

ORDINANCE 2019-013

AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN EMERGENCY WATER SERVICE AGREEMENT WITH THE WARREN COUNTY BOARD OF COMMISSIONERS AND DECLARING AN EMERGENCY

WHEREAS, the Village of Waynesville and the Warren County Board of Commissioners have determined that it is in the best interest of both entities to enter into an emergency water service agreement.

NOW THEREFORE BE IT ORDAINED, by the Council of the Village of Waynesville, 7 members elected thereto concurring:

SECTION 1: That the Village Manager is hereby authorized to execute an emergency water service agreement substantially in the form of the agreement attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2: That is Ordinance is hereby declared to be in emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall be effective immediately upon its adoption. The reason for said declaration of emergency is the need for an emergency water service agreement with Warren County.

Adopted this 6th day of May, 2019.

Attest

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EMERGENCY TEMPORARY WATER PURCHASE AGREEMENT

This is an agreement entered into on the dates stated below, for the purchase of water to meet emergencies, by and between Warren County Board of County Commissioners, 406 Justice Drive, Lebanon, Ohio 45036 ("County") and the Village of Waynesville, 1400 Lytle Road, Waynesville, Ohio 45068 ("Village"), an incorporated village whose boundaries are located entirely within Warren County, Ohio.

WHEREAS, the County's Water and Sewer Department is a regional water supplier capable of supplying surplus water to surrounding communities and jurisdictions; and

WHEREAS, the Village owns, operates, and maintains a waterworks system, and is capable of supplying limited quantities of surplus water to the County through an existing interconnection; and

WHEREAS, the County pursuant to Ohio Rev. Code §§ 307.15 and 6103.02 and 6103.21 et seq. has the authority to sell surplus water to the Village; and the Village pursuant to Ohio Rev. Code § 715.08 et seq. and the provisions of its ordinances, codes, or charter has the power to sell water to the County.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, the County and Village, in a cooperative effort to provide each other with a temporary source of domestic water to meet emergencies, hereby agree as follows:

Section 1 - Definition of Terms.

"Buyer": Either the County or the Village when needing to purchase water from the other entity.

"Seller": Either the County or the Village when requested by the other to sell water.

"Water": Potable, safe water, treated with conditioning actions as normally supplied by the Seller to its Customers.

"Customers": Residents, corporations, and other purchasers of the buyer's government district.

"Emergency" (with respect to buying/selling water): The temporary inability of the Buyer to supply its current billable customers with safe, potable water, thus causing an immediate threat to life, health, or property of the customers.

"Commodity Rate": The cost per 1000 gallons of water that the government entity (County or Village) charges its residential customers within its jurisdiction limits. For example, as of 3/1/2019, the County has a commodity rate of \$4.18/1000 gallons of water as shown on the County's website: <http://www.co.warren.oh.us/water/rates.aspx>. The Village as of 3/1/2019 has a commodity rate of \$3.49/1000 gallons of water as listed in the Village's Schedule of Fees,

available at: <http://villageofwaynesville.org/government/utilities/utility-billing/>.

Section 2 - Purpose of the Agreement.

In the event of an emergency, the Buyer shall buy water from the Seller subject to the capacity of the Seller to provide the water requested and as provided for in this agreement.

This Agreement is limited to the purchase and sale of water for temporary emergency purposes only, for a period of time not to exceed 30 consecutive days. The parties may enter into separate agreements dealing with the purchase and sale of water between Warren County and Waynesville, for other purposes, but such agreements shall not affect this agreement.

Section 3 - Notification.

Whenever possible, the Buyer shall inform the Seller 24 hours prior to water usage, allowing the Seller to make necessary system changes to supply the requested water. If prior notification is not possible the Buyer shall inform the Seller immediately upon water usage, through phone calls, voice messages, email, electronic texts, or other reliable communication means.

Section 4 - Water Supply Period.

In no event, without the written consent of the Seller, shall this agreement require providing temporary emergency water to the Buyer to meet an emergency for a longer period than 30 days.

Section 5 - Interconnections.

Water shall be measured and/or estimated through interconnections at the following location(s):

- 1) At a meter vault located near 4095 Lytle Road. [the water meter is located in a vault chamber on the south side of the road and the downstream side valve is always off until the County is notified by the Village of the intended use.] Either party shall have the right to test the accuracy of the relevant meter, at its own cost, upon written notification to the other party. The meter shall be repaired or replaced by Warren County should the meter test inaccurate by more than 10%.

- 2) At a meter vault located near 3050 St. Rt. 73. [the water meter is located in a vault chamber on the north side of the road and the downstream side valve is always off until the County is notified by the Village of the intended use.] Either party shall have the right to test the accuracy of the relevant meter, at its own cost, upon written notification to the other party. The meter shall be repaired or replaced by Warren County should the meter test inaccurate by more than 10%.

- 3) At a meter vault located near the intersection of St. Rt. 42 and Corwin Road and the downstream valve is always off until the Village is notified of the intended use. Either party shall have the right to test the accuracy of the relevant meter, at its own cost, upon written notification to the other party. The meter shall be repaired or replaced by the Village of Waynesville should the meter test inaccurate by more than 10%.

Additional interconnections may be created during the term of this agreement. To be included for use for emergency water, additional interconnections must be identified and described through modifications to this agreement (see Section 13).

Each party, throughout the term of this Agreement, shall allow unrestricted access to the meters and meter pits for the purpose of monitoring and operation of the equipment.

Section 6 - Compensation.

The Buyer shall compensate the Seller for emergency water supplied by the Seller at 90% of the Buyer's lowest commodity rate in effect at the start of the Emergency.

The Seller shall invoice the Buyer and the Buyer shall provide payment within twenty calendar days in accordance with the rates set forth above.

Section 7 – Frequency of Occurrence and Compensation Rate.

Each emergency starts a new 30-day period under this agreement.

Section 8 - Water Quality.

The Seller shall provide the Buyer with water of a quality satisfactory to the Ohio Environmental Protection Agency and of the same standards being furnished to its own customers. The Seller shall have no responsibility for the quality of water once it passes through the interconnection defined in Section 5 of this agreement and into the Buyer's distribution system.

Section 9 - Agreement Term.

The term of this agreement shall be for a period of ten (10) years from the later date of signature executed by the parties for this agreement. Either party has the right to terminate this agreement by giving written notice to the other party one year in advance of termination.

Section 10 – Existing Waterworks.

The Village and County shall continue to own, operate, and maintain their independent and separate waterworks, service their respective water customers, and extend and/or alter their respective waterlines and services within their water service areas. Nothing in this agreement shall be construed to alter or expand the service area or jurisdiction of any party to this agreement. Nor shall either party be required to violate the terms of any agreements relating to

its respective service area or jurisdiction.

Section 11 – Commodity Water Rates.

Both the Village and the County shall have the sole right to set commodity rates for their respective water customers.

Section 12 – Previous Agreements.

This Agreement shall supersede all previous water purchasing/selling agreements and any other decisions regarding the purchase or sale of commodity water between these parties, with the exception that this agreement does not affect the “Public Water Suppliers System Capacity Charges” water selling policy adopted under Village Ordinance 2018-052.

Section 13 – Future Modifications.

This Agreement may be modified or amended only by written instrument duly authorized and executed by both the Village and the County.

Section 14 – Successors and Assigns.

This Agreement shall be binding on the successors and assigns of the parties. Neither party may assign or otherwise transfer its rights and obligations in this Agreement without the written consent of the other party.

Section 15 – Controlling Law and Venue.

This Agreement shall be construed under the laws of the State of Ohio. The parties further stipulate that any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Section 16 – Validity.

A determination that any part of this Agreement is invalid shall not invalidate or impair the force or effect of any other part hereof, except to the extent that such part is wholly dependent for its operation upon the part declared invalid.

Section 17 – Execution.

VILLAGE OF WAYNESVILLE

IN EXECUTION WHEREOF, the Council of the Village of Waynesville has authorized this Agreement to be executed on the date stated below by its Village Manager, pursuant to Ordinance No. _____ dated _____, 2019.

VILLAGE OF WAYNESVILLE

SIGNATURE:

NAME: Gary Copeland TITLE: Village Manager

DATE:

Approved as to form: VILLAGE LAW DIRECTOR

Jeffrey D. Forbes

WARREN COUNTY

IN EXECUTION WHEREOF, the WARREN COUNTY BOARD OF COUNTY COMMISSIONERS has caused this agreement to be executed by _____, its _____, on the date stated below, pursuant to Resolution No. _____ dated _____, 2019.

**WARREN COUNTY
BOARD OF COUNTY
COMMISSIONERS**

SIGNATURE:

NAME: _____

TITLE: _____

DATE: _____

Approved as to form:

PROSECUTING ATTORNEY WARREN COUNTY, OHIO
