

1500  
8-1-1  
2-2-0

MODIFICATION OF A BULK WATER PURCHASE AGREEMENT BETWEEN THE CITY OF DEFIANCE, OHIO; "SELLER", AND THE AYERSVILLE WATER AND SEWER DISTRICT; "PURCHASER", DATED JANUARY 23, 1969; TO PROVIDE A PROCEDURE FOR THE ADJUSTMENT OF THE RATES AT WHICH WATER IS SOLD TO THE DISTRICT.

WITNESSETH:

WHEREAS, "SELLER" and "PURCHASER" entered into a contract ("Original Contract") for the sale and purchase of water on January 23, 1969; which provides the rates at which the water is sold to the District may be modified based on a demonstrable increase or decrease in the cost of performance; and,

WHEREAS, the Original Contract neither provides a means of determining when a demonstrable increase has occurred, nor a clear procedure by which rate increases are to be implemented; and,

WHEREAS, many of these ambiguities were resolved by a "gentleman's agreement" reached at a meeting February 5, 1976 between representatives of the City Water Utility and the Ayersville Water and Sewer District; said Agreement having been successfully implemented over the intervening years; and,

WHEREAS, to avoid future disputes and provide a clear record as to the nature of the Agreement between the parties, the "SELLER" and "PURCHASER" by their duly authorized agents have caused the "gentleman's agreement" on rate schedules and increases to be recorded herein:

NOW, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE SELLER AND THE PURCHASER AGREE TO A REVISION OF THE RATE COVENANT OF THE ORIGINAL CONTRACT TO READ AS FOLLOWS:

I...

B. THE PURCHASER AGREES:

1. (Rates and Payment Date). To pay to the SELLER not later than the tenth (10th) day of each month, for water delivered in accordance with the following schedule of rates:

(a) Bulk Rate "A": The SELLER shall sell water to PURCHASER on a bulk rate basis. The schedule for bulk rate "A" shall reflect a fifty-four (54%) percent differential above the basic metered rate schedule established for water consumers inside the corporate limits of the City of Defiance, for all rates on the schedule. Bulk Rate "A" shall specify a minimum charge to PURCHASER payable each month for any water used up to and including the first one hundred twenty thousand (120,000) cubic feet metered (0-120,000) and shall thereafter establish a flat rate for each one thousand (1,000) cubic feet metered at the point of delivery over one hundred twenty thousand (120,000) cubic feet in each monthly billing cycle.

(1) At the execution of this Agreement, the current schedule of rates reflects the following charges enacted by Ordinance \_\_\_\_\_, Passed \_\_\_\_\_, 1982:

Bulk Rate "A"

Minimum cost per month: \$1,004.39 for 0-120,000 cu.ft.  
Over 120,000 cu.ft.- 6.02 per 1,000 cu.ft.

(b) Modification of Rates; Procedure:

The PURCHASER agrees to permit the SELLER to increase or decrease rates based on a demonstrable increase or decrease in the cost of performance hereunder; or a general increase or decrease.

(1) Modification of Bulk Rate Differential:

Modification of the current rate differential charged to PURCHASER, which is calculated at 1.54 times the schedule for metered rates for water consumers inside the corporate limits of the City of Defiance, Ohio, shall not be altered except by written agreement modifying this contract.

(2) Percentage Increases in Scheduled Rates:

Whenever the SELLER implements a percentage increase or decrease in its scheduled rates for metered water provided to water users inside the corporate limits, the SELLER shall adjust the schedule of rates on the Bulk Rate "A" schedule by the same percentage. Increases or decreases of this type shall be deemed "per se" demonstrably related to the cost of performance. Such adjustments shall be enacted by Resolution or Ordinance of Council, or governing body of the City of Defiance, and the PURCHASER hereby consents to each such adjustment as a modification of this contract, effective as provided in the Ordinance. Each Ordinance or Resolution implementing a percentage adjustment of rates shall be attached to this Agreement, in consecutively numbered addendum, and a copy of each Ordinance or Resolution adjusting rates shall be forwarded by Certified Mail, Return Receipt Requested, to the current business office of the Ayersville Water and Sewer District.

(c) At no time will the rates charged by the District to its users be less than rates charged on the schedule for metered water furnished to property owners outside the corporate limits of the City of Defiance.

II. The "PURCHASER" and "SELLER" further agree that all provisions of the Original Contract dated January 23, 1969; not expressly modified herein, shall continue in full force and effect, and are expressly incorporated herein and made a part hereof by reference, specifically including the modification of the term of the contract to a term of sixty (60) years from its original execution date of January 23, 1969, (Ordinance #2704, passed 6/3/69).

III. It is mutually agreed and covenanted among the governmental corporate entities which are parties to this Agreement; that the signatories hereto, have been duly authorized in accordance with

the corporate formalities of their principals, to execute this Agreement on behalf of their principals; and that the parties to this Agreement waive any and all claims to the validity of this Agreement they have or may have acquired, with respect to the capacity of the signatories, or the corporate formality surrounding the execution of this Agreement.

IN WITNESS WHEREOF, the parties, by and through their authorized representatives, and with full intent to bind themselves, have caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 1982, in quintuplicate.

Signed and acknowledged  
in the presence of:

SELLER,  
THE CITY OF DEFIANCE, OHIO

By:

\_\_\_\_\_  
Service-Safety Director

\_\_\_\_\_  
(SEAL)

Signed and acknowledged  
in the presence of:

PURCHASER,  
THE AYERSVILLE WATER AND SEWER  
DISTRICT

By:

\_\_\_\_\_  
President

\_\_\_\_\_  
(SEAL)

This Instrument prepared by Stephen R. Archer, Assistant Law  
Director, The City of Defiance, Ohio (8-82)

Authorized by Ordinance #\_\_\_\_\_; passed \_\_\_\_\_.

Authorized by Resolution of The Board of Trustees, Ayersville  
Water and Sewer District, #\_\_\_\_\_, passed \_\_\_\_\_.

WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into as of the 23<sup>rd</sup> day of January, 19 69, between the City of Defiance, Ohio  
324 Perry St. Defiance, Ohio  
(Address)  
hereinafter referred to as the "Seller" and the Ayersville Water and Sewer District  
(Address)  
hereinafter referred to as the "Purchaser",

WITNESSETH:

Whereas, the Purchaser is organized and established under the provisions of Sec. 6119 of the Code of Ohio, 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 treated 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 Ordinance No. 2658 enacted on the 21<sup>st</sup> day of January, 19 69, by the Seller, the sale of water to the Purchaser in accordance with the provisions of the said Sec. 6119 was approved, and the execution of this contract

carrying out the said Ordinance by the Mayor and attested by the Secretary was duly authorized, and made a part of this contract, and

Whereas, by Resolution of the Board of Trustees of the Purchaser, enacted on the 16<sup>th</sup> day of January, 19 69, the purchase of water from the Seller in accordance with the terms set forth in the said Resolution was approved, and the execution of this contract by the President, and attested by the Secretary was duly authorized;

Now, therefore, in consideration of the foregoing and the mutual agreements hereinafter set forth,

A. The Seller Agrees:

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 of the Board of Health of the State of Ohio which shall be at least in such quantity as may be required by the Purchaser ~~not to exceed~~ 900,000 gallons per month.

2. (Point of Delivery and Pressure) That water will be furnished at a reasonably constant pressure calculated at 40 lbs. per sq. inch from an existing eight inch main supply at a point located \_\_\_\_\_

approximately 800 feet Southeasterly of Dohoney Rd. on the Defiance Ayer'sville Rd.

If a greater pressure than that normally available at the point of delivery is required by the Purchaser, the cost of providing such greater pressure shall be borne by the Purchaser. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service.

3. (Metering Equipment) To (furnish, install) operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the Purchaser and to calibrate such metering equipment whenever requested by the Purchaser 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 one 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 Seller

and Purchaser shall agree upon a different amount. The metering equipment shall be read on monthly. An appropriate official of the Purchaser at all reasonable times shall have access to the meter for the purpose of verifying its readings.

4. (Billing Procedure) To furnish the Purchaser at the above address not later than the first day of each month, with an itemized statement of the amount of water furnished the Purchaser during the preceding month.

B. The Purchaser Agrees:

1. (Rates and Payment Date) To pay the Seller, not later than the 10th day of each month, for water delivered in accordance with the following schedule of rates:

a. \$ 104.00 for the first 40,000 cubic feet gallons, which amount shall also be the minimum rate per month.

b. \$ 2.60 cents per 1000 cubic feet gallons for water in excess of 40,000 cubic feet gallons but less than \_\_\_\_\_ gallons.

c. \$ \_\_\_\_\_ cents per 1000 gallons for water in excess of \_\_\_\_\_ gallons.

c. At no time will rates charged by the district to its users be less than charges to comparable users by the City of Defiance.

2. (Connection Fee) To pay as an agreed cost, a connection fee to connect the Seller's system with the system of the Purchaser, the cost the sum of \_\_\_\_\_ dollars which shall cover any and all costs of the Seller for installation of the metering equipment and or in lieu thereof the District shall furnish, install and calibrate the metering equipment.

3. No new industrial user shall be connected in the district

C. It is further mutually agreed between the Seller and the Purchaser as follows:

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

2. (Delivery of Water) That 30 days prior to the estimated date of completion of construction of the Purchaser's water supply distribution system, the Purchaser will notify the Seller in writing the date for the initial delivery of water.

3. (Water for Testing) When requested by the Purchaser the Seller will make available to the contractor at the point of delivery, or other point reasonably close thereto, water sufficient for testing, flushing, and trench filling the system of the Purchaser during construction, irrespective of whether the metering equipment has been installed at that time, at a cost of 1,000 cubic foot  
flat charge of \$ 2.60 per which will be paid by the contractor or, on his failure to pay, by the Purchaser.

4. (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 failures 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.

5. (Modification of Contract) That the provisions of this contract pertaining to the schedule of rates to be paid by the Purchaser for water delivered are subject to modification at the end of every one year period. Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder. ~~Such rates shall not include increased capitalization of the Seller's system.~~ Other provisions of this contract may be modified or altered by mutual agreement.

6. (Regulatory Agencies) That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

*omit* 7. (Miscellaneous) That the construction of the water supply distribution system by the Purchaser is being financed by a loan made or insured by, and/or a grant from, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the Purchaser are conditioned upon the approval, in writing, of the State Director of the Farmers Home Administration.

8. (Successor 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 rights of the Purchaser hereunder.

or a general rate increase or decrease.



In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in Two (2) counterparts, each of which shall constitute an original.

Seller:

The City of Defiance, Ohio

By *M. Bent Smith*

Title Mayor

Attest:

*Margaret A. Arnold*  
Secretary

Purchaser:

Ayersville Water & Sewer District

By *M. L. Fisher*

Title President

Attest:

*Robert S. Hoshack*  
Secretary

This contract is approved on behalf of the Farmers Home Administration this \_\_\_\_\_ day of \_\_\_\_\_,

19 \_\_\_\_\_.

By \_\_\_\_\_

Title \_\_\_\_\_