

ORDINANCE NO. 13-0617

**AN ORDINANCE APPROVING A WATER SUPPLY
CONTRACT WITH INDUSTRIAL USER – SUNRISE COAL, LLC**

WHEREAS, the City of Georgetown (“City”) is an Illinois municipal corporation and non-home rule unit of government, which owns and operates a municipal water system pursuant to the provision of the Illinois Municipal code, 65 ILCS 5/11-125-1 *et seq.*; and

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/11-149-1, provides that “the corporate authorities of a municipality may provide by ordinance for the extension and maintenance of sewers and water mains, or both, in specified areas outside the corporate limits”; and

WHEREAS, Sunrise Coal, LLC is a limited liability company doing business in the State of Illinois and seeking to operate a coal mine to be located at or about the intersection of County Roads 100E and 800N in Vermilion County, Illinois; and

WHEREAS, Sunrise Coal LLC desires to purchase water from the City to be used in connection with its coal mining operation in Vermilion County; and

WHEREAS, the Mayor and City Council find it to be in the best interests of the City to provide water to Sunrise Coal, LLC as provided in the Water Supply Contract attached hereto.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Georgetown, Vermilion County, Illinois, as follows:

SECTION 1. Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

SECTION 2. Approval of Contract. The Water Supply Contract between the City of Georgetown and Sunrise Coal, LLC, as attached hereto, is hereby approved and the Mayor and City Clerk are hereby authorized to execute the Water Supply Contract attached hereto.

SECTION 3. Severability. In the event that any section, clause, provision, or part of this Ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect.

SECTION 4. Repeal and Savings Clause. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, action, or causes of action which shall have accrued to the City of Georgetown prior to the effective date of this Ordinance.

SECTION 5. Effective Date. After its passage, this Ordinance, shall be effective after this Ordinance is printed in book or pamphlet form and published by the authority of the corporate authorities.

PASSED this 17 day of June, 2013.


MAYOR

ATTEST:


City Clerk

YEAS 7

NAYS 0

WATER SUPPLY SERVICES CONTRACT

THIS WATER SERVICES CONTRACT ("*Contract*") is made this 17th day of June, 2013, by and between the CITY OF GEORGETOWN, a municipal corporation in the County of Vermilion and State of Illinois ("*City*") and SUNRISE COAL, LLC, a limited liability company doing business in the State of Illinois ("*Sunrise Coal*") and

IN CONSIDERATION OF the recitals, terms, conditions, and mutual covenants and agreements set forth in this Contract, and pursuant to the City's powers under the Illinois Municipal Code, 65 ILCS 5/1-1 *et seq.*, the parties agree as follows:

Section 1. RECITALS

A. The City, an Illinois municipal corporation and non-home rule unit of government, owns and operates a municipal water system pursuant to the provisions of the Illinois Municipal Code, 65 ILCS 5/11-125-1 *et seq.*

B. The Illinois Municipal Code, 65 ILCS 5/11-149-1, provides that "the corporate authorities of a municipality may provide by ordinance for the extension and maintenance of municipal sewers and water mains, or both, in specified areas outside the corporate limits."

C. Sunrise Coal is a limited liability company doing business in the State of Illinois and seeks to operate a coal mine to be located at or about the intersection of County Roads 100E and 800N in Vermilion County, Illinois.

D. Sunrise Coal desires to purchase Production Water from the City to be used in connection with its coal mining operations in Vermilion County.

E. The City is agreeable and willing to provide the Production Water in accordance with the terms and conditions set forth in this Contract.

F. Sunrise Coal currently has a Water Supply and Sewerage Services Contract in effect with the Village of Homer ("*Homer*") wherein Sunrise Coal has agreed to purchase all of its treated potable water needs from Homer and accordingly Sunrise Coal covenants and agrees it will not use any water purchased under this Contract for its treated potable water needs (e.g., cooking, cleaning, washing, showering, drinking, etc.), unless the contract between the Village of Homer and Sunrise Coal is altered, terminated, or amended in a manner, or a release given, that would allow Sunrise Coal to utilize the water from the City of Georgetown for treated water purposes or the Village of Homer is unable to provide treated potable water as set forth within Section 5(E) of the contract with Homer.

Section 2. DEFINITIONS

A. The term "Date of Operation" shall mean the date on which all infrastructure set forth in this Contract is constructed and completed and Sunrise Coal is able to and requests the delivery of Production Water from the City.

B. The term "Uncontrollable Circumstance" shall mean an event beyond the control of the parties, which prevents a party from complying with any of its obligations under this Contract, including: (1) act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); (2) acts of war or terrorism; or (3) strikes, labor disputes, or work stoppages.

C. The term "Point of Connection" shall mean the location of the connection, at which point Production Water will be supplied from a City owned water main through a water meter owned by the City to a water line owned by Sunrise Coal. The Point of Connection shall be located at a location mutually agreeable between the parties, neither party to unreasonably withhold its approval.

D. The term "Production Water" shall mean water produced from the City's water treatment plant and shall meet all standards to be used as treated water, although nothing herein shall require Sunrise Coal to use Production Water for its treated potable water needs.

E. The term "City" shall mean the City of Georgetown, an Illinois municipal corporation and non-home rule unit of government.

Section 3. SUPPLY OF WATER

A. The City agrees to furnish and Sunrise Coal agrees to purchase a supply of Production Water, in accordance with the terms and conditions of this Contract. The agreement to purchase Production Water shall be contingent on Sunrise Coal obtaining all necessary permits to conduct mining operations in Vermilion County and obtaining all necessary easements, access rights and governmental approvals as may be required to construct the infrastructure set forth in this Contract.

B. The City shall supply Production Water to its Point of Connection to the water service lines of Sunrise Coal.

C. In the event of a water shortage, documented by a hydrologist and defined as an event when there is insufficient Production Water available to meet the present and anticipated needs of the City's customers and where said insufficiency requires a temporary reduction in total, the City reserves the right to prioritize service to customers within its corporate limits and to limit the amount of Production Water supplied to Sunrise Coal.

Section 4. QUANTITY OF PRODUCTION WATER TO BE SUPPLIED

A. The City agrees to deliver up to a maximum of 300,000 gallons per day of Production Water to Sunrise Coal for its first two years after the initial Date of Operation and thereafter up to a maximum of 500,000 gallons per day.

B. If the City is unable to supply Sunrise Coal with the full quantity of Production Water provided hereunder due to any Uncontrollable Circumstance, the City shall take such actions as practical to promptly restore delivery of Production Water to Sunrise Coal.

Section 5. RATES FOR WATER USAGE

A. During the first year after the Date of Operation, Sunrise Coal shall pay water usage fees to the City at one-hundred percent (100%) of the adopted rates charged, from time to time, to the City's residential water customers located within the corporate limits of the City, for water released and delivered to Sunrise Coal. Within 90 days of the entry into this Contract, the parties agree to negotiate, in good faith, a discounted usage fee to be charged in all other years, or portions thereof, of this Contract, that takes into account the donation and value of infrastructure provided by Sunrise Coal. If the parties are unable to agree to a discounted usage fee within 90 days and amend the Contract to reflect the discounted usage fee, the Contract may be terminated by Sunrise Coal, or, at the election of Sunrise Coal, the Contract shall continue with a usage fee of one-hundred percent (100%) of the adopted residential rates, as outlined above, to be charged during the entire term of the Contract or until Sunrise Coal elects to terminate the Agreement by giving 30 days advance written notice to the City. The City shall maintain records of the dates and amount of water released and delivered pursuant to this Contract.

B. The City shall read the meter at the Point of Connection on a monthly basis. Sunrise Coal shall be invoiced for the preceding month's water usage and such invoice shall be due and payable at City Hall within thirty (30) days from the date of the invoice. Any payment not made when due shall incur a penalty in the amount of ten (10%) per cent of the invoice due and owing. In addition, all outstanding balances shall incur interest in the amount of one (1%) per cent per month.

C. In the event the metered connection point fails for any reason to properly record the Production Water provided to Sunrise Coal, or if for reasons beyond the control of the City, the City is unable to read the meter, the City will calculate and bill Sunrise Coal for the estimated usage based upon historical data from the City's records, or in the first year of the Contract, from records provided by Sunrise Coal. Sunrise Coal shall pay the City for the approximate usage and if an accurate usage for the affected period can be determined, the amount due the City will be adjusted based upon such determination.

D. Nothing herein shall require Sunrise Coal to utilize or accept delivery of a set amount of, or any, Production Water from the City. Sunrise Coal shall further only be charged for the Production Water that is actually released by the City and delivered to Sunrise Coal

Section 6. RESPONSIBILITY TO CONSTRUCT INFRASTRUCTURE

A. Sunrise Coal shall install, at its own cost and expense, the necessary infrastructure to obtain any Production Water purchased by Sunrise Coal. Such infrastructure shall include: (1) construction of water lines from the main water lines owned by the City to the Sunrise Coal property located in Vermilion County, Illinois; and (2) the Point of Connection of said water lines to the City's system. In addition, Sunrise Coal shall reimburse the City for the cost of constructing any necessary water lines within its jurisdictional boundaries to connect its water treatment system to the Point of Connection. Reimbursement of the reasonable costs associated with the design and construction of the water lines shall thereafter be paid by Sunrise Coal within 30 days after receipt of a detailed invoice after completion of the project. The City agrees not to commence such construction, or incur any expenses associated with same, until notified in writing by Sunrise Coal. Construction of the infrastructure set forth herein will be contingent on Sunrise Coal obtaining all necessary permits to conduct mining operations in Vermilion County and obtaining all necessary easements and governmental approvals as may be required to construct said facilities, and that the parties reach an agreement or Sunrise Coal continues to operate as set forth in Section 5(A). If Sunrise Coal does not construct the infrastructure set forth herein, the City shall have no obligation to sell Sunrise Coal any Production Water and such shall be its sole remedy under this Contract.

B. The parties agree all of the infrastructure, including the water lines and Point of Connection to be constructed by Sunrise Coal and any potential water lines necessary to be constructed by the City within its limits, shall be completed in a good and workmanlike manner in full accordance with all applicable federal, state, county and local laws, ordinances and regulations.

C. Upon construction of the infrastructure to be completed by Sunrise Coal, as set forth in this Section 6, Sunrise Coal shall transfer ownership of the infrastructure, through a bill of sale, to the City, at no cost, and the City agrees to accept such ownership. Notwithstanding the transfer of ownership, Sunrise Coal shall assume the reasonable maintenance of the infrastructure that is constructed outside of the City's jurisdictional limits for the term of this contract. Any additional service lines constructed by the City or any third parties that are authorized by the City shall be maintained by the City or said third parties. No service lines shall be added or allowed to operate, however, that disrupt or negatively impact the flow or supply of water to Sunrise Coal.

Section 7. COMPLIANCE WITH ORDINANCES OF CITY

Except as expressly provided herein, Sunrise Coal shall abide by the same ordinances, laws, rules and regulations with respect to water consumers and customers within the corporate limits of the City, including, but not limited to, water conservation measures or limitations which may be imposed by the City.

Section 8. HOLD HARMLESS & INDEMNIFICATION

Sunrise Coal shall indemnify and hold harmless the City for any cause of action, incident, claim or demand arising from this Contract, except that Sunrise Coal shall not be responsible, nor indemnify and hold harmless the City, for any liability or loss occurring as a result of the City's intentional acts or gross negligence.

Section 9. TERM

A. Except as otherwise provided herein, this Contract shall begin on the date set forth above and shall continue for 30 years from the date coal mining operations are commenced by Sunrise Coal in Vermilion County, Illinois. Sunrise Coal shall be entitled to renew this contract for an additional ten (10) year term upon giving at least 180 day advance-written notice given by Sunrise Coal to the City before the end of initial term, the renewal to be on the same terms and conditions of this Contract. Sunrise Coal shall provide written notice to the City evidencing the date said coal mining operations are commenced. However, if Sunrise Coal fails to commence coal mining operations within five (5) years from the date of this Contract, this Contract shall become null and void and neither party shall have any obligations hereunder.

Section 10. DEFAULT

A. In the event of a default or breach of this Contract, the non-defaulting party shall be entitled to all remedies at law and in equity, including the remedy of specific performance. However, neither party will be in default under this Contract if an Uncontrollable Circumstance prevents or delays a party's performance of its obligations hereunder. It is understood and agreed that any time limit provision contained in this Contract will be extended for the duration of an Uncontrollable Circumstance if the party delayed or prevented from performing gives the other party written notice of its inability to timely perform within ten (10) days of the occurrence of the Uncontrollable Circumstance. Notice of any other default must be given in writing by the non-defaulting party to the defaulting party and the defaulting party shall have a 30-day period to cure said default prior to any rights being available hereunder or such being considered a default or breach of this Contract. In any court action brought in the event of a default under this Contract, if a court finds that the defaulting party has acted in bad faith, the prevailing party shall be entitled to its reasonable attorney's fees.

Section 11. ASSIGNMENT

Either party may assign its interest in this Contract subject upon the new party agreeing in writing to the same terms and conditions.

Section 12. NO THIRD PARTY BENEFICIARIES

No claim as a third party beneficiary under this Contract by any person, firm or corporation shall be made, or be valid, against the City or Sunrise Coal.

Section 13. WAIVERS

No waiver by any party of any term or condition of this Contract shall be deemed or construed as a waiver of any other term or provision of this Contract, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Contract.

Section 14. CONFLICT

If the terms and provisions of this Contract conflict with any code, ordinance, rule or regulation of the City or other agreement between the parties, the terms and provisions of this Contract shall control over any such other terms and provisions.

Section 15. ENTIRE AGREEMENT

This Contract embodies the entire agreement and understanding between the parties and there are no other agreements, representations, warranties or understandings, oral or written, between the parties with respect to the subject matter of this Contract. No alteration, modification, amendment or change of this Contract shall be valid unless made by like instrument.

Section 16. DRAFTER BIAS

The Parties acknowledge and agree that the terms of this Contract are the result of on-going and extensive negotiations between the Parties, both of which are represented by independent counsel and that this Contract is a compilation of said negotiations. As a result, in the event that a court is asked to interpret any portion of this contract, neither of the Parties shall be deemed the drafter hereof and neither shall be given benefit of such presumption that may be set out by law.

Section 17. SEVERABILITY

The invalidity of any paragraph or subparagraph of this Contract shall not impair the validity of any other paragraph or subparagraph. If any provision of this Contract is determined to be unenforceable, such provision shall be determined severable and the Contract may be enforced with such provision severed or as modified by a court of competent jurisdiction.

Section 18. APPLICABLE LAW & JURISDICTION

This Contract shall be governed by and construed in accordance with the laws of the State of Illinois. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Contract shall be brought against either of the parties in the courts of the State of Illinois, County of Vermilion, or federal court having jurisdiction.

IN WITNESS WHEREOF, the parties have thereto set their hands on the date first above written.

CITY OF GEORGETOWN

By: *K. Sanders*
Mayor

ATTEST:

By: *Tracy Bacon*
City Clerk

SUNRISE COAL, LLC

By: *Janelyn Harris*
PROPERTY MANAGER

ATTEST:

By: *Juzym Javorowski*
Dir. of Communications
Sunrise Coal, LLC.