

ORDINANCE 06-30


AN ORDINANCE TO AUTHORIZING SIGNATURE OF AN INTERGOVERNMENTAL AGREEMENT REGARDING CURRAN GARDNER WATER DISTRICT

WHEREAS, the Intergovernmental Cooperation Act, 20 ILCS 220/1 et seq., authorizes the Village of Chatham and the Curran-Gardner Water District to enter into an agreement which is beneficial to the citizens of the Village of Chatham.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Chatham, Sangamon County, Illinois as follows:

Section 1: That the President is authorized to sign said agreement attached hereto as Exhibit "A".

Section 2: This Resolution is effective upon passage and approval.


Thomas S. Gray, President
Village of Chatham

ATTEST: 
Pat Schad, Clerk

YEAS: 5 MCCARTHY, McGRATH, HERR, SCHATTEMAN, BOYLE
NAYS: 0
ABSENT: 1 KAVANAGH

PASSED: 6/27/06
APPROVED: 6/27/06



INTERGOVERNMENTAL AGREEMENT

This Agreement is between the Village of Chatham, Illinois ("Village"), an Illinois municipal corporation organized and existing pursuant to the Illinois Municipal Code, and the Curran-Gardner Water District, ("District"), an Illinois public corporation and unit of government organized and existing pursuant to the Illinois Public Water District Act, and is dated this 27 day of JUNE, 2006.

WHEREAS, pursuant to § 11-125-1 of the Illinois Municipal Code, the Village may provide for a supply of water by the boring of artesian wells, or by the digging, construction, or regulations of wells, pumps, cisterns, reservoirs or waterworks, and borrow money therefor;

WHEREAS, pursuant to § 11-125-2 of the Illinois Municipal Code, the Village may purchase, extend, and improve and operate waterworks, and a village may go beyond its corporate limits and acquire and hold property by purchase or otherwise, and also may take and condemn all necessary property therefore, in the manner provided for the taking or damaging of private property for public uses;

WHEREAS, pursuant to Section 9 of the Public Water District Act, the District may be authorized to construct, maintain, alter and extend its water mains as a proper use of highways along, upon, under and across any highway, street, alley or public ground in the State, but so as not to inconvenience the public use thereof, and may construct, maintain and operate any conduit or conduits, water pipe or pipes, wholly or partially buried or otherwise in, upon and along any of the lands owned by said State under any of the public waters therein; provided that the right, permissions and authority granted shall be subject to all public rights of commerce and navigation and the authority of the United States in behalf of such public rights, and also to the laws of the State of Illinois to regulate and control same.

WHEREAS, pursuant to Section 10 of the Public Water District Act, the District has the right to supply water to any municipality, provided the water is delivered at the corporate limits of the district or from such waterworks properties of the district located outside the district that have been constructed or acquired as necessary and incidental to the furnishing of water to the inhabitants of said district;

WHEREAS, pursuant to Section 11 of the Public Water District Act, the District has the right to contract with third parties for a supply of water;

WHEREAS, intergovernmental agreements are expressly allowed by Article VII, Section 10 of the Illinois Constitution of 1970;

WHEREAS, Section 3 of the Intergovernmental Cooperation Act provides that any power or powers, privileges; functions, or authority exercised or which may be exercised by a public agency of the State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of the State except where specifically and expressly prohibited by law;

WHEREAS, Section 5 of the Intergovernmental Cooperation Act provides that any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract, and provided that such a contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties;

WHEREAS, pursuant to authority granted by Division 151 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-151-1 et seq., and in particular 4 thereof, 65 ILCS 5/11-151-4, and pursuant to Section 40 of the Public Water District Act, 70 ILCS 3705/40, the Village and District may enter into contracts providing for division and allocation of duplicate and

overlapping powers, functions and duties, so long as such contracts do not exceed 30 years duration;

WHEREAS, pursuant to the foregoing constitutional and statutory provisions, the Village and District wish to contract with each other to cooperate in providing a source of water for their customers and avoid duplication of services and boundary line disputes.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I.

SECTION 11-151-4 PROVISIONS

1. Whenever the Village annexes territory that is within the geographical limits of the District, the Village will give the District the option of serving customers within the territory. Only if the District declines to serve the customers shall the Village serve the customers. If requested by the District in order to enable the District to serve such customers, the Village shall sell water to the District at the Village's then-current rates for governmental customers or wholesale customers, whichever is more favorable to the District, to a meter or meters located within the corporate limits of the Village as they existed on January 1, 2006, and shall grant the District such easements as are reasonably required by the District to provide such service. The meters shall be the property of the Village, and shall be purchased and installed in accordance with the Village's water line extension policies. All waterworks downstream of the meter shall be the property and maintenance and service responsibility of the District and shall be purchased and installed in accordance with the District's water line extension policies.

2. Whenever the District wishes to serve customers in a territory which is within the District and not annexed to the Village, the Village will sell water to the District under the same terms and conditions as set forth in paragraph 1. Any such customer who is located east of the

abandoned Chicago Northwestern railroad line which is east of and parallels Wesley Chapel Road (the "Annexation Line") shall, as a condition of receiving such service, execute a recordable annexation agreement pursuant to the annexation agreement division of the Illinois Municipal Code (65 ILCS 5/11-15.1-1 et seq): (a) agreeing that the customer or the customer's successors in interest will annex to the Village when the customer's land become contiguous to the Village; (b) containing a valid petition for annexation executed by all owners of record and 51% of the electors within the territory; (c) providing that the agreement is a covenant running with the land; and (d) consenting to the Village's jurisdiction over the land pending its annexation, to the extent permitted by the annexation agreement division of the Illinois Municipal Code. Nothing in this paragraph shall be construed as precluding any person owning land west of the Annexation Line from voluntarily annexing the land to the Village of Chatham; however, the Village shall not require annexation of any land west of the Annexation Line as a condition of service to the District.

3. Whenever there is a subdivision to be served by the District in accordance with paragraph 2, the Village's requirements for waterworks in the subdivision, and mains to the subdivision, shall apply. The parties anticipate that the waterworks within the subdivision will be built by a third party at its expense and dedicated to the District at no cost to the District. However, with respect to any water main which needs to be constructed to serve such a subdivision, the Village shall reimburse the District for any increased costs incurred by the District as a result of any difference between the two entities' requirements. The parties shall consult from time to time to harmonize as much as possible their technical requirements for water mains and other works.

4. The District's retail rates to customers within the corporate limits of the Village of Chatham shall not exceed the rates charged by the Village to its similarly situated customers. The District may apply to the Village to waive this requirement if the Village's rates are lower than those of the District, and the District can demonstrate that it is operating at a loss when charging the Village's retail rates. In such cases, the District and Village shall negotiate a rate by which the District will not operate at a loss.

5. The parties intend that the Village shall serve all customers within its corporate limits with sewage services. Whenever the District reads water meters, it shall promptly provide the Village with customer usage data so that the Village can render sewage bills to the customers in a timely fashion.

6. In no event shall the District convey or assign its lines, works or easements located within the corporate limits of the Village, or assign its rights to serve or delegate its obligations to serve customers within the corporate limits of the Village, to any third party. Should the District ever elect to cease service to any areas located within the corporate limits of the Village that it has served pursuant to this Agreement, then the District shall convey its right, title and interest in its lines and works and easements within such areas to the Village for \$1.00. Should the District disband or be merged into some other unit of government or other entity, then the District's rights under this Agreement shall terminate without further notice, and the Village shall take title to all District lines and works within the corporate limits of the Village after reimbursing the District the depreciated replacement cost of any water mains or other works that the District built at its expense. Lines and works that were built by third parties and dedicated to the District at no cost to the District will be transferred to the Village at no charge.

II.

INTERGOVERNMENTAL COOPERATION PROVISIONS

7. The parties agree to cooperate with each other in providing water to their respective customers. Without limitation, the parties agree:
- a. to negotiate, and if appropriate, to enter into interconnection agreements as agreed from time to time by the parties in the discretion of their respective corporate authorities.
 - b. to investigate the development of sources of water supplies, as agreed from time to time by the parties in the discretion of their respective corporate authorities.
 - c. to investigate, and if appropriate, to implement contractual arrangements where one party bears the entire cost of development of sources of water supplies and the other party is the customer of the party developing the source of supply, as agreed from time to time by the parties in the discretion of their respective corporate authorities.
 - d. to investigate, and if appropriate, to implement contractual arrangements where the parties share in the cost of developing such supplies, taking a share of the production according to negotiated prices and terms, as agreed from time to time by the parties in the discretion of their respective corporate authorities.
 - e. to investigate, and if appropriate, to implement contractual arrangements whereby the parties share in the financing of sources of water supply, pledging the revenues of their respective systems of any joint source in repayment of bonds or other financing arrangements, as agreed from time to time by the parties in the discretion of their respective corporate authorities.
 - f. to share or transfer customers, as agreed from time to time by the parties in the discretion of their respective corporate authorities, with a view toward maximizing the efficiency of both systems.

8. Whenever the parties reach formal written agreement on any of the matters set forth in paragraph 7, then each such agreement shall include as an express or implied term a provision that each party will transfer to the other such powers as are possessed by the transferring party under the Illinois Municipal Code or the Public Water District Act or otherwise possessed by law, (including but not limited to eminent domain powers, and regardless of whether or not such powers are specifically enumerated in the preambles hereto) and to the full extent allowed by the Intergovernmental Cooperation Article of the Illinois Constitution and the Intergovernmental Cooperation Act, as are deemed necessary or appropriate by the transferee party to facilitate the development of sources of water supply or to perform any other acts set forth in paragraph 7 of this Agreement.

III.

GENERAL PROVISIONS

9. The duration of Part I of this Agreement is limited to 30 years by Section 11-151-4 of the Municipal Code, and shall be through and including December 31, 2035. The parties agree to negotiate in good faith the location of the Annexation Line established in paragraph 2 of this Agreement during the 10th and 20th years of this Agreement. Part II of this Agreement is terminable by either party at will unless there are outstanding bonds as to which the revenues of both parties' systems are pledged, in whole or in part, with respect to a joint production facility or waterworks system developed in accordance with or in reliance on this Agreement; the passage of ordinances authorizing the issuance of any such bonds shall be deemed an irrevocable extension of Part II of this Agreement to and including the date such bonds are retired.

10. This Agreement is nonexclusive and does not prohibit or hinder either party from entering into any intergovernmental agreement, supply agreement, annexation agreement or boundary line agreement with any other municipality, public agency, cooperative, or private party that is not inconsistent with this Agreement.

11. This Agreement is effective when adopted by ordinance duly adopted by the corporate authorities of each party and its execution by the chief executive officer of each party. This Agreement is the entire agreement between the parties with respect to its subject matter, and all prior representations relating thereto are expressly disclaimed. This Agreement may be modified only in a writing approved by ordinance of the corporate authorities of both parties and signed by the presidents of both parties. 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.

AGREED AS OF THE DATE ABOVE FIRST WRITTEN:

VILLAGE OF CHATHAM, ILLINOIS

By: Thomas S Gray
Its: Village President



Attest: Pat Schur
Its Clerk

CURRAN-GARDNER WATER DISTRICT

By: _____

Its Chairman

Attest: _____
Its Clerk