

Ordinance No. 11- 05

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 Curran-Gardner Townships Public Water District 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 17th day of may, 2011.



CHAIRMAN

ATTEST:



Village Clerk

AYES: McCord Puffer Hall

NAYS: none

PASSED: 5/17/11

APPROVED: 5/17/11

ABSENT: none

WHOLESALE WATER AGREEMENT

This Agreement is between the South Sangamon Water Commission, an Illinois public and municipal corporation, ("Commission"), and the Curran-Gardner Townships Public Water District an Illinois Water District and unit of local government ("District"). 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 Illinois Public Water District Act, 70 ILCS 3705/0.01, *et seq.*, the Intergovernmental Cooperation article of the Illinois Constitution and the Intergovernmental Cooperation Act, all of which are incorporated herein by reference.

2. General

During the term of this Agreement and subject to the terms of this Agreement, Commission shall sell to District, and District shall purchase from Commission, potable water to be resold by District to retail customers of District's water system.

3. Conditions of Service.

The water shall meet applicable purity standards of the Illinois EPA. Delivery points shall be as determined by the parties from time to time. Water shall only be delivered to a main or mains owned by District and permitted by the IEPA. Each delivery point shall be separately metered. 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

District shall be responsible at its sole expense for installing the meter at the delivery points agreed on by the parties from time to time. Commission shall own the meter and all water mains and works on its side thereof, and shall be responsible for maintenance and replacement thereof. District shall own all water mains 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 District, 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 District and to Commission's 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 to District for water at the delivery point shall be the same as the price charged to municipalities

which are members of Commission. However, the parties may negotiate a surcharge where there are extraordinary capital expenses associated with a particular proposed new connection or District customer. Commission shall give District at least 60 days prior notice of any rate adjustment.

6. District's Responsibility for Bills

District shall pay the charges and rates established by Commission for the sale of water by Commission to District. Water delivered to District will be billed monthly, and paid within 30 days, and will bear interest at 1% per month if not paid within 30 days. If District 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. Water and Customer Restrictions

7.1. 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, District shall impose similar restrictions on District's retail customers on mains served by Commission. Commission may, during periods of announced shortages and rationing, curtail the amounts of water delivered to District, but only after consultation with District, and only in a nondiscriminatory manner. Whenever during a curtailment situation Commission declares a moratorium on new retail customers, District shall do the same along mains served by Commission.

7.2. Whenever in the judgment of the Commission, the water treatment plant is nearing or at capacity, it may restrict District from adding new customers along District's mains served by Commission 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 of Commission, and the Commission itself shall add no new retail customers during any period during which such restrictions are in effect.

7.3. Commission shall give District 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.

7.4 District shall enact and enforce the current version of the Illinois EPA model cross-connection control ordinance as to all customers on mains supplied by Commission.

8. Effective Date and Term

8.1 This Agreement shall become effective on the date the IEPA issues all required operating permits for the Commission's water treatment plant and the treatment plant commences operation. The initial term of the agreement shall be through December 31, 2040.

8.2 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.

9. 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.

9. Territorial Issues

9.1 The parties recognize that there are potential customers adjacent or near to Commission mains, located within the boundaries of the District, that can be more economically served by Commission than by the District. Such potential customers may be served by Commission if after consultation with Commission, District is unable or unwilling to provide service through a District main and the customer may be served by a direct tap to a Commission main. District shall serve no customers who or which are directly tapped to a Commission main.

9.2 Outside the territorial limits of District, Commission may serve retail customers without prior consultation with District. District also may serve customers outside the territorial limits of District with water provided by Commission through a District main; however, the member municipalities of Commission shall have a right of first refusal to serve any customer through its own mains within a two-mile radius of their respective corporate limits.

9.3 In the event a member municipality of Commission should annex customers served by District that are extraterritorial to the District with water provided by Commission pursuant to this Agreement, or the customers shall become parties to an annexation agreement with one of Commission's member municipalities, District shall offer to work with the municipality for the sale of the District's extraterritorial mains and works within the area to be annexed to the member municipality at a price to be agreed upon. Such agreement shall include the necessary provisions to address additional master meter location installations and costs, individual and master meter reading responsibilities, and similar related items. Mains and works within the District will not be required to be sold as a part of this agreement.

9.4. In the event of a conflict between this Paragraph 9 and any wholesale water contract between Commission and its member municipalities in effect as of the date of this agreement, the contract with the member municipality shall prevail.

10. Procedures For Initiating Service to a District Main; Main Extensions and Relocations

10.1 Whenever District intends to construct a main and install a master meter, and to connect its main with Commission's mains, it shall provide Commission with an application for service accompanied by a map of the proposed main and known customers thereon; a forecast of likely water usage, such design information as may be requested by Commission as will enable it to forecast likely effects on water pressure, and such other information as may reasonably be requested by Commission. Commission shall promptly review the application, and the application shall be granted if it conforms with this Agreement and the requested service will not unreasonably and adversely affect Commission's system or supply, or the system or supply of member municipalities and other existing customers. . Although at the time of execution of this contract there are no limitations on volumes of water which may be taken by District, the parties will negotiate volume limitations in good faith when requested by either party.

10.2 Whenever District intends to extend an existing main that is connected to the Commission's system, it shall provide an application similar to that set forth in paragraph 10.1 but limited to the main extension. If the main extension requires an upgrade of the meter, the upgrade shall be at District's sole cost and expense.

10.3 In the event Commission relocates a main, necessitating the relocation of a master meter serving a District main, the cost of relocating the meter shall be borne by Commission, but any costs of relocating District's main shall be borne by District.

11. Dispute Resolution

11.1 Whenever there is a dispute between the parties, the parties shall first consult together and attempt to resolve the dispute. Either party shall have the privilege of directly addressing the corporate authorities of the other party with respect to the dispute.

11.2 Disputes 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. **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 District Chairman 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 District 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.

CURRAN-GARDNER TOWNSHIPS PUBLIC WATER DISTRICT

Approved pursuant to Ordinance No. ____
dated _____, 2010

By: _____
Its Chairman

Date

Attest: _____
Its Secretary

SOUTH SANGAMON WATER COMMISSION

Approved pursuant to Ordinance No. ____
dated _____, 2010

By: Del M Good
Its Chairman

May 17, 2011
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. 11- 05, adopted by the Commission on the 17th day of May, 2011, 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 17th day of May, 2011.

Laura VanProyen
Clerk