

## APPENDIX "A"

### 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 the 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 determined by the Village. 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 lines 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 **twelve (12) months**. A meter registering not more than **two percent (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 **six (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 **sixty (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 **thirty (30) days**, and will bear interest at **one percent (1%)** per month if not paid within **thirty (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.**
  - A. 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.
  - B. 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: (i) 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 (ii) Commission shall use best efforts to add capacity to render such customer restrictions unnecessary.
  - C. Commission shall give Village at least **ten (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.**

- A. 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 **five (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.
- B. 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 **sixty (60) days** prior notice to Village and other member municipalities of Commission.
- C. After expiration of the initial or any extended or renewal term, this Agreement shall automatically renew in successive **five (5) year** increments, unless at least **three (3) 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.**

- A. 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.

- B. 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.
  - C. 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.
  - D. If with respect to a purchase pursuant to paragraphs B. or C., 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 **thirty (30) year** straight line basis.
  - E. Village shall also have the right of first refusal to serve any retail customer or group of retail customers within **two (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. 04-10 dated March 17, 2010.

By: /s/ Stephen R. Frank  
Its President

Date: March 17, 2010

Attest: /s/ Deborah LaKamp  
Its Clerk

SOUTH SANGAMON WATER COMMISSION

By: \_\_\_\_\_  
Its Chairman

Date: March 24, 2010

Attest: \_\_\_\_\_  
Its Clerk

**(Ord. No. 10-04; 03-17-10)**

## APPENDIX "B"

### WATER SYSTEM INTERCONNECTION AGREEMENT

This Water System Interconnection Agreement is by and between the Curran-Gardner Townships Public Water District ("District"), and the Village of New Berlin ("Village") and is effective the **11<sup>th</sup> day of January, 2016**.

#### 1. **Construction and Maintenance of Interconnection Facilities**

- A. The District, as lead agency, shall within **one hundred eighty (180) days** of the execution of this Agreement, construct interconnection facilities to be located at the southeast corner of the intersection of Old Jacksonville Road (County Road 8) and South Pleasant Plains Road (County Road 10), Sangamon County IL, (the "Interconnection Facilities"); a pumping station located in the southwest quadrant of the intersection of Old Jacksonville Road (County Road 8) and Farmingdale Road (County Road 15); and a **ten (10) inch** diameter water main from the Village of Berlin to the Interconnection Facilities, per plans and specifications to be developed by MECO Engineering. After construction, a final cost of the project shall be computed, which shall include all costs incurred with respect to the project, including but not limited to; engineering fees for design, construction and observation; easements, materials, labor (including labor supplied by any of the parties, including burden) and any equipment rentals. The Interconnection Facilities will include a valve and meter for water flows from the District to the Village, separate valves to direct flow through the same meter for water flows from the Village to the District, and associated SCADA equipment. A preliminary estimate of probable construction and project costs is attached hereto as **Exhibit "A"**.
- B. The cost of the Interconnection Facilities shall be shared as follows:
  - i. District pays **fifty percent (50%)** of the final cost.
  - ii. Village pays **fifty percent (50%)** of the final cost.
- C. The District, as lead agency, shall pay all invoices related to this project. The Village shall reimburse the District for **fifty percent (50%)** of each invoice within **thirty (30) days** of receiving a copy thereof.
- D. After construction, the Interconnection Facilities will be owned and maintained by the District, subject to the following provisions:
  - i. The District shall be solely responsible for the operation and maintenance of any water mains and works on the Berlin side of the Interconnection Facilities
  - ii. The Village shall be solely responsible for the operation and maintenance of any water mains and works on the Village side of the Interconnection Facilities.
  - iii. The District shall document and bill the Village for **fifty percent (50%)** of the cost of maintenance on the Interconnection Facilities including the replacement of the meter, and the District shall be responsible for the remaining **fifty percent (50%)** of such costs.
  - iv. District shall be responsible for utility costs for the pumping station.

## 2. **Interconnection Agreement**

During the term of this Agreement, the District shall provide emergency water supplies to the Village, and the Village shall provide emergency water supplies to the District. The party supplying water is sometimes referred to in this paragraph as the "Supplying Party" and the party receiving water is sometimes referred to as the "Receiving Party." The procedure for providing emergency water supplies shall be as follows:

- A. A competent officer of the Receiving party shall notify the Supplying Party that a water supply emergency exists due, without limitation, to supply interruptions caused by water line breaks, equipment failures, acts of God, maintenance on the Receiving Party's water system, plant, or in the case of the Village, maintenance on the Village's wholesale supplier's (the South Sangamon Water Commission) water system. Thereupon, the Supplying Party shall promptly take all steps necessary at the Interconnection Facilities to initiate the necessary flows of emergency water supplies.
- B. The District's responsibility to supply water to the Village is limited to **one hundred fifty thousand (150,000) gallons** per day, maintaining a pressure of not less than **fifty-seven (57) pounds per square inch** at the Interconnection Facilities. The Village's responsibility to supply water to the District is limited to **one hundred fifty thousand (150,000) gallons** per day maintaining a pressure of not less than **thirty-five (35) pounds per square inch** at the Interconnection Facilities.
- C. All water supplied shall be metered at the Interconnection Facilities.
- D. The Supplying Party shall bill the Receiving Party for water used in accordance with the Supplying Party's normal billing procedures. Bills shall be paid by the Receiving Party within **thirty (30) days** of receipt.
- E. Unless otherwise agreed, the water rates charged for emergency use shall be the lowest current wholesale or emergency connection rate in effect for any customer of the Supplying Party. At the date of this agreement the District rate is **Five Dollars Twenty-One Cents (\$5.21)** per **one thousand (1,000) gallons** and the Village rate is **Six Dollars Twenty-Five Cents (\$6.25)** per **one thousand (1,000) gallons**.
- F. In the event the Supplying Party has water rationing or other use restrictions in effect due to water shortages, act of God, natural disaster or other causes beyond the control of the Supplying Party (including problems the Village may encounter with its supplier, the South Sangamon Water Commission), the Supplying Party may impose on the Receiving Party the same rationing or use restrictions as are in effect for the Supplying Party's other customer.
- G. In the event both the Supplying Parties have declared a water emergency, neither the Supplying Party shall have the obligation to supply water pursuant to this Agreement until competent officers have met in attempt to work out a joint solution.
- H. The Receiving Party shall notify the Supplying Party of the cessation of the water emergency. Thereupon, the District shall promptly take all steps necessary at the Interconnection Facilities to terminate the flows of emergency water supplies and conduct a final meter reading.

## 3. **Use of Water in Non-Emergency Situations**

The parties recognize that from time to time, there may be flows of water from the District to the Village, or from the Village to the District, caused by flushing, fire flows and other

maintenance activities. In such event, water read through the meters shall be billed in the same manner as for emergency supplies.

4. **Term**

The original term of this Agreement shall be through and including **December 31, 2045**. Thereafter, this Agreement shall automatically renew in successive **five (5) year** terms, unless at **three (3) years** prior to the expiration of the original or any renewal period, any party gives written notice to the other two parties of its intent not to renew.

5. **Dispute Resolution**

- A. 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 parties with respect to the dispute.
- B. The parties shall engage in non-binding mediation as a prerequisite to any lawsuit. Notwithstanding the duty to mediate, in the event of a breach of contract which, in the absence of the duty to mediate would give rise to the right of a party for a temporary equitable relief, a party may apply to the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois, for a temporary equitable relief maintaining the status quo, or compelling a party to specifically perform, pending mediation.
- C. Unless a court has held that this Agreement is terminated before the expiration of its term, no pending or threatened litigation shall excuse any party's obligation to provide emergency water pursuant to Section 2 or required fire flows pursuant to Section 3.

6. **Miscellaneous**

- A. This Agreement is an intergovernmental agreement and is adopted in accordance with the Intergovernmental Agreement provisions of the Illinois Constitution, the Intergovernmental Cooperation Act, and the several statutes defining the powers of the parties.
- B. This Agreement is nonexclusive and does not prohibit or hinder any party from entering into any intergovernmental agreement or emergency or nonemergency water supply agreement, with any other municipality, public agency, cooperative, or private party that is not inconsistent with this Agreement.
- C. This Agreement is effective when adopted by ordinance or resolution duly adopted by the corporate authorities of each party and its execution by the chief executive officer of each party.
- D. This Agreement is the entire agreement between the parties with respect to its subject matter, and all prior representations relating thereto are expressly disclaimed.
- E. This Agreement may be modified only in a writing approved by ordinance or resolution of the corporate authorities of all parties and signed by their chief executive officers.
- F. This Agreement shall be governed in accordance with Illinois law. In the event any portion of this Agreement is unenforceable, that shall not affect the enforceability of the remainder of the Agreement. In the event any third party challenges this Agreement, the parties shall jointly defend this Agreement and



shall share legal fees and expenses in equal amounts, or as otherwise agreed by the parties.

- G. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when joined together as a single document, shall constitute one and the same agreement. Signature pages may be delivered by fax or scanned .pdf documents.

**AGREED AS OF THE DATE ABOVE FIRST WRITTEN:**

VILLAGE OF NEW BERLIN, ILLINOIS

By: /s/ Stephen R. Frank  
Its Village President

Approved pursuant to Ordinance No. 16-01 adopted January 11, 2016.

CURRAN-GARDNER TOWNSHIPS PUBLIC WATER DISTRICT

By: /s/ James Mitchell  
Its Chairman

Approved pursuant to Resolution No. \_\_\_\_\_ adopted February 8, 2016.

**(Ord. No. 16-01; 01-11-16)**