

Resolution No. 16-02

**A RESOLUTION AUTHORIZING AND APPROVING  
WATER SUPPLY AGREEMENT WITH EJ WATER COOPERATIVE, INC.**

WHEREAS, it is in the best interest of the South Sangamon Water Commission to add water customers;

WHEREAS, EJ Water Cooperative, Inc. has requested to become a water customer of the Commission; and

WHEREAS, it is in the Commission's best interest to enter into a Water Supply Agreement with EJ Water Cooperative, Inc.

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

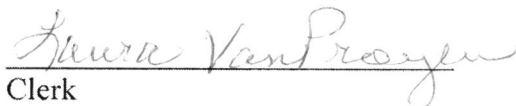
**SECTION 1:** That the Chairman be, and is hereby authorized and directed to execute, and the Clerk is directed to attest to the Water Supply Agreement by and between the South Sangamon Water Commission and EJ Water Cooperative, Inc., an unsigned copy of which is attached hereto as Exhibit "A."

**SECTION 2:** This Resolution is effective immediately.

APPROVED on this 16th day of February, 2016.

  
\_\_\_\_\_  
CHAIRMAN

ATTEST:

  
\_\_\_\_\_  
Clerk

AYES: 2 Burke, Sander

NAYS: 0

PASSED: February 16, 2016

APPROVED: February 16, 2016

ABSENT: 1 Hall

## WATER SUPPLY AGREEMENT

**THIS WATER SUPPLY AGREEMENT** (“Agreement”) is by and between South Sangamon Water Commission, an Illinois public and municipal corporation (“Commission”) and EJ Water Cooperative, Inc., an Illinois not-for-profit corporation (“EJ”).

**WHEREAS**, Commission owns and operates a public water system, and is the wholesale water supplier to the Villages of Chatham and New Berlin (hereinafter referred to as the “Commission’s Water System”); and also serves a number of retail customers;

**WHEREAS**, EJ operates a public water system on a not for profit, cooperative basis in Christian, Clay, Crawford, Cumberland, Effingham, Fayette, Jasper, Montgomery, Richland, Sangamon, and Shelby counties, Illinois, including a water treatment facility in Holland Township, Shelby County, Illinois, known as the Delbert D. Mundt Water Treatment Plant (hereinafter referred to collectively as the “Mundt Water Plant”), and also including a water treatment facility in Jasper County, Illinois, known as the Gila Water Treatment Plant (hereinafter referred to as the “Gila Water Plant”), (and the Mundt Water Plant, Gila Water Plant and public water system collectively hereinafter referred to as the “EJ Water System”); and,

**WHEREAS**, EJ desires to connect with Commission’s Water System for the purposes of establishing a water source for a portion of EJ’s Water System as described herein and Commission desires to sell water to supply EJ’s needs; and,

**WHEREAS**, Commission and EJ desire to memorialize their respective agreements regarding the sale and transfer of water from Commission to EJ.

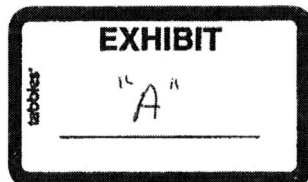
**NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING AND OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

**1. Approval by USDA:** This Agreement is subject to and conditioned upon the written consent and approval of the United States Department of Agriculture – Rural Development (hereinafter referred to as “USDA-RD”).

**2. Purchase & Sale; Identification of Delivery Points:**

**2.1 Purchase and Sale:** During the term of this Agreement, and subject to the terms of this Agreement, Commission shall sell, transmit, deliver and convey to EJ, and EJ shall purchase and accept, potable water, delivered and metered at one or more delivery points as designated by the parties from time to time, and purchased by EJ at such delivery points, and thereafter transmitted into EJ’s Water System at the EJ’s expense.

**2.2 Initial Delivery Points:** The initial delivery points are located at various Points of Connections (hereinafter referred to as the “Delivery Points”), as depicted in Exhibits A and B. The parties may agree to amend, expand, relocate or otherwise modify the Delivery Points by written agreement pursuant to terms and conditions of this Agreement.



**2.3 Risk of Loss; Care, Custody, and Control:** Risk of loss of the potable water shall transfer from Commission to EJ on EJ's side of the Delivery Points as shown in Exhibit A. Care, custody and control of the potable water shall transfer from Commission to EJ on EJ's side of the Delivery Point as shown in Exhibit A.

**3. Construction, Operation and Transmission of Water at Delivery Points:**

**3.1 Measurement of Water:** As part of the initial construction of the Delivery Points, EJ shall at its expense provide metering equipment as specified by Commission in its reasonable discretion after consultation by the parties' engineers, at the Delivery Points. Commission shall at its expense thereafter maintain and operate metering equipment at the Delivery Points.

**3.2 Pressure and Flow Control:** As part of the initial construction of the Delivery Points, EJ shall at its expense provide pressure and flow control valve apparatus and other monitoring equipment as specified by Commission in its reasonable discretion after consultation by the parties' engineers, at the Delivery Points. Each point of connection will be evaluated by the Commission's Engineer to determine the need for backflow prevention and related infrastructure.

**3.3 Telemetry & Utilities:** As part of the initial construction of the Delivery Points, EJ shall at its expense provide Beacon AMI/AMR telemetry equipment at the Delivery Points. All maintenance, upgrades or modifications to the Beacon AMI/AMR telemetry equipment at the Delivery Points shall be performed by EJ, at EJ's expense, when determined by EJ to be reasonably required in accordance with prudent engineering and industry practices applicable to public water systems in Illinois.. EJ shall remain solely responsible for all, utilities, maintenance and upgrade costs that may be required to the EJ's Water System.

**3.4 Quantity & Pressure:** Subject to the terms and conditions of this Agreement, Commission shall transmit and deliver to EJ at the Delivery Points, for distribution within EJ's Water System for sale and consumption by EJ's retail and wholesale customers, a volume of potable water not to exceed in the aggregate at all Delivery Points, 75,000 gallons per day (75,000 gpd) (hereinafter referred to as the "Maximum Quantity"), at a flow rate not to exceed 100 gallons per minute (100 gpm) at a suction pressure of 50 pounds per square inch (50 psi). The quantity of water and pressure transmitted by Commission to EJ through the Delivery Points may be modified by the mutual written agreement of the parties. Commission shall not be obligated to transmit and deliver to EJ any amount of potable water in excess of the Maximum Quantity, but may do so in its sole and unfettered discretion.

**4. Rates:** Pursuant to Section 5 of Division 135 of the Illinois Municipal Code and pursuant to its bond covenants and agreements with other wholesale customers, Commission is obligated to establish and maintain such charges and rates for water supplied to EJ and to Commission's member municipalities and retail customers 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 EJ for water at the Delivery Points shall be the same as the price charged to municipalities which are members of Commission. Commission shall give District at least 60 days prior notice of any rate adjustments. Anything contained herein to the contrary notwithstanding, the Commission shall only be entitled to increase the price charged to EJ for water delivered by Commission to EJ at the Delivery Points not more than one time per calendar year during the term of this Agreement.

## **5. Billing and Metering:**

**5.1** After EJ obtains an IEPA construction permit and prior to obtaining an operating permit, EJ shall install or cause to be installed the necessary metering equipment for properly measuring the quantity of water transmitted and sold to EJ at the Delivery Points (hereinafter referred to as the "Meter Stations"), (identified in the detail of the project plans detailed within Exhibit B). The costs of any and all materials and labor necessary for the initial installation of the Meter Station shall be at EJ's expense. After the initial installation of the Meter Stations, Commission shall at its expense, operate, maintain, and repair the Meter Stations.

**5.2** Commission shall calibrate and test the metering equipment at any Delivery Point upon request by EJ, but not more frequently than once per calendar year. Metering equipment registering not more than 2% above or below the calibration result shall be deemed to be accurate. If EJ requests calibration and testing of Commission's metering equipment and the metering equipment is found to be accurate (i.e. within 2% above or below the calibration result), then EJ shall pay the cost of calibration and testing of the meter. If Commission's metering equipment is found to be inaccurate (i.e. more than 2% higher or lower than the calibration result) Commission shall pay the cost of calibration and testing of the metering equipment. There will be no adjustment, either upward or downward, for past bills in the event a meter is found to be out of calibration.

**5.3** The metering equipment shall be read on a monthly basis. On reasonable notice and during Commission's normal business hours, Commission shall grant EJ access to the meter stations to verify readings on any meter.

**6. Force Majeure:** Failures of pressure or water supply due to water main line breaks, power failure, flood, drought, fire, acts of God, acts of terrorism, use of water to fight fire, earthquake, windstorm or other casualty, or other causes beyond the reasonable control of Commission (hereinafter referred to as an "Event of Force Majeure") shall excuse Commission from any and all liability or obligation under this Agreement for such reasonable period of time as may be necessary to effect repairs and restore pressure or water supply to EJ. Commission shall not be liable to EJ for any loss, liability, claim, demand, cause of action, cost, expense of attorney fee arising out of any Event of Force Majeure; provided, however, that Commission shall use commercially reasonable efforts at all times to maintain its public water system in good and working order in accordance with the rules and regulations of the Illinois Department of Public Health and the Illinois Environmental Protection Agency, and Commission shall exercise

commercially reasonable efforts to repair any damage to its public water system as soon as reasonable practicable.

## **7. EJ's Responsibility for Bills**

EJ shall pay the charges and rates established by Commission for the sale of water by Commission to EJ. Water delivered to EJ will be billed monthly, and paid within 30 days, and will bear interest at 1% per month if not paid within 30 days. If EJ contests a bill, it shall nevertheless pay the bill, and the parties shall promptly consult pursuant to paragraph 13 of this Agreement to determine if any refund is appropriate.

## **8. Water and 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, EJ shall impose similar restrictions on EJ's retail customers in those areas served from the Delivery Points. 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.

**8.2** Whenever in the judgment of the Commission, the water treatment plant is nearing or at capacity, it may restrict EJ from adding new customers along EJ'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.

**8.3** Commission shall give EJ 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.

**8.4** EJ 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.

**9. Water Quality:** At the Delivery Points, Commission shall deliver potable water to EJ in compliance with the regulations established by the Illinois Department of Public Health and the Illinois Environmental Protection Agency as required as the same may be amended from time to time in accordance with applicable Illinois law (hereinafter referred to as the "Water Quality Requirements"). Compliance with the Water Quality Requirements shall be measured at the Delivery Points. Commission shall be responsible for meeting the Water Quality Requirements at the Delivery Points at Commission's expense. EJ shall be responsible for compliance with the Water Quality Requirements within EJ's Water System on EJ's side of the Delivery Point at EJ's expense.

**10. Non-Exclusivity and Nature of Relationship:** This Agreement is not an all-requirements contract, and EJ may purchase water from any other source of its choice. It is understood and agreed that the relationship of Commission and EJ is contractual in nature; neither shall be deemed an agent, partner, or joint venturer of the other.

**11. Effective Date and Term:** This Agreement shall become effective on the date the IEPA issues all required operating permits for the EJ's mains to be served by the Delivery Points, and approval by the USDA of this Agreement. The term of the agreement shall be through December 31, 2055.

**12. 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. Anything contained herein to the contrary notwithstanding, any data or usage forecasts provided to, or gathered, developed, compiled or similarly obtained in any manner whatsoever at any time by or otherwise furnished to Commission under this Agreement will remain EJ's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at EJ's request. Commission may not disclose, without EJ's written permission or as required by law, any confidential information, data, or usage forecasts to any person, or use confidential information, data, or usage forecasts for any purpose other than performing its obligations under this Agreement. The Commission acknowledges that the use or disclosure of the confidential information, data, or usage forecasts may cause substantial, irreparable injury to EJ and EJ may, in addition to other legal remedies it may have, obtain injunctive relief to prevent such use or disclosure. The restrictions in this paragraph shall not apply to information that (1) was independently known to Commission prior to obtaining the same from EJ, (2) is, at the time of disclosure by EJ, then in the public domain, or (3) is obtained by the Commission from a third party who did not receive the same, directly or indirectly, from EJ. This obligation of confidentiality shall survive the termination of this Agreement.

### **13. Dispute Resolution**

13.1 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 governing board or corporate authorities of the other party with respect to the dispute.

13.2 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.

**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 the Commission and corporate resolution of EJ and execution by EJ's President and the Chairman of Commission. All modifications to this Agreement shall be in writing and shall be effective only when approved by ordinance of the Commission and corporate resolution of EJ and execution by EJ's 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. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. Neither Commission nor EJ shall assign this Agreement without prior written consent of the other party, which such consent shall not be unreasonably withheld; provided, however, that in no event shall this Agreement be assigned without the prior written consent of the United State Department of Agriculture – Rural Development. This Agreement shall be subject to all of the rules and regulations of the United State Department of Agriculture – Rural Development, as the same be amended from time to time. Subsequent to the date hereof, this Agreement may be supplemented, modified or otherwise amended by mutual agreement of the parties hereto. Such supplements, modifications or amendments, if any, must be in the form of a written amendment to this Agreement, and signed by authorized representatives of all parties to this Agreement. The parties agree that they shall cause this Agreement to be amended if necessary to cause the Agreement to be in compliance with any and all rules and regulations of the United State Department of Agriculture – Rural Development, as the same be amended from time to time.

**15. Security Pledge:** This Agreement shall be pledged as security for any financing obtained by or through USDA-RD in connection with the construction of the EJ Water Phase 44.

**IN WITNESS WHEREOF,** Commission and EJ have executed this Agreement on that date affixed next to their respective signatures set forth below.

**SOUTH SANGAMON WATER COMMISSION,**  
an Illinois public and municipal corporation

BY:   
\_\_\_\_\_  
, Its Chairman

DATE: 3-3-16

ATTEST: Laura Van Proyen  
Laura Van Proyen, Its Clerk

DATE: 3/3/2016

EJ WATER COOPERATIVE, INC., an  
Illinois not-for profit corporation

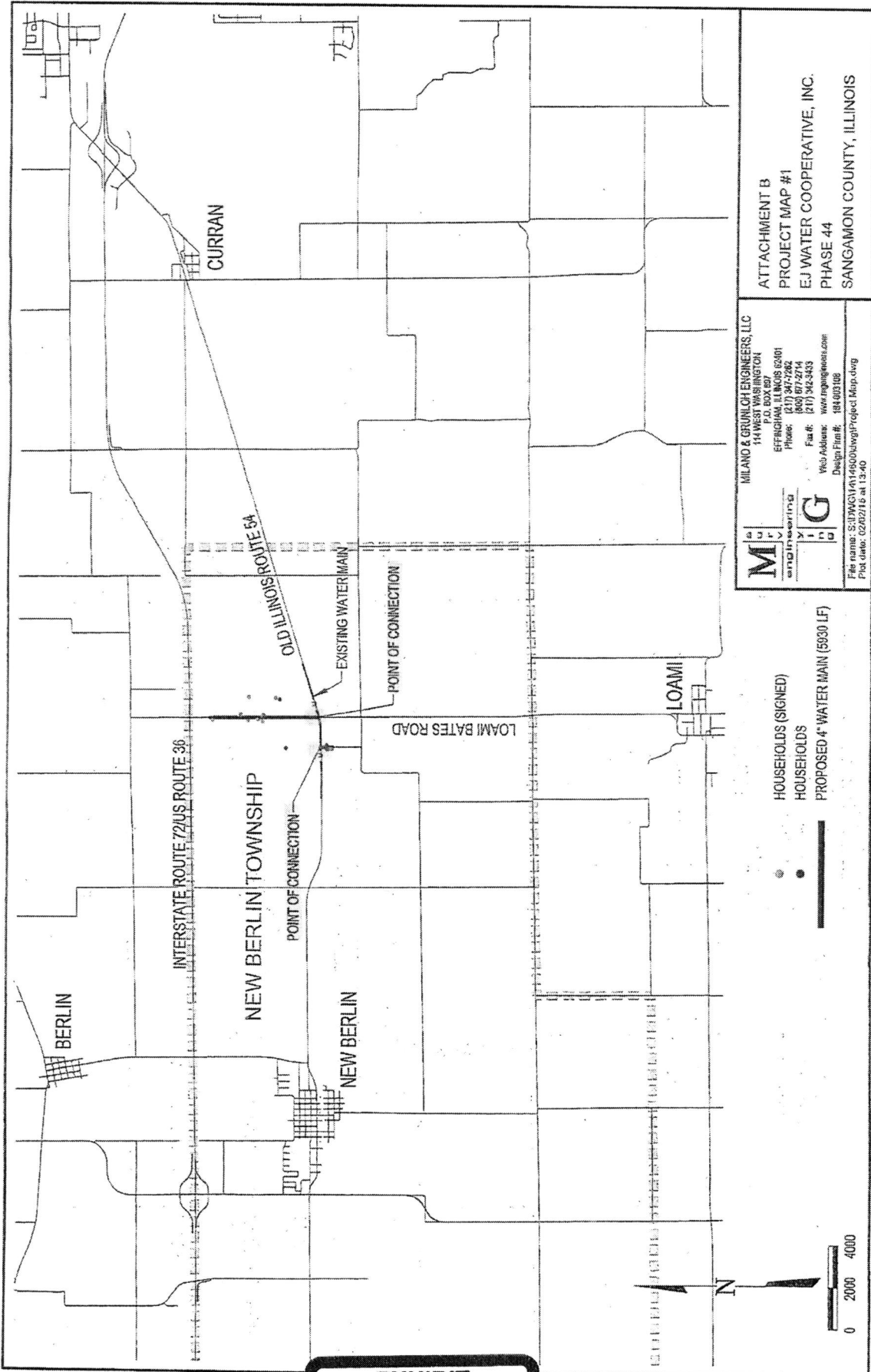
BY: Diane Aherin  
Diane Aherin, its Board President

DATE: 3/16/16

ATTEST: Monte Van Dyke  
Monte Van Dyke, its Board Secretary

DATE: 3/17/16





**EXHIBIT**  
A

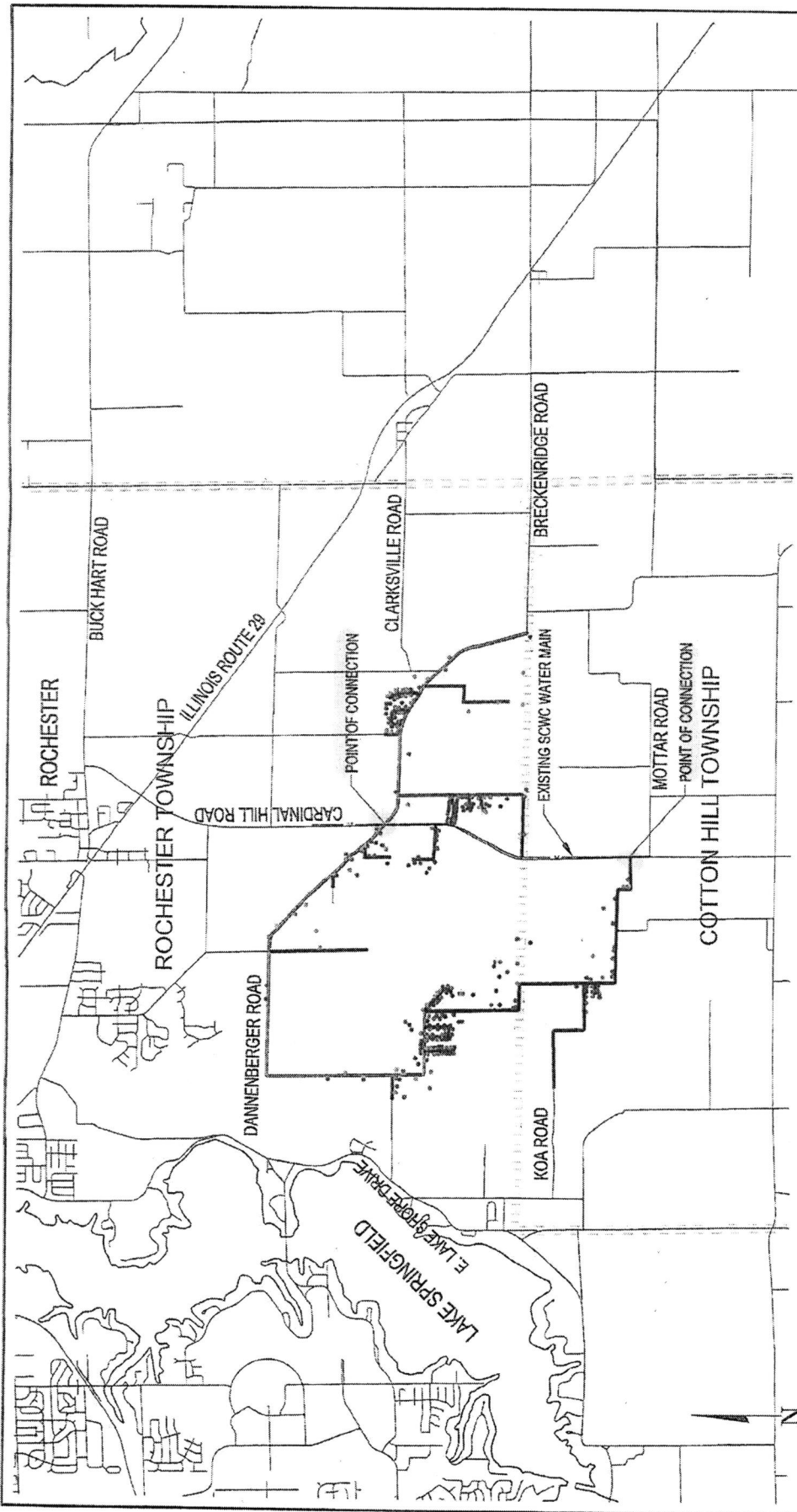
**MILANO & GRUNICH ENGINEERS, LLC**  
 114 WEST WASHINGTON  
 P.O. BOX 697  
 EFFINGHAM, ILLINOIS 62401  
 Phone: (217) 847-2662  
 (800) 677-2714  
 Fax #: (217) 842-3403  
 Web Address: www.mgengineers.com  
 Design Firm #: 184-003108  
 File name: S:\I\W\G\1414500\00\wg\Project Map.dwg  
 Plot date: 02/02/16 at 13:40

**ATTACHMENT B**  
**PROJECT MAP #1**  
**EJ WATER COOPERATIVE, INC.**  
**PHASE 4A**  
**SANGAMON COUNTY, ILLINOIS**

HOUSEHOLDS (SIGNED)  
 HOUSEHOLDS  
 PROPOSED 4" WATER MAIN (5930 LF)

14600 RD PER

Attachment B



**MILANO & GRUNLOH ENGINEERS, LLC**  
 P.O. BOX 887  
 EFFINGHAM, ILLINOIS 62401  
 Phone: (217) 342-7282  
 Fax: (217) 342-5433  
 Web Address: www.mgengineers.com  
 Design Team #: 184-003108  
 File name: S:\025215\14600\dwg\Project Map.dwg  
 Plot date: 02/22/15 at 13:40

**ATTACHMENT B**  
**PROJECT MAP #2**  
**EJ WATER COOPERATIVE, INC.**  
**PHASE 44**  
**SANGAMON COUNTY, ILLINOIS**

- HOUSEHOLDS (SIGNED)
- HOUSEHOLDS
- PROPOSED 4" WATER MAIN (54,050 LF)
- PROPOSED 6" WATER MAIN (33,400 LF)

**tabbles**  
**EXHIBIT**  
 B



14600 RD PER

**RESOLUTION CERTIFICATE**

STATE OF ILLINOIS        )  
  )SS.  
COUNTY OF SANGAMON )

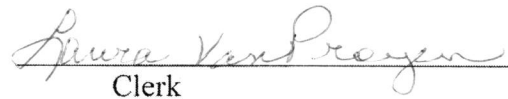
I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the South Sangamon Water Commission.

I do further certify that the resolution attached hereto is a full, true, and exact copy of Resolution No. 16-02 approved by the Commission on the 16th day of February, 2016, said Resolution being entitled:

**A RESOLUTION AUTHORIZING AND APPROVING  
WATER SUPPLY AGREEMENT WITH EJ WATER COOPERATIVE, INC.**

I do further certify that prior to the making of this certificate, the said Resolution 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 16<sup>th</sup> day of February, 2016.

  
Clerk