

“The Agreement”

AGREEMENT FOR THE SALE OF
WATER BY THE CITY OF JAMESTOWN
TO
STUTSMAN RURAL WATER DISTRICT

THIS AGREEMENT is entered into by and between the City of Jamestown, a municipal corporation, whose post office address is 102 Third Avenue Southeast, Jamestown, North Dakota, hereinafter referred to as "Jamestown", and Stutsman Rural Water District, whose address is 3322 Highway 281 North, Jamestown, North Dakota, hereinafter referred to as "Stutsman".

1.

NOTICE

Any notice given to Jamestown should be sent to the attention of the City Administrator and any notice given to Stutsman should be sent to the attention of its manager. Any such notice given shall be complete upon delivery to the other party at the address set forth above. Either party may modify or change this address upon providing written notice to the other party.

2.

PURPOSE

The purpose of this agreement is for Jamestown to sell treated water to Stutsman and related issues. Jamestown has determined that Jamestown will have water production capacity in

excess of its citizen's needs and will have sufficient excess capacity to sell treated water to Stutsman pursuant to the terms and conditions of this agreement.

Jamestown draws water for treatment from a series of wells authorized pursuant to state water permit #01120. This agreement is for the sale of treated water and does not apply to any other service provided by the City of Jamestown.

3.

SALE OF WATER

Jamestown agrees to sell to Stutsman at mutually agreed point or points of connection with Stutsman's lines as specified in this agreement, water from the Jamestown water system of the same quality as provided to all other water users within the City of Jamestown and of a quantity and quality as set forth in this agreement.

4.

QUANTITY, PRESSURE and COSTS

A. Jamestown shall treat and deliver a quantity of treated water in a volume to be determined, at the sole discretion of Stutsman, provided, however, the quantities shall not exceed the sum of 400,000 gallons per day of treated water measured at the point of delivery unless Stutsman has received prior authorization from Jamestown. It is hereby acknowledged and

understood that Stutsman intends to ramp up to a volume of 300,000 to 400,000 gallons per day over a period of years.

B. In the event that Jamestown shall impose rationing or other water use restrictions on city users, the same rationing or restriction shall apply to Stutsman. Stutsman shall adopt such rules and regulations to allow it to comply with this requirement. Jamestown shall deliver water to each point of delivery at the existing line pressure, but in no case shall the pressure be less than 40 p.s.i. No guarantee or commitment is provided by Jamestown that there shall be supplied under this contract adequate water pressure or volume of water required for fire protection.

C. Sufficient quantity and pressure is not guaranteed beyond the points of connection. Stutsman shall notify the City of its estimated yearly and monthly use before January 1 of each year. For water treatment and delivery provided, Stutsman agrees to pay Jamestown a cost per unit of water figured as follows:

- (1) Stutsman shall pay to Jamestown a fixed monthly fee of \$250.00.
- (2) Stutsman shall pay Jamestown for metered water transferred to Stutsman's system at the same unit rate Jamestown charges to its residents.

that the service is the same as that given to all other customers served by Jamestown in the zone which includes that point of delivery.

7.

INSTALLATION, CONNECTION AND ANNEXATION

A. Stutsman shall be responsible for the installation of all points of connection with Jamestown's water system and for any water lines necessary to connect with Stutsman's water system. This agreement allows the Stutsman connection to be made at mutually acceptable locations in the southeast portion of the City (a 'Bloom Road' connection) and in the northwest portion of the City (a 'Fairgrounds' connection) and at any other mutually agreed upon locations. The Fairgrounds connection shall be made with a Pressure Sustaining Valve per requirements of the City. Stutsman shall provide to the City, at Stutsman's expense, documentation of testing and calibration of the Pressure Sustaining Valve initially upon construction completion and periodically upon request by the City. It is understood by Stutsman that the water supply availability at the Fairgrounds connection is subject first to the needs of Jamestown. Jamestown shall deliver a quantity of treated water to Stutsman to the following extent:

- * Bloom Road Connection shall be a maximum flow rate not to exceed 277 gpm.

* Fairgrounds connection shall be a maximum flow rate not to exceed 200 gpm.

B. Jamestown shall own the required metering equipment.

The manner of connecting to the water system of Jamestown and meter installation shall be in the manner and with the permits required by the City Engineer, including a specified double backflow prevention system as approved by the City Engineer at the point of connection. The City Engineer and Stutsman shall cooperate in determining specifications of the connections to the City system. Ultimate requirements shall be as required by the Jamestown City Engineer.

C. Stutsman shall provide to the City Engineer a copy of all plans and specifications prior to Stutsman's connection to Jamestown system. Stutsman shall provide to the City of Jamestown a copy of a design as finally constructed. All costs of the installation and the connections and installation of meters shall be born by Stutsman.

D. The connecting facilities, and all other lines and apparatus, other than meters necessary for Stutsman's connections to the City water system shall be the property of Stutsman. Jamestown shall have access to all such facilities for inspection, review, and monitoring.

E. (1) The parties acknowledge the provisions of United State Code Annotated Title 7 Sec. 1926 and related state law. As

additional consideration for the supplying of water under this agreement, the parties agree that upon annexation of lands within the statutory extra-territorial jurisdiction of the City of Jamestown to Jamestown, Jamestown may assume all or part of Stutsman's system in said area. Upon any such annexation, Jamestown shall thereafter, unless otherwise agreed, have the exclusive right to supply water to all locations within the annexed area. This exclusive right shall survive the termination of this agreement and any extension thereof within the annexed area. Jamestown and Stutsman shall negotiate the assumption of any appropriate part of the Stutsman's system by the City of Jamestown. The rights of assumption and annexation provided herein as to areas not annexed during the term of this agreement shall cease upon termination of this agreement and any extension thereof.

(2) In the event of such annexation and assumption, relocation of metering points will be at the expense of Stutsman.

(3) In the event of annexation, Jamestown shall, as hereinafter provided, provide Stutsman compensation for certain water lines and related improvements located within the annexed area. Except as otherwise provided, all water lines and infrastructure located within the annexed area shall become the

property of Jamestown. Any compensation to be paid shall be computed as follows:

- (a) It is understood and agreed that Stutsman has an indebtedness of \$1,853,933.31 as of January 1, 2004, and has 1097 members. This existing indebtedness figure shall be the only indebtedness figure that shall be used in any annexation assumption calculations under this agreement and any extension thereof.
- (b) The remaining portion of said indebtedness in paragraph (a) existing on the date of any future annexation, shall be the debt figure to be used in arriving at the per member debt.
- (c) Jamestown shall pay the then existing per member debt for each member annexed to the City of Jamestown. The member numbers to be determined at the time of annexation.
- (d) If the infrastructure to be acquired in the annexed area was paid for by Stutsman, then Jamestown shall reimburse Stutsman the unamortized portion of the original construction cost based upon a forty (40) year useful life, provided the infrastructure was built to Jamestown's construction

specifications in effect at the time of construction. If the infrastructure acquired through annexation was not built to Jamestown specifications in effect at the time of construction, Jamestown shall not reimburse Stutsman for any such water lines and infrastructure. Jamestown agrees not to assume any of Stutsman's main infrastructure which is needed by Stutsman to transmit water from one service area of Stutsman's system to another service area of Stutsman's system.

Possible scenarios for the computation of acquisition costs are attached as Exhibit A.

- (e) If the water lines or infrastructure acquired through annexation was paid for by the member, then Jamestown shall not reimburse Stutsman or the member the unamortized portion of the original cost.
- (f) Nothing in this agreement shall prohibit Stutsman from constructing in its acquired right of way water lines and infrastructure which is required by Stutsman solely to transport water between its service areas. Such construction shall be in accordance with

applicable Jamestown specifications. Any maintenance of such infrastructure shall be the responsibility of Stutsman. If such main is the principal supply line for the hook-ups acquired by Jamestown, Jamestown shall have to construct Jamestown's own parallel water main.

F. All of the specifications for the connection and metering shall be in writing and shall be attached to this agreement as Exhibit B.

G. The location of the connection shall be as shown on the attached Exhibit C which shall be attached to this agreement after the parties have agreed upon the location.

H. Stutsman will furnish, install, operate, and maintain at its own expense at each point of delivery, the necessary backflow prevention devices, including, but not limited to, a meter vault, pit or house, visual remote, water sampling device, flow recording device and required devices of standard type for properly measuring the quantity of water delivered to the Stutsman. Said equipment must be acceptable to Jamestown. Furthermore, it is agreed:

(1). That if either party believes a meter reading to be in error, it shall present its claim in writing, to the other party's business office before said

bill is delinquent (not later than the fifteenth (15th) day of the month). Such claim, if made after the bill has become delinquent, shall not be effective in presenting discontinuance of service, as herein provided. The Stutsman must pay said bill under protest and said payment shall not prejudice the claim of error.

(2). Upon either party presenting a claim of error in a meter reading, the meter will be calibrated upon payment of the actual cost of the calibration by the requesting party, provided, however that if the meter is found to over-register beyond two percent (2%) of the correct volume, the City shall bear the cost of calibration and if the meter is found to under-register beyond two percent (2%) of the correct volume, then Stutsman shall bear the cost of calibration.

(3). Any adjustments of Stutsman's bill, in the event of over registering or under registering of a meter, as shown by calibration, shall not eliminate the obligation to make future payments required by Stutsman of any amounts as set forth in this contract. If adjustments are required based upon the calibration, they shall be made to the current months

and previous month's billing. Adjustments made based upon meter failure shall be negotiated based upon records available.

8.

MAINTENANCE

A. Stutsman shall be responsible for the proper maintenance of its connection with Jamestown's system which maintenance shall be required from time to time by the City Engineer.

9.

LIMITATIONS

A. Jamestown shall have no responsibility for the distribution of water in Stutsman's system beyond the points of connection. Stutsman agrees to indemnify and hold harmless Jamestown and its agents and employees from and against all claims, damages, loss, and expenses of whatever nature, arising out of Stutsman's water system or from acts of Stutsman's users, agents, employees or contractors.

B. Jamestown shall have no responsibility to insure Stutsman's compliance with any state or federal regulation. Stutsman has no responsibility to insure that Jamestown's compliance with any state or federal regulation.

10.

CANCELLATION AND AMENDMENT

A. If one party defaults, the other may terminate this Agreement or exercise other remedy available at law or in equity, A party shall give written notice of a default to the other (and to Rural Utilities Service, a Division of Rural Economic Development, State of North Dakota, if Stutsman is in default) by certified mail return receipt requested and the default must be cured within 90 days mailed.

11.

ASSIGNABILITY

This agreement may not be assigned by a party to this agreement without the written consent of the other party.

12.

MERGER CLAUSE

This agreement, with attachments, constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind the parties unless in writing and signed by the parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The parties, by the signature below of their authorized representatives, hereby

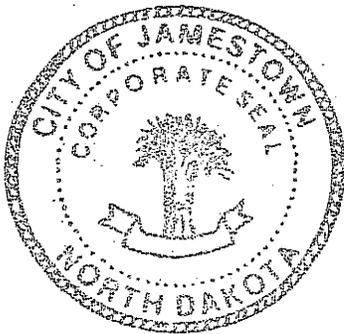
acknowledge that they have read this agreement, understand it, and agree to be bound by its terms and conditions.

13.

PARTIAL INVALIDITY

If any provision of this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue to be in full force and effect without being impaired or invalidated in any way.

DATED at Jamestown, North Dakota this 18th day of November, 2005.



CITY OF JAMESTOWN, A
MUNICIPAL CORPORATION

BY:

Charles Kourajian

CHARLES KOURAJIAN

ITS: Mayor

ATTEST:

Jeff Fuchs

JEFF FUCHS,

City Administrator

STATE OF NORTH DAKOTA)

: ss.

COUNTY OF STUTSMAN)

EXHIBIT A

City of Jamestown / Stutsman Rural Water District Annexation Illustrations January, 2004

For purposes of this illustration it is assumed that SRWD has 1100 members and an outstanding indebtedness as of January 1, 2004 of \$1,870,000.00.

The existing debt as of January 1, 2004 is the only debt that is to be used in future annexation calculations.

The remaining portion of the existing debt on the date of any future annexation is the debt to be used in arriving at per member debt.

Basic understanding would be that the City will pay to the SRWD the existing per member debt for each member annexed to the City of Jamestown.

If the infrastructure acquired through the annexation was paid for by the SRWD, then the City would reimburse the District the unamortized portion of the original construction cost, based on a 40 year useful life, providing the infrastructure acquired was built to City Specifications at the time of construction.

If the infrastructure acquired through the annexation was paid for by the SRWD, then the City would not reimburse the District the unamortized portion of the original construction cost if the infrastructure so acquired was not built to City Specifications at the time of construction.

If the infrastructure acquired through the annexation was paid for by the member, then the City would not reimburse the District or the member the unamortized portion of the original cost.

EXHIBIT A

Illustration A

Assumptions:

Annexation Date:	August, 2004
# Members:	1100
Debt per Member:	\$ 1,700.00
Original Infrastructure Cost:	\$ 30,000.00
Year Built:	1984
Built to City Specs:	Yes
Construction Paid For By:	District
# of Members Annexed:	15

City would pay to SRWD:

Debt:	15 X \$1700.00=	\$25,500.00
Infrastructure:	50% X \$30,000.00 =	<u>15,000.00</u>
Total		\$40,500.00

Illustration B

Assumptions:

Annexation Date:	November, 2004
# Members:	1100
Debt per Member:	\$ 1,700.00
Original Infrastructure Cost:	\$ 30,000.00
Year Built:	1984
Built to City Specs:	No
Construction Paid For By:	District
# of Members Annexed:	15

City would pay to SRWD:

Debt:	15 X \$1700.00=	\$25,500.00
Infrastructure:	0% X \$30,000.00 =	<u> </u>
Total		\$25,500.00

EXHIBIT A

Illustration C

Assumptions:

Annexation Date:	January, 2009
# Members:	1140
Debt per Member:	\$ 800.00
Original Infrastructure Cost:	\$ 20,000.00
Year Built:	1979
Built to City Specs:	Yes
Construction Paid For By:	District
# of Members Annexed:	30

City would pay to SRWD:

Debt:	30 X \$800.00=	\$24,000.00
Infrastructure:	25% X \$20,000.00 =	<u>5,000.00</u>
Total		\$29,000.00

Illustration D

Assumptions:

Annexation Date:	January, 2020
# Members:	1230
Debt per Member:	\$ -
Original Infrastructure Cost:	\$ 20,000.00
Year Built:	1999
Built to City Specs:	Yes
Construction Paid For By:	Users
# of Members Annexed:	25

City would pay to SRWD:

Debt:	25 X \$.00=	\$ -
Infrastructure:	25% X \$20,000.00 =	<u>-</u>
Total		\$ -

EXHIBIT A

Illustration E

Assumptions:

Annexation Date:	July, 2020
# Members:	1205
Debt per Member:	\$ -
Original Infrastructure Cost:	\$ 40,000.00
Year Built:	1995
Built to City Specs:	Yes
Construction Paid For By:	District
# of Members Annexed:	17

City would pay to SRWD:

Debt:	17 X \$.00=	\$ -
Infrastructure:	37.5% X \$40,000.00 =	<u>15,000.00</u>
Total		\$15,000.00

City of Jamestown, North Dakota

RESOLUTION

Introduced by Council Member Nygaard, who moved its adoption;

April 5, 2010

Be It Resolved by the City Council of the City of Jamestown, to-wit:

THAT, the City Council does hereby approve the request from Stutsman Rural Water District to amend the current agreement with the City for the sale of water to Stutsman Rural Water District for a new 20 year term with two 10 year renewals and City Attorney language added.

ATTEST:

APPROVED:

Jeff Fuchs
City Administrator

Clarice Liechty
Mayor

Council Member Kourajian seconded motion for adoption.

Roll Call No. 6
Ayes 3
Nays 1 (Liechty)
Absent 1

AMENDMENT TO AGREEMENT FOR THE SALE OF WATER BY THE CITY OF JAMESTOWN TO STUTSMAN RURAL WATER DISTRICT

The City of Jamestown presently has a Water Sales Agreement with the Stutsman Rural Water District at which such agreement is amended and re-enacted as follows;

NON-APPROPRIATION :

This contract for the sale of water is made based upon the availability of funds for the production and distribution of sufficient water by the City of Jamestown, ND, which are budgeted and appropriated for that purpose during the current fiscal year. Stutsman Rural Water District cannot compel the City of Jamestown to impose taxes and fees which may be necessary to fulfill the terms of this agreement. Should the City of Jamestown fail to budget and appropriate or otherwise make available funds to fulfill the provisions of this agreement following the then current year, then this agreement may be deemed terminated by either party to this agreement. The City of Jamestown shall act in good faith in considering all issues relating to fees, budgeting and appropriations affecting this agreement. The City shall deliver notice of any termination in accordance with this agreement.

Section 5. TERM. Replace Section 5 with the following:

The term of this agreement shall be for twenty (20) years. The twenty year term shall begin on May 10, 2010. This agreement shall automatically be renewed for two ten (10) year terms unless either party gives written notice to the other party, at least two (2) years prior to the end of the then current term that it elects not to renew the agreement for an additional term of ten (10) years.

DATED at Jamestown, North Dakota this 4th day of June, 2010

CITY OF JAMESTOWN
MUNICIPAL CORPORATION

BY: Clarice Liechty
CLARICE LIECHTY

ITS: Mayor

ATTEST:

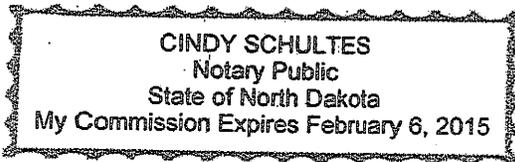
Jeff Fuchs
JEFF FUCHS,
City Administrator

STATE OF NORTH DAKOTA)
: ss.
COUNTY OF STUTSMAN

On this 4th day of June, 2010, before me personally appeared Clarice Liechty, Mayor of the City of Jamestown, and Jeff Fuchs, City Administrator, known to me to be the persons who are described in and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

Cindy Schultes
_____, NOTARY PUBLIC
Stutsman County, North Dakota
My Commission Expires: _____

(SEAL)



STUTSMAN RURAL WATER DISTRICT

BY: Terry Nieland
Chairman

BY: Mardee Heinrich
Secretary

STATE OF NORTH DAKOTA)
: ss.
COUNTY OF STUTSMAN)

On this 11th day of May, 2010, before me personally appeared, Terry Nieland and Mardee Heinrich, Chairman and Secretary of Stutsman Rural Water District, that is described in and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

Geneva Kaiser
_____, NOTARY PUBLIC
Stutsman County, North Dakota
My Commission Expires: _____

