

Ordinance No. 10- 06

**AN ORDINANCE APPROVING AN AGREEMENT WITH THE
VILLAGE OF CHATHAM AND THE VILLAGE OF NEW BERLIN**

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

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


SECTION 2: The Chairman of the Commission is authorized and directed to approve said agreement 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 20th day of April, 2010.

CHAIRMAN

ATTEST:



Village Clerk

AYES: McCord, Pheffer

NAYS: None

PASSED: 4/20/10

APPROVED: 4/20/10

ABSENT: Hall

AGREEMENT FOR ISSUANCE OF BONDS

THIS AGREEMENT dated as of April ___, 2010 (the "Agreement") is by and among the South Sangamon Water Commission, Sangamon County, Illinois (the "Commission"), the Village of Chatham, Illinois (the "Village of Chatham") and the Village of New Berlin, Illinois (the "Village of New Berlin"). This Agreement is made pursuant to Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* ("Division 135"), the Intergovernmental Cooperation article of the Illinois Constitution (Section 10 of Article VII of the Constitution of the State of Illinois), the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, the Illinois Municipal Code including the Municipal Bond Reform Act, 65 ILCS 5/8-4.1-1 *et seq.*, the Local Government Debt Reform Act, 30 ILCS 350/1 *et seq.*, the Omnibus Bond Acts, 5 ILCS 70/8 and other applicable law (collectively, "Applicable Acts").

WITNESSETH:

WHEREAS, the Village of Chatham and the Village of New Berlin (collectively, the "Villages") adopted ordinances pursuant to which the Villages elected to jointly acquire and operate a common source of supply of water under the authority granted by Division 135 and to establish the Commission; and

WHEREAS, the Commission and the Villages have determined it is advisable, necessary and in the best interests of the Villages and the Commission to proceed with the development and construction of a common source of supply of water at an estimated cost of construction of \$24,000,000 plus capitalized interest and costs of financing, described generally as follows (the "Project"):

a new water well field and new water treatment facilities located east of the Village of Rochester, Illinois designed to treat 3.3 million gallons per day of water, plus 18" and 20" transmission main to carry water 20 miles to the Village of Chatham, a 10" transmission line to the Village of New Berlin and a booster station that will feed 10 miles of water main, including all necessary engineering, design, land acquisition, connections, appurtenances, material, labor and equipment incident thereto, all mechanical, electrical and other services necessary, useful or advisable to such projects, and, incidental to such improvements, and all bond discount, bond interest, bond reserve account funding, legal, financing, and administrative expenses; and

WHEREAS, the Commission has insufficient funds on hand and lawfully available to pay the costs of the Project; and

WHEREAS, in order to pay a portion of the initial costs of the Project, it is necessary and advisable for the Commission to issue its revenue bonds in an aggregate principal amount not to exceed \$7,000,000 (the "Bonds"); and

WHEREAS, Section 11-135-1 of Division 135 authorizes the Villages to pay, to advance or to obligate themselves to the Commission to bear a proportionate share of the construction costs of the Project by adopting ordinances declaring their intention to do so; and

WHEREAS, the President and Board of Trustees of the Village of Chatham adopted Ordinance No. 10-16 on April 13, 2010 (“Ordinance No. 10-16”) obligating the Village of Chatham to pay the Commission \$6,300,000 on January 1, 2012 plus an amount equal to 90% of the interest due on the Bonds, provided however that (i) the maximum amount paid shall not exceed the sum equal to 90% of the principal and interest to come due on the Bonds, and (ii) if the Commission’s Bonds are refunded prior to their maturity, such obligation shall terminate and be of no further force and effect; and

WHEREAS, the President and Board of Trustees of the Village of New Berlin adopted Ordinance No. 10-05 on April 21, 2010 (“Ordinance No. 10-05”) obligating the Village of New Berlin to pay the Commission \$700,000 on January 1, 2012 plus an amount equal to 10% of the interest due on the Bonds, provided however that (i) the maximum amount paid shall not exceed the sum equal to 10% of the principal and interest to come due on the Bonds, and (ii) if the Commission’s Bonds are refunded prior to their maturity, such obligation shall terminate and be of no further force and effect; and

WHEREAS, Ordinance No. 10-16 and Ordinance No. 10-05 (collectively, the “Ordinances”) obligate the Villages to the Commission to their respective proportionate amounts which in the aggregate is sufficient to provide revenues to the Commission that will pay principal and interest on the Bonds; and

WHEREAS, the Commission approves the foregoing obligations of the Villages to pay their proportionate share; and

WHEREAS, the Villages have requested the Commission to issue the Bonds pursuant to the Applicable Acts which shall be payable from the revenues received by the Commission from the payments made by the Villages pursuant to the Ordinances, this Agreement and the Wholesale Water Agreements between the Villages and the Commission (the “Revenues”).

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties agree as follows:

1. The recitals contained in the preambles to this Agreement are true, correct, and complete, and are incorporated into this Agreement by this reference.

2. The Village of Chatham shall pay the Commission \$6,300,000 on January 1, 2012 plus an amount equal to 90% of the interest due on the Bonds, provided however that (i) the amount paid shall not exceed the sum equal to 90% of the principal and interest to come due on the Bonds, and (ii) if the Commission’s Bonds are refunded prior to their

maturity, the obligation to make such payment shall terminate and be of no further force and effect.

3. The Village of New Berlin shall pay the Commission \$700,000 on January 1, 2012 plus an amount equal to 90% of the interest due on the Bonds, provided however that (i) the amount paid shall not exceed the sum equal to 10% of the principal and interest to come due on the Bonds, and (ii) if the Commission's Bonds are refunded prior to their maturity, the obligation to make such payment shall terminate and be of no further force and effect.

4. The Commission shall promptly issue the Commission's Bonds in the amount not to exceed \$7,000,000 and apply the proceeds thereof to pay costs of developing and constructing the Project and costs of issuing the Bonds. The Villages and the Commission acknowledge and agree that issuance of the Bonds constitutes the initial issuance of bonds by the Commission under Section 9.1 of the Villages' Wholesale Water Agreements with the Commission.

5. The Bonds shall be payable from the Revenues and the Commission shall secure the Bonds with a pledge and assignment of the Revenues to the owners of the Bonds. The Villages shall have no right to terminate, cancel or rescind this Agreement, no right to withhold from the Commission payments due or to become due under this Agreement and the Ordinances, no right of reduction or set-off against the amounts due or to become due the Commission under this Agreement and the Ordinances, and no lien on the Revenues for any reason or on account of the existence or occurrence of any event, condition or contingency, whether foreseen or unforeseen or foreseeable or unforeseeable by the Villages or the Commission or any other person; it being the intent hereof that the Villages shall be absolutely and unconditionally obligated to make their payments in full under this Agreement and the Ordinances.

6. The representations, warranties and covenants of the Villages made in the Ordinances are incorporated herein as if set forth in full. The Villages acknowledge and agree that the owners of the Commission's Bonds are relying upon the Villages' obligations hereunder and under the Ordinances. This Agreement, the Agreements and the Ordinances shall constitute contracts with, and shall inure to the benefit of, the Commission, the Villages and the owners of the Bonds, and the Commission, the Villages and any registered owner of a Bond may proceed by civil action, mandamus or other proceeding to compel performance of all duties required by this Agreement, the Agreements and the Ordinances.

7. If any section, paragraph, clause or provision of this Agreement shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the Villages and the Commission have caused this Agreement to be executed by their duly authorized officers as of the date first shown above.

SOUTH SANGAMON WATER COMMISSION,
Sangamon County, Illinois

By: _____
Chairman

(SEAL)
Attest:

Clerk

VILLAGE OF NEW BERLIN,
Sangamon County, Illinois

By: _____
President

(SEAL)
Attest:

Village Clerk

VILLAGE OF CHATHAM,
Sangamon County, Illinois

By: _____
President

(SEAL)
Attest:

Village 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- 06, adopted by the Commission on the 20th day of April, 2010, said Ordinance being entitled:

**AN ORDINANCE APPROVING AN AGREEMENT WITH THE
VILLAGE OF CHATHAM AND THE VILLAGE OF NEW BERLIN**

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 20th day of April, 2010.



Clerk