

# RECORD OF ORDINANCES

Ordinance No. 2014- 10

Passed MARCH 10 2014

## AN ORDINANCE AUTHORIZING THE MAYOR AND VILLAGE ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH THE VILLAGE OF THURSTON, OHIO, FOR THE SALE OF SURPLUS WATER AND THE DECLARATION OF AN EMERGENCY

WHEREAS, the Village of Baltimore desires to sell and the Village of Thurston desires to purchase surplus water for the benefit of the Village of Thurston; and,

WHEREAS, the two Villages have prepared a proposed agreement detailing the terms and conditions of the sale of surplus water, the terms being set forth in a Surplus Water Sales Agreement; and,

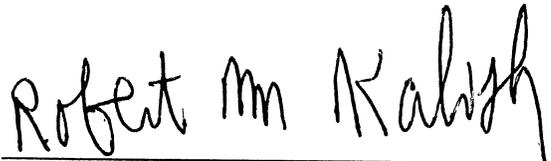
WHEREAS, Service Committee has reviewed the matter and recommends the approval of a surplus water sales agreement; and,

WHEREAS, as the current contract for surplus water sales expired on or about March 5, 2014, this ordinance needs to be approved on an emergency basis;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BALTIMORE, FAIRFIELD COUNTY, OHIO, THREE-FOURTH'S (3/4'S) OF ITS MEMBERS CONCURRING:

SECTION 1: The Mayor and Village Administrator are hereby authorized to enter into a Surplus Water Sales Agreement for the sale of surplus water to the Village of Thurston, pursuant to the terms and conditions of the Agreement. A copy of the Agreement shall be attached hereto and incorporated herein.

SECTION 2: This legislation shall become effective at the earliest period authorized by law.



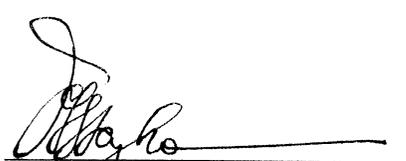
Robert M. Kalish, Mayor

DATE OF PASSAGE: 3-10-2014

EFFECTIVE DATE: 3-10-2014

ATTEST:   
Florence D. Welker, Fiscal Officer

SPONSOR: Hankison

APPROVED AS TO FORM:   
Jeffrey Feyko, Village Solicitor

**SURPLUS WATER SALES AGREEMENT BETWEEN THE VILLAGE OF  
BALTIMORE, OHIO AND THE VILLAGE OF THURSTON, OHIO**

This Agreement, made pursuant to Ordinance No. 2014-10, passed and approved by the Village of Thurston, Ohio, authorizing and directing its Mayor to enter into this Agreement, and pursuant to Ordinance No. 2014-10, passed and approved by the Village of Baltimore, Ohio, authorizing and directing its Village Administrator to enter into this Agreement, is hereby entered into by and between said Village of Baltimore, Ohio, a municipal corporation, and the Village of Thurston, Ohio, a municipal corporation, this 10<sup>th</sup> day of MARCH, 2014.

**WITNESSETH:**

1. PURPOSE AND TERM. The Village of Baltimore, Ohio, shall for the consideration hereinafter stated, furnish to the Village of Thurston, Ohio, or its successors, and the inhabitants thereof, surplus water from the municipal water system of the said Village of Baltimore for the term of years hereinafter described.

This Agreement shall commence on March 5, 2014, and shall be in effect month-to-month for a period of up to one year, with the option to terminate as provided for in paragraph eight, and with the option to renew annually upon written agreement of the parties.

2. TRANSMISSION LINE; MASTER METER. Such water aforementioned shall be furnished from the water distribution system of the Village of Baltimore to the Village of Thurston through the transmission line along State Route 256 owned by the Village of Thurston consisting of pipes, valves, hydrants, and meters. Maintenance, repair, replacement, and/or calibration of the meter shall be performed only by the Village of Baltimore, but the costs shall be divided equally by the Villages. The Village of Baltimore shall have unlimited access to this meter, for the purpose of reading the meter, at any time throughout the duration of this Agreement. The Village of Thurston is solely responsible for upkeep and repair of the transmission line along State Route 256 owned by the Village of Thurston.

3. CHEMICALS. The Village of Baltimore reserves to itself the right to add or delete any chemicals to the water which is deemed necessary by the electorate, executive, legislative, or administrative bodies of the Village of Baltimore, each within their specific authority. Conversely, the Village of Baltimore is not subject to any requirements of the Village of Thurston, whether through said Village's electorate, executive, legislative, or administrative bodies, to add or delete chemicals to the water supply. However, all treatment and analysis performed by the Village of Baltimore shall be in conformity with the specifications and standards as may be established from time to time by the Ohio Environmental Protection Agency for potable water within the State of Ohio.

4. SERVICE AREAS. The water supply aforementioned shall be restricted for usage within the corporate limits of the Village of Thurston, those specific users located outside of the Village of Thurston's corporation limits and currently serviced by the Village of Thurston, or for those properties annexed into the Village of Thurston. The water supply aforesaid shall be

for the domestic, commercial, and industrial usage of the Village of Thurston and its inhabitants. Neither the Village of Baltimore or Village of Thurston claim exclusive water service rights to parcels in the present or future unincorporated area between the two villages adjacent to State Route 256, and each agrees to refrain from making representations that either has exclusive water service rights to that area.

5. AMOUNT OF SURPLUS BULK WATER; INTERRUPTION OF WATER SUPPLY. During the period for which this Agreement is in effect, the Village of Baltimore shall make available for delivery to the Village of Thurston a quantity of surplus potable water per month, as more fully described in paragraph 6. The Village of Baltimore reserves the right to restrict flows to the Village of Thurston, on a daily basis in the event of equipment failure, shortage of raw water, unusual demands elsewhere in the system such as a fire or environmental accident or such other circumstances that may interrupt the supply and delivery of potable water to the Village of Thurston, and no liability shall attach to the Village of Baltimore as a consequence thereof. The Village of Baltimore will inform the Village of Thurston by the most rapid means available of any such restriction and will take steps reasonable and necessary to restore service. During the term of this Agreement, the Village of Thurston agrees that the only water to be used or permitted in any portion of its distribution system served by the Village of Baltimore shall be water supplied from the Village of Baltimore water supply.

It is further agreed that the Village of Baltimore shall have the right to temporarily shut off the water supply of the Village of Thurston or any part thereof, whenever alterations, additions, maintenance operations, or breaks in the line due to negligence or accidents make it necessary. The Village of Baltimore shall give the Village of Thurston reasonable notice of the anticipated shut off and the probable duration of such shut off. In cases of serious breaks or accidents or emergencies that require immediate discontinuance of water service, water service will be discontinued without prior notice.

In the latter case, the Village of Baltimore, as soon as practicable, shall give the Village of Thurston notice of the reason for the interruption of water service, and an estimate of the possible duration of such interruption. Under no circumstances will the Village of Baltimore be held liable or responsible for any damage that may result to the Village of Thurston or the inhabitants thereof, due to, or as a proximate cause of, any necessary or emergency discontinuance of water service.

6. RATES. The Village of Thurston will pay 1.50 times (150%) the current rate of \$4.64 per 1000 gallons or \$6.96 per 1000 gallons of water for the first 1,800,000 gallons of water sold per month. Water sold to the Village of Thurston in excess of 1,800,000 gallons per month will be charged at a rate of 1.75 (175%) of the current rate of \$4.64 per 1000 gallons or \$8.12 per 1000 gallons. Additionally, the Village of Thurston shall be subject to all rate increases the same as the rate increase is applied to the Village of Baltimore residents. By way of example only: If the Village of Baltimore has a 3% rate increase to the current rate of \$4.64 per 1,000 gallons, the Village of Thurston's rate will increase by 3%. The Village of Baltimore shall give the Village of Thurston a minimum of thirty (30) days advance notice of any water rate increase.

7. METER READING; PAYMENTS. The aforesaid master meter shall be read by meter readers of the Village of Baltimore on a monthly basis. Twenty-four hour notice of the

meter readings shall be given to the Village of Thurston and a representative of the Village of Thurston shall have the right to accompany the meter readers of the Village of Baltimore when said readings are taken. Within fifteen (15) days after the last date of each said calendar month, the village of Baltimore will notify the Village of Thurston of the amount of the total gallons used by the Village of Thurston in the preceding monthly period, and shall render a statement of the balance due to the Village of Thurston. Failure to make full payment within the thirty (30) days following the mailing of said bill will result in the addition of an amount for liquidated damages to the unpaid bill. The amount of the liquidated damages shall be ten percent (10%) of the unpaid bill, compounded monthly, and shall be due at the time of payment of the overdue bill.

Further, failure to make full payment by the Village of Thurston to the Village of Baltimore within thirty (30) days of the due date shall be sufficient reason for the Village of Baltimore to discontinue the surplus water supply service to the Village of Thurston without resorting to any legal proceedings in law or equity, and the Village of Thurston shall save the Village of Baltimore harmless from each, every, and all claims or suits for damages to the person and/or properties, to the inhabitants of the Village of Thurston, and/or the Village of Thurston.

In the event of failure of any meter, the amount of water consumed shall be estimated by the Village of Baltimore. Such estimates shall be based on the average daily consumption used during any similar period.

8. VIOLATIONS; TERMINATION. It is further agreed that if the Village of Thurston neglects to comply with or violates any terms or conditions of this Agreement, the Village of Baltimore shall notify the Village of Thurston in writing of such neglect or violation and any noncompliance or violation shall be corrected within thirty (30) days after the issuance of such notice to the Village of Thurston.

The Village of Baltimore agrees to use its best efforts to comply with all terms and conditions of this Agreement, and that it will not act in any arbitrary or capricious manner with respect to any action it may deem necessary or advisable as it determines through the exercise of sound engineering principles and/or in response to any public necessity or other exigency insofar as any such action on the part of the Village of Baltimore may be deemed by the Village of Thurston to be in violation of the terms and conditions of this Agreement.

Failure on the part of either party to this Agreement to faithfully discharge its obligations and responsibilities hereunder, either in whole or in material part, shall vest in the other party to this Agreement the right to terminate the same, if they have in good faith tried to resolve the issue(s).

If the failure to perform obligations or responsibilities is other than the payment of money and is of such a nature that it will be corrected, but not within thirty (30) days, then such notice of termination shall not be effective, and this Agreement shall remain in full force and effect without prejudice to the rights of the parties, if corrective action is instituted within thirty (30) days and diligently pursued to its completion.

Additionally, where the exercise of temporary measures proves to be inadequate, this Agreement may be terminated by either party by giving written notice of termination at least thirty (30) days prior, because the Village of Baltimore due to the drought conditions, dewatering of its water source or sources, or any other condition beyond the control of the Village of Baltimore, is unable to provide water service at capacity or in volume adequate to provide water services to all customers within the Village of Baltimore's service area.

The Village of Baltimore understands and recognizes the Village of Thurston is in the process of constructing its own potable water treatment facility. As such, the Village of Baltimore understands the Village of Thurston will terminate this Agreement as soon as the Village of Thurston can provide its own potable water. The Village of Thurston can terminate this Agreement upon thirty (30) days' written notice for any reason, or no reason at all.

9. MISCELLANEOUS. The Village of Thurston agrees to design, construct, operate, maintain, and regulate its own water storage and distribution system in accordance with applicable state and federal laws, and regulations, and to make such lawful extension as are deemed necessary by the Village of Thurston without cost or liability to the Village of Baltimore.

Any extension of the distribution systems of the Village of Thurston that will increase demand on the Village of Baltimore system in excess of 1,800,000 gallons per month requires the written notification to the Village of Baltimore prior to bidding for construction, or if bidding is not undertaken, prior to entering into an Agreement for construction.

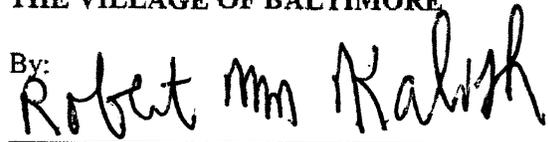
No cross-connections shall be made or permitted by the Village of Thurston with any other water supply other than that of the Village of Baltimore, including water supplied by domestic water wells. The Village of Thurston shall not place any of its own water supply wells or treatment plant into service without there first being a physical isolation of the Village of Thurston water system from the Village of Baltimore Water System such as by use of a suitable valve or other device as determined by the Village of Baltimore. The Village of Baltimore will be responsible for purchasing, installing, and maintaining any such isolation mechanisms.

The Village of Thurston agrees to inform the Village of Baltimore, by the most rapid means available, of any known changes in normal daily water supply requirements, including, but not limited to, fire use, line breaks, flushing, storage tower overflows, etc. The Village of Thurston further agrees to cooperate with the Village of Baltimore in regulating flows to meet unforeseen changing needs within the Village of Baltimore, and to enforce compliance with any water usage restrictions required by the Village of Baltimore, pursuant to the terms hereof.

The Village of Thurston shall establish the rates and service charges for water supplied to consumers from the distribution system of the Village of Thurston and assume full responsibility for the collection thereof. By March 1 of each calendar year during the effective period of this agreement, the Village of Baltimore agrees to furnish to the Village of Thurston a detailed written report setting forth the following: 1) changes to the fee structure for sale of surplus water to the Village of Thurston; 2) the amount of water utilized by the Village of Thurston; and 3) any additional items and/or events affecting the preceding calculations.

**THE VILLAGE OF BALTIMORE**

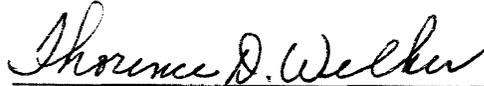
By:



Robert M. Kalish, Mayor

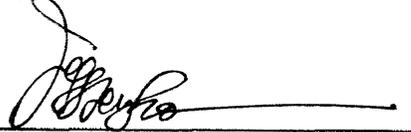


Scott A. Brown, Village Administrator



Florence D. Welker, Fiscal Officer

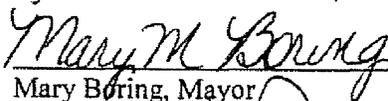
Approved as to form:



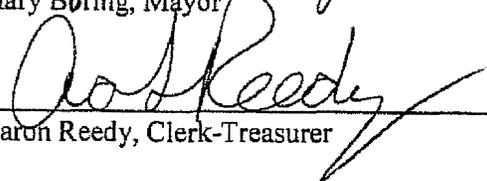
Jeffrey Feyko  
Village Solicitor

**THE VILLAGE OF THURSTON**

By:

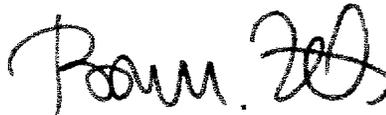


Mary Boring, Mayor



Aaron Reedy, Clerk-Treasurer

Approved as to form:



Brian M. Zets  
Village Solicitor