

ORDINANCE NO. 2017- 15

AN ORDINANCE TO APPROVE THE VILLAGE OF CENTERBURG ENTERING INTO AN AGREEMENT FOR THE SALE AND LEASE OF CERTAIN ASSETS AND PROPERTIES OF ITS WATER DISTRIBUTION SYSTEM TO DEL-CO WATER COMPANY INC. TO OPERATE A WATER DISTRIBUTION SYSTEM AND TO SELL WATER TO THE VILLAGE OF CENTERBURG CUSTOMERS

WHEREAS, the Village of Centerburg is the owner and operator of certain assets and properties constituting a public water works system situated in the Village; and,

WHEREAS, the Village Council, the Village Engineer, and staff have studied the cost effectiveness of maintaining a self-operated water works system within the Village; and,

WHEREAS, Council has determined that entering into an agreement with Del-Co Water Company Inc. for distribution and provision of water to Village customers is more cost-effective to customers than maintaining a self-operated water works system; and,

WHEREAS, Council by passage of Ordinance No. 2016-13 passed August 1, 2016 allowed Village residents to determine by public ballot the question of whether the Village shall enter into an agreement with Del-Co Water Company Inc. for provision of water services to customers of the Village, which was approved by the Village residents at the General Election on November 8, 2016 by a vote of 459 to 246; and,

WHEREAS, Council has the authority to place issues and questions on the ballot to be voted on by the electors of the Village (see *City of Bedford v. Board of Elections of Cuyahoga County*, 1991, 62 Ohio St. 3d 17 and R.C. Section 743.24);

WHEREAS, the Village of Centerburg has negotiated the terms of an Agreement for the Sale and Purchase of the Village's Waterworks System by Del-Co Water Company, Inc.;

NOW, THEREFORE, BE IT ORDAINED by the Council for the Village of Centerburg, Knox County, State of Ohio, that:

SECTION I: Council hereby authorizes the Mayor to enter into the Agreement for the Sale and Purchase of the Waterworks System of the Village of Centerburg, Ohio in substantially the same form as the agreement attached hereto as Exhibit A for sale and lease of assets and properties of its water distribution system to Del-Co Water Company, Inc., an Ohio not-for-profit corporation of Delaware, Ohio to distribute and sell water to the Village of Centerburg customers.

WHEREFORE, this Ordinance shall take effect and be in force from and after its passage.

DATE PASSED Oct. 02, 2017

ATTEST Signature on file
CLERK OF COUNCIL

Signature on file

PRESIDENT OF COUNCIL

Signature on file

MAYOR

DATE APPROVED _____

APPROVED AS TO FORM:

Signature on file

LEGAL COUNSEL

I hereby certify that the ordinance or a summary of the ordinance was published once a week for two consecutive weeks on October 5, 2017 and October 12, 2017 in the *Mount Vernon News* in conformance with the Ohio Revised Code.

CLERK-TREASURER

CERTIFICATION

I hereby certify on this 2 day of October, 2017, that the foregoing is a true and accurate copy of the Ordinance passed at the meeting held on October 2, 2017, of the Village of Centerburg, County of Knox, State of Ohio.

Signature on file

Clerk of Council

**AGREEMENT FOR THE SALE AND PURCHASE OF
THE WATERWORKS SYSTEM OF
THE VILLAGE OF CENTERBURG, OHIO**

EFFECTIVE DATE: _____, 2017

CLOSING DATE: _____, 2017

SELLER:

Village of Centerburg
an Ohio municipal corporation
49½ East Main Street
Centerburg, OH 43011-7074

BUYER:

Del-Co Water Company, Inc.
an Ohio not-for-profit corporation
6658 Olentangy River Road
Delaware, OH 43015-9211

Exhibit A

Ordinance No. 2017 ____ (O-17-06C)

TABLE OF CONTENTS

<u>Article/ Exhibit</u>	<u>Subject/Title</u>	<u>Page</u>
Article I	The Assets Shall Consist of the Following	1
Article II	Purchase Price and Surcharge	3
Article III	Representations, Warranties and Covenants of Seller	6
Article IV	Transactions Prior to the Closing Date	7
Article V	Conditions to Obligations of Buyer to Close	7
Article VI	Conditions to Obligations of Seller to Close	8
Article VII	Conditions to Obligations of Both Buyer and Seller to Close	8
Article VIII	Closing	9
Article IX	Deposits, Taxes, Etc.	9
Article X	Miscellaneous Agreements	10
	Signatures	16
Exhibit A	Real Property Easements, Licenses, Leases and Rights-of-Way	
Exhibit A-1	License for Space and Premises Access	
Exhibit B	Pre-Paid Watertap Fees	
Exhibit C	Licenses, Permits, Certificates and Grants	
Exhibit D	Personal Property, Fixtures and Equipment	
Exhibit E	Declined Assets	
Exhibit F	Ordinance No.	
Exhibit G	[RESERVED]	
Exhibit H	[RESERVED]	

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into effective the _____ day of _____, 2017, by and between the **Village of Centerburg**, an Ohio municipal corporation located in Knox County, Ohio, whose principal address is 49½ East Main Street, Centerburg, Ohio 43011 (hereinafter referred to as "Seller"), and **Del-Co Water Company, Inc.**, an Ohio non-profit corporation having its principal business office at 6658 Olentangy River Road, Delaware, Ohio 43015-9211 (hereinafter referred to as "Buyer"), with Seller and Buyer being sometimes collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, Seller is the owner and operator of certain assets and properties constituting a public waterworks system situated in the Village of Centerburg and its environs in Knox County, Ohio, which assets and properties are hereinafter collectively referred to as the "Waterworks System"; and

WHEREAS, Seller desires to discontinue the operation of the Waterworks System, to retain certain assets (hereinafter referred to as the "Excluded Assets"), and to sell certain assets to Buyer (hereinafter referred to as the "Assets") with Buyer thereafter supplying water to the inhabitants of the Village of Centerburg and Seller no longer operating a waterworks system, and Buyer desires to purchase the Assets from Seller on the terms and conditions described herein and to thereafter supply water to the inhabitants of the Village of Centerburg.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements set forth herein, Seller agrees to sell, transfer, assign, and deliver the Assets to Buyer and Buyer agrees to purchase, receive, assume, and pay for, on the terms and conditions described herein, the Assets, all subject to the terms and conditions set forth in this Agreement:

I. THE ASSETS SHALL CONSIST OF THE FOLLOWING.

- 1.01 The general location of the Waterworks System is in the Village of Centerburg, Knox County, Ohio and its environs.
- 1.02 The specific assets and properties of Seller's Waterworks System embraced within the term "Assets" are as follows:
 - A. The real property, whether transferred to Buyer in fee simple or by lease, on which the water tanks or water towers (hereinafter referred to as "water tanks") used in its Waterworks System and which water tanks are part of the Assets are situated, and which real property is, pursuant to the terms of this Agreement, to be conveyed or assigned to Buyer, as well as any easements, licenses, leases, and rights-of-way, recorded and unrecorded, and including easements which arise by prescription or by necessity, which are used or available for the use of Seller on

the effective date of this Agreement and as of the Closing Date (as defined hereinbelow) in its Waterworks System, and which, as soon as practicable, shall be identified and described in an Exhibit A to be attached hereto, which shall be made a part hereof;

- B. Water-tap fees in excess of the aggregate of _____, less the amount paid by Buyer to Seller or on Seller's behalf to pay off Seller's debt pursuant to Section 2.05 hereof, if any, received, or to be received, by Seller on or after the effective date of this Agreement. The water-tap fees received by Seller and which are not pursuant to this division B., part of the Assets, and to be retained by Seller, are hereinafter referred to as the "Retained Fees";
- C. Pre-paid water-tap fees, as of the Closing Date, identified in Exhibit B, updated as of the Closing Date, unless Seller elects to retain such pre-paid water-tap fees and not transfer and pay them to Buyer at Closing, in which event the aggregate amount of such pre-paid water-tap fees not transferred and paid to Buyer at Closing shall be credited against the Retained Fees.
- D. All permits, licenses, certificates and grants of Seller which pertain to the Assets, or are necessary and appropriate for the operation of the Assets, and which, as soon as practicable, shall be described in Exhibit C to be attached hereto, which shall be made a part hereof;
- E. Legible or electronically readable copies of Seller's records, logs, lists, and other documents, written or electronic, used by Seller in the operation of the Waterworks System;
- F. All personal property, fixtures, and equipment, except for the Excluded Assets, which are used by Seller as part of its Waterworks System, and which, as soon as practicable, shall be identified and described in an Exhibit D, to be attached hereto, which shall be made a part hereof;

1.03 The Excluded Assets, which are not included within the Assets of the Waterworks System to be conveyed, assigned and transferred to Buyer pursuant to this Agreement, and which are to be retained by Seller are:

- A. Its water treatment plant used in its Waterworks System;
- B. [RESERVED]
- C. Any reservoirs used in its Waterworks System;
- D. [RESERVED]

E. Any Retained Fees;

F. Any other properties or assets that Buyer may wish to decline, in its sole discretion, and which, as soon as practicable, shall be described in Exhibit E to be attached hereto, which shall be made a part hereof.

Notwithstanding anything else in this Section 1.03, and subject to any restrictions on the transfer of property by Seller in conformance Ohio law, Seller and Buyer agree that Buyer shall have the option, at Buyer's sole discretion, of taking fee simple ownership of the existing water plant and other properties associated with these Excluded Assets at Closing and for a period of up to five (5) years following Closing, without paying any consideration beyond what is already required of Buyer under this Agreement other than what is necessary to comply with Ohio law. This option as to these Excluded Assets may be exercised by Buyer upon written notice to Seller without Buyer paying any additional consideration to Seller other than what is necessary to comply with Ohio law; further Buyer reserves the right to release its option upon written request from Seller.

- 1.04 The inadvertent omission of any asset or property embraced within the term "Assets" from the exhibits described in Section 1.02 or otherwise shall not operate to defeat the conveyance, assignment, or transfer of any part of the Assets to Buyer; and the Parties agree to take such action, prior to, at, or after the Closing, as is required to complete the conveyance, assignment, or transfer of said asset or property to Buyer in accordance with their intent to transfer the entire Waterworks System other than the Excluded Assets to Buyer under the terms of this Agreement.

II. PURCHASE PRICE AND SURCHARGE

- 2.01 As discussed below and in section 10.07, the parties shall determine the purchase price for the Assets two (2) weeks prior to the Closing Date based on the Initial List (as defined hereinbelow) and the following unit prices:

Line Size Category	Buyer Capacity/Tap Fee per Existing Connection	Credit to Village of Centerburg Residents per Existing Connection	Net Difference Payable from Seller to Buyer for Calculating Net Present Value of Assets per Existing Connection
5/8"	\$5,000.00	\$2,703.00	\$2,297.00
3/4"	\$8,225.00	\$4,446.00	\$3,779.00
1"	\$12,506.00	\$6,761.00	\$5,745.00

1.5"	\$23,377.00	\$12,637.00	\$10,740.00
2"	\$37,422.00	\$20,230.00	\$17,192.00

- 2.02 The formula for setting the purchase price for the Assets shall be as follows, solving for "C" as the subtotal of existing connections ("Existing Connections") in the table below, and then adding together each "C" subtotal for a given Line Size Category to reach a total price for the Assets:

	A	Number of Existing Connections for each Line Size Category
<u>X</u>	<u>B</u>	Net Difference Payable from Seller to Buyer for said line size, as taken from table above
	C	Subtotal for Line Size Category

For example, where:

607	Equals "A" above for Number of Existing Connections for each Line Size Category
<u>X \$2,297.00</u>	Equals "B" above for Net Difference Payable from Seller to Buyer, then
\$1,394,279	Equals "C" above for Subtotal for Line Size Category

- 2.03 Two (2) weeks prior to the Closing Date, Seller shall deliver to Buyer a current list of all Existing Connections setting forth for each Existing Connection the Line Size Category, address or other location and the billing name and address (the "Initial List"), which Initial List shall be used, subject to adjustments provided for in this Agreement, to calculate the purchase price for the Assets. After the Initial List is prepared Seller shall permit no new connections to the Waterworks System until Buyer takes control on the Closing Date, at which time new connections will be subject to all the terms and conditions and rules and regulations of Buyer for Buyer's existing customers.
- 2.04 The Parties agree and acknowledge that if additional information becomes available on Assets and their condition prior to the Closing Date, then Buyer may adjust any credit given per Existing Connection in Buyer's sole discretion.
- 2.05 At the Closing Date, Buyer will pay to Seller, or the applicable creditors of Seller, an amount sufficient to pay off the then outstanding debt of Seller (if any) on the water treatment plant used in its Waterworks System, which debt, as of the Effective Date is

approximately Eighty-Two Thousand Six Hundred Thirty-Nine and 64/100 Dollars (\$82,639.64) based on Village loans known as the Westside Water Loan and Hartford Avenue Loan. Seller will deliver to Buyer at Closing evidence reasonably satisfactory to Buyer's counsel of the current, as of Closing, amount of such debt. The Parties agree and acknowledge that any amount paid by Buyer may be added by Buyer to the principal amount to be collected from Village of Centerburg residents under the Centerburg Surcharge, as discussed in Section 2.07.

- 2.06 Seller agrees and acknowledges that in addition to the credit Buyer is providing for Existing Connections, Buyer is also further discounting its regular capacity/tap fee, e.g., Buyer typically charges for a 5/8" line \$5,200 and not \$5,000 as provided for under this Agreement.
- 2.07 Buyer may take out debt from the United States Department of Agriculture ("USDA") or possibly another governmental or private agency or agencies to finance Seller's repayment through the Centerburg Surcharge (defined below) to Buyer. Buyer also reserves the right to self-finance out of its own cash reserves at the same term and interest rate as would be applicable if Buyer used USDA financing. Regardless, the Parties agree and acknowledge that Buyer will develop a water service surcharge for Village of Centerburg residents that would allow the debt to be paid back on a 40-year term, fully amortized ("Centerburg Surcharge").
1. As of the Effective Date of this Agreement, Buyer anticipates the interest on this debt will be charged at or around 2.25%, plus or minus 75 basis points.
 2. Using the hypothetical example above in section 1.01.B, \$1,394,279 financed over 40 years at 2.25% would mean an estimated monthly payment of \$4,408, which, when divided over a hypothetical 607 existing connections of 5/8" would be \$7.26 per connection, per month.
 3. Buyer would set the Centerburg Surcharge two (2) weeks prior to the Closing Date. The Parties agree and acknowledge that the Centerburg Surcharge at the Closing Date may vary from the example above based on actual interest rates, the actual number of Existing Connections and the sizes of those connections, and Buyer shall have the right to adjust accordingly.
 4. Any customer included in the Initial List may choose to pay Buyer the entire reduced tap fee, minus the applicable credit (based on Line Size Category) for the customer's Existing Connection(s), in which case such customer will not be subject to the Centerburg Surcharge, but will instead pay the standard Buyer water rates.

5. In the event that after the Closing Date an Existing Connection subject to the Centerburg Surcharge shall, for any period of time for any reason, fail to pay the Centerburg Surcharge, Buyer shall endeavor to collect from the then customer or the successor customer at such Existing Connection the unpaid Centerburg Surcharge plus interest thereon at the interest rate used in determining the Centerburg Surcharge (an "Unpaid Centerburg Surcharge"). Buyer may adjust, not more frequently than annually, the Centerburg Surcharge to account for Unpaid Centerburg Surcharges reasonably determined to be uncollectible, in order that the purchase price as determined two (2) weeks prior to the Closing Date shall be fully amortized over the 40-year term of the Centerburg Surcharge.

III. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER.

Seller represents, warrants and covenants to Buyer as follows:

- 3.01 Seller is, or will be as of the Closing Date, the owner of the easements, licenses, leases and rights-of-way granted by the instruments described in Exhibit A, free and clear of any and all liens or encumbrances, and, as to recorded easements, licenses, leases and rights-of-way, that all of them have been duly and properly recorded by Seller under the applicable law.
- 3.02 Seller is, or will be as of the Closing Date, the owner of the rights granted in the licenses, certificates, and permits described in Exhibit C, attached hereto and made a part hereof.
- 3.03 Seller is, or will be as of the Closing Date, the owner of all personal property described in Exhibit D, and that said personal property is, or will be as of the Closing Date, free from any security interest, mortgage, or other lien or encumbrance of any nature whatsoever.
- 3.04 All records and documents relating to the operation and maintenance of the Waterworks System furnished to Buyer during due diligence, pursuant to Section 10.01 of this Agreement, or which will be furnished to Buyer on or before the Closing Date were, or will be as of the Closing Date, prepared and maintained in the ordinary course of business and, to the best knowledge of Seller, are, or will be, complete and accurate in all material respects and have been, or will be, filed with the appropriate governmental agency or authority, if required. Seller agrees and acknowledges that, in addition to its own field verification, Buyer will rely upon the completeness and accuracy of this material in setting the purchase price as provided for under Article II.
- 3.05 Seller possesses, or will possess as of the Closing Date, all permits, certificates, and franchises, necessary and proper to the operation of Assets as part of Buyer's waterworks system. To the best of Seller's knowledge, Seller does not possess any licenses, easements, leases or rights-of-way, other than as identified in Exhibit A, and Seller is not aware any additional licenses, easements, leases or rights-of-way that would be necessary for Buyer's operation of the Assets.

- 3.06 To the best of its knowledge, the personal property, fixtures and equipment to be identified and described in Exhibit D are, and will be as of the Closing Date, not defective, operational and suitable for the purpose intended, which is to be part of the water distribution system for the Village of Centerburg, Ohio.
- 3.07 The pre-paid watertap fees identified as to watertap location (by subdivision and lot number or street address), payor, date of payment and amount of payment in Exhibit B, to be attached hereto and to be updated as of the Closing Date, constitute, and will constitute as of the Closing Date, all the pre-paid, in part or in whole, watertap fees or other developer or customer credits against watertap fees of its Waterworks System.
- 3.08 Except as otherwise specifically disclosed in writing by Seller to Buyer, Seller has received no written notices of any potential or actual charge or claim of any violations or operating issues experienced with the Waterworks System in the last five years.
- 3.09 The Village of Centerburg staff and its agents will work in a good faith effort to aid Buyer in the efforts to on-board Seller's current customers at its Existing Connections as Buyer's members and to educate Buyer's staff on the Assets.
- 3.10 During the term of this Agreement, and then during and after the Closing Date for so long as the Buyer is providing water to the Village of Centerburg, any of Buyer's staff shall not be subject to the Village's income tax unless that individual staff member of Buyer resides within the Village of Centerburg's municipal limits at that time.

III.A. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER.

Buyer represents, warrants and covenants to Seller as follows:

- 3.01A Buyer will use its best efforts to complete the installation of all of Buyer's meters and transition work to assume responsibility for Seller's Waterworks System within twelve (12) months of Closing, without being subject to any penalty.
- 3.02A Buyer shall assume and fulfill the obligations of Seller arising after the Closing Date under the rights-of-way, easements, leases, contracts, permits, licenses, and other agreements set forth in Exhibits A and C and shall indemnify, defend, and hold harmless Seller against all claims, actions, demands, losses, or liabilities arising from the ownership or the operation of the Assets or arising under or relating to any right-of-way, easement, contract, permit, lease, license, certificate, or other agreement assigned to and/or assumed by Buyer and accruing from and after the Closing Date, including but not limited to, the maintenance, repair, replacement, expansion, refurbishing, removal, construction, or any other costs or fees associated with the wells, water tower or other equipment being leased, assigned or transferred from Seller to Buyer.

3.03A [RESERVED]

3.04A Buyer is duly authorized, licensed and permitted by the Ohio Environmental Protection Agency to operate a water system for household, agricultural, industrial and commercial purposes in the State of Ohio. Buyer is organized and operating under the laws of the State of Ohio as a not-for-profit corporation.

3.05A [RESERVED]

3.06A Buyer and its agents will work in a good faith effort to aid Seller in the efforts to on-board Seller's current customers at its Existing Connections as Buyer's members and to communicate with the Village of Centerburg staff and its agents during the transition.

3.07A Buyer will coordinate with Seller transition of the Assets, so that Seller can ensure that Seller's final billing to customers is accurate.

3.08A To the extent that Buyer requires the assistance of Seller's personnel for billing or meter reading or other services after transition of the waterworks system, Buyer will reimburse Seller for the full expense (wages and benefits) of said Seller's personnel. Any services provided by Seller to Buyer will be set forth in an Agreement signed by Buyer and Seller's Village Administrator in advance of the providing of any such services.

3.09A Buyer, without additional compensation for the Buyer, will allow Seller, the Knox County Sheriff's Office and the Central Ohio Joint Fire District to maintain communications equipment attached to the water tower, so long as their use and occupancy does not materially and adversely interfere with Buyer's operation of the Assets. The parties agree and acknowledge that Buyer will use a radio network to operate the Assets as part of Buyer's overall system. Other public or private entities shall be considered on a case-by-case by Buyer based on prevailing market rents and terms. Seller or any entity referred by Seller to Buyer wanting to occupy space on the water tower shall sign an agreement with Buyer in substantially the same form attached as Exhibit A-1, License for Space and Premise Access.

IV. TRANSACTIONS PRIOR TO THE CLOSING DATE.

4.01 To the extent that assignment of any right of Seller under leases, licenses, easements, rights-of-way, permits, licenses, franchises, or any other conveyance, agreement, or proceeding shall require the consent of any other party thereto (a "Consent"), Seller shall obtain the Consent. Buyer shall cooperate with and assist Seller, before and after the Closing Date, in obtaining such Consents in such manner as Seller may reasonably request. Seller shall not agree to any payment or agree to or modify any arrangement that will result in the obligation of Buyer to make future payments in excess of the amount theretofore payable without prior written consent of Buyer.