the term of this Agreement, each party shall provide the other with such data and usage forecasts as either party may reasonably require for its planning purposes. Either party may inspect the books and records of the other at reasonable times and places, insofar as such books and records relate to the subject matter of this Agreement, and without the necessity for a

formal request pursuant to the Freedom of Information Act. Each party to this agreement shall consult with the other whenever requested to do so.

11. Dispute Resolution

Disputes between the parties that cannot be resolved by consultation shall be settled by arbitration, in the following manner. The parties will attempt to agree on a single arbitrator to decide the dispute. If they cannot agree on an arbitrator, then each party will select an arbitrator, and the two arbitrators so selected shall select a third arbitrator, and the panel so composed shall decide the dispute. Arbitrations shall be conducted and enforced pursuant to the Illinois Uniform Arbitration Act, and the cost of arbitration shall be divided equally by the parties.

Notwithstanding the duty to arbitrate, in the event of a breach of contract which, in the absence of the arbitration clause would give rise to the right of a party to apply for a temporary restraining order, either party may apply to the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois, for a temporary restraining order maintaining the *status quo* pending referral of the matter to arbitration.

12. Service Areas

12.1 Commission is primarily a wholesale supplier and may serve any wholesale customer (defined as a customer which resells water to third parties) outside the corporate limits of Village. Village shall not serve any wholesale customers wherever situated, without the prior written consent of Commission, which Commission may grant or withhold in its sole discretion.

12.2 Village shall have the exclusive right to serve customers within its corporate limits. Consistent with Division 135, Commission may in its discretion serve retail customers in unincorporated areas. Whenever Village annexes unincorporated territory

containing retail customers of Commission, Commission shall convey, and Village shall purchase, any water mains, meters and works belonging to Commission serving such customers (not, however, including any part of the transmission mains from Commission's water treatment plant to the Village) at such price and on such terms as the parties may agree.

12.3. Whenever Village enters into an annexation agreement including noncontiguous unincorporated territory containing retail customers of Commission, Village may at its option purchase any water mains, meters and works belonging to Commission serving such customers (not, however, including any part of the transmission mains from Commission's water treatment plant to the Village) at such price and on such terms as the parties may agree.

12.4 If with respect to a purchase pursuant to paragraphs 12.2 for 12.3, the parties cannot agree on a price, then the price shall be the then-current replacement cost of the mains, meters, and works, less depreciation based on a 30-year straight line basis.

12.5 Village shall also have the right of first refusal to serve any retail customer or group of retail customers within 2 miles of the corporate limits of Village.

13. Alternate Bonds

If the Commission is authorized to issue alternate bonds pursuant to Section 15 of the Local Government Debt Reform Act, the Commission may issue such bonds in its discretion.

14. Miscellaneous This is the entire Agreement between the parties with respect to its subject matter. All oral representations regarding this Agreement prior to the date hereof are expressly disclaimed. This Agreement is effective upon approval by ordinance of each party and signed by the Village President and the Chairman of Commission. All modifications to this Agreement shall be in writing and shall be effective only when approved by ordinance and signed by the Village President and the Chairman of Commission. The headings

in this Agreement are for convenience only and are not substantive parts of this Agreement.

This Agreement shall be governed in accordance with Illinois law. In the event any portion of this Agreement is unenforceable, such shall not affect the enforceability of the remainder of the Agreement.

VILLAGE OF NEW BERLIN, ILLINOIS

Approved pursuant to Ordinance No. 10-04
dated March 11, 2010

By: _____
Its President

Date

Attest: _____
Its Clerk

SOUTH SANGAMON WATER COMMISSION

By: _____
Its Chairman

Date

Attest: _____
Its Clerk

ORDINANCE CERTIFICATE

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the South Sangamon Water Commission.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 10- 4, adopted by the Commission on the 24 day of March, 2010, said Ordinance being entitled:

AN ORDINANCE APPROVING A WHOLESALE WATER AGREEMENT

I do further certify that prior to the making of this certificate, the said Ordinance was spread at length upon the permanent records of said Commission, where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 24 day of March, 2010.



Clerk