

AN ORDINANCE APPROVING A PUMP STATION LAKESHORE LEASE

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

SECTION 1: That certain Lease, by and between the City of Springfield, Illinois 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 Lease 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 19th day of September, 2011.



CHAIRMAN

ATTEST:


Clerk

AYES: McCord, Pfeiffer, Hall

NAYS: none

PASSED: 9/19/11

APPROVED: 9/19/11

ABSENT: none

**PUMP STATION
LAKESHORE LEASE**

THIS LEASE, made and entered into this ____ day of _____, 2011, by and between the **CITY OF SPRINGFIELD, ILLINOIS**, a municipal corporation, hereinafter referred to as "City" and **SOUTH SANGAMON WATER COMMISSION**, a public corporation formed pursuant to Division 135 of the Illinois Municipal Code, hereinafter referred to as "Lessee" or "Commission".

WITNESSETH:

WHEREAS, the City, as part of its municipal water supply has acquired the land for a large artificial lake known as Lake Springfield, including for its protection a surrounding zone of marginal or shore land, and the leasing of portions of such shore land to persons who agree to protect said lake from pollution, undue erosion and other injury, by the development of suitable vegetation, and the improvement, care and maintenance of the premises, and

WHEREAS, the City previously authorized the use of a portion of such marginal land by the Village of Chatham for the purpose of maintaining its pumping station and necessary appurtenances, and

WHEREAS, the use of the land for a pumping station was authorized as part of a Contract entered into January 24, 1967, between the City and Village of Chatham for the City to supply water directly to Chatham pursuant to Ordinance No. 22-1-67, which Contract was amended on January 6, 1970, April 20, 1993, and on December 22, 1998, through a Settlement Agreement pursuant to Ordinance No. 26-1-99, and

WHEREAS, the Village of Chatham has notified the City that it intends to terminate said Contract as part of supplying water through the Commission, of which the Village of Chatham is a part, and

WHEREAS, the Commission has acquired or will acquire the assets of the Village of Chatham necessary to supply water, including the pumping station and related appurtenances on the City's lakeshore lands, and

WHEREAS, the City desires to lease the land used for the pumping station and related appurtenances to the Commission, and the Commission desires to lease such land from the City under the terms as agreed by the parties.

NOW, THEREFORE, in consideration of the rent and other covenants, the parties agree as follows:

1. Lease Term. The City hereby leases to Lessee the following described real estate, hereinafter described as "premises," situated in the City of Springfield, Sangamon County, Illinois,

Part of the Southeast Quarter of the Southeast Quarter of Section 4, Township 14 North, Range 5 West of the Third Principal Meridian; described more particularly as follows:

Commencing at the Southeast Corner of the Aforementioned Section 4, thence South 88 Degrees 04 minutes 34 seconds West Along the Section Line A Distance of 40.07 Feet, Thence North 01 Degrees 55 Minutes 26 Seconds West 30.00 Feet to an Iron Pin Marking the True Point of Beginning, Thence South 88 Degrees 04 Minutes 34 Seconds West 48.65 Feet to an Iron Pin, Thence North 29 Degrees 12 Minutes 46 Seconds West 96.19 Feet to an Iron Pin, Thence North 88 Degrees 04 Minutes 34 Seconds East 96.48 Feet to an Iron Pin, Thence South 00 Degrees 34 Minutes 29 Seconds West 85.56 Feet to the True Point of Beginning. Said Parcel contains 0.142 Acres, More or Less, all in the County of Sangamon, State of Illinois.

as described on the attached Plat of Survey, Exhibit A, for a term of fifty years beginning _____, _____, and ending _____, _____, unless terminated sooner as hereinafter provided.

2. Rent. As rent for said premises, Lessee agrees to pay to the City at the Office of Public Utilities or such other place as may be designated by the City, One Hundred Dollars (\$100.00) per year, due upon commencement of this lease and by _____, each year thereafter. Every three years, beginning on the rent due date in 2014, said rent shall increase by Twenty-five dollars (\$25) per year.

3. Preference in Again Leasing. At the expiration of the term hereof, the Lessee, if not in default, shall be preferred by the City over all other in the further leasing of said premises, subject to such ordinances and regulations, for such term, and upon the payment of such rental as the City may then charge for said location. If Lessee does not desire to enter into a new lease at that time, it shall have the right and shall remove the improvements from the leased premises placed on the leased premises by Lessee at its cost prior to the expiration of this lease.

4. No Power to Mortgage. The Lessee may not mortgage the leasehold hereby granted, nor any of its improvements now or hereafter on the leased premises.

5. Taxes and Utilities. The Lessee will also pay before the same become delinquent any and all taxes and assessments levied on any part of the leased premises and the improvements thereon during the term of this lease, and all reasonable charges of the City for water, electricity, or other utility service availed of by the Lessee. Interruption or inadequacy of any service shall not excuse or relieve the Lessee from payment for service rendered, and the

City shall not be liable for damage caused to any improvement or other property of the Lessee by the action of waters of Lake Springfield or other cause.

6. Local Improvements. Whenever the leased premises will be specially benefited by the construction of any local improvement or improvements pursuant to Article 9 of the Illinois Municipal Code, or such subsequent replacement legislation, and the Lessee consents thereto in writing, the City may cause such improvement or improvements to be made, and the Lessee will pay to the City such part of the cost thereof and in such installment, as the City may apportion on the basis, and not in excess, of the benefits thereby conferred on the leased premises; and the apportionment of cost as made by the City shall be prima facie evidence of the matters recited in such petition, as to what property is benefited, the fairness of the apportionment, and that the leased premises are so benefited not less than the amount of the cost so apportioned thereto.

7. Use of the Premises. Lessee may use the premises only to operate and maintain (and replace) a pumping station and necessary appurtenances.

8. Fencing and Access. Lessee shall maintain fencing around said pump station and shall replace such fencing from time-to-time as necessary to restrict access only to personnel authorized by the Commission to enter. Said fence shall be locked, so as to restrict access only to personnel authorized by the Commission to enter.

9. Riparian Rights. Lessee shall have no riparian rights to the waters of Lake Springfield.

10. Lessee's Responsibilities.

- a. The Lessee shall be solely responsible for obtaining and maintaining all necessary governmental permits in order to allow for pumping, construction of pumping facilities, maintaining and replacing said pumping facilities. Copies of all permit applications and permits shall be supplied to the Office of Public Utilities within a reasonable time upon such request, but not longer than fourteen (14) days.
- b. All equipment, installation, operations, and maintenance costs of the pumping facility will be borne by the Lessee.
- c. At no time does the City guarantee a supply of water for this pumping facility.
- d. If the facilities become non-functional or are no longer needed, the facilities will be removed from the premises by the Lessee at no cost to the City pursuant to paragraph 3 above.

11. Improvements. The Lessee will make no alterations or improvements on the premises without the written consent of the City, which shall not be unreasonably withheld. Before beginning any alteration or improvement, plans therefor, including all appurtenances, plumbing, and the location on the leased premises, shall first be submitted to and approved in writing by the City, and any structure built without such written approval shall be removed or altered by the Lessee so as to comply with the City's requirements, and upon the failure of the Lessee to do so at the City's request, the City may cause the same to be removed or altered, and the amount of expense so incurred shall be paid by the Lessee to the City on demand. No

facilities located on the premises shall be removed or demolished by Lessee without the written consent of the City, which shall not be unreasonably withheld.

12. General Regulations. The Lessee shall:

- (a) keep all of the developed leased premises in sanitary condition, decent, neat, and free from noxious weeds and debris, and shall maintain all improvements thereon attractive in appearance and in good repair;
- (b) care for and protect from injury all shade and ornamental trees, shrubbery and sod, and shall not remove, trim, or permit the removal or trimming of any tree on the leased premises more than three (3) inches in diameter without the consent of the City, nor permit any of the premises to be denuded of vegetation or to be cultivated in such manner as to cause or permit soil erosion.

13. Reserved Rights of City.

- (a) Should the City require the leased premises or a portion thereof to be used exclusively for any public purpose inconsistent with its occupancy by the Lessee, the city may terminate this lease upon giving not less than twelve (12) months notice in writing of its intention so to do. If the City exercises its rights hereunder, it shall pay to the Lessee an amount equal to the fair market value of any improvements placed on the premises at its own expense. In the event that the City and Lessee cannot agree as to the fair market value of such improvements, each shall select a qualified professional real estate appraiser, and the appraisers so selected shall

select a third qualified professional real estate appraiser, and the fair market value of such improvements shall be the average of the highest and lowest appraisals submitted by these three appraisers. The City may set off against this payment all amounts owed to it by the Lessee under the terms of this lease that are due or past due and unpaid. All prepaid rent to the City applicable to any portion of the unexpired term of the lease shall be refunded to the Lessee. For purposes of determining the pro rata portion of prepaid rent to be refunded, a year shall be deemed to consist of 360 days.

- (b) Representatives of the City shall have the right to go upon the premises at any and all times for the purpose of inspecting the same, and to improve and protect the shore line; and to do any other work pertaining to the lake on any part of the leased premises or on other lands. The City shall restore the surface of any areas it disturbs.

14. Eminent Domain. If the leased premises, or any part thereof, shall be taken by or pursuant to governmental authority or through the exercise of the right of eminent domain, or if a part only of said premises is taken and the balance of said premises in the option of the Lessee is not suitable for the operation of this lease, at the option of the Lessee said lease shall terminate without further liability on the part of the Lessee, or the rent hereunder shall be reduced in the proportion to the reduction in the area of the premises, but nothing herein shall be deemed a waiver of the sole right of the Lessee to any award for damages to it or its leasehold interest caused by such taking, whether made separately or as a part of a general award.

15. Indemnification. The Lessee covenants and agrees to indemnify and save City harmless from any and all claims, demands, suits, actions, judgments, and recoveries, including the defense thereof, for or on account of damage or injury (including death) to property or person of Lessee, its agents, servants or other party or parties arising out of or due to the construction or operation of any improvements placed on the premises, or Lessee's use of the premises. Lessee agrees to reimburse the City for any and all expenses incurred by the City for environmental damage and/or clean up deemed necessary by the City, caused by Lessee's use of the premises, including any attorney fees, penalties or fines, associated with the pollution or contamination of air, water, land and groundwater, and the amount of the expense shall be paid by Lessee to the City on demand.

16. Voluntary Cancellation. Upon full performance of all accrued obligations hereunder, the Lessee may surrender this lease and be relieved of any obligations thereafter accruing under the provisions hereof, subject to the provisions of paragraph 3 above.

17. Transfer of Lease. Neither this lease, nor any interest therein or in the leased premises, shall be assigned or transferred by the Lessee, any receiver, trustee in bankruptcy, or other representative of the Lessee or the Lessee's estate, or by operation of law, legal process or any other means whatsoever, without the written consent of the City; nor shall the premises or any part thereof be used by any person other than the Lessee's agents or employees, without such written consent. No assignment or transfer shall become operative until approved in writing by the City and the transferee has signed an agreement assuming the obligations herein of the Lessee. The Lessee may not sublet the premises. The City may withhold its consent to any transfer of this lease until any default under the terms of this lease by any lessee, custodian,

assignee, or proposed lessee has been removed. The City may condition the grant of such consent on the renegotiation of the terms of this lease, including the rent to be charged.

18. Defaults. If default be made in any of the provisions herein to be kept, observed or performed by the Lessee, and such default be not made good within sixty (60) days after written notice thereof from the City, or, if the Lessee fails to vacate the premises at the expiration of the term of this lease or if thereby any transfer of this lease, or any interest therein, except in compliance with the provisions of the paragraphs above, then and in any such case the City may, at its option, at once and without further demand or notice, terminate this lease and re-enter and take possession of the premises and expel the Lessee and all other persons found on the premises, using such force as may be necessary without being guilty of trespass or forcible entry or detainer, or liable for any loss or damage caused thereby and all buildings and appurtenances placed on the leased premises shall at the option of the City become the property of the City in full settlement as liquidated damages sustained by the City by reason of such default of the Lessee. To secure the payment of the rent and performance of all other obligations of the Lessee to the City, the City shall have a lien, prior to all other liens (except mechanics liens) on all buildings and appurtenances placed on the leased premises and also all other liens and remedies given by law. And, at the City's option, any lien in favor of the City may be secured in equity or by distress, or by foreclosure sale, in like manner as a secured party can act under the Uniform Commercial Code of Illinois, and the City may bid at any such sale without obligation to account for more than the sum bid.

19. Notices. The Lessee and any person claiming any interest under this lease shall at all times keep his or her post office address on file in the Office of Public Utilities of the City,

and any notice required or permitted to be given under this lease, shall be deemed for all purposes to have been given when such notice in writing shall have been deposited in the United States mail, postage prepaid, and properly addressed to such designated address, and the affidavit of the person so mailing such notice shall be prima facie evidence of such notice and the mailing thereof.

20. Binding Effect. All provisions hereof shall run with the land and extend to and be binding upon the legal representatives, successors and assigns of the parties hereto. In administration of this lease, the City may act through its Office of Public Utilities, unless otherwise provided by Ordinance of the Council of the City of Springfield.

21. Illinois Law. This lease agreement is to be construed in accordance with the laws of the State of Illinois.

22. Severability. If any section, subsection, sentence, clause, phrase or portion of this lease agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and distinct and independent provision and such holding shall not effect the validity of the remaining portions thereof.

23. Merger. This lease agreement and the exhibits attached hereto contain the full understanding of the parties with respect to the subject matter hereof and is a complete and exclusive statement of the understanding of the parties.

24. Insurance.

- (a) Upon the effective date of this lease, Lessee shall furnish proof that satisfactory liability insurance policies are in force for Workers'

Compensation as required by the laws of the state, Comprehensive General Liability and Comprehensive Automobile Liability.

- (b) The Lessee shall have the City and all of its officers and employees included as co-insured on all insurance policies referred to in this Section. All such policies shall provide that the issuing insurance company will not cancel them without thirty (30) days prior notice to the City and the Lessee.
- (c) The liability insurance policies shall be maintained throughout the duration of this lease. The policies of insurance, or a certificate thereof, shall be deposited with and kept on file by the Risk Management Department.

25. For notification purposes, the parties shall use the following:

Office of Public Utilities
Property Manager
200 East Lake Shore Drive
Springfield, IL 62712

South Sangamon Water Commission

This lease is signed in triplicate as of the date above written.

CITY OF SPRINGFIELD, ILLINOIS
OFFICE OF PUBLIC UTILITIES

Attest: _____
City Clerk

By: _____
Mayor

SOUTH SANGAMON WATER COMMISSION,
A Public Corporation

Attest: Laura VanBroyen
Its Secretary

By: Del M. Goff
Its Chairman

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- 13, adopted by the Commission on the 19 day of September, 2011, said Ordinance being entitled:

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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 19 day of September 2011.


Clerk