

ORDINANCE NO. 6-04

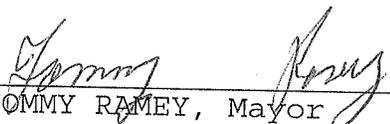
**AN ORDINANCE AUTHORIZING THE MAYOR AND
VILLAGE FISCAL OFFICER TO ENTER INTO A WATER
PURCHASE AGREEMENT WITH RURAL LORAIN
COUNTY WATER AUTHORITY AND DECLARING
AN EMERGENCY**

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Spencer, Ohio, three-fourths (3/4) of its members concurring herein as follows:

1. That the Mayor and the Village Fiscal Officer are hereby authorized and directed to enter into a Water Purchase Agreement, the terms of which are set forth in the written Water Purchase Agreement attached hereto and incorporated herein as "Exhibit A";

2. That this Ordinance is hereby determined to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of said Village and for the particular reason that it is immediately necessary to enter into a revised Water Purchase Agreement so that work may commence during the current building season for connection to a new waterline source that will serve the Village of Spencer residents, and that this Ordinance shall be in full force and effect from and after its passage.

PASSED: February 25, 2004



TOMMY RAMEY, Mayor

Attest:



RHONDA R. RIFFLE, Village Fiscal Officer

CERTIFICATE OF VILLAGE FISCAL OFFICER

The undersigned, Rhonda R. Riffle, Spencer Village Fiscal Officer, hereby certifies the foregoing is a true and correct copy of Ordinance No. 6-04 duly passed by the Council of the Village of Spencer, Ohio, on the 25th day of February, 2004.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Spencer, Ohio, on this 25th day of February, 2004.


RHONDA R. RIFFLE
Village Fiscal Officer

WATER PURCHASE AGREEMENT

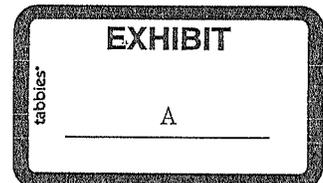
This contract for the sale and purchase of water is entered into as of the _____ day of _____, 2004, between the **RURAL LORAIN COUNTY WATER AUTHORITY**, 42401 State Route 303, LaGrange, Ohio 44050, hereinafter referred to as the "Seller," and the **VILLAGE OF SPENCER**, P.O. Box 336, Spencer, Ohio, 44275, hereinafter referred to as the "Purchaser."

WITNESSETH:

WHEREAS, the Purchaser is organized and established under the provisions of Title 7 of the Ohio Revised Code, for the purpose of constructing and operating a water supply distribution system serving water users within the area described in plans now on file in the office of the Purchaser, and to accomplish this purpose, the Purchaser will require a supply of potable water; and

WHEREAS, the Seller owns and operates a water supply distribution system with a capacity currently capable of serving the present customers of the Seller's system and the estimated number of water users to be served by the said Purchaser as shown in the plans of the system now on file in the office of the Purchaser; and

WHEREAS, by Resolution No. _____ enacted on the _____ day of _____, 20__, by the Seller, the sale of water to the Purchaser in accordance with the provisions of the said Resolution was approved, and the execution of this contract carrying out the said Resolution by the **RURAL LORAIN COUNTY WATER AUTHORITY** was duly authorized; and



WHEREAS, by Ordinance No. _____ of the Village of Spencer, enacted on the ___
_____ day of _____, 20___, the purchase of water from the Seller in accordance
with the terms set forth in the said Ordinance was approved, and the execution of this contract by
the Village of Spencer and attestation by the Village Fiscal Officer was duly authorized;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements
hereinafter set forth:

A. OBLIGATIONS OF SELLER.

(1) **Quality and Quantity:** To furnish the Purchaser at the point of delivery
hereinafter specified, during the term of this contract or any renewal or extension thereof, potable
treated water meeting applicable purity standards (with a minimum chlorine content of 0.75 mg/L
free chlorine residual) of the Ohio Environmental Protection Agency in such quantity as may be
required by the Purchaser not to exceed 150,000 gallons per day calculated on a monthly average
not to exceed 150 gallons per minute. Purchaser agrees to purchase a minimum of 45,000
gallons per day as calculated on a monthly average.

(2) **Point of Delivery and Pressure:** That water will be furnished at a
reasonably constant minimum pressure from an existing eight inch (8") main supply at a point
located at the north vault at the current Spencer corporation limit on State Route 301 so as to
supply the required turn-over in the Spencer Water Tower so as to meet any and all state and
federal regulatory requirements. If a greater pressure than what is normally required at the point
of delivery is requested by the Purchaser, the cost of providing such a greater pressure shall be
born by the Purchaser. Emergency failures of pressure or supply due to main supply line breaks,
loss of source of water, power failure, flood, fire, and use of water to fight fire, earthquakes, or

other catastrophes shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service. In the event of drought conditions, the Purchaser shall be required to implement water saving procedures as directed by Seller or be faced with a reduction of the amount of water received. One optional delivery point shall be provided by the Seller to the Purchaser. It is understood that the optional point of delivery shall be utilized at the sole discretion of Seller. The current alternate supply location is at West Main Street near the Spencer Village corporation limit.

(3) **Billing Procedure:** Seller shall send Purchaser at the above address not later than the second day of each month, an itemized statement of the amount of water supplied to Purchaser or expenses and costs incurred, if applicable, during the preceding month.

Purchaser shall pay said amount in accordance with the procedure set forth in section B of this Agreement.

B. OBLIGATIONS OF PURCHASER.

(1) **Rates and Payment Date:** Purchaser shall pay the Seller, not later than the 20th day of each month, for water delivered in accordance with the contracted RLCWA rate. Seller shall provide potable water to Purchaser at the same rate that Seller charges its customers at the time of the execution of this Agreement. This rate can only be modified if other customers of Seller are similarly raised in an equal amount. A copy of said rate is incorporated herein and attached hereto as "Exhibit A."

Purchaser agrees to pay for a minimum of 45,000 gallons per day as calculated per a monthly average. In the event the Purchaser uses more than 150,000 gallons per day, the Purchaser shall pay the standard RLCWA rate plus one hundred percent (100%) for any

gallons in excess of 150,000 gallons per day, as calculated per a monthly average. Any unpaid invoices shall be reflected on the next regular billing and paid in full unless other arrangements have been made and agreed upon in writing by the parties.

(2) **Metering Equipment:** The meter shall be a standard type acceptable to Seller. 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 one (1) month 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 Seller and Purchaser shall agree upon a different amount. The metering equipment shall be read on the last working day of each month. An appropriate official of the Purchaser, at all reasonable times, shall have access to the meter for the purposes of verifying its readings. Said master meter shall be located at the point of delivery. The Seller will own said master meter and be responsible for its maintenance and calibration. Purchaser may request calibration as often as Purchaser wishes to have said calibration performed. If the meter tests accurate within two percent (2%), then the Purchaser shall pay the cost of testing; otherwise, the Seller shall pay the cost of testing. Seller shall provide to the Purchaser certified copies of documentation as to all costs associated with any testing of the meter.

(3) **Rules and Regulations:** Purchaser agrees to abide by all rules and regulations of RLCWA now in effect or hereafter adopted as pertains to late charges, penalties, or interest on delinquent accounts.

(4) **Service Areas:** The Purchaser's water service area shall be the geographical area within the Village's municipal boundaries, including those areas that may be changed from time to time through annexation, merger, or incorporation. The Seller's service area includes those geographical areas outside the Village's municipal boundaries as may be changed from time to time through annexation, merger, or incorporation. During the term of this Water Purchase Agreement, and unless otherwise mutually agreed as set forth herein, the Purchaser shall not supply water to customers within the Seller's defined service area. Further, the water supplied pursuant to this Water Service Agreement is furnished for the benefit of the Purchaser's residents only and shall not be sold, transferred, or conveyed to any other third party with the exception that the Purchaser may supply a bulk water hauling customer, if the Purchaser should choose to do so.

(5) **Annexation/Merger/Incorporation:** Annexation, merger, or incorporation of any area by Purchaser shall not effect the service area of Seller. Should the Purchaser, by annexation, merger, or incorporation, extend its municipal corporate boundaries to areas beyond the Purchaser's present corporation boundaries, Seller shall retain jurisdiction, ownership, and control over all water facilities constructed, owned, or maintained by Seller in the annexed, merged, or incorporated area, unless otherwise mutually agreed by the parties. Further, customers who have connected to Seller's system shall remain customers of the Seller, notwithstanding the annexation, merger, or incorporation, unless otherwise mutually agreed by the parties. Provided however, in those instances where Purchaser has extended its corporate boundaries by annexation, merger, or incorporation into Seller's service area, then, in that event, any new customers of Purchaser shall be serviced by Purchaser, and Seller shall be compensated according to the terms set forth in this Agreement and section B(6). The Purchaser shall do the

tap and determine the tap for new customers of Purchaser. Provided further, nothing contained herein shall be construed as a waiver, modification, or relinquishment of Seller's service area, or its rights and interests thereto.

(6) **Tap-In Fees/Charges**. The parties agree that on and after the effective date of this Agreement, and in those instances where new customers of Purchaser are located within the service territory of Seller, as well as areas annexed, merged, or incorporated into the municipal boundaries of Purchaser, Purchaser shall charge to each new customer connecting to the Purchaser's system the applicable tap-in fee provided in the attached "Exhibit A." The applicable tap-in fee shall apply to each customer (that is, each living unit). The applicable tap-in fee may be adjusted by Seller from time to time, provided however, that the applicable tap-in fees shall be the same tap-in fees charged by Seller to other Lorain RLCWA water users. It is understood and agreed that such tap-in fees shall not apply to dedicated fire protection lines. It is further understood and agreed that such tap-in fees will only apply to areas annexed by Purchaser after January 1, 2004, and only to those properties constructed after the effective date of this Water Purchase Agreement.

In further consideration for the Seller's furnishing water to the Purchaser and to compensate Seller for the capital costs incurred in providing service, the Purchaser shall pay to the Seller 62.5% of the dollar amount of each tap-in fee as described above in this subparagraph. The Purchaser may retain 37.5% of the dollar amount of each tap-in fee for each tap-in to compensate Purchaser for the costs of the tap-in and the capital costs incurred by Purchaser in providing service to its own customers. Purchaser shall require the applicable tap-in fee to be paid by the customer prior to receipt of water service. Purchaser shall pay Seller its respective share of the tap-in charge within fourteen (14) days of receipt by Purchaser.

(7) **Maintenance:** Seller shall be responsible for maintenance of its water facilities to the point of delivery. Purchaser shall be responsible for maintenance of water facilities from point of delivery except that Seller will be responsible for maintenance of the master meter vault. The control valve itself will specifically be the Purchaser's maintenance responsibility. All water facilities shall be constructed, maintained, and operated in accordance with the minimum requirements of the Ohio Environmental Protection Agency or other state or local agency with jurisdiction.

C. **IT IS FURTHER MUTALLY AGREED BETWEEN THE SELLER AND THE PURCHASER AS FOLLOWS:**

(1) **Term of Contract:** This contract shall extend for a term of fifteen (15) years from the date of the initial delivery of any water as shown by the first bill submitted by the Seller to the Purchaser after the date of this Agreement, and thereafter may be renewed or extended for such term or terms as may be agreed upon by the Seller and Purchaser.

(2) **Failure to Deliver:** That the Seller will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the Purchaser with quantities of water required by the Purchaser. Temporary or partial failure to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser's consumers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's consumers is reduced or diminished.

(3) **Elevated Storage:** Purchaser shall maintain not less than 100,000 gallons of elevated storage or such increased elevated storage as shall be required to meet EPA standards, except for time periods where the Spencer Water Tower is temporarily out of service.

(4) **Hold Harmless**: The Purchaser shall save the Seller harmless from any claims made against its distribution system within Spencer Village limits for any cause unless said cause is directly related to the supply of safe drinking water. It shall be the Purchaser's duty to test all water entering its system, and the Seller shall be relieved from all responsibility after the water enters the Purchaser's system. Purchaser's test results shall be deemed definitive if Purchaser is using an acceptable test standard.

(5) **Indemnity of Purchaser**: The Purchaser shall save and hold the Seller harmless from any and all claims, and shall indemnify the Seller from all losses, including attorney fees and costs of defense, from any claim made against the Seller as a result of the Purchaser's distribution system or the delivery of water therein or against the Seller as a result of the performance of the terms of this Agreement unless such claim arises from or is proximately caused by the Seller's failure to supply water meeting the standards provided for in this Agreement. The Purchaser shall further save and hold the Seller harmless from any claims related to fire protection to the Purchaser, it being specifically understood that the supply of water by the Seller is not intended, nor does the Seller assume any responsibility for the fire protection.

(6) **Regulatory Agencies**: This contract is subject to such rules, regulations, or laws as may now be or shall in the future be applicable to this Agreement, and the parties hereto will cooperate in obtaining such permits, certificates, or other compliance as may be required. The Seller and Purchaser shall maintain a backflow prevention and cross connection control program which meets any applicable EPA and/or Ohio Administrative Code Requirements. The Seller shall further provide the Purchaser with copies of all drinking water contaminate

compliance results as may be required. Any water storage requirements by local, state, or federal law or regulations for the Village of Spencer shall be the sole responsibility of the Purchaser.

(7) **Successors to the Purchaser:** That in the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the right of the Purchaser hereunder.

IN WITNESS WHEREOF, the parties hereto, acting under the authority of their respective governing bodies, have caused this contract to be duly executed in three (3) counterparts, each of which shall constitute an original.

SELLER:

RURAL LORAIN COUNTY WATER AUTHORITY

By: _____
Title: President

PURCHASER:

VILLAGE OF SPENCER

By: Tommy Ramey
TOMMY RAMEY
Title: Mayor

Attest:

Rhonda R. Riffle
RHONDA R. RIFFLE
Title: Village Fiscal Officer

EXHIBIT A

CURRENT TAP FEE SCHEDULE

<u>Size</u>	<u>Cost</u>
3/4"	\$ 2,000.00
1"	\$ 3,200.00
1 1/2"	\$ 5,006.00
2"	\$ 6,150.00
3"	\$18,000.00
4"	\$26,062.00

A separate tap fee is required for each business or living unit.

CURRENT WATER RATE SCHEDULE

<u>Quantity Per Month</u>	<u>Rates Per 1,000 Gallons</u>
First 2,000 gallons	\$15.50 minimum bill
Next 3,000 gallons	\$ 4.95 per 1,000 gallons
Next 5,000 gallons	\$ 3.95 per 1,000 gallons
Next 40,000 gallons	\$ 2.95 per 1,000 gallons
Next 50,000 gallons	\$ 2.45 per 1,000 gallons