

**REGULAR COUNCIL MEETING
OF THE COUNCIL OF THE CITY OF BROOK PARK, OHIO
TO BE HELD ON TUESDAY, JUNE 21, 2016
7:00 P.M.**

A. ROLL CALL OF MEMBERS

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF MINUTES OF PRECEDING MEETINGS:

1. REGULAR COUNCIL MEETING HELD ON MARCH 15, 2016.
2. SPECIAL CAUCUS MEETING HELD ON MARCH 15, 2016.

D. REPORTS OF STANDING COMMITTEES:

AVIATION & ENVIRONMENTAL (Powers) _____	PLANNING COMMITTEE (Troyer) _____
FINANCE COMMITTEE (McCormick) _____	SAFETY COMMITTEE (Salvatore) _____
LEGISLATIVE COMMITTEE (Troyer) _____	SERVICE COMMITTEE (Burgio) _____
PARKS & RECREATION (Mencini) _____	BOARD OF ZONING APPEALS (Scott) _____

E. REPORTS OF SPECIAL COMMITTEES:

SOUTHWEST GENERAL HEALTH CENTER - TRUSTEE (Salvatore) _____
BEREA BOARD OF EDUCATION COMMITTEE (Burgio, McCormick) _____

F. REPORTS OF BOARDS AND COMMISSIONS:

G. INTRODUCTION OF RESOLUTIONS OF COMMENDATION:

H. REPORTS AND COMMUNICATIONS FROM THE MAYOR:

I. REPORTS AND COMMUNICATIONS FROM DEPARTMENTS, COMMISSIONS AND OTHER PUBLIC OFFICIALS:

**J. OTHER COMMUNICATIONS AND PETITIONS, AND VERBAL APPROVAL:
(INTRODUCTION OF NEW LEGISLATION):**

VERBAL APPROVAL:

1. COUNCIL SUMMER RECESS
 - **Month of July – no meetings**
 - **Month of August – Council meeting on August 2nd**
 - **Caucus meeting on August 9th**

K. MISCELLANEOUS BUSINESS, APPOINTMENTS, CONFIRMATIONS:

**L. REMARKS FROM THE AUDIENCE ON THE ORDINANCES AND/OR RESOLUTIONS
THAT PERTAIN TO ITEMS ON THE AGENDA:**

M. INTRODUCTION OF ORDINANCES AND RESOLUTIONS: (FIRST READING):

1. ORDINANCE NO. 10025-2016, AUTHORIZING THE MAYOR TO ENTER INTO THE RESTATEMENT OF THE WATER SERVICE AGREEMENT WITH THE CITY OF CLEVELAND. Introduced by Mayor Coyne
2. ORDINANCE NO. 10026-2016, AMENDING SECTION 121.01 (a) AND (b) OF THE BROOK PARK CODIFIED ORDINANCES RELATING TO THE PRESIDENT OF COUNCIL AND MEMBERS OF COUNCIL AND DECLARING AN EMERGENCY. Introduced by Councilman Troyer
3. ORDINANCE NO. 10027-2016, AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH THE BROOK PARK SAFETY DISPATCHERS/CLERKS, FRATERNAL ORDER OF POLICE ASSOCIATION (SAFETY DISPATCHERS/CLERKS) AND DECLARING AN EMERGENCY. Introduced by Mayor Coyne
4. ORDINANCE NO. 10028-2016, AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH G&G FITNESS FOR THE PURCHASE OF PERFORMANCE CARDIO EQUIPMENT AND DECLARING AN EMERGENCY. Introduced by Mayor Coyne

M. INTRODUCTION OF ORDINANCES AND RESOLUTIONS: (FIRST READING): cont.

5. ORDINANCE NO. 10029-2016, AUTHORIZING THE CITY OF BROOK PARK'S PARTICIPATION IN THE STATE OF OHIO PURCHASING PROGRAM, FOR THE PURCHASE OF CARDIO EQUIPMENT AND TREADMILLS, AND DECLARING AN EMERGENCY. Introduced by Mayor Coyne
6. RESOLUTION NO. 16-2016, AUTHORIZING THE MAYOR TO ENTER INTO A RESTATEMENT OF THE WATER SERVICE AGREEMENT FOR DIRECT SERVICE WITH THE CITY OF CLEVELAND AND DECLARING AN EMERGENCY. Introduced by Mayor Coyne
7. RESOLUTION NO. 17-2016, AUTHORIZING THE MAYOR TO ENTER INTO AN ASSET TRANSFER AGREEMENT WITH THE CITY OF CLEVELAND FOR THE TRANSFER OF WATER SERVICE ASSETS AND DECLARING AN EMERGENCY. Introduced by Mayor Coyne
8. RESOLUTION NO. 18-2016, AUTHORIZING THE MAYOR TO ENTER INTO A MUNICIPAL UTILITY DISTRICT AGREEMENT WITH THE CITY OF CLEVELAND IN CONNECTION WITH THE PROVISION OF WATER SERVICE, AND DECLARING AN EMERGENCY. Introduced by Mayor Coyne
9. RESOLUTION NO. 19-2016, HONORING CLAIRE DAVIS FOR HER MANY ACCOMPLISHMENTS AND DECLARING AN EMERGENCY. Introduced by Councilman Troyer and Council Members Burgio, McCormick, Powers, Scott, Mencini, Salvatore, Council President Astorino and Mayor Coyne
10. RESOLUTION NO. 20-2016, URGING THE BEREА CITY SCHOOL DISTRICT TO BUILD A NEW ELEMENTARY SCHOOL ON THE CURRENT SITE OF BROOK PARK MEMORIAL SCHOOL AND DECLARING AN EMERGENCY. Introduced by Councilman Mencini and Council Members Troyer and Scott
11. RESOLUTION NO. 21-2016, URGING THE BEREА CITY SCHOOL DISTRICT TO BUILD A NEW HIGH SCHOOL ON THE CURRENT SITE OF FORD INTERMEDIATE SCHOOL AND DECLARING AN EMERGENCY. Introduced by Councilman Mencini

M. INTRODUCTION OF ORDINANCES AND RESOLUTIONS: (FIRST READING):

12. RESOLUTION NO. 22-2016, HONORING THE POLARIS CAREER CENTER'S CULINARY TEAM IN WINNING THE 2016 NATIONAL PROSTART INVITATIONAL CULINARY TEAM COMPETITION AND DECLARING AN EMERGENCY. Introduced by Councilwoman Powers and Council Members Troyer, Mencini, Scott, Burgio, McCormick, Salvatore and Council President Astorino

N. SECOND READING OF ORDINANCES AND RESOLUTIONS:

1. RESOLUTION NO. 13-2016, SUPPORTING OHIO HOUSE BILL 523 TO LEGALIZE MEDICAL MARIJUANA IN THE STATE OF OHIO AND DECLARING AN EMERGENCY. Introduced by Councilwoman McCormick

2. RESOLUTION NO. 14-2016, ENCOURAGING PEOPLE TO CREATE MONARCH BUTTERFLY WAYSTATIONS. Introduced by Councilwoman Powers and Council Members Troyer, Mencini, McCormick and Council President Astorino

O. THIRD READING OF ORDINANCES AND RESOLUTIONS:

P. REMARKS FROM THE AUDIENCE ON ANY SUBJECT MATTER:

Q. ADJOURNMENT:

SYNOPSIS OF RESOLUTIONS AND ORDINANCES
FOR THE COUNCIL MEETING OF TUESDAY, June 21, 2016

FIRST READING:

ORD. No. 10025-2016 AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO THE RESTATEMENT OF THE WATER SERVICE AGREEMENT WITH THE CITY OF CLEVELAND

SYNOPSIS: An ordinance authorizing the Mayor to enter into the "Restatement of Water Service Agreement" with the City of Cleveland, and to take such further actions and sign such documents as are necessary to fully implement the "Restatement of Water Service Agreement"

ORD. NO.10026-2016 AN ORDINANCE AMENDING SECTION 121.01(a) and (b) OF THE BROOK PARK CODIFIED ORDINANCES, RELATING TO THE PRESIDENT OF COUNCIL AND THE MEMBERS OF COUNCIL AND DECLARING AN EMERGENCY

SYNOPSIS: An ordinance amending Section 121.01(a) and (b) of the Brook Park Codified Ordinances relating to the reduction in the amount of future compensation for Council President and Members of Council beginning in 2018.

ORD. No.10027-2016 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO CONTRACT WITH THE BROOK PARK SAFETY DISPATCHERS/CLERKS, FRATERNAL ORDER OF POLICE ASSOCIATION (SAFETY DISPATCHERS/CLERKS), AND DECLARING AN EMERGENCY.

SYNOPSIS: An ordinance authorizing the Mayor to enter into a contract with the Brook Park Safety Dispatchers/Clerks, Fraternal Order of Police Association.

Ord. No.10028-2016 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH G&G FITNESS FOR THE PURCHASE OF PERFORMANCE CARDIO EQUIPMENT AND DECLARING AN EMERGENCY

SYNOPSIS: An ordinance authorizing the Mayor to enter into a contract with G&G Fitness for the purchase of performance cardio equipment for the Recreation Center.

Ord. No. 10029-2016 AN ORDINANCE AUTHORIZING THE CITY OF BROOK PARK'S PARTICIPATION IN THE STATE OF OHIO PURCHASING PROGRAM, FOR THE PURCHASE OF STRENGTH EQUIPMENT, CARDIO EQUIPMENT, AND TREADMILLS, AND DECLARING AN EMERGENCY

SYNOPSIS: An ordinance authorizing the City of Brook Park's participation in the State of Ohio purchasing program for the purchase of strength and cardio equipment, and treadmills for the Recreation Center.

Res. No. 16-2016 A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A RESTATEMENT OF THE WATER SERVICE AGREEMENT FOR DIRECT SERVICE WITH THE CITY OF CLEVELAND, AND DECLARING AN EMERGENCY

SYNOPSIS: A resolution authorizing the Mayor to enter into the "Restatement of the Water Service Agreement" for direct service with the City of Cleveland.

Res. No. 17-2016 A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN ASSET TRANSFER AGREEMENT WITH THE CITY OF CLEVELAND AND FOR THE TRANSFER OF WATER SERVICE ASSETS, AND DECLARING AN EMERGENCY

SYNOPSIS: A resolution authorizing the Mayor to enter into an asset transfer agreement with the City of Cleveland for the transfer of water service assets.

Res. No. 18-2016 A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MUNICIPAL UTILITY DISTRICT AGREEMENT WITH THE CITY OF CLEVELAND IN CONNECTION WITH THE PROVISION OF WATER SERVICE, AND DECLARING AN EMERGENCY.

Synopsis: A resolution authorizing the Mayor to enter into a municipal utility district agreement with the City of Cleveland in connection with the provision of water service.

Res. No. 19-2016 A RESOLUTION HONORING CLAIRE DAVIS ON HER MANY ACCOMPLISHMENTS, AND DECLARING AN EMERGENCY.

SYNOPSIS: A resolution honoring a Brook Park resident on her academic and athletic accomplishments.

Res, No. 20-2016 A RESOLUTION URGING THE BEREA CITY SCHOOL DISTRICT TO BUILD A NEW ELEMENTARY SCHOOL ON THE CURRENT SITE OF BROOK PARK MEMORIAL SCHOOL, AND DECLARING AN EMERGENCY

SYNOPSIS: A resolution urging the Berea City School District to build a new elementary school on the site of Brook Park Memorial School.

Res. No. 21-2016 A RESOLUTION URGING THE BEREA CITY SCHOOL DISTRICT TO BUILD A NEW HIGH SCHOOL ON THE CURRENT SITE OF FORD INTERMEDIATE SCHOOL AND DECLARING AN EMERGENCY

SYNOPSIS: A resolution urging the Berea City School District to build a new high school on the current site of Ford Intermediate School.

Res. No. 22-2016 A RESOLUTION HONORING THE POLARIS CAREER CENTER'S CULINARY TEAM IN WINNING THE 2016 NATIONAL PROSTART INVITATIONAL CULINARY TEAM COMPETITION, AND DECLARING AN EMERGENCY.

Synopsis: A resolution honoring the Polaris Career Center's Culinary Team in winning the 2016 National Prostart Invitational Competition.

SECOND READING:

Res. No. 13-2016 A RESOLUTION SUPPORTING OHIO HOUSE BILL 523 TO LEGALIZE MEDICAL MARIJUANA IN THE STATE OF OHIO, AND DECLARING AN EMERGENCY

SYNOPSIS: A resolution supporting Ohio House Bill 523 to legalize medical marijuana in the State of Ohio.

Res. No. 14-2016 A RESOLUTION ENCOURAGING PEOPLE TO CREATE MONARCH BUTTERFLY WAYSTATIONS

SYNOPSIS: A resolution encouraging people to create Monarch Butterfly Waystations in an effort to that will help assure the preservation of the Monarch Butterfly.

PREPARED BY THE BROOK PARK LEGAL DEPARTMENT
June 17, 2016, 2016

P/C 3/15/16 Legislative
CA 6/14/16
1st R 6/21/16
2nd R _____
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 10025-2016

INTRODUCED BY: MAYOR COYNE

AN ORDINANCE
AUTHORIZING AND DIRECTING THE MAYOR
TO ENTER INTO THE RESTATEMENT OF THE
WATER SERVICE AGREEMENT WITH THE CITY OF CLEVELAND

WHEREAS, the City of Brook Park has previously entered into certain agreements with the City of Cleveland related to the provision of water service to the City of Brook Park's residents and businesses; and

WHEREAS, the City of Cleveland amended and restated the various agreements so that it may continue to reimburse communities, beyond the year 2012, for replacement water lines; and

WHEREAS, the Council finds and determines that the proposed Restatement of the Water Service Agreement is in the best interests of the City of Brook Park, its water users and ratepayers, and its taxpayers and residents.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio:

SECTION 1: That the Mayor be and is hereby authorized and directed to enter into the "Restatement of the Water Service Agreement" with the City of Cleveland, which is on file in the Clerk of Council's office.

SECTION 2: That the Mayor may take such further actions and sign such documents as are necessary to fully implement the "Restatement of the Water Service Agreement."

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance shall take effect and be in force from and after the earliest time allowed by law.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW

DATE

**RESTATEMENT OF THE WATER SERVICE AGREEMENT
FOR DIRECT SERVICE**

Between

THE CITY OF CLEVELAND

And

THE CITY OF BROOK PARK

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WATER SERVICE AGREEMENT FOR DIRECT SERVICE

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF CLEVELAND ("PURVEYOR"), acting by and through its Director of Public Utilities by authority of Section 129.16 of the Codified Ordinances of the City of Cleveland and the City of Brook Park ("MUNICIPALITY"), acting by authority of Ordinance No. _____, passed on _____, 20__.

WHEREAS, PURVEYOR owns and operates a waterworks system under the management and control of its Division of Water, Department of Public Utilities, pursuant to the Constitution and laws of the State of Ohio and the Charter and ordinances of the City of Cleveland; and

WHEREAS, PURVEYOR under authority of the Charter of the City of Cleveland and Article XVIII, Section 6, of the Ohio Constitution is empowered to sell and deliver its surplus water to inhabitants and others outside its municipal boundaries; and

WHEREAS, MUNICIPALITY seeks to represent itself and its inhabitants to obtain potable water from PURVEYOR for itself and its inhabitants; and

WHEREAS, PURVEYOR has been the sole supplier of water to MUNICIPALITY; and

WHEREAS, MUNICIPALITY shall utilize PURVEYOR to provide water to MUNICIPALITY and its inhabitants and is willing to contract with PURVEYOR as the sole and exclusive supplier of water for itself and its inhabitants on the terms, covenants, and conditions hereinafter set forth; and

RECITALS:

1) Since entering into the Water Service Agreement for Direct Service to MUNICIPALITY ("Water Service Agreement"), PURVEYOR has offered amendments to the Agreement's terms and conditions with respect to the rights and obligations of the parties and ownership of various water facilities.

2) Beginning in 2006, PURVEYOR offered to MUNICIPALITY an amendment to the Water Service Agreement related to improvement of MUNICIPALITY'S distribution system and joint economic development ("2006 Amended Water Service Agreement").

3) PURVEYOR and MUNICIPALITY desire to further revise the terms of the 2006 Amended Water Service Agreement regarding the reimbursement for Capital Improvement Projects ("2013 Amended Water Service Agreement").

4) To the extent that MUNICIPALITY executed the 2006 Amended Water Service Agreement or similar agreement, the terms of the Asset Transfer Agreement (the form of which is attached), and the Joint Economic Development Zone Agreement, now known as the municipal utility district agreement (attached as Exhibit E) are incorporated herein and remain binding on the Parties to this Amendment, as amended.

5) To the extent that MUNICIPALITY has not executed the 2006 Amended Water Service Agreement or a similar agreement, PURVEYOR will provide water and related services to MUNICIPALITY and its inhabitants pursuant to the terms, covenants, and conditions set forth in the Water Service Agreement, as amended in 2013.

6) This Restatement of the Water Service Agreement restates the original Water Service Agreement and the amendments that have been incorporated into the Water Service Agreement from 1981 to 2013.

WHEREAS, PURVEYOR is willing to provide water and water related services to MUNICIPALITY and its inhabitants on the terms, covenants, and conditions hereinafter set forth;

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual promises set forth in this Agreement, as amended, PURVEYOR and MUNICIPALITY agree as follows:

ARTICLE 1. DEFINITIONS

1.01 "Director" means the Director of the Department of Public Utilities of the City of Cleveland.

1.02 "Division of Water" means the Division of Water of the Department of Public Utilities of the City of Cleveland.

1.03 "Commissioner" means the Commissioner of the Division of Water of the Department of Public Utilities of the City of Cleveland.

1.04 "Waterworks Facilities" means all waterworks facilities including but not limited to water treatment facilities, storage facilities, and pumping stations but excluding water mains.

1.05 "Water Main" means any pipe, regardless of size or function, which is used to transport water from Lake Erie as part of PURVEYOR'S waterworks system to any service connection.

1.06 "Trunk Main" means a water main that is twenty inches (20") in diameter or larger.

1.07 "Distribution Main" means a water main that is less than twenty inches (20") in diameter.

1.08 "Service Connection" means any tap or connection to a distribution main to enable the furnishing of water from such distribution main to any water consumer.

1.09 "Direct Service Customer" means an owner of premises located outside PURVEYOR'S municipal boundaries who receives water and water related services from PURVEYOR and who is billed by and pays to PURVEYOR directly for such water and water services.

1.10 "Master Meter Customer" means a governmental entity which purchases water from PURVEYOR for resale and delivery to water consumers.

1.11 "Suburban Water Council of Governments" means a council of governments formed pursuant to Chapter 167 of the Ohio Revised Code whose membership is limited to and open to those political subdivisions who receive water and/or water related services from PURVEYOR.

1.12 "Service Area" means the entire area of the Municipality or the area designated and outlined on the Map as further described in Paragraph 2.01 and attached as Exhibit A to the Water Service Agreement.

1.13 "Distribution System" means all distribution mains and appurtenances, including valves, pressure regulators, city-side service connections, and fire hydrants located within MUNICIPALITY'S territorial limits.

1.14 "Capital Improvements" means cleaning, relining, and completing other capital repairs and replacements of the Distribution System.

ARTICLE 2. SERVICE DISTRICTS

2.01 PURVEYOR has divided the geographic area in which it supplies water into service districts. It is agreed that the service districts located within the territorial boundaries of MUNICIPALITY are as set forth in the Map which is attached hereto as Exhibit A. Only for the purpose of preserving the hydraulic integrity of the system, PURVEYOR may change the service district and the consequent rate to be applied to any geographic territory located within the MUNICIPALITY upon sixty (60) days written notice to MUNICIPALITY from PURVEYOR'S engineer describing the engineering changes actually made in the grid system.

ARTICLE 3. OBLIGATION TO FURNISH QUALITY WATER

3.01 In accordance with and subject to the terms of this Agreement, PURVEYOR agrees to continue to furnish water and water related services to MUNICIPALITY and its inhabitants, including persons, commercial businesses, industry, and other existing direct service customers. PURVEYOR has the right to prohibit the installation or extension of any water mains only when the Commissioner determines, on the basis of engineering data, that the installation or extension would adversely affect water pressure and/or water volume being provided to PURVEYOR'S existing water consumers or in accordance with Article 10, Section 10.08(b) hereof.

3.02 The water furnished by PURVEYOR shall at all times be at least equal to the quality of water that is furnished by PURVEYOR to water consumers located within the territorial boundaries of the City of Cleveland.

3.03 PURVEYOR does not guarantee any fixed volume or pressure of water, the same being subject to varying conditions of tuberculation of water mains and other conditions relating to the operation and maintenance of PURVEYOR'S waterworks system. However, MUNICIPALITY shall have a cause of action against PURVEYOR if any such condition arises as the direct result of PURVEYOR'S breach of any term of this Agreement. When necessitated by the need to repair breaks in water mains, serious damage to reservoirs, serious damage to pumping machinery or other emergencies, water may be shut off or curtailed without notice and the failure to furnish water under such circumstances shall in no case render PURVEYOR liable in damages. However, as soon as reasonably possible, the Mayor and/or Service or Safety Director of MUNICIPALITY will be notified, so that fire protection precautions may be taken.

3.04 PURVEYOR shall have the right to discontinue serving any Direct Service Customer who fails to pay in full within the period of time set by PURVEYOR any water bill or who violates any of the provisions of this Agreement or any ordinances, rules or regulations of PURVEYOR that are applicable to the supplying of water to him by PURVEYOR. The same right to discontinue service shall apply to service to MUNICIPALITY except that service may be discontinued only if such violation or failure to pay continues for four (4) months after written notice is given by PURVEYOR of the alleged violation or failure to pay.

ARTICLE 4. WATER RATES

4.01 Rates charged to all customers of PURVEYOR shall be set by the Board of Control of the City of Cleveland subject only to the approval of its Council. PURVEYOR hereby agrees that, for a period of ten (10) years from and after the effective date of this Agreement, the dollar amount of any and all increases in water rates charged by the City of Cleveland to any Direct Service Customer shall not exceed the dollar amount of the increase for any direct service customer within the City of Cleveland by more

than 75% in the Low or First High Service District outside the City of Cleveland; by more than 100% in the Second High Service District outside the City of Cleveland; or by more than 130% in the Third High Service District outside the City of Cleveland. Rates shall be calculated on a dollars per mcf (one thousand cubic feet of water) basis. Rate increases for Master Meter Customers shall be 75% of the rate increases for Direct Service Customers located in comparable service districts and 63% of the first rate increase reflecting the elimination of a separate maintenance charge. No increase shall be made in the rate for any customer without simultaneously increasing the rates for all other customers, except that customers entitled to a Homestead Exemption as specified and defined by the Codified Ordinances of the City of Cleveland need not be increased.

4.02 Rate increases for the following classes of customers shall not be limited by the provisions of Paragraph 4.01 above:

- 1) The rate to be charged to all customers or classes of customers who have taken steps toward leaving the Cleveland water system;
- 2) All rates and charges for unmetered fire supply connections pursuant to Section 535.21 of the Codified Ordinances of the City of Cleveland;
- 3) All rates and charges for water supplied from a public fire hydrant set pursuant to Article 17 hereof; and
- 4) All special rates for the use of water under special circumstances as determined by the Commissioner of Water pursuant to Section 535.26 of the Codified Ordinances of the City of Cleveland.

4.03 PURVEYOR agrees that no water rate shall be changed, instituted or revoked prior to sixty (60) days after the Suburban Water Council of Governments receives written notice of the proposed change, institution or revocation.

**ARTICLE 5. COVENANT NOT TO SUE ON WATER RATES;
EXCLUSIVE FRANCHISE**

5.01 In consideration of the agreement of PURVEYOR and provided that PURVEYOR conforms all water rate increases strictly to the provisions of Article 4 of this Agreement, MUNICIPALITY agrees that it will not directly or indirectly, alone or together with others, by court proceedings or in any other way attempt to obstruct, enjoin, hinder or disable PURVEYOR from setting, charging and collecting rates that PURVEYOR in its sole discretion deems necessary to enable PURVEYOR to fulfill its obligations hereunder. In addition, MUNICIPALITY agrees that PURVEYOR shall be the sole and exclusive supplier of water to MUNICIPALITY and its inhabitants in the designated Service Area for the term of this Agreement.

ARTICLE 6. OPERATIONAL CONTROL OF WATERWORKS SYSTEM

6.01 PURVEYOR has the right to regulate and control, in accordance with the terms and conditions of this Agreement, the operation, engineering, construction, expansion, maintenance, repair and use of the entire waterworks system, including all water treatment facilities, water storage facilities, pumping stations, water transmission facilities, and water mains. The Commissioner has the right to determine through which water mains, water shall be delivered to any Direct Service Customer of PURVEYOR.

ARTICLE 7. RIGHT TO USE STREETS, WATER MAINS AND EQUIPMENT

7.01 PURVEYOR shall have the right to use the easements, streets, and other public ways and places of MUNICIPALITY to the extent MUNICIPALITY has such rights, for the purpose of laying, extending, maintaining and repairing water mains and doing such other acts as PURVEYOR shall deem to be necessary for the delivery of water to all of PURVEYOR'S present and potential consumers, whether located inside or outside of the territorial boundaries of MUNICIPALITY.

7.02 PURVEYOR shall have the right to use, extend, tap or connect into any and all water mains and other water transmission facilities, without any fee or charges by MUNICIPALITY to PURVEYOR for the exercise of such right, provided such water mains and/or water transmission facilities are connected into PURVEYOR'S waterworks system.

7.03 After laying, extending, repairing and maintaining water mains PURVEYOR shall backfill all excavations, and the surface easements and streets shall then be restored to previous condition by MUNICIPALITY at PURVEYOR'S expense, unless otherwise agreed to in writing by MUNICIPALITY and PURVEYOR. PURVEYOR will pay only those costs for surface restoration which PURVEYOR would have incurred using its own materials, labor and equipment.

ARTICLE 8. INSTALLATION AND MAINTENANCE OF WATER FACILITIES

8.01 PURVEYOR shall have the obligation to provide, at its own cost and expense, the planning, engineering, purchasing, construction, installation, and to place in operation, maintain and repair all Waterworks Facilities that PURVEYOR in its sole discretion deems necessary or conducive to the proper and efficient functioning of the waterworks system, unless otherwise provided in this Agreement.

8.02 When, in the opinion of the Commissioner, additional Waterworks Facilities need to be installed within the corporate limits of MUNICIPALITY, MUNICIPALITY shall cooperate with PURVEYOR in the construction or installation of such facilities to the extent such cooperation shall not impose any additional cost to MUNICIPALITY, unless otherwise provided in this Agreement, and PURVEYOR shall provide MUNICIPALITY with due notice as to the location of the proposed Waterworks Facilities. MUNICIPALITY shall not charge PURVEYOR for any permits in connection with such installation, and MUNICIPALITY shall cooperate in providing all permits, easements, rights-of-way, access, traffic control and other rights and privileges necessary to facilitate PURVEYOR'S work. PURVEYOR shall pay for the restoration of areas in which construction is carried on, shall pay for any property taken for such construction, and to the extent allowed by law, hold MUNICIPALITY harmless from all damages or claims for damages to persons or property arising from the performance by PURVEYOR or its agents of any work to install or repair or maintain Waterwork Facilities, unless otherwise provided in this Agreement. MUNICIPALITY reserves the right to require its own inspectors where it deems necessary on work performed within its boundaries. The cost of any such inspections shall be paid by MUNICIPALITY. However, where construction of new, extension or replacement Waterworks Facilities is being carried on at the request of PURVEYOR and not at the request of MUNICIPALITY, and where MUNICIPALITY'S inspection is not routine, then the cost of such inspection shall be paid by PURVEYOR.

**ARTICLE 9. INSTALLATION AND MAINTENANCE OF TRUNK
MAINS**

9.01 PURVEYOR shall have the right to use and shall bear the expense of repairing, maintaining, cleaning and relining all trunk mains located within MUNICIPALITY'S corporate limits.

9.02 When, in the opinion of the Commissioner, additional trunk mains or extensions of trunk mains shall be installed to supply MUNICIPALITY or any territory beyond MUNICIPALITY'S corporate limits, such mains or extensions thereof shall be installed, repaired, maintained, cleaned, and relined by PURVEYOR at its expense. PURVEYOR is hereby authorized to install new trunk mains within the corporate limits of MUNICIPALITY after due notice to MUNICIPALITY as to the location of the proposed mains or extensions thereof. MUNICIPALITY shall not charge PURVEYOR for any permits or inspection fees in connection with such installation and MUNICIPALITY shall cooperate in providing all permits, easements, rights-of-way, access, traffic control and other rights and privileges necessary to facilitate PURVEYOR'S work. PURVEYOR shall pay for the restoration of areas in which construction is carried on and shall, to the extent allowed by law, save the MUNICIPALITY harmless from all damages or claims for damages to persons or property arising from the performance by PURVEYOR or its agents of any work to repair, maintain, or install trunk mains.

9.03 When the purpose in performing any of the work referred to in this Article 9 is, in the opinion of the Commissioner, primarily to provide additional water supply to MUNICIPALITY and its inhabitants, and such water is requested by the MUNICIPALITY, and if it is necessary to remove or rearrange the property of any other utility to perform such work, the MUNICIPALITY shall remove or rearrange or cause to be removed or rearranged, at no expense to PURVEYOR, the property of the other utility. If, however, the work performed is, in the opinion of the Commissioner, not primarily to provide additional supply to MUNICIPALITY, or its inhabitants, and the work is not requested by the MUNICIPALITY, and it is necessary to remove or rearrange the property of other utilities to perform the work, then MUNICIPALITY will not be responsible for rearranging or bearing the cost of rearranging the property of such utility but will in all events cooperate as far as legally possible, without expense to itself, in obtaining the rearrangement or removal of such utilities' property.

**ARTICLE 10. INSTALLATION AND OWNERSHIP OF DISTRIBUTION
MAINS**

10.01 Upon MUNICIPALITY'S execution of the Asset Transfer Agreement, the form of which is attached to this Agreement, PURVEYOR shall own the existing Distribution System presently owned by MUNICIPALITY. Upon such transfer, PURVEYOR shall have the obligation to perform at its cost all Capital Improvements relating to the existing Distribution System. PURVEYOR in its sole discretion shall determine the schedule of Capital Improvements, based upon criteria such as break history, water quality, fire flow information, street construction projects, and the recommendation for approval of such schedule by the Suburban Water Council of Governments. PURVEYOR shall use best efforts to expend an average of Ten Million Dollars per year toward suburban system-wide Capital Improvements. PURVEYOR will provide to the Suburban Water Council of Governments an annual report identifying the funds expended on Capital Improvement projects in the prior year.

10.02 PURVEYOR shall not be responsible to construct or pay for the installation of new distribution mains or the extension of existing distribution mains where a distribution main did not previously exist. Once PURVEYOR approves a completed installation, PURVEYOR shall issue a notice of acceptance of the new or extended distribution main and, subject to MUNICIPALITY'S obligations set forth in Paragraph 13.03 of the Water Service Agreement, assume ownership, including all responsibilities to perform and pay for Capital Improvements.

10.03 When mutually agreed upon by PURVEYOR and MUNICIPALITY, in lieu of PURVEYOR making Capital Improvements to a designated part of the Distribution System, MUNICIPALITY shall make the Capital Improvement and PURVEYOR shall reimburse MUNICIPALITY for the cost of the Capital Improvement in accordance with the Capital Improvement Project Reimbursement Terms and Conditions, attached as

Exhibit F, and incorporated herein for purposes of the making the Capital Improvements.

10.04 The Cost of the above-referenced Capital Improvements will be included as a part of the water rate on a system-wide basis.

10.05 PURVEYOR'S maintenance responsibilities are described in Article 12 of the Water Service Agreement.

10.06 PURVEYOR may install water mains less than twenty inches (20") in diameter within the corporate limits of MUNICIPALITY when, in the opinion of the Commissioner, such installation is suitable and necessary to supply a large segment of PURVEYOR'S service area, whether or not such area is totally or partially within MUNICIPALITY'S corporate limits. Whenever PURVEYOR installs such a main less than twenty inches (20") in diameter within the corporate limits of MUNICIPALITY, and PURVEYOR agrees in writing to bear the cost of installation, then PURVEYOR shall bear the cost of construction, installation, repairing, maintaining, cleaning and relining such main for all time. PURVEYOR shall not be liable for the cost of installation of any such main less than twenty inches (20") in diameter in the absence of such written notice. In the event that PURVEYOR shall install and bear the expense of such main, then PURVEYOR shall have the right to restrict the use of the main so that it would not be permitted to be tapped for service connections or connecting water mains. PURVEYOR shall have the right to allow service connections to be tapped to such main, and shall have the right to condition such permission on the payment of a tap-in charge presenting a fair proportion of PURVEYOR'S cost of installation of such main. Such tap-in charge shall be in addition to established connection charges and in lieu of any other assessment. Where a permit is issued for the connection of a fire hydrant, the entire cost of such fire hydrant installation to such main installed by PURVEYOR shall be paid in advance to PURVEYOR by MUNICIPALITY or the party requesting such installation. No tap-in charge shall be assessed by PURVEYOR for the privilege of connecting a distribution main to any water main constructed under the provisions of this paragraph 10.06.

10.07 No main less than twenty inches (20") in diameter, which primarily functions as a trunk main, that is, primarily furnishing water to other distribution mains and not to service connections, shall be installed at the cost of MUNICIPALITY without MUNICIPALITY'S consent in writing.

10.08 No distribution main or fire hydrant shall be constructed and connected to the waterworks system unless the following requirements have been satisfied:

(a) Prior to construction of the main, preliminary plans shall be furnished to the Commissioner in duplicate which shall show:

(1) the street and other public ways and places in which such distribution main is to be installed, with the location of all monuments or stakes necessary to establish the centerline of such streets or other public ways;

(2) the present surface of the street;

(3) the established grade of the street, (including cases where the grade is established, but the street or public way has not been graded in accordance with the established grade);

(4) the proposed size and location of all mains, pipes, valves, hydrants and other appurtenances and the location of existing or proposed sanitary sewers. PURVEYOR may request modification to said plans and final plans shall be drafted and submitted incorporating all modifications required by Commissioner. Eight copies of the final plans shall be furnished to Commissioner in accordance with the provisions of this Agreement. Upon approval of final plans, installation of the main may commence. Six copies of the final plans will be retained by the Commissioner in the files of the Division of Water. Two copies of the plans shall be returned to MUNICIPALITY, one of which shall be retained in the files of the MUNICIPALITY.

(b) PURVEYOR shall have the right to refuse to approve the construction of a new water main or the extension of an existing water main and the right to refuse connection of a new water main or service connection to the existing water system in any area where sanitary sewers and sewage treatment facilities, or plans for such facilities, have not been approved by the local sewer authority and MUNICIPALITY or in any area where the Ohio Environmental Protection Agency has imposed a tap-in ban prohibiting additional connections to the existing sewer system serviced by the local sewer authority. In the event that PURVEYOR has approved construction of a water main on the basis of plans for sewer facilities, then PURVEYOR may refuse to approve connection of such water main until the sewer facilities have been constructed.

(c) When distribution mains are to be installed in a street dedicated by the owner to the public and properly recorded, but not accepted by the MUNICIPALITY, said distribution main may not be constructed until the owner shall grant and record an easement for the full length and width of such street to MUNICIPALITY and PURVEYOR, providing for the installation of water mains, service connections and appurtenances and their maintenance pending acceptance of the street by MUNICIPALITY.

(d) All mains, pipes and fittings shall comply with standard Department of Public Utilities specifications, as same shall be modified from time to time by the Commissioner. All valves, valve boxes, hydrants, and service connections with their fittings such as corporation cocks, stop cocks, and stop cock boxes and the like, shall be

of the same pattern and type and of the same quality of material and shall operate in substantially the same manner as those used by PURVEYOR within its corporate limits with the exception of the hydrant threads, which shall be standard threads if so desired by MUNICIPALITY. All construction, including backfill, shall be that required by PURVEYOR. No better type or quality of materials and construction shall be required by PURVEYOR in MUNICIPALITY than is required of PURVEYOR.

(e) The Commissioner shall have the right to determine the size of all mains, pipes, and service connections used for the supply of water hereunder; the same shall conform to the requirements established by PURVEYOR within its own corporate limits under similar circumstances.

(f) All mains twelve inches (12") or less in diameter and all service connections shall be laid not less than six feet (6') below the established grade of the street or other public way measured down to the top of mains or service connections. Mains sixteen inches (16") in diameter shall be laid not less than five feet (5') below the established grade.

ARTICLE 11. CONNECTION OF NEW DISTRIBUTION MAINS;
INSPECTION AND TESTING

11.01 PURVEYOR shall not be obligated to supply water service to any new distribution water main constructed by MUNICIPALITY or a third party or Capital Improvement constructed by MUNICIPALITY or a third party or any new service connection unless and until all of the following provisions have been complied with:

(a) Before the installation of any main may proceed, MUNICIPALITY shall cause a professional engineer to set the required line and grade stakes so that the main and appurtenances are placed in the proper location and at the correct elevation. The cost of such services shall be borne by MUNICIPALITY or other interested party.

(b) Parties seeking to install a new main shall notify Commissioner of the intention to begin work on the installation of any water main at least three days prior to such starting date. PURVEYOR shall have the right to inspect and test any and all materials used or to be used in the construction and installation of any part of the water supply and distribution system within the corporate limits of MUNICIPALITY. The times and method of inspection and testing shall be determined by the Commissioner. MUNICIPALITY shall grant PURVEYOR access to all streets, public ways, all parts of the water system and all other places where materials are located, or to areas work is to be performed, and MUNICIPALITY shall cooperate with and inspection and testing performed by PURVEYOR.

(c) All water mains shall be disinfected and chlorinated by PURVEYOR at the expense of the party installing the main. The party installing the main shall give Commissioner reasonable notice as to when the mains are ready for such work. The process of disinfection and chlorination, and the rate of application shall be determined by the Commissioner.

(d) All water mains shall be tested with hydraulic pressure by MUNICIPALITY or other interested party at its expense under procedures for hydrostatic testing and the pressure to be applied to be determined by the Commissioner. MUNICIPALITY shall cause to be prepared and delivered to PURVEYOR record prints prior to final testing of the main.

11.02 Any work of inspection and testing performed by PURVEYOR pursuant to Section 11.01(b) above shall be at the expense of PURVEYOR provided, however, that if such expense in the MUNICIPALITY shall become greater than the average expense for such services on behalf of other municipal users of the water system during a comparable period, then in that event, PURVEYOR shall have the right to charge the party requesting such services for all or a portion of the excess cost that is greater than the average cost in other municipalities. Such excess costs shall be paid within thirty (30) days from the date of PURVEYOR'S bill for such services. All work of inspection and testing performed by MUNICIPALITY shall be at the expense of the MUNICIPALITY.

ARTICLE 12. MAINTENANCE OF DISTRIBUTION MAINS

12.01 PURVEYOR shall be responsible for and shall bear the expense of the repair and maintenance of all distribution mains and appurtenances, except as otherwise provided herein. The cost of said repair and maintenance will be included as a part of the water rate on a system wide basis.

ARTICLE 13. DAMAGE TO SYSTEM AND RELEASE OF LIABILITY

13.01 MUNICIPALITY agrees to make no claim against PURVEYOR on account of any break or leak in any water main, or fire hydrant in any public street, highway or easement which claim arises before PURVEYOR has notice of such leak and before PURVEYOR has had a reasonable period of time to act after such notice is received to cure any such condition.

13.02 MUNICIPALITY shall bear the cost of repairing water mains and service connections that may be damaged due to being embedded wholly or partly within a sewer, manhole or catch basin. MUNICIPALITY shall save PURVEYOR harmless from any claim for damages caused by a break in any water main, pipe or service connection that results from the water main, pipe or service connection being embedded wholly or partly within a sewer, manhole or catch basin in violation of regulations of any environmental protection agency.

13.03 Repair and maintenance of new valve boxes, hydrants, distribution mains, and service connections and their appurtenances installed by a contractor shall be the obligation of MUNICIPALITY for a period of two years after completion, unless the contract for such installation provides for such maintenance to be furnished by the contractor or some other party.

13.04 If any contractor employed by MUNICIPALITY damages any water mains or other water plant facilities which are the property of PURVEYOR, MUNICIPALITY shall be responsible for the repair of said facilities or pay PURVEYOR for such damage, upon receipt of bill.

ARTICLE 14. MAINTENANCE OF DISTRIBUTION SYSTEM BY MUNICIPALITY

14.01 In the event that MUNICIPALITY desires to undertake the repair and maintenance of all or any part of the distribution system located within its geographic territory, MUNICIPALITY and PURVEYOR may, by mutual agreement, enter into a written agreement supplemental to this Agreement modifying and amending this Agreement with respect to the duties, responsibilities and liabilities related to such maintenance and repair work. Nothing in this Agreement shall prohibit MUNICIPALITY from becoming a Master Meter Community if MUNICIPALITY and PURVEYOR can reach mutually agreeable terms and conditions for such change in status.

ARTICLE 15. SERVICE CONNECTIONS

15.01 No service connection or meter vault may be constructed or connected to the waterworks system until a permit for such construction or connection has been obtained from PURVEYOR.

15.02 Before a permit for a service connection is issued by PURVEYOR, the applicant requesting same shall: (1) submit a plan with the location and desired size of the proposed connection and submit all other information requested by PURVEYOR or PURVEYOR'S application form; (2) make satisfactory arrangements with MUNICIPALITY for any necessary openings in the street or public highway, excavating trenches, disposal of excavating material, backfilling trenches, placing temporary wearing surface, maintenance of surface in advance of permanent replacement of roadway, sidewalks, or driveways, including the erection and maintenance of lights, signs and barricades without expense to PURVEYOR; and (3) submit a release relieving PURVEYOR of all responsibility and liability that may arise from the performance of any work by applicant or his contractor or from any damages which occur due to improperly installed service connections.

15.03 Only distribution mains within the corporate limits of MUNICIPALITY shall be tapped for the purpose of making service connections for the general supply of water to any premises within the corporate limits of MUNICIPALITY.

15.04 A service connection to a water main shall be permitted only if the water main extends across the full length of frontage of the premises to receive water service from the service connection. Service connections shall be permitted only to premises which abut a street in which a distribution main is situated or where an easement for water supply purposes extends from the premises to a street in which a distribution main is located.

15.05 A single service connection shall supply no more than one building. In multi-unit buildings, such as are located in shopping centers, or such other structures where units within that structure may be sold individually, the Commissioner shall determine the number of service connections necessary to adequately provide service to the building.

15.06 All service connections to any main located in a street or other public way or place shall be installed by PURVEYOR at the expense of the party ordering the service. The service line shall be installed by PURVEYOR up to a point approximately two feet (2') back of the curb line or edge of pavement. Such installations shall include all stop cocks and valves. The extension of a service connection from the stop cock box or valve at or near the curb pipe shall be installed by and at the expense of the Direct Service Customer. The service pipe and connections shall be of a type approved by the Commissioner. The pipe and connection must be left uncovered in the trench or at all points where fittings are located to afford PURVEYOR an opportunity to test and inspect at PURVEYOR'S expense. The water shall not be turned on until the pipe and connections have been inspected and approved by PURVEYOR.

15.07 MUNICIPALITY shall provide PURVEYOR with all building permits issued for each month and a list of occupancy permits or equivalent documents issued by MUNICIPALITY within ten (10) days of issuance. MUNICIPALITY agrees that its officers vested with authority to issue building permits will, before issuing any permit for construction work which will require the use of water, first require the applicant to furnish a certificate secured from PURVEYOR stating that the rules and regulations of the Division of Water have been complied with, and that arrangements have been made with the Division of Water for use of water and for payment of all water used.

ARTICLE 16. METERS

16.01 Water meters and remote registers shall be installed on all service connections established within the service area of MUNICIPALITY in such locations as the Commissioner shall determine. Water meters and remote registers shall be supplied by PURVEYOR and shall remain the property of PURVEYOR. The cost of the

water meters and remote registers and the cost of their installation shall be paid for by the Direct Service Customer.

16.02 Meters shall be set in a vault within the dedicated right-of-way when required by the Commissioner. When vaults are required, they shall be furnished and installed by the Direct Service Customer and approved by the Commissioner, all in strict conformity with the rules and regulations of the Division of Water.

16.03 Water meters and remote registers on existing service connections that were not originally supplied by PURVEYOR to the water consumer, and did not meet the specifications of PURVEYOR at the time of installation and do not accurately register the consumption of water, shall be repaired and/or replaced by PURVEYOR at the expense of the Direct Service Customer. All water meters and/or remote registers which must be replaced and/or repaired as the result of theft or damage from causes other than normal wear and tear shall be repaired and/or replaced by PURVEYOR at the expense of the Direct Service Customer. Notwithstanding anything to the contrary in this paragraph, a water meter and/or remote register supplied by PURVEYOR which must be repaired or replaced as a result of defects in material or workmanship, or normal wear and tear, shall be repaired and/or replaced at PURVEYOR'S expense.

16.04 In cases where, with the consent of PURVEYOR, the Direct Service Customer is the owner of a reregistering meter, maintenance and repairs on said meter shall be made by PURVEYOR at the expense of the Direct Service Customer on the basis of the cost of material and labor plus twenty-five (25%) of the cost of materials and labor to compensate PURVEYOR for supervision and overhead expenses.

16.05 If any water meter shall fail to register correctly within the limitations established in the ordinances and rules and regulations of PURVEYOR applicable thereto, the Direct Service Customer shall be charged for water usage based on the consumer's average daily rate of consumption. The consumer's average daily rate of consumption shall be estimated by Commissioner based upon water usage registered under similar conditions when the meter was in working order. PURVEYOR shall use the same criteria in estimating consumption of Direct Service Customers as customers within the City of Cleveland.

ARTICLE 17. FIRE HYDRANTS

17.01 MUNICIPALITY shall not use nor permit the use of water from fire hydrants, valves or other openings within the corporate limits of MUNICIPALITY unless the use of such water is metered or is in conformance with the provisions of this Article 17.

17.02 MUNICIPALITY has the right to connect fire hydrants to PURVEYOR'S water supply system and to make use of all water required by MUNICIPALITY for the extinguishment of fires, the flushing of fire hydrants, streets and sewers and for such other use as is specifically authorized by Commissioner. For this right, MUNICIPALITY shall pay an annual fee in advance at such rates, in such manner, and at such times as shall be provided in applicable ordinances or rules and regulations of PURVEYOR existing at the time this Agreement is executed or as amended in the future. The rate charged for the use of water from a fire hydrant shall be calculated to cover only PURVEYOR'S actual cost of estimated water losses for uses other than extinguishment of fires, but in no event shall said rate exceed the rate authorized to be charged to a Direct Service Customer located in the same service district. MUNICIPALITY shall maintain records establishing charges for such use. Except as otherwise provided in this Article 17, there shall be no unaccounted for or other free use of water by MUNICIPALITY.

17.03 No water shall be taken from any fire hydrant for construction or any other purpose except as provided in Paragraph 17.02 without first obtaining a permit for said use from the Commissioner. The issuance of such permit shall be conditioned upon compliance with rules and regulations issued by PURVEYOR, including but not limited to, prepayment for water which said applicant may reasonably be expected to use, at rates not higher than the rates in effect for the service district in which the fire hydrant is located. The Commissioner shall have the power to revoke any permit issued in order to protect PURVEYOR against waste of water or for any other reasonable purpose.

17.04 MUNICIPALITY shall be responsible to install at its own cost all new fire hydrants located within its corporate limits. Once PURVEYOR approves a completed installation, PURVEYOR shall issue a notice of acceptance of the installation and, subject to MUNICIPALITY'S obligations set forth in Paragraph 13.03 of this Agreement, as amended, assume ownership, including all responsibilities to perform and pay for Capital Improvements related to the hydrants. MUNICIPALITY shall perform and bear the expense of periodic inspections of and maintenance and/or repair, including but not limited to flushing, greasing, painting, and flow testing as determined to be performed by MUNICIPALITY of all fire hydrants located within its corporate limits.

ARTICLE 18. CHANGE IN GRADE OF STREETS

18.01 Where the established grade of any street or public way under which trunk mains, mains, pipes, or service connections are installed is to be altered or re-established at more than one foot (1') below the grade used for the installations, then MUNICIPALITY shall lower or shall cause to be lowered the trunk mains, mains, pipes, or service connections to the depth required in Paragraph 10.08(f), at no cost to PURVEYOR.

18.02 Where the established grade of any street or public way under which trunk mains, mains, pipes, or service connections are installed is to be altered or re-established at more than two feet (2') above the grade used for such installation, MUNICIPALITY shall replace or shall cause to be replaced such trunk mains, mains, pipes or service connections to the depth required in Paragraph 10.08(f), at no cost to PURVEYOR.

18.03 Where relocation or re-establishment of grade is made of any street or public way by MUNICIPALITY, or with its consent or approval, which relocation or re-establishment of the street or public way causes all or part of existing trunk mains, mains, hydrants, service connections or meter vaults to be located outside of the relocated street or public way, then MUNICIPALITY shall cause such trunk mains, mains, hydrants, service connections or meter vaults to be relocated within the limits of the relocated street or public way at no cost to PURVEYOR or shall cause an easement to be granted to PURVEYOR and MUNICIPALITY covering the property within which such trunk mains, mains, hydrants, service connections or meter vaults are located for the purposes of using, installing, repairing and maintaining such facilities.

ARTICLE 19. VACATION OF STREETS

19.01 Where any dedicated or proposed street, wholly or partly improved with water facilities, is to be vacated in a MUNICIPALITY, the MUNICIPALITY or the owner of the street shall file a notice of such proposed vacation with PURVEYOR before the effective date of the vacation.

19.02 Within thirty (30) days of the receipt of the notice provided for in paragraph 19.01, PURVEYOR shall notify MUNICIPALITY in writing of any relocation or alteration in water facilities required by the street vacation. Such relocation or alteration shall not be required if the existing water facilities are located within an easement to the MUNICIPALITY and PURVEYOR in a form satisfactory to the PURVEYOR.

19.03 Any relocation or alteration of water mains, service connections, fire hydrants, valves, curb cocks, meters, or meter vaults or other water facilities in any street or public way necessitated by a street vacation, shall be at the expense of MUNICIPALITY, or the benefitting party. Should MUNICIPALITY, or the benefitting party, be unwilling or unable to make the relocation or alteration required, then PURVEYOR may proceed with the relocation or alterations and be reimbursed as hereinafter provided. MUNICIPALITY or the party benefitting from the street vacation shall be billed for the total cost of such relocation or alteration and shall have two months from the date of receipt to pay PURVEYOR the total amount of the bill. If the total amount due and owing is not paid within the two month period, permission for any additional extensions of water mains or any additional service connections within MUNICIPALITY'S corporate limits may be withheld until the amount is paid in full.

ARTICLE 20. CAPITAL IMPROVEMENT PROGRAM

20.01 If the PURVEYOR determines that capital improvements are necessary or desirable for the efficient operation and expansion of the water system as a whole, and PURVEYOR desires to locate such capital improvements within MUNICIPALITY'S corporate limits or if the construction or completion thereof can be affected in any way by any act or failure to act by MUNICIPALITY, then MUNICIPALITY will cooperate with PURVEYOR to facilitate such construction and in the acquisition by PURVEYOR of land for such construction, provided such action does not require MUNICIPALITY to incur any expense.

ARTICLE 21. ANNUAL REPORTS

21.01 MUNICIPALITY shall furnish to PURVEYOR, within thirty (30) days after a written request from PURVEYOR, the location and size of all water pipes, valves, service connections and fire hydrants laid or placed within the corporate limits of MUNICIPALITY during the preceding year. PURVEYOR may request such information for periods of time longer than the preceding year if available, and MUNICIPALITY shall be required to furnish such information within a reasonable period of time. Within ninety (90) days from the date of a request by PURVEYOR, MUNICIPALITY shall furnish to PURVEYOR, MUNICIPALITY'S best estimate of its requirements for expansion and future needs for water service for the next five (5) years.

ARTICLE 22. CURTAILMENT OF WATER SERVICE

22.01 When emergency conditions necessitate the temporary curtailment of water usage to insure that all water consumers will have adequate volume and pressure of water for essential health and safety purposes, PURVEYOR may order a temporary curtailment of water supply in all or any part of the geographic territory within MUNICIPALITY'S boundaries.

22.02 Upon telephone communication, public media announcement or other actual notice of an order to the Mayor or City Manager and/or the Safety or Service Director for temporary curtailment of water service, MUNICIPALITY agrees to take every reasonable and appropriate action to curtail the use of water by its inhabitants and users throughout the geographic territory affected by the order by enforcement of the ordinance referred to in paragraph 22.03.

22.03 Within sixty (60) days after the execution of this Agreement, MUNICIPALITY agrees to adopt legislation substantially in the form provided in Exhibit D and agrees to enforce its provisions in good faith. PURVEYOR shall have the right to inspect copies of any and all ordinances, rules and regulations, police citations, reports and inspection memoranda regarding enforcement by MUNICIPALITY of PURVEYOR'S order to curtail use of water.

22.04 Failure of MUNICIPALITY to make a good faith effort to enforce a curtailment order against an inhabitant of MUNICIPALITY after PURVEYOR has provided hand delivered written notice to MUNICIPALITY of the identity of an inhabitant who is in violation of the order, shall subject MUNICIPALITY to a penalty in the amount of Five Hundred Dollars (\$500.00) per day for each day MUNICIPALITY fails to make a good faith effort to enforce the curtailment order against said inhabitant. Before assessing the penalty authorized by this Paragraph, PURVEYOR shall provide the highest ranking official of MUNICIPALITY with hand delivered written notice of PURVEYOR'S intent to assess the penalty and of the reason for the proposed penalty. MUNICIPALITY shall have the opportunity to remedy and remove the penalty by making good faith effort to enforce the curtailment order against the violating inhabitant within six (6) hours. If, within the six (6) hour time period, MUNICIPALITY has taken appropriate action, PURVEYOR shall waive any penalty.

22.05 Permission for any additional water mains, extension of water mains or any additional service connections within MUNICIPALITY'S corporate limits shall be denied until any unpaid penalties assessed in accordance with this Article 22 have been paid.

22.06 A curtailment order under this Article 22 shall automatically expire seven (7) days after it is instituted unless renewed prior to that time by PURVEYOR and PURVEYOR notifies MUNICIPALITY of the renewal.

22.07 MUNICIPALITY hereby agrees that the penalties provided for herein are necessary to allow PURVEYOR to preserve the hydraulic integrity of the water supply system and are not excessive.

ARTICLE 23. TERM OF AGREEMENT

23.01 The term of this Agreement as amended by this 2013 Amendment shall be for a minimum period of twenty (20) years, commencing on the first day after execution of this Amendment by PURVEYOR, and shall automatically continue in effect from year to year thereafter. This Agreement as amended or the terms contained in this Amendment may be cancelled by either party hereto by giving written notice to the other party at least five (5) years prior to the effective date of termination, provided that no such notice may be given until fifteen (15) years after the date upon which this Amendment is executed by PURVEYOR. Should either party give written notice of cancellation to the other, PURVEYOR shall execute an appropriate asset transfer agreement to transfer ownership of the Distribution System back to MUNICIPALITY. If MUNICIPALITY cancels this Agreement as amended, MUNICIPALITY shall also pay to PURVEYOR reasonable compensation in the amount of the replacement costs less a depreciated value that is calculated at a 100 year useful life on a straight line basis for PURVEYOR's prior Capital Improvements in the Distribution System. Any notice of cancellation shall be pursuant to Article 27, including subsections 27.01 to 27.03. In

the event of termination of this Agreement as amended, the Director or his designated representative shall have sole control over the terms and conditions of the operation of the water system within MUNICIPALITY'S service area. PURVEYOR'S right to operate the Distribution System shall survive any termination of the Amended Water Service Agreement. Such termination shall not affect the validity of the Asset Transfer Agreement or PURVEYOR'S ownership interest in the Distribution System unless and until the parties have transferred ownership of the assets as described in this paragraph.

ARTICLE 24. MISCELLANEOUS PROVISIONS

24.01 MUNICIPALITY and PURVEYOR expressly agree that the terms, covenants and conditions made in this Agreement shall bind its respective council, officers, mayors and officials for the term of this Agreement and they have authority to execute this Agreement.

24.02 If any governmental unit, department, division, body or office referred to in this Agreement shall cease to exist or shall cease to retain any part of its powers and duties, material to the performance of this Agreement which are vested in them at the time of the execution of this Agreement, then all references to them shall be deemed to include whatever governmental units, department, division, body or office shall then succeed to or have the powers and duties material to performance of this Agreement without regard to title or formal designation.

24.03 PURVEYOR and MUNICIPALITY agree that in performing the rights, duties and obligations under this Agreement, they must at all times act in good faith.

24.04 MUNICIPALITY agrees that all ordinances, rules and regulations of PURVEYOR now or hereafter applicable to the operation, management and control of PURVEYOR'S water system shall be included in this Agreement for all purposes, provided the ordinances, rules and regulations are not in conflict with provisions of this Agreement. If any such ordinances, rules or regulations are in conflict with provisions of this Agreement, the provision of this Agreement shall apply.

24.05 Whenever under the terms of this Agreement, PURVEYOR is required to bear any expense or fund any improvement to the water system, MUNICIPALITY agrees the cost of said expense or funding shall be recovered from revenues of the Division of Water and not from PURVEYOR'S General Fund.

ARTICLE 25. TERMINATION OF ALL PRIOR AGREEMENTS

25.01 All prior water service agreements, supplemental water service agreements and conditions of water service between PURVEYOR and MUNICIPALITY, verbal or written, are hereby terminated.

25.02 MUNICIPALITY and PURVEYOR release each other of any and all claims arising under or in connection with any previous water service agreements between them.

ARTICLE 26. MODIFICATIONS; UNDERSTANDINGS; LEGALITY

26.01 No covenant, agreement or condition of this Agreement shall be waived, altered, or modified except by a written instrument executed by the party against whom enforcement of such waiver, alteration or modification is sought. No waiver of any covenant, term or condition of this Agreement shall affect any other covenant, term or condition of this Agreement.

26.02 This Agreement contains all the promises, agreements, conditions, inducements and understandings between MUNICIPALITY and PURVEYOR, and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, express or implied, other than as set forth in this Agreement.

26.03 In the event any term or provision of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same have been held to be invalid, illegal or unenforceable, had never been contained herein.

ARTICLE 27. NOTICES

27.01 Notice of cancellation of this Agreement as amended or the terms contained in this Amendment shall be delivered by certified mail. All other notices required to be given under this Agreement as amended shall be delivered by regular mail.

27.02 Notice to PURVEYOR required to be given under this Agreement shall be delivered to the following addresses:

Primary Notice:	Copy:
Director of Public Utilities City of Cleveland 1201 Lakeside Avenue Cleveland, Ohio 44114	Commissioner Division of Water City of Cleveland 1201 Lakeside Avenue Cleveland, Ohio 44114

27.03 Notices to MUNICIPALITY required to be given under this Agreement shall be delivered to the following address:

[Chief Elected Official] _____
City of Brook Park
Brook Park City Hall
6161 Engle Road
Brook Park, Ohio 44142

ARTICLE 28. FORM OF AGREEMENT

28.01 MUNICIPALITY acknowledges that there may be variations between the Article numbers and titles contained in MUNICIPALITY'S Water Service Agreement and this Amendment. MUNICIPALITY agrees that the revisions to each provision set forth in this Amendment shall apply to the applicable provision of MUNICIPALITY'S particular Water Service Agreement, irrespective of the corresponding Article number associated with that provision.

ARTICLE 29. MUNICIPAL UTILITY DISTRICT AGREEMENT

29.01 The parties agree that, as a condition of this Amendment, MUNICIPALITY and PURVEYOR have entered into the Municipal Utility District Agreement, a form of which is attached to this Amendment.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed as of the day and year first written.

**CITY OF CLEVELAND
PURVEYOR**

**CITY OF BROOK PARK
MUNICIPALITY**

Robert L. Davis, Director
Department of Public Utilities

Thomas J. Coyne, Mayor

The legal form and correctness of this instrument are approved:

The legal form and correctness of this instrument are approved:

Barbara A. Langhenry
Director of Law

Carol Dillon Horvath, Director of Law

Kate E. Ryan
Assistant Director of Law

Date: _____

EXHIBIT A

A Map of the service area and service districts located within the territorial boundaries of MUNICIPALITY will be attached.

EXHIBIT B

[The original list of distribution mains, identified for cleaning and relining in the 1981 Agreement, is obsolete and deleted. (Art. 9, Paragraph 9.01)]

EXHIBIT C

[Deleted]

EXHIBIT D

CURTAILMENT OF WATER USE (ORDINANCE TO BE ADOPTED BY MUNICIPALITY)

Upon notice from the City of Cleveland, Division of Water of the Department of Public Utilities that a shortage of water supply exists which threatens the public health and safety and that the shortage makes it necessary to curtail water use within all or any part of (Municipality), the (Mayor) shall proclaim a water use emergency throughout all or any part of (Municipality).

A water use emergency proclamation shall specify:

- (a) the geographic area affected by the water use emergency;
- (b) the length of time the emergency shall be in effect which time shall not exceed seven (7) days; and
- (c) the degree of water use curtailment.

During a water use emergency, the (Mayor) may order a water use curtailment by prohibiting unnecessary use or consumption of water during all or specified hours of the day and/or may order that specified premises curtail necessary use or consumption of water on specified days only as the (Mayor) shall determine to be necessary.

A proclamation of a water use emergency shall become effective at the time of issuance by the (Mayor). Notice thereof shall be given to a newspaper of general circulation in (Municipality) and shall be reported to a local radio and television station for broadcast.

As used in this section, unnecessary use or consumption means the use or consumption of water for purposes other than personal health, safety, sanitation and bodily consumption. "Unnecessary use or consumption" of waters includes but is not limited to sprinkling or watering lawns, other land irrigation, the washing of automobiles, houses or other structures and the use of water for recreational purposes such as the maintenance of swimming pools. The use of water for private construction such as the mixing and curing of concrete, the puddling of backfill in excavations, the moistening of masonry walls preparatory to pointing or sealing, and other similar uses is not an unnecessary use or consumption of water. The use of water to scrub and rinse areas such as hard-surface drives, garage floors, patios and similar uses where necessary for the purpose of sanitation and the protection of health is not an unnecessary use or consumption of water.

No person or entity shall during a water use emergency use water in violation of the terms and conditions of the (Mayors) water use emergency proclamation.

Whoever violates this ordinance is guilty of a minor misdemeanor and shall be fined not more than one hundred dollars (\$100.00). Whoever violates this ordinance having been previously convicted of a violation of this ordinance is guilty of a misdemeanor of the third-degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

EXHIBIT E

MUNICIPAL UTILITY DISTRICT AGREEMENT

Between

THE CITY OF CLEVELAND

And

THE CITY OF BROOK PARK

THIS MUNICIPAL UTILITY DISTRICT AGREEMENT ("Agreement"), entered into pursuant to Section 715.84 of the Ohio Revised Code ("R.C.") and Article XVIII, Sections 3, 4 and 6 of the Ohio Constitution as of the _____ day of _____, 20__ ("Effective Date"), by and between the City of Cleveland, Ohio ("Cleveland"), pursuant to the authority of Ordinance No. 1683-06, passed by Cleveland City Council on October 30, 2006, and the City of _____ ("City"), pursuant to the authority of Ordinance No. _____, passed by City's Council on _____, 20__; Cleveland and City (collectively the "Parties") are municipal corporations in, and political subdivisions of, the State of Ohio (the "State"), and duly organized and validly existing under the laws of the State.

RECITALS:

1. Cleveland provides a long-term, reliable supply of high quality water service to political subdivisions in the region including City that facilitates new and expanded commercial and industrial growth and strengthens the tax base for the benefit of City residents.
2. The provision of Cleveland water facilitates economic development, creates and preserves jobs, improves property values, and advances the economic welfare of the inhabitants and businesses located within Cuyahoga County.
3. The provision of Cleveland water outside its borders may have negative economic impacts for Cleveland through the loss of economic development that may otherwise have occurred within Cleveland.
4. The Parties desire to work toward a regional economy focused on growth, innovation, and cooperative efforts, rather than competition amongst municipal neighbors within Cuyahoga County.
5. As part of this regional approach, Cleveland is willing to extend the terms of existing water service agreements with the Parties and assume ownership of the water distribution systems owned by the Parties, thus relieving them of the financially burdensome responsibilities to perform capital repairs and replacements of the distribution systems.
6. To facilitate the transfer of ownership of such distribution systems, as well as cleaning, relining, maintenance, repair, and replacement responsibilities, the Parties have entered into a Restatement of the Water Service Agreement, dated as of _____, 20__.
7. The Parties intend to enter into this Agreement to create and provide for the operation of a municipal utility district in accordance with R.C. §715.84 for the purpose of

facilitating new or expanded growth for commercial or economic development for the benefit of their residents and of the State.

8. Cleveland is an impacted city as defined in R.C. §1728.01(C).

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the Parties hereto agree and bind themselves, their agents, employees and successors, as follows:

Section 1. Creation of the Municipal Utility District: Name.

The Parties, by their combined action evidenced by the signing of this Agreement, hereby create a municipal utility district in accordance with the terms and provisions of this Agreement. The municipal utility district created pursuant to this Agreement shall be known as the "Cleveland – _____ Municipal Utility District" (the "District").

Section 2. Purpose. In accordance with R.C. §715.84, the Parties intend that the creation and operation of the District shall, and it is the purpose of the District to, facilitate new or expanded growth for commercial or economic development for the benefit of their residents and of the State.

Section 3. Territory of the District. The territorial boundary of the District shall be the combined total area of the municipal boundaries of the Parties

Section 4. Term. Unless earlier terminated in accordance with its terms, or amended by mutual written agreement of the Parties, this Agreement shall be for a term of twenty (20) years commencing on the first day after execution of this Agreement by Cleveland, and shall automatically continue in effect from year to year thereafter. This Agreement may be cancelled by either Party by giving written notice to the other at least five (5) years prior to the effective date of termination, provided that no such notice may be given until fifteen (15) years after the date upon which this Agreement is executed by Cleveland.

Section 5. Contribution to the District.

(a) Cleveland's Contribution. Cleveland's contribution to the District is its agreement to extend the term of water service agreement in accordance with the Restatement of the Water Service Agreement, executed by Cleveland and City; the assumption of ownership of the distribution systems; the cleaning, relining, maintenance, repair, and replacement responsibilities related to all infrastructure; and performance of all other covenants of Cleveland stated in this Agreement.

(b) City's Contribution. City's contribution to the District is its agreement to encourage commercial and industrial development necessary or appropriate to promote economic development within the District; provide appropriate municipal services and public improvements to promote economic development; and perform all other covenants of City stated in this Agreement.

Section 6. Limitation on the use of Tax Abatements; Allowable Incentives; Uniform training incentives.

(a) Real Estate Tax Abatements. The Parties agree that for any business relocating between Cleveland and City, there shall be a limit on any new industrial or commercial real estate tax abatement to a term not to exceed 10 years. The abatement shall not exceed 75 percent.

(b) Income Tax Abatements. The Parties agree that they shall not provide any income tax abatement to any businesses relocating between Cleveland and City.

(c) Allowable Incentives. Notwithstanding the provisions of subsections (a) and (b) of this Section 6, the Parties may continue to offer incentives including, but not limited to, the discounted sale of property, low-interest loans, and tax increment financing as provided for in R.C. §§5709.40 and 5709.41. The limitations provided in subsections (a) and (b) of this Section 6 shall not apply to business relocation from outside of the territorial boundaries of the District as defined in Section 3 above.

Section 7. Income Tax Sharing for Moves Within the District.

(a) The Parties agree that if any business with an annual gross payroll of more than \$500,000 relocates from one Party (the "Losing Party") to another Party (the "Gaining Party"), the Losing Party shall be entitled to receive from the Gaining Party, for a period of 5 years, 50 percent of future income tax revenue based upon payroll in existence immediately prior to the relocation. The Gaining Party's 50 percent share shall be calculated based upon the Gaining Party's employment-based tax rate as may be amended from time to time, minus the percentage that may be earmarked for a city's school district pursuant to city ordinance. The Gaining Party's 5 year income tax sharing obligation for any business that relocates during the term of this Agreement is a continuing obligation that shall survive the termination of this Agreement.

(b) The 5 year tax sharing obligation may be earlier terminated or reduced if the Losing Party "backfills" space at the same payroll value with a similar business, as follows: (i) the business that moved jobs adds equivalent new payroll anywhere in the Losing Party's jurisdiction, this new payroll shall qualify as "backfill" for purposes of this Section 7; and (ii) if the moving business replaces part of the vacated space with new jobs and payroll, the aggregate employment-based income tax paid to the Losing Party will be deducted from this tax sharing obligation. Upon becoming aware that "backfilling" has occurred, the Losing Party shall provide the Gaining Party with written notice within 30 days as provided for in Section 20.

For example, if new employees are hired anywhere in Cleveland by the relocated employer, the employment-based income tax from those employees that is paid to Cleveland shall reduce the amount to be paid by City to Cleveland in an amount equal to the employment-based income tax paid by or on behalf of those employees. For purposes of the above example, "new" Cleveland employees are permanent employees who are hired due to the creation of new positions within Cleveland versus new or existing employees that are hired to fill existing vacant positions created by employee turnover, retirement, or other reason.

Section 8. Administration of Agreement.

(a) After execution of this Agreement, Parties may provide that the income tax sharing provisions in this Agreement be administered jointly by City and Cleveland, or by either the Central Collection Agency, Regional Income Tax Authority, or both. The administrator will be responsible for collecting annual employment and income tax data from a relocating business, calculating the aggregate employment and payroll, determining the annual income tax to be shared and determining if the agreement should be terminated due to occurrence of any of the triggering events.

(b) If for any reason a relocating business is unable or unwilling to provide the payroll information necessary to make the tax sharing calculations specified in Section 7, the Parties agree to confer in good faith to determine an appropriate alternative calculation.

Section 9. Access to Records; Audit. During the tax sharing period provided in Section 7, City and Cleveland shall provide access to the other Party's tax withholding and estimated tax records related to the relocating business during normal business hours. Either Party, through its representatives or employees, shall be permitted to make and keep photocopies of portions of the other Party's records that pertain to such tax withholdings and estimates. Once a year, both Parties shall have the right to have an independent auditor inspect and audit the books and records of the other Party.

Section 10. Informal Dispute Resolution. Prior to invoking the provisions of Section 11, if City or Cleveland disagrees with the implementation or interpretation of this Agreement, the Parties will use their best efforts to settle such dispute between themselves. If, despite good faith efforts the disagreement cannot be resolved, City or Cleveland may request informal dispute resolution by providing written notice to the other. The disagreement shall be submitted to the President of the Cuyahoga County Mayors and Managers Association for mediation. Unless otherwise agreed to by the Parties, mediation shall be concluded no later than 30 days after receipt of the notice provided for in this Section.

Section 11. Defaults and Remedies. A failure to comply with the terms of this Agreement shall constitute a default. The Party in default shall have 60 days after receiving written notice from the other Party of the event of default to cure that default. If the default is not cured within that time period, the non-defaulting Party may sue the defaulting Party for specific performance under this Agreement or for damages or both. This Agreement may not be terminated because of a default unless the Parties agree to such cancellation or termination.

Section 12. Amendments. This Agreement may be amended by the Parties only in a writing approved by the legislative authorities of both Parties by appropriate legislation authorizing that amendment. In order for such amendment to be effective, the legislative actions of the Parties that amend this Agreement must occur and be effective within a period of 90 days of each other.

Section 13. Binding Effect. This Agreement shall be binding upon the Parties and their respective permitted successors, subject, however, to the specific provisions hereof. This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence.

Section 14. Signing Other Documents. The Parties agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments and documents, and to take such other actions, in order to effectuate the purposes of this Agreement.

Section 15. Severability. In the event that any section, paragraph or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason: (1) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein; (2) the illegality or invalidity or any applications hereof or thereof shall not affect any legal and valid application hereof or thereof; and (3) each section, paragraph, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Section 16. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of Ohio, and in particular R.C. §715.84.

Section 17. Captions and Heading. The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

Section 18. No Third-Party Beneficiaries. Nothing contained herein, and nothing that may be implied hereby, is intended to or shall be construed to confer upon any person or entity, other than the Parties hereto, any right or remedy under or by reason of this Agreement.

Section 19. Consideration, Utility Agreement. The amendment, renewal or termination of a separate contract for utility services does not constitute any part of the consideration for this Agreement. Further, other substantial consideration exists to support this Agreement, and this Agreement has been entered into between the Parties without duress or coercion related to the amendment, renewal or termination of a separate contract for utility services.

Section 20. Forms of Notice. Any notice or demand required or permitted to be given by or to the Parties and every alleged breach of a warranty, representation, or agreement contained in this Agreement shall be made in writing and shall be deemed to have been given or delivered, as the case may be, when personally delivered to the Mayor of the respective city, or two (2) days after deposit in the U.S. Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows (or as to each Party, to such other address as the Party may designate by a notice give in accordance with the provisions of this Section):

	Notice	With a copy to:
Notice to Cleveland shall be addressed to:	Director of Economic Development City of Cleveland Cleveland City Hall 601 Lakeside Avenue, Room 210 Cleveland, Ohio 44114	Director of Law City of Cleveland 601 Lakeside Avenue, Room 106 Cleveland, Ohio 44114
Notice to City shall be addressed to:	_____ _____ _____ Attn: _____	Director of Law _____ _____ _____

Section 21. Counterparts. This Agreement may be executed in any number of counterparts, all of which, when so executed and delivered, shall constitute but one and the same instrument. The following documents attached hereto are hereby incorporated with and made a part of this Agreement:

The Parties have executed this instrument as of the day and year first written.

CITY OF CLEVELAND

CITY OF _____

Name, Director _____
Department of Finance

Printed name and title

The legal form and correctness of this instrument are approved:

The legal form and correctness of this instrument are approved:

Name _____
Director of Law

Printed name and title (Director of Law)

Name _____
Assistant Director of Law

Name of authorized designee

Date: _____

EXHIBIT F

CAPITAL IMPROVEMENT PROJECT REIMBURSEMENT TERMS AND CONDITIONS

In addition to the Water Service Agreement, as amended, PURVEYOR and MUNICIPALITY agree as follows:

I. Scope of Agreement. This Agreement shall apply to any Capital Improvements performed by MUNICIPALITY for which PURVEYOR is providing reimbursement during the term of the Water Service Agreement, as amended ("Agreement"). In instances where both parties determine that deviations from this Agreement are necessary due to the unique circumstances of a particular Capital Improvement project, the parties shall execute a letter agreement specifying any modifications to this Agreement for that particular project. Such letter agreement shall apply solely to the particular Capital Improvement project for which modifications are necessary, unless otherwise specified in the letter agreement.

II. Engineering Consultants and Preparation of Design and Specifications.

- A. Hiring Consultants. MUNICIPALITY shall hire consultants and authorize work as required by its charter and ordinances only after obtaining the written approval of PURVEYOR to perform each Capital Improvement; the consultants shall design the Capital Improvement, prepare the specifications, provide engineer's estimates of the costs of the Capital Improvement, provide construction administration services, and prepare as-built drawings. All designs shall be prepared in accordance with PURVEYOR's standards and details.
- B. Payments to Consultant. MUNICIPALITY shall be responsible for making all payments to its consultants. Throughout each Capital Improvement, MUNICIPALITY shall provide on-going documentation to PURVEYOR related to the work performed by the consultants, including, but not limited to, consultants' requests for payment and MUNICIPALITY's payments to the consultants. MUNICIPALITY need not obtain approval of PURVEYOR prior to making payments to MUNICIPALITY's consultants; however, PURVEYOR shall inform MUNICIPALITY of any problems PURVEYOR identifies within the documentation provided, and the parties shall cooperate in resolving such problems.
- C. Approval of Design. MUNICIPALITY shall obtain PURVEYOR's written approval of all final designs and engineer's cost estimates of water work prior to bidding the construction portion of a Capital Improvement. Capital Improvements for which designs have been completed prior to the parties entering into this Agreement may be eligible for reimbursement under this Agreement so long as MUNICIPALITY obtains PURVEYOR's written approval of the completed design.
- D. Inspectors. In addition to MUNICIPALITY's construction site inspector, PURVEYOR shall have the right to have its own inspector or other designee present during all construction work. PURVEYOR's inspectors and/or designees shall be present to observe all water main hydrostatic testing, chlorination, final inspections, and warranty inspections. MUNICIPALITY's inspection costs shall be considered reimbursable

construction administration costs. PURVEYOR's inspector shall have the final authority with respect to water work performed.

- E. Approval of As-Builts. MUNICIPALITY shall obtain PURVEYOR's final approval of the as-built drawings. MUNICIPALITY shall submit the as-built drawings to PURVEYOR prior to PURVEYOR disinfecting the water main. Failure by MUNICIPALITY to submit accurate as-built drawings within the time frame required under this section may preclude funding for subsequent, future Capital Improvements under these Terms and Conditions and the Agreement, as amended.

III. Soliciting Bids, Selecting Contractors, and Constructing the Capital Improvement.

- A. Bidding Construction Contracts. MUNICIPALITY shall perform the bid process for each Capital Improvement pursuant to its charter and ordinances, and enter into a contract with the contractor(s) for the work. MUNICIPALITY shall provide the unit bid prices of each bidder in a bid tabulation document to PURVEYOR after bid opening. MUNICIPALITY shall award the contract to the selected contractor only after consulting with and obtaining the written approval of PURVEYOR, which approval shall not be unreasonably withheld. Any disapproval, and the reasons therefore, shall be provided in writing to MUNICIPALITY.
- B. Payments to Contractor(s). MUNICIPALITY shall be responsible for making all payments to its contractor(s). Throughout each Capital Improvement, MUNICIPALITY shall provide on-going documentation to PURVEYOR related to the work performed by the contractor(s), including but not limited to contractors' requests for payment, and payments made to contractor(s). Except as otherwise stated in these Terms and Conditions, MUNICIPALITY need not obtain approval of PURVEYOR prior to making payments to MUNICIPALITY's contractor(s); however, PURVEYOR shall inform MUNICIPALITY of any problems PURVEYOR identifies within the documentation provided, and MUNICIPALITY shall cooperate with PURVEYOR in resolving such problems.
 - 1. Release of Retainage. MUNICIPALITY shall obtain PURVEYOR's written approval prior to the release of any retainage to the contractor. PURVEYOR shall cooperate in issuing its written approvals to ensure that MUNICIPALITY is able to release any retainage within the time frames which may be required by the MUNICIPALITY'S charter and codified ordinances, and its specifications and contract with the contractor.
- C. Bid Items. MUNICIPALITY shall bid the water work portion of its Capital Improvements on an itemized unit price basis. Table 1 (attached to these Terms and Conditions) lists the water work unit items MUNICIPALITY shall include in the bid sheets. Table 1 may be revised by PURVEYOR, and sent to the Suburban Water Council of Governments ("COG") for comment and to any MUNICIPALITY with a Capital Improvement project in the upcoming year, no more often than January of each year. Any revision to Table 1 will in no way interfere with PURVEYOR'S obligation to maintain the distribution mains and the water works system. Allowable water work bid items may include reasonable contingency (10% or less). When bidding in conjunction with a road capital

improvement, MUNICIPALITY shall ensure that the water work is expressly separated from other types of work in the bid documents and on the bid sheets.

- D. Pavement Costs. When water work is performed without a corresponding roadwork capital improvement, PURVEYOR shall reimburse MUNICIPALITY for pavement restoration up to a total width not to exceed twelve (12) feet per PURVEYOR'S pavement restoration standards for distribution main replacement projects or such other standards established by the COG with the approval of PURVEYOR.

PURVEYOR shall not reimburse the cost of pavement restoration when water work is performed in conjunction with roadwork or resurfacing capital improvements, except that PURVEYOR will reimburse the cost of providing back-fill and temporary pavement when street reconstruction capital improvements are performed, and shall additionally reimburse the cost of concrete base replacement within the trench area when resurfacing capital improvements are performed.

- E. Warranty. MUNICIPALITY shall include warranty language in its bid specifications that is substantially similar to the following:

A two-year warranty commencing from the date of acceptance of final chlorination of the water main installation shall be required of contractor for all water work should any leaks occur or repairs be required due to deficient materials or poor workmanship.

- F. Third Party Beneficiary and Additional Insured. The bid specifications shall include a provision naming the City of Cleveland as a third-party beneficiary of any warranties related to each Capital Improvement. The bid specifications shall also include provisions requiring contractors to name the City of Cleveland as an additional insured on the contractors' insurance policies and performance bonds.

- G. Water Work Contingency Allowance. MUNICIPALITY may include a contingency allowance of not greater than 10% of the water work for any Capital Improvement.

- H. Change Orders. MUNICIPALITY shall obtain the prior written approval of PURVEYOR before issuing any change orders greater than \$20,000, or 5% of the water work portion of the Capital Improvement, whichever is less, including but not limited to orders for changes in bid item quantities and compensation for changes in work site conditions. PURVEYOR shall provide its approval or disapproval, in writing, within five (5) business days after receiving a request for approval of a change order submitted pursuant to this paragraph, or sooner if conditions reasonably require a more rapid approval of the change order. PURVEYOR may increase the minimum thresholds for approval by PURVEYOR of change orders as fixed in this Paragraph III. H, no more often than January of each year and send the revised standards to MUNICIPALITY.

IV. Reimbursement of Capital Improvement Project Costs.

- A. Reimbursement of Consulting Costs. PURVEYOR shall reimburse MUNICIPALITY for the consulting services described in this Agreement as follows:

1. Reimbursement of Design Costs. PURVEYOR shall reimburse MUNICIPALITY the actual amount MUNICIPALITY paid its consultants to perform design services for each Capital Improvement, up to a maximum of 8% of the actual construction costs of the water work portion of the Capital Improvement. PURVEYOR shall pay MUNICIPALITY after receipt of an invoice in accordance with the provisions set forth in Paragraph IV. C below.
 2. Approval of Construction Administration Costs. MUNICIPALITY shall provide cost estimates and schedules to PURVEYOR relative to construction administration services, including inspection services and preparation of as-built drawings, and shall obtain PURVEYOR's written approval prior to commencement of construction.
 3. Reimbursement of Construction Administration Costs. PURVEYOR shall reimburse MUNICIPALITY for construction administration for actual costs incurred, but not to exceed 5% of the actual construction cost of the water work. PURVEYOR shall pay MUNICIPALITY after receipt of an invoice in accordance with the provisions set forth in Paragraph IV. C below.
- B. Reimbursement of Construction Costs. PURVEYOR shall compensate MUNICIPALITY for the estimated construction costs based on the bid prices of the winning bidder.
1. In those Capital Improvements projects that include items in addition to the approved water work, the cost of which is at least 10% of the total contract value, the average total cost (defined as the total water work cost, not including any contingency allowance, divided by the lineal feet of water main work) to perform the water work portion of each Capital Improvement must fall within a range of acceptable average costs, identified in Table 2 (attached to these Terms and Conditions). Should the average total cost fall outside the range, PURVEYOR shall pay the upper or lower limit value shown in Table 2, whichever is closer to the actual, average total cost.
 - a. PURVEYOR shall adjust, in accordance with the index in the Engineering News Record, Table 2 no more often than January of each year. PURVEYOR shall send the revised Table 2 to the COG and to any municipality with a Capital Improvement project in the upcoming year. Such adjustments shall apply only to those construction contracts that are bid after the adjustments have been promulgated.
 2. In those Capital Improvement projects in which the cost of the water work is more than 90% of the total contract value, the ranges in Table 2 shall not apply.
 3. In accordance with Article 8.02 of the Water Service Agreement, as amended, between the parties, PURVEYOR shall not be obligated to reimburse MUNICIPALITY for any street opening and traffic permits.
- C. Payment Process for Reimbursement of Project Costs. PURVEYOR shall pay MUNICIPALITY for the actual Design costs (subject to the limits articulated in Paragraph

IV. A, 1 and in advance for the estimated Construction and Administrative costs of each Capital Improvement. PURVEYOR shall pay MUNICIPALITY for the design, administrative and construction costs within forty-five (45) days of receipt of an approvable invoice that is in compliance with PURVEYOR'S policies. MUNICIPALITY shall invoice PURVEYOR for the design, administrative and construction costs following PURVEYOR'S review and approval of MUNICIPALITY awarding the project construction contract.

1. Actual Costs. Within forty-five (45) days after substantial completion of the entire Capital Improvement, MUNICIPALITY shall determine the actual cost of the water work portion including design, administration and construction of the Capital Improvement. MUNICIPALITY shall, within said forty-five (45) days, either 1) invoice PURVEYOR for any deficiency in the amount paid in advance; or 2) notify PURVEYOR of the amount of any overpayment based on its calculations. In the event of an underpayment, PURVEYOR shall remit the additional amount due to the MUNICIPALITY within forty-five (45) days of its receipt of MUNICIPALITY'S invoice.
2. Reimbursement of Overpayment. In the event of overpayment and following the PURVEYOR'S verification of the amount due, the PURVEYOR shall submit an invoice to the MUNICIPALITY for reimbursement of the amount of overpayment. MUNICIPALITY shall remit payment of invoice to PURVEYOR within forty-five (45) days of receipt of PURVEYOR'S invoice.

V. Reporting Requirements. MUNICIPALITY shall submit progress monthly reports to PURVEYOR. The first report shall be submitted one month after MUNICIPALITY issued its intent to take on the execution of the project. Thereafter, MUNICIPALITY shall issue updates on a monthly basis until project close out. The monthly reports shall be in compliance with the format as specified by PURVEYOR which will be more fully defined within a specific project letter to be received by Municipality from the Division of Water Engineering Section that outlines reimbursement terms and reporting requirements. The monthly reports shall cover, but not be limited to the following:

- Proposed start and finish dates of design, bidding process, and construction;
- Estimated cost of design, construction, and project administration;
- Percent of completion of design and construction;
- Actual expenditure (cost) of design, construction, and project administration; and
- Any complications, delay and delay causes, change orders, or deviation from the original scope.

VI. Right to Audit Records. PURVEYOR shall have the right, during the period during which the subject records are required to be retained by MUNICIPALITY, to audit any of MUNICIPALITY'S records related to any Capital Improvements performed pursuant to this Agreement, including financial and technical documentation.

VII. Cooperation. The parties shall meet as required to ensure that both parties coordinate their efforts for the entire term of the Capital Improvement, and shall cooperate in exchanging any documents and information necessary for the successful completion of any Capital Improvements performed as well as the administration of the Agreement. The parties further agree to cooperate in amending these Terms and Conditions or the Agreement should it become necessary for the effective administration of the Agreement or to clarify the intent of the Agreement.

VIII. Claims by employees, Immunity and Defenses. Each party is responsible for providing worker's compensation benefits and administering worker's compensation for its own personnel and for injury or damage to any of its own employees as it would be responsible in the normal course of business. Nothing in these Terms and Conditions or in the Agreement shall act, or be construed, as a waiver of any statutory or common-law immunity or a waiver of any other defense or exemption or limitation that either party may enjoy.

TABLE 1

Allowable Water Items for CWD Reimbursement

- Installation of New Water Mains (various sizes)
- Clean & Line Water Mains (various sizes)
- Remove & Replace Existing Valve with New Valve
- Install New Cut-in Valves
- Installation of a Supplemental Connection (Connection between two Water Mains of Various Sizes, typically a Transmission Main and a Local Distribution Main)
- Replace or Install New Fire Hydrant
- Replacement of Service Connections from Main to Curb Valve (all sizes / In R/W)
- Abandon Water Service Connection (all sizes, plugging of connections as per CWD specification)
- Provide Temporary Water Mains and Service Connections
- Video Taping Services of Pipe Lining (inside pipe for Cleaning & Lining)
- Temporary Connections (house to house or building to building)
- Installation of Spool Pieces (used for removing tees, taps, hydrants, connections, main abandonment)
- Preconstruction Video of right of way (on water only projects)
- As-built drawings (as per CWD specification)
- Flowable Fill or Granular Fill for Water Main Trench
- Pavement Restoration (including base and asphalt pavement not to exceed 12 feet in total width)
- Cathodic protection (including Corrosivity Report, Electrical Bonding, Test Stations, as specified by CWD)
- Allowance for fees

TABLE 2

Allowable Cost/Foot Reimbursement Ranges for Water Items
(Effective January, 2015)

	6" – 12" diameter mains		16" diameter mains	
	<i>Min.</i>	<i>Max.</i>	<i>Min.</i>	<i>Max.</i>
Cleaning & Lining	\$59.02	\$94.43	\$70.83	\$106.24
Water Main Replacement	\$141.65	\$212.48	\$177.06	\$236.08

PURVEYOR will apply an escalator adjustment to the amounts each year as of January 1st, pursuant to the construction cost index in the Engineering News Record.

ATTACHMENTS

Asset Transfer Agreement, Executed by the Parties

Municipal Utility District Agreement, Executed by the Parties

P/C 10/21/14 Finance
CA 5/5/15 -amended
1st R 6/21/16
2nd R _____
3rd R _____
B/C 5/19/15 Caucus
Caucus 5/19/15
Caucus 2/23/16
B/C 2/23/16 Caucus
Cau 6/14/16

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 10026-2016

INTRODUCED BY: COUNCILMAN TROYER

AN ORDINANCE
AMENDING SECTION 121.01(a) and (b)
OF THE BROOK PARK CODIFIED ORDINANCES, RELATING
TO THE PRESIDENT OF COUNCIL AND MEMBERS OF COUNCIL,
AND DECLARING AN EMERGENCY.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City
of Brook Park, State of Ohio, that:

SECTION 1: Section 121.01(a) and (b) of the Brook Park
Codified Ordinances, passed by Ordinance No. 8346-1997, passed
May 20, 1997; Ordinance No. 8708-2000, passed February 6, 2001;
Ordinance 9000-2003, passed June 17, 2003; Ordinance No. 9581-
2009, passed May 19, 2009, and reading as follows:

COUNCIL SALARY

121.01(a) The salary of the President of Council for one
year commencing January 1, 2010, until duly changed, is hereby
fixed at fifteen thousand seven hundred thirty-five dollars
(15,735) per annum, payable in monthly installments. The salary
of the President of Council for one year commencing January 1,
2011, until duly changed, is hereby fixed at fifteen thousand
seven hundred thirty-five dollars (\$15,735) per annum, payable
in monthly installments. The salary of the President of Council
for one year commencing January 1, 2012, until duly changed, is
hereby fixed at sixteen thousand two hundred seven dollars
(\$16,207) per annum payable in monthly installments. The salary
of the President of Council for one year commencing January 1,
2013 until duly changed, is hereby fixed at sixteen thousand six
hundred ninety-three dollars (\$16,693) per annum, payable in
monthly installments.

is hereby amended to read:

121.01(a) The salary of the President of Council
commencing January 1, 2016 until duly changed is hereby fixed at
\$15,735.00 per annum payable in monthly installments.

121.01(b) The salary of the members of Council for one year commencing January 1, 2010, until duly changed, is hereby fixed at fourteen thousand four hundred forty-six dollars (\$14,446) per annum, payable in monthly installments. The salary of the members of Council for one year commencing January 1, 2011, until duly changed, is hereby fixed at fourteen thousand four hundred forty-six dollars (\$14,446) per annum, payable in monthly installments. The salary of the members of Council for one year commencing January 1, 2012, until duly changed, is hereby fixed at fourteen thousand eight hundred seventy-nine dollars (\$14,879) per annum, payable in monthly installments. The salary of the members of Council for one year commencing January 1, 2013, until duly changed, is hereby fixed at fifteen thousand three hundred twenty-five dollars (\$15,325) per annum, payable in monthly installments.

is hereby amended to read:

121.01(b) The salary of the members of Council for one year commencing January 1, 2016, until duly changed, is hereby fixed at fourteen thousand four hundred forty-six dollars (\$14,446) per annum, payable in monthly installments.

SECTION 2: Former Section 121.01(a) and (b) of the Brook Park Codified Ordinances, as passed by passed by Ordinance No. 8346-1997, passed May 20, 1997; Ordinance No. 8708-2000, passed February 6, 2001; Ordinance 9000-2003, passed June 17, 2003; Ordinance No. 9581-2009, passed May 19, 2009, is hereby expressly repealed.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of public peace, health, safety and welfare of said City, and for the further reason to amend Section 121.01(a) and (b) of the Brook Park Codified Ordinances; therefore this Ordinance shall take effect and be in force immediately from and after its passage and approval by the Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW

P/C 6/7/16 Finance
CA _____
1st R _____
2nd R _____
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

ORDINANCE NO: _____

INTRODUCED BY: MAYOR COYNE

AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT
WITH THE BROOK PARK SAFETY DISPATCHERS/CLERKS,
FRATERNAL ORDER OF POLICE ASSOCIATION
(SAFETY DISPATCHERS/CLERKS),
AND DECLARING AN EMERGENCY

WHEREAS, a contract between the City and the Brook Park Safety Dispatchers/Clerks, Fraternal Order of Police Association has been negotiated by the Mayor and presented to Council pursuant to the provisions of Chapter 4117 of the Ohio Revised Code; and

WHEREAS, said contract shall be effective January 1, 2016 through December 31, 2018.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The Mayor is hereby authorized to enter into a contract on behalf of the City with the Brook Park Safety Dispatchers/Clerks, Fraternal Order of Police Association effective January 1, 2016 through December 31, 2018, a copy of said contract is attached hereto as Exhibit "A" and made a part hereof as if fully rewritten herein.

SECTION 2: The money needed for the aforesaid transaction shall be paid from funds theretofore appropriated for said purpose.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the municipality and inhabitants thereof, such emergency existing for the further reason that the previous contract with Brook Park Safety Dispatchers/Clerks, Fraternal Order of Police Association expired

on December 31, 2015; provided this ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

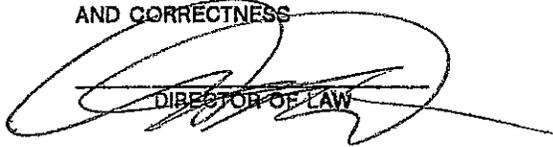
PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS

DATE

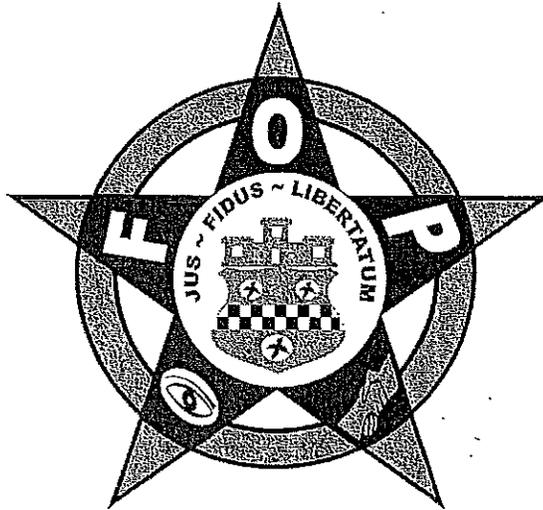

DIRECTOR OF LAW

A COLLECTIVE BARGAINING AGREEMENT

BETWEEN

**THE FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.**

AND



THE CITY OF BROOK PARK, OHIO

(SAFETY DISPATCHERS/CLERKS)

EFFECTIVE: January 1, 2016

EXPIRES: December 31, 2018

AS PREPARED BY:

**Lucy DiNardo
Staff Representative
FOP/Ohio Labor Council, Inc.
2721 Manchester Road
Akron, OH 44319-1020
330-753-7080**



AGREEMENT

This Agreement is made and entered into by and between the City of Brook Park (hereinafter referred to as the "Employer") and FOP, Ohio Labor Council, Inc. (hereinafter referred to as "Union").

ARTICLE I

INTENTION OF THE AGREEMENT

1.1 The Employer has recognized Union as the representative of all full-time safety dispatchers/clerks of the City of Brook Park, Ohio. Both parties now desire to enter into a new Agreement to supersede all previous agreements, and to provide for the peaceful adjustment of any differences that may arise from time to time during the term of this Agreement without resort to strike, and to set forth clearly the terms and conditions of employment and responsibilities of each party and to promote harmony and efficiency to the end that the citizens of Brook Park, Ohio will enjoy uninterrupted service during the term of this Agreement.

ARTICLE II

RECOGNITION

2.1 The Employer agrees that it has and will continue to recognize Union as the exclusive representative for negotiating wages and salaries, hours of work, and all other terms and conditions of employment for all employees occupying the position of full-time safety dispatcher/clerk, and the Head Dispatcher, excluding all other employees of the Employer.

2.2 The Employer will furnish the Union with a list of all employees in the classifications covered by this Agreement indicating their starting date of employment upon request. Such list will be furnished no less than annually and will be supplemented by the names of all new employees as hired.

ARTICLE III

MANAGEMENT RIGHTS

3.1 Except as specifically limited by explicit provisions of this Agreement, the Employer reserves and retains, solely and exclusively, all rights, powers and authority, including the right to determine and fulfill the mission of the Employer, determine staffing policy, and in all other respects to plan, manage, evaluate, administer, govern, control, and direct its personnel and operations. Such exclusive rights include, but are not limited to, the following:

- A. To determine matters of inherent managerial policies which include policy areas of discretion such as the functions and programs of the Employer, standards of service, overall budget, utilization of technology and organizational structure;
- B. To establish, modify and enforce reasonable policies, rules, regulations, and standards for employee performance;

- C. To determine the size, composition, structure and adequacy of the work force;
- D. To establish and determine job qualifications and duties, and to establish, modify, consolidate and abolish jobs or job classifications;
- E. To hire, evaluate, assign, transfer, schedule, supervise, direct, promote, and for just cause demote, discipline, suspend, and discharge employees;
- F. To lay off employees in the event of lack of work or lack of funds or under conditions where the Employer determines that the continuation of such work is unnecessary;
- G. To determine overall methods, processes and means by which operations are to be efficiently and effectively conducted;
- H. To determine the location of facilities and to introduce new and/or improved equipment and methods, and to subcontract;
- I. To determine the financial policies and procedures of the Employer, including the exclusive right to allocate and expend all funds of the Employer;
- J. To do all things appropriate and incidental to any of its rights, powers, prerogatives, responsibilities, and authority; and in all respects to carry out the ordinary and customary functions of the administration, subject only to the procedures and criteria governing the exercise of these rights as are expressly provided for in this Agreement.

ARTICLE IV

DUES DEDUCTION

4.1 The Employer agrees to deduct from the wages and salaries of the bargaining unit members' dues required by the Union by payroll deduction. All members of the bargaining unit all either become dues paying members of the Union, or as a condition of continued employment, remit to the Union a fair share fee in the amount set by the Union per person per month in accordance with the provisions of O.R.C. 4117.09(C), starting the thirty-first (31) day of employment with the Employer.

4.2 Dues and Fair Share Fees shall be paid over by the Employer once each month to the FOP/OLC at 222 East Town Street, Columbus, Ohio 43215-4611 or such address as set by the Union from time to time.

4.3 An employee shall have the right to revoke such authorization by giving written notice to the Employer and the Union at any time during the fifteen (15) day period preceding the termination of this Agreement, and the authorization card shall state clearly on its face the right of employee to revoke during that period.

4.4 The Employer's obligation to make deduction shall terminate automatically upon timely receipt of revocation of authorization or upon termination of employment or transfer to a job classification outside the bargaining unit.

4.5 The Union will indemnify and hold the Employer harmless from any action growing out of deductions hereunder and commenced by an employee against the Employer.

4.6 All bargaining unit employees who are not members of the FOP/Ohio Labor Council shall pay a fair share fee to the Union in the amount of employee dues as set by the Union from time to time. The deduction to the fair share fee from any earnings of the employee shall be automatic and does not require a written authorization for payroll deduction. Payment to the Union of fair share fees shall be made in accordance with the regular dues deductions as provided herein.

ARTICLE V NO STRIKE

5.1 **Dispute Resolution.** The Employer and Union agree that the grievance procedures provided herein are adequate to provide a fair and final determination of all grievances arising under this Agreement. It is the desire of the Employer and Union to avoid work stoppages and strikes.

5.2 **Arbitration.** If, as a result of an employee's failure to exhaust all contract grievance procedures, a strike or work stoppage or slowdown occurs, and such employee or employees are disciplined, which may include discharge, the disciplinary action taken by the Employer and the issue of guilt shall be subject to the grievance procedure up to and including arbitration.

5.3 **No Strike.** Neither the Union nor any member of the bargaining unit shall directly or indirectly call, sanction, encourage, finance, participate, or assist in any way in any strike, slowdown, walkout, concerted "sick leave" or mass resignation, work stoppage or slowdown, or other unlawful interference with the normal operations of the Employer for the duration of this Agreement. A breach of this section shall be grounds for discipline. The Union shall not be held liable for the unauthorized activity of the employees it represents or its members who are in breach of this section, provided that the Union meets all of its obligations under this Article.

5.4 **Association Cooperation.** The Union shall at all times cooperate with the Employer in continuing operations in a normal manner and shall actively discourage and attempt to prevent any violation of the "no-strike" clause.

In the event of a violation of the "no-strike" clause, the Association shall promptly notify all employees in a reasonable manner that the strike, work stoppage or slowdown, or other unlawful interference with normal operations of the Employer is in violation of this Agreement, unlawful and not sanctioned or approved of by the Association. The Association shall advise the employees to return to work immediately.

5.5 **Lockout.** The Employer shall not lock out any employees for the duration of this Agreement.

ARTICLE VI DISCIPLINE

6.1 A non-probationary employee who is suspended, demoted or discharged shall be given written notice regarding the reason(s) for the disciplinary action within a reasonable time after the Employer has knowledge of the conduct for which an employee is being disciplined. An employee has the right to the presence and advice of a Union representative at all disciplinary interrogations.

6.2 Disciplinary action taken by the Employer shall only be for just cause.

6.3 Any disciplinary action against a non-probationary employee shall be processed in accordance with the dispute resolution procedure in Article VII of this Agreement beginning at the level where the disciplinary action was meted out to the employee.

ARTICLE VII DISPUTE RESOLUTION

7.1 Definitions.

- A. A "grievance" is a dispute or difference between the Employer and Union or the Employer and an employee covered by the terms of this Agreement, concerning the interpretation or application of only the provisions of this Agreement.
- B. For the purpose of this Article, "working days" means Monday through Friday.
- C. Pursuant to 4117.10(A), this is a binding grievance procedure and is the exclusive remedy to such disputes noted in A. above.
- D. In the event the Employer or its representative does not respond in accordance with the time limitations as set forth herein, the grievance will automatically move to the next step of the grievance procedure.

7.2 Grievance Procedure.

Step 1:

An employee who has a grievance may take it up orally with the immediate Supervisor, if available, either alone or with a representative of the Union, within one (1) calendar week after the events occur which give rise to the grievance. The immediate Supervisor will respond orally or in writing within two (2) working days after the grievance is presented.

Step 2:

If the grievance is not satisfactorily settled at Step 1, it shall be reduced to writing with details and remedy requested and submitted to the Safety Director on forms provided by the Union within five (5) working days after receipt of the Step 1 answer. The Safety Director will

meet with the employee and with representatives of the Union within five (5) working days of the receipt of the grievance and will provide the Union with a written answer within two (2) working days after the meeting.

Step 3:

If the grievance is not satisfactorily settled at Step 2, the employee may appeal the grievance within five (5) working days of the receipt of the Step 2 answer. The Mayor, or designee, shall respond in writing within five (5) working days of the receipt of the appeal.

Step 4:

If the grievance is not satisfactorily settled at Step 3, the Union must submit the grievance to arbitration by notice to the Employer within thirty (30) working days of the Step 3 answer. The parties will select an arbitrator from the permanent panel as set forth in Section 7.07. Arbitrators shall conduct hearings pursuant to the rules of the American Arbitration Association. Fees and expenses of the arbitrator so selected will be shared equally by the parties.

7.3 **Attendance at Arbitration.** An employee or Employer official requested to appear at the arbitration hearing by either party shall attend without the necessity of subpoena and without any loss of regular pay for time off the job while attending the arbitration proceeding.

7.4 **Policy Grievance.** A grievance which affects a substantial number of employees may be initiated at Step 3 of the Grievance Procedure.

7.5 **Authority of Arbitrator.** The arbitrator shall have no power or authority to add to or subtract from or modify in any way the provisions of this Agreement, or to make an award in conflict with law.

7.6 **Binding Arbitration.** The grievance procedure set forth herein is the exclusive method of resolving disputes and all decisions of arbitrators or settlements of grievances reached prior to arbitration shall be final and binding on the Employer and Union provided that the withdrawal of any grievance at any stage shall not be prejudicial to the positions of the parties as they relate to that grievance or any future grievance.

7.7 **Permanent Panel.** There is hereby established a permanent panel of arbitrators during the terms of this Agreement as follows: (1) Robert G. Stein; (2) David Pincus; (3) Jonathan Klein; (4) Harry Graham, and (5) James M. Mancini.

ARTICLE VIII DUTY HOURS

8.1 The regular work week for employees will be forty (40) hours, not necessarily consecutive, Sunday through Saturday. All hours worked over forty (40) in one (1) week will be computed at time and one-half the employee's regular rate of pay, but there shall be no pyramiding of overtime.

8.2 All safety dispatchers/clerks, who adjust their schedules four (4) times per year for training (in-service or otherwise departmental approved), schedule adjustment to fit manpower needs, or for other operational need, which does not result in the employee receiving overtime compensation, shall receive sixteen (16) hours of pay a year in December 1, of each year of the Agreement.

8.3 Regularly scheduled overtime shall be equalized and offered by seniority and shift when the equalization is met. The Employer will use its best efforts to allow equalization of emergency overtime. Overtime equalization lists shall be maintained by and be the responsibility of the associate and alternate of the bargaining unit. In the event an employee is erroneously passed over on the equalization lists, the Employer will not be held responsible and the associate or alternate will rectify the error by reinstating the employee to the list.

8.4 Employees shall be eligible to receive either compensatory time or overtime at the rate of time and one-half as noted above. Employees may accumulate no more than eighty (80) hours of compensatory time. Employees eligible for such time shall have the right to receive overtime pay or compensatory pay. However, when an employee accumulates eighty (80) hours of compensatory time, he/she must take overtime pay at the applicable rate of pay for that year. Employees shall receive eight (8) hours of compensatory time during the first pay period of each year, which shall be added to their compensatory bank. If such time creates the compensatory time bank to exceed eighty (80) hour limit, then this time must be used in such year causing the bank to drop back to eighty (80) hour limit.

Employees who currently have more than eighty (80) hours of compensatory time will not be eligible to receive additional compensatory time and must receive overtime pay until their compensatory time "bank" is reduced to below eighty (80) hours. The use of compensatory time may not create an overtime situation elsewhere in the department.

8.5 Employees required to appear outside of regular duty time and in connection to their employment will be paid overtime compensation on an hour-for-hour basis for the appearance. If the required time appearance is not contiguous to the employee's scheduled shift, the employee shall be entitled to a minimum of three (3) hours overtime compensation.

8.6 Duty hours shall not be changed by the Employer for the sole purpose of avoiding the payment of overtime.

ARTICLE IX LEAVES

9.1 **Sick Leave.** Each employee shall be credited with sick leave at the rate of 4.6 hours for each completed eighty (80) hours. Employees may use sick leave, upon the approval of the responsible administrative officer of the employing unit, for absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to other employees, and to illness, injury, or death in the employee's immediate family. Unused sick leave shall be cumulative without limitation. When sick leave is used, it shall be deducted from the employee's credit on the basis of one hour for every hour of absence from previously scheduled work. An employee using sick leave shall furnish a satisfactory written signed

statement justifying its use. If medical attention is required, or the absence is for more than two (2) consecutive workdays, a certificate stating the nature of the illness from a licensed physician shall be required to justify the use of sick leave. Falsification of either a written, signed statement or physician's certificate shall be grounds for disciplinary action including dismissal. This section shall be uniformly administered as to all employees. No sick leave may be granted to an employee upon or after his retirement or termination of employment. The abuse or patterned use of sick leave may be cause for disciplinary action up to and including termination of employment.

9.2 **Conversion of Unused Sick Leave.** An employee who retires shall be entitled, as part of the employee's final pay, to a lump sum payment of one-half of all of the employee's accrued and unused sick leave, not to exceed a maximum payout of 1,200 hours. The payment will be based upon the employee's hourly rate on the last date of employment and will eliminate all accrued and unused sick leave. To be eligible, an employee must have at least ten (10) years of full-time employment with the Employer. "Retirement" means disability or service retirement under any State of Ohio retirement system where the employee is immediately eligible to receive pension payments. The above sick leave conversion payment will be paid after a member retires, or paid to his/her estate upon his/her death.

9.3 **Funeral Leave.** A full-time employee shall be granted a leave of absence with pay, not to be charged against sick leave in the event of the death of his spouse, mother, father, children, stepchildren, brother, sister, brother-in-law, sister-in-law, mother-in-law, father-in-law, grandparent or legal guardian within the family environment. The employee will be granted twenty-four (24) working hours leave. To be eligible, the employee must notify the Employer in the manner it will establish, and attend the funeral. Failure to do so or misrepresentation of the facts relating to funeral leave shall be grounds for disciplinary action including discharge. With the prior approval of the Chief of Police, the attendance of funerals for other family members or the extension of the above time limits shall be charged against the employee's sick leave. Eighty (80) hours of leave shall be granted to a member of the Department whose spouse or child or parent dies.

9.4 **Jury Duty Leave.** Any full-time safety dispatcher/clerk who is called for jury duty and any full-time employee who is called and actually serves on the jury in any court, either federal, county or municipal, shall be paid his or her regular salary, less any compensation received from such court for jury duty as provided for in the Ohio Revised Code.

9.5 **Leave Donation Program.** Employees may donate paid leave to a fellow employee who is otherwise eligible to accrue and use sick leave. The intent of the leave donation program is to allow employees to voluntarily provide assistance to co-employees who are in critical need of leave due to a serious illness or injury of the employee or a member of his or her immediate family. An employee may not donate paid leave if it will result in the employee having less than forty (40) hours of accrued leave. An employee is not entitled to receive donated paid leave until the employee first exhausts all of his or her accumulated leave time. Employees may not actively solicit donations for paid leave.

9.6 **Family and Medical Leave Act.** Employees may request and be granted time off without pay pursuant to the Family and Medical Leave Act of 1993 (FMLA). Such time off without pay shall not exceed twelve (12) weeks in any twelve (12) month period. Leave under this provision shall be computed when first approved. During such leave, the employee shall continue to receive health benefits with the same condition set forth in Article XIII. Employees may choose to have their accumulated sick time deducted concurrent with their FMLA leave, but will stipulate as to how long and how much when filing for FMLA leave. Employees are subject to the Employer's FMLA policy.

9.7 **Sick Leave Bonus.** Effective January 1, 2012, any employee who does not utilize any paid sick leave for a period of four (4) consecutive months shall be entitled to eight (8) hours of compensation. This compensation to be eight (8) hours of time placed into the employee's compensatory time bank or in cash money in the first pay period following each four (4) month period. Such payment shall be separate and distinct from any other regular compensation to be received. The four (4) consecutive month periods shall be 1) January, February, March, and April, 2) May, June, July, and August, 3) September, October, November, and December.

ARTICLE X VACATION

10.1 All full-time employees shall be granted the following vacation leave, with pay, for each year based on length of service with the Employer. Vacation shall be taken at a time mutually convenient to the Employer and the employee. The Employer may allow two (2) employees to take vacation at the same time provided they are not scheduled on the same shift.

<u>Years of Service</u>	<u>Length of Vacation</u>
After 1 year	2 weeks
After 5 years	3 weeks
After 10 years	4 weeks
After 18 years	5 weeks

10.2 Compensation for vacation shall be based on forty (40) hours of pay at the employee's regular hourly rate for each week of vacation.

10.3 Any break in service by an employee will result in a forfeiture of all accumulated years of service. Break in service shall mean retirement or resignation by an employee or termination by the Employer which is final.

10.4 Employees may be permitted to take vacation one day at a time provided that permission for such vacation has been secured from the Chief or designee provided that such vacation does not cause overtime.

10.5 Employees may be permitted to take their earned vacation time (1-5 weeks) in hour increments provided that permission for such time off has been secured from the Chief or his designee and further provided that such time off does not create overtime.

ARTICLE XI

HOLIDAYS

11.1 All full-time employees shall be entitled to eight (8) hours of paid holidays for each of the following days:

- | | |
|------------------------|------------------|
| New Year's Days | Labor Day |
| Martin Luther King Day | Veteran's Day |
| President's Day | Thanksgiving Day |
| Memorial Day | Christmas Day |
| Independence Day | |

Time off for each holiday shall be taken according to departmental rules, except that should any holiday be taken prior to the actual date of the holiday, an employee shall be liable for repayment of the holiday pay to the Employer if the employee ceases to be an employee of the Employer by the date of the holiday. If a full-time employee works on one of the holidays shown above, the employee will be paid time and one-half for the hours worked.

11.2 Any full-time employee who actually works one of the holidays enumerated in Section 1 will be compensated at the overtime rate defined in Article VIII, Section 1, for the hours actually worked on the holiday. Any full-time employee who is working overtime on one of the holidays enumerated in Section 1 will be compensated an additional one-half (1/2) of their normal rate.

11.3 All full-time employees shall be entitled to twenty-four (24) personal hours. Time off shall be taken according to departmental rules.

11.4 Effective January 1, 2015, all full-time employees who are not on the department's sick leave abuse program shall be entitled to exchange up to eighty (80) hours holiday leave each year for cash compensation. The employee must inform the Employer of the number of holiday hours, if any, he/she wants to exchange for cash compensation by December 1st of each year. The payment for the exchanged holiday leave hours will be in the first pay period of December and will be separate and distinct from any other regular compensation to be received.

ARTICLE XII

COMPENSATION

12.1 Effective January 1, 2016 2% added to the current wage rate

Effective January 1, 2017 2% added to the current wage rate

Effective January 1, 2018 2% added to the current wage rate

12.2 Employees shall receive a shift differential in the amount of an additional twenty-five (\$.25) cents per hour for working the afternoon shift, and an additional thirty (\$.30) cents per hour for working the night shift.

12.3 Effective January 1, 2016 all employees, in addition to their salary, shall receive longevity payments in accordance with the following schedule:

After five (5) years	\$ 550.00
After ten (10) years	\$1,271.00
After fifteen (15) years	\$1,986.00
After twenty (20) years	\$2,697.00
After twenty-five (25) years	\$3,410.00

12.4 In the event the Employer creates a Head Dispatcher position, such position shall be paid four (4%) percent greater than the basic salary schedule (after four years). The payment of this stipend shall not be deemed a promotion for Civil Service testing purposes.

12.5 **Professional Pay Supplement.** Effective January 1, 2015 and thereafter, Certified employees shall be eligible to receive a Professional Pay Supplement of \$750.00 for completing and maintaining emergency medical dispatch certification. The payment for the Professional Pay will be in the first pay period of July of each year of this Agreement and will be in a separate check and distinct from any other compensation.

ARTICLE XIII INSURANCE

13.1 Healthcare: Effective September 22, 2014, the City shall provide coverage as noted in Appendix A on the following basis:

- 400/800 deductible plan – employees match 15%
- 1000/2000 deductible plan – employees match 10%

Option 1 - Medical Plan 1 \$400/\$800 Deductible

15% Employee Contribution

Monthly Cost	Monthly Cost	Per Employee	Per Pay (26 pays)
Employee	\$ 536.08	\$ 80.41	\$37.11
Employee + Spouse	\$1,036.71	\$155.51	\$71.77
Employee + Child(ren)	\$ 893.42	\$134.01	\$61.85
Family	\$1,469.66	\$220.45	\$101.75

Option 2 - Medical Plan 1 \$1000/\$2000 Deductible

10% Employee Contribution

Monthly Cost	Monthly Cost	Per Employee	Per Pay (26 pays)
Employee	\$ 536.08	\$ 53.61	\$24.74
Employee + Spouse	\$1,039.71	\$103.67	\$47.85
Employee + Child(ren)	\$ 893.42	\$ 89.34	\$41.23
Family	\$1,469.66	\$146.97	\$67.83

These rates will be in effect in 2014 & 2015. Thereafter, the rate will be determined by actual costs.

- (A) The Employer shall have the right to choose an alternative insurance carrier and/or provide other delivery systems, after discussion with the Union, provided that the benefits in such new policy are equivalent to the current policy.
- (B) The Employer may change health plan carriers, benefits or administrators under this Article or to self-insure, providing such changes are comparable to existing benefits.

13.2 **Dental Insurance.** The Employer will provide each member of the Division of Safety dental insurance coverage under the current plan or a substantially similar plan and/or other delivery systems which includes fifty (\$50.00) dollars deductible with eighty (80%) percent payment in all services to one thousand (\$1,000.00) dollars per year and sixty (60%) percent payment toward orthodontia care to a lifetime maximum of one thousand five hundred (\$1,500.00) dollars. The Employer will pay the equivalent of the premium for employee and family coverage and orthodontia coverage.

13.3 **Life Insurance.**

- (a) The Employer will provide and pay the full premium for all full-time employees for a convertible life insurance policy of twenty-five thousand (\$25,000.00) dollars.
- (b) The Employer will provide and pay the full premium for a paid up life insurance policy in the face amount of five thousand (\$5,000.00) dollars for each employee covered by this Agreement upon such employee's retirement.

13.4 **Vision Care.** The Employer shall provide a vision care program through the current program or a substantially similar program.

ARTICLE XIV

CLOTHING ALLOWANCE

14.1 Employees, when first hired, shall be initially provided a clothing allowance of eight hundred (\$800.00) dollars. Thereafter, employees shall be provided an annual clothing allowance of eight hundred (\$800.00) dollars in January of each year of the Agreement.

ARTICLE XV

MISCELLANEOUS

15.1 **Medical Examinations.** In any instance where the Employer sends an employee for a medical examination, the Employer shall pay the cost of the examination and shall pay the employee for the time expended taking such examination.

15.2 **Probationary Period.** There shall be a one (1) year probationary period in which employees may be terminated for any reason whatsoever and have no recourse to the grievance and arbitration procedure or to the Civil Service Commission.

15.3 **Suits Against Employees.** Except where an employee is found by a Court to have acted in a willful, wanton or malicious manner, the Employer shall indemnify and hold harmless all employees covered by the terms of this Agreement from any liability arising from or because of any claim or suit brought against such employee arising from or because of any action or inaction by such employee in the scope of employment. The Employer shall also provide legal counsel and pay all expenses for the defense of any claim or suit brought against any such employee arising from or because of any action or inaction by such employee actually or allegedly committed in the scope of employment.

15.4 For purposes of disciplinary action only, a disciplinary notice shall remain in the employee's personnel folder for only two (2) years, except for time off for suspension incidents.

15.5 **Field Training Officer.** Any Bargaining Unit Member who acts as a Field Training Officer shall be compensated one (1) additional hour at time and one-half for each eight (8) hour tour of duty as a Field Training Officer in addition to time worked.

If the employee works less than an eight (8) hour shift in the capacity of Field Training Officer, additional compensation shall be reduced on a pro rata basis.

ARTICLE XVI

LAYOFF PROCEDURE

16.1 If a layoff of a safety dispatcher/clerk becomes necessary, it shall be made in order of seniority (most junior first) and recall shall be in the inverse order of seniority. If a layoff of a safety dispatcher/clerk should become necessary, the Employer shall pay the safety dispatcher/clerk laid off the following: (1) regular overtime pay due; (2) compensatory time due; and (3) accrued but unused vacation time.

It is further understood that before any full-time safety dispatcher/clerk may be laid off under this Article, all part-time dispatcher/clerk work must first have been eliminated and that no civilian employee shall be hired to do any work currently performed by members of the bargaining unit if such hiring would cause the layoff of a member of the bargaining unit.

ARTICLE XVII

NON-DISCRIMINATION

17.1 The Employer and the Union agree not to discriminate against any employee(s) on the basis of race, religion, color, creed, national origin, age, sex or disability.

17.2 The Union expressly agrees that membership in the Union is at the option of the employee and that it will not discriminate with respect to representation between members and non-members.

ARTICLE XVIII

GENDER AND PLURAL

18.1 Whenever the context so requires, the use of words herein in the singular shall be construed to include the plural, and words in the plural, the singular, and words whether in the masculine, feminine or neuter genders shall be construed to include all of said genders. By the use of either the masculine or feminine genders, it is understood that said use is for convenience purposes only and is not to be interpreted to be discriminatory by reason of sex.

ARTICLE XIX

HEADINGS

19.1 It is understood and agreed that the use of headings before Articles is for convenience only and that no heading shall be used in the interpretation of said Article nor effect any interpretation of any such Article.

ARTICLE XX

"PICK-UP" PAYMENTS

20.1 Within a reasonable period from the ratification of this contract, the Employer shall initiate a pension "pick-up" plan. Specifically, the members' gross salary shall be reduced by the full amount of said contribution. The members' contributions which are "picked up" by the Employer shall be treated in the same manner as contributions made by members prior to the commencement of the "pick-up" program and will, therefore, be included in "compensation" for the purposes of the Public Employees Retirement System benefit calculations, and for the

purposes of the parties in fixing salaries and compensation of members as set forth in this contract. The Employer's contribution to the Public Employees Retirement System will be calculated on the full salary of members before the "pick-up" is deducted from gross salary.

ARTICLE XXI SAVINGS CLAUSE

21.1 In the event any one or more provisions of this Agreement is or are deemed invalid or unenforceable by any final decision of a court or governmental agency, that portion shall be deemed severable from the rest of the Agreement and all such other parts of this Agreement shall remain in full force and effect. In such event, the Employer and the Union will, at the request of either party hereto, promptly enter into negotiations relative to the particular provisions deemed invalid or unenforceable.

ARTICLE XXII DURATION OF AGREEMENT

22.1 This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and the Union and except as otherwise noted herein shall become effective on January 1, 2016, and shall remain in full force and effect until December 31, 2018, or until the completion of the relocation of the dispatch operation to the Parma Ohio dispatch facility. If either party desires to make any changes in the Agreement, notice of such a desire shall be given sixty (60) days prior to expiration. If such notice is given, this Agreement shall remain in effect until the parties reach agreement on a new contract, or either party, subsequent to expiration of the Agreement, delivers a written notice to the other party stating that this Agreement shall terminate seven (7) days after receipt of that notice. If no notice seeking modification is given, then the Agreement shall remain in effect for another year, although notice may be given in any subsequent year prior to expiration and the procedure stipulated herein shall then take effect.

ARTICLE XXIII ASSOCIATION RECOGNITION

23.1 The parties recognize that it may be necessary for an employee representative of the Union to leave a normal work assignment while acting in the capacity of representative. The Union recognizes the operational needs of the Employer and will cooperate to keep to a minimum time lost from work by representatives. Before leaving an assignment pursuant to this Section, the representative must obtain approval from the Chief or designee. The Employer will compensate a representative at the normal rate for the time spent in the good faith processing of grievances, and at any meetings at which the Employer requests a representative to be present, but only for such time expended during normal working hours.

23.2 Members of the Negotiating Committee shall be allowed reasonable time off to participate in collective bargaining meetings with the Employer if held during a member's regular working hours, without loss of pay.

23.3 Associate(s) of the Union shall be allowed three (3) hours per month off, with pay, for the purpose of attending Ohio Labor Council meetings. Requests for time off must be made in writing to the Director's office.

ARTICLE XXIV SENIORITY

24.1 Seniority shall be determined by the length of service with the Department of Public Safety of the City of Brook Park. In the event that an employee shall have formally been separated from the Department of Public Safety of the Employer, and is subsequently rehired, the seniority for such rehired employee shall be determined by the length of service with the Department of Public Safety since the date of rehire. For pension purposes, ERISA shall govern the calculation or seniority.

ARTICLE XXV LABOR/MANAGEMENT COMMITTEE

25.1 It is agreed by and between the Employer and the Union that it is in the best interest of the parties to create a Labor Management Committee for the purpose of discussing areas of mutual concern.

25.2 The Labor Management Committee shall consist of the Mayor or designated representative, Director of Public Safety, and two (2) representatives of the Union. Said committee shall meet at least once every three (3) months for the purpose of discussing or attempting to resolve any mutual work-related problems.

25.3 Any member of the Labor Management Committee may put a matter on the committee's agenda at least five (5) working days in advance of a scheduled meeting. Both the Employer and the Union shall make every effort to implement the unanimous decisions of the Committee.

25.4 This Committee is not intended to resolve grievances, but is intended to discuss matters of general concern.

25.5 Employee members shall have the right to attend such meetings without loss of pay.

ARTICLE XXVI PERMANENT SHIFTS

26.1 There shall be permanent shifts for safety dispatchers. The Union will be responsible to balance shifts among senior and junior members. In that regard, Union members will make an annual shift selection by seniority and submit the same to the Employer for review. Shift assignments will not be used as a form of discipline.

26.2 The Employer shall have the right to request that a safety dispatcher be removed from his/her selected shift for good cause. After such request, the parties shall meet and negotiate before the Employer makes a final decision as to such removal. The Employer will make every effort not to switch a dispatcher's shift during the calendar year; provided, however, that

if a shift discrepancy occurs during the year, the Employer will meet with the Union in a Labor Management Meeting before it makes any final decision. The Employer will take into consideration the seniority of the employee(s) and the operational needs prior to making any shift change under this provision. Nevertheless, affected individuals shall have the right to file a grievance regarding such shift change. No action on shift change will be taken until the completion of Step 3 of the grievance/arbitration procedure.

26.3 New hires will fill vacancies on shifts and/or fill in where needed until the end of a calendar year.

ARTICLE XXVII FAMILY MEDICAL LEAVE

27.1 Employees of the bargaining unit shall be subject to the Employer's Family and Medical Leave Policy and all such modifications of such policy to the same extent as other City employees.

ARTICLE XXVIII WAGE CONTINUATION/TRANSITIONAL WORK

28.1 All employees are subject to the Employer's Wage Continuation/Transitional Work Policy.

ARTICLE XXIX UNPAID LEAVES OF ABSENCE

29.1 An employee who has completed one (1) year of continuous service with the Employer may be granted a leave of absence without pay for a period not to exceed one (1) year because of injury, illness, educational purposes, or other personal reasons. The decision to grant the leave, the length of the leave period, and all other terms and conditions of the leave will be at the sole discretion of the Employer, with consideration given to the reasons and evidence presented by the employee to the Employer.

29.2 All leaves of absence (and any extensions thereof) must be requested in writing by the employee and submitted to the Employer. The Employer will grant or deny the request in writing. Except in cases of emergency, the leave request shall be submitted to the Employer not later than two (2) weeks prior to the date on which the leave is to start. Along with the request for the leave, the employee shall supply any and all available documentation in support of said leave. This documentation shall consist of medical proof of disability in cases where the leave is for medical purposes and the specific reason for the leave when the leave is for other purposes. An employee will be notified in writing within five (5) working days from the date the application was made of the approval or disapproval of the leave of absence request for ten (10) working days or less. For a leave request in excess of ten (10) working days, the employee will be notified within two (2) weeks from the date the application was made of the approval or disapproval of the leave. An employee who is granted such a leave shall not accrue any benefits during his absence, except seniority. The employee may continue his/her insurance coverage by paying the appropriate monthly premiums to the Director of Finance.

29.3 Leaves of absence will not be granted for the employee to seek employment with another employer, nor shall any employee work for another employer during the time period he is on leave. Any employee who works for another employer while on leave shall have his leave cancelled immediately and be subject to disciplinary action.

29.4 When an employee returns to work after a leave of absence, he will be assigned to the position which he formally occupied or to a similar position if his former position no longer exists at the applicable rate of pay, provided the employee is able to perform the work.

29.5 An employee may request a return to work prior to the expiration of any leave of absence, provided that such early return is agreed to by the Employer.

ARTICLE XXX TOTAL AGREEMENT

30.1 The Employer and the Union acknowledge that during negotiations which preceded this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining/negotiations and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

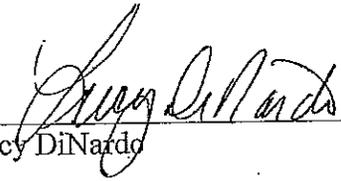
30.2 Therefore, for the life of this Agreement, the Employer and the Union each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to negotiate collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of the parties at the time they negotiated and signed this Agreement. This Agreement represents the entire agreement between the Employer and the Union.

30.3 Modifications of this Agreement may be made only by mutual agreement of the parties. The party proposing to modify the Agreement shall so notify the other in writing. Within thirty (30) days thereafter, the parties shall meet to discuss the proposed modification.

ARTICLE XXXI EXECUTION

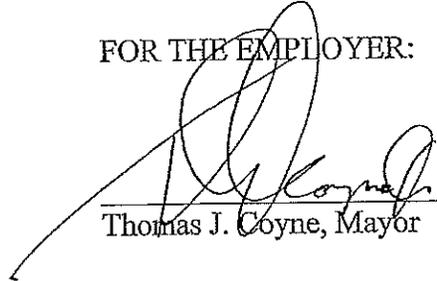
31.1 In Witness Whereof, this Agreement is hereby executed by the parties this 2nd day of June, 2016.

FOR THE UNION:



Lucy DiNardo

FOR THE EMPLOYER:



Thomas J. Coyne, Mayor

Memorandum of Understanding

Re: Part-time employees

Effective with the ratification of this Agreement the parties agree that the City shall have the right to hire a minimum of two (2) non bargaining unit part-time dispatch employees.



City of Brook Park
SuperMed Plus January 1, 2011



~~HER Non-Contributory~~ Non-Contributory (Exhibit A)

Benefits	Network	Non-Network
Benefit Period	January 1 st through December 31 st	
Dependent Age	26	
Older Age Child	28	
Pre-Existing Condition Waiting Period (does not apply to members under the age of 19)	Removal upon End of Month Not subject to Pre Existing Conditions	
Blood Pint Deductible	0 pints	
Overall Annual Benefit Period Maximum	Unlimited	
3 month Deductible Carryover	Does Apply	
Benefit Period Deductible -- Single/Family ¹	\$1,000 / \$2,000	\$1,000 / \$2,000
Coinsurance	90%	70%
Coinsurance Out-of-Pocket Maximum (Excluding Deductible) -- Single/Family	\$3,000 / \$6,000	\$3,600 / \$7,000
Physician/Office Services		
Office Visit (Illness/Injury) ²	\$20 copay, then 100%	70% after deductible
Urgent Care Office Visit ²	\$20 copay, then 100%	70% after deductible
Immunizations (tetanus toxoid, rabies vaccine, and meningococcal polysaccharide vaccine are covered services)	90% after deductible	70% after deductible
Injections Received in a Physician's Office	\$20 copay then 100%	70% after deductible
Administration of H1N1	100%	
Preventive Services		
Preventive Services, in accordance with state and federal law ³	100%	70% after deductible
Routine Physical Exam (Age 21 and over) (One exam per benefit period)	100%	70% after deductible
Well Child Care Services Including Exam, Routine Vision, Routine Hearing Exams, Well Child Care Immunizations and Laboratory Tests (To age 21)	100%	70% after deductible
Routine Vision Exam including Refraction (one exam every two benefit periods)	100%	70% after deductible
Routine Hearing Exam	100%	70% after deductible
Routine Mammogram (One per benefit period)	100%	70% after deductible
Routine Pap Test (One per benefit period)	100%	70% after deductible
Routine Lab, X-Ray and Medical Tests	100%	70% after deductible
Routine Endoscopic Services	100%	70% after deductible
Outpatient Services		
Surgical Services	90% after deductible	70% after deductible
Diagnostic Cat Scan, MRI and Nuclear Medicine	90% after deductible	70% after deductible
Diagnostic Labs, X-Rays and Medical Tests	90% after deductible	70% after deductible
Physical Therapy - Facility and Professional (20 visits per benefit period)	\$20 copay then 100%	70% after deductible
Occupational Therapy -- Facility and Professional (20 visits per benefit period)	\$20 copay then 100%	Not Covered
Chiropractic Therapy -- Professional Only (24 visits per benefit period)	\$20 copay then 100%	70% after deductible
Speech Therapy -- Facility and Professional (20 visits per benefit period)	\$20 copay then 100%	70% after deductible
Cardiac Rehabilitation Institutional 36 visits per benefit period, professional unlimited	\$20 copay then 100%	70% after deductible
Emergency use of an Emergency Room ⁴	\$100 copay, then 100%	

Non-Emergency use of an Emergency Room ⁶	Not Covered	Not Covered
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Benefits	Network	Non-Network
Inpatient Facility	90% after deductible	70% after deductible
Semi-Private Room and Board	90% after deductible	70% after deductible
Maternity	90% after deductible	70% after deductible
Rehabilitation Facility (60 days per benefit period)	90% after deductible	70% after deductible
Skilled Nursing Facility (60 days per benefit period)	90% after deductible	70% after deductible
Organ Transplants	90% after deductible	70% after deductible
Additional Services		
Allergy Testing	90% after deductible	70% after deductible
Allergy Treatments	90% after deductible	70% after deductible
Ambulance	90% after deductible	70% after deductible
Durable Medical Equipment including Prosthetic Appliances and Orthotic Devices	90% after deductible	70% after deductible
Oral Accident	90% after deductible	70% after deductible
Weight Loss Surgical Services including complications from Weight Loss Surgery	Not Covered	Not Covered
Home Healthcare (60 visits per benefit period)	90% after deductible	70% after deductible
Hospice (360 days per lifetime)	90% after deductible	70% after deductible
Private Duty Nursing	90% after deductible	70% after deductible
Mental Health and Substance Abuse – Federal Mental Health Parity		
Inpatient Mental Health and Substance Abuse Services	Benefits paid are based on corresponding medical benefits	
Outpatient Mental Health and Substance Abuse Services		

Note: Services requiring a copayment are not subject to the single/family deductible.

Deductible and coinsurance expenses incurred for services by a non-network provider will also apply to the network deductible and coinsurance out-of-pocket limits. Deductible and coinsurance expenses incurred for services by a network provider will also apply to the non-network deductible and coinsurance out-of-pocket limits.

Non-Contracting and Facility Other Providers will pay the same as Non-Network.

Benefits will be determined based on Medical Mutual's medical and administrative policies and procedures.

This document is only a partial listing of benefits. This is not a contract of insurance. No person other than an officer of Medical Mutual may agree, orally or in writing, to change the benefits listed here. The contract or certificate will contain the complete listing of covered services.

In certain instances, Medical Mutual's payment may not equal the percentage listed above. However, the covered person's coinsurance will always be based on the lesser of the provider's billed charges or Medical Mutual's negotiated rate with the provider.

¹Maximum family deductible. Member deductible is the same as single deductible.

²The office visit copay applies to the cost of the office visit only.

³Preventive services include evidence-based services that have a rating of "A" or "B" in the United States Preventive Services Task Force, routine immunizations and other screenings, as provided for in the Patient Protection and Affordable Care Act.

⁴Copay waived if admitted. The copay applies to room charges only. All other covered charges are not subject to deductible.

⁵Copay waived if admitted. The copay applies to room charges only. All other covered charges are subject to deductible and coinsurance.



City of Brook Park
SuperMed Plus January 1, 2011



FOR Non-Grandfathered 10% Contribution (Exhibit B)

Benefits	Network	Non-Network
Benefit Period	January 1 st through December 31 st	
Dependent Age	26	
Older Age Child	28	
Pre-Existing Condition Waiting Period (does not apply to members under the age of 19)	Removal upon End of Month Not subject to Pre Existing Conditions	
Blood Pint Deductible	0 pints	
Overall Annual Benefit Period Maximum	Unlimited	
3 month Deductible Carryover	Does Apply	
Benefit Period Deductible - Single/Family ¹	\$400/ \$800	\$800 / \$1,600
Coinsurance	90%	70%
Coinsurance Out-of-Pocket Maximum (Excluding Deductible) - Single/Family	\$1,500 / \$3,000	\$3,000 / \$6,000
Physician/Office Services		
Office Visit (Illness/Injury) ²	\$15 copay, then 100%	70% after deductible
Urgent Care Office Visit ²	\$15 copay, then 100%	70% after deductible
Immunizations (tetanus toxoid, rabies vaccine, and meningococcal polysaccharide vaccine are covered services)	90% after deductible	70% after deductible
Injections Received in a Physician's Office	\$15 copay then 100%	70% after deductible
Administration of H1N1	100%	
Preventive Services		
Preventive Services, in accordance with state and federal law ³	100%	70% after deductible
Routine Physical Exam (Age 21 and over) (One exam per benefit period)	100%	70% after deductible
Well Child Care Services including Exam, Routine Vision, Routine Hearing Exams, Well Child Care Immunizations and Laboratory Tests (To age 21)	100%	70% after deductible
Routine Vision Exam including Refraction (one exam every two benefit periods)	100%	70% after deductible
Routine Hearing Exam	100%	70% after deductible
Routine Mammogram (One per benefit period)	100%	70% after deductible
Routine Pap Test (One per benefit period)	100%	70% after deductible
Routine Lab, X-Ray and Medical Tests	100%	70% after deductible
Routine Endoscopic Services	100%	70% after deductible
Outpatient Services		
Surgical Services		
Diagnostic Cat Scan, MRI and Nuclear Medicine	90% after deductible	70% after deductible
Diagnostic Labs, X-Rays and Medical Tests	90% after deductible	70% after deductible
Physical Therapy - Facility and Professional (20 visits per benefit period)	\$15 copay then 100%	70% after deductible
Occupational Therapy - Facility and Professional (20 visits per benefit period)	\$15 copay then 100%	Not Covered
Chiropractic Therapy - Professional Only (24 visits per benefit period)	\$15 copay then 100%	70% after deductible
Speech Therapy - Facility and Professional (20 visits per benefit period)	\$15 copay then 100%	70% after deductible
Cardiac Rehabilitation Institutional 36 visits per benefit period, professional unlimited	\$15 copay then 100%	70% after deductible
Emergency use of an Emergency Room ⁴	\$50 copay, then 100%	

Non-Emergency use of an Emergency Room ⁵	Not Covered	Not Covered
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Benefits	Network	Non-Network
Inpatient Facility		
Semi-Private Room and Board	90% after deductible	70% after deductible
Maternity	90% after deductible	70% after deductible
Rehabilitation Facility (80 days per benefit period)	90% after deductible	70% after deductible
Skilled Nursing Facility (80 days per benefit period)	90% after deductible	70% after deductible
Organ Transplants	90% after deductible	70% after deductible
Additional Services		
Allergy Testing	90% after deductible	70% after deductible
Allergy Treatments	90% after deductible	70% after deductible
Ambulance	90% after deductible	70% after deductible
Durable Medical Equipment Including Prosthetic Appliances and Orthotic Devices	90% after deductible	70% after deductible
Oral Accident	90% after deductible	70% after deductible
Weight Loss Surgical Services including complications from Weight Loss Surgery	Not Covered	Not Covered
Home Healthcare (80 visits per benefit period)	90% after deductible	70% after deductible
Hospice (360 days per lifetime)	90% after deductible	70% after deductible
Private Duty Nursing	90% after deductible	70% after deductible
Mental Health and Substance Abuse – Federal Mental Health Parity		
Inpatient Mental Health and Substance Abuse Services	Benefits paid are based on corresponding medical benefits	
Outpatient Mental Health and Substance Abuse Services		

Note: Services requiring a copayment are not subject to the single/family deductible.

Deductible and coinsurance expenses incurred for services by a non-network provider will also apply to the network deductible and coinsurance out-of-pocket limits. Deductible and coinsurance expenses incurred for services by a network provider will also apply to the non-network deductible and coinsurance out-of-pocket limits.

Non-Contracting and Facility Other Providers will pay the same as Non-Network.

Benefits will be determined based on Medical Mutual's medical and administrative policies and procedures.

This document is only a partial listing of benefits. This is not a contract of insurance. No person other than an officer of Medical Mutual may agree, orally or in writing, to change the benefits listed here. The contract or certificate will contain the complete listing of covered services.

In certain instances, Medical Mutual's payment may not equal the percentage listed above. However, the covered person's coinsurance will always be based on the lesser of the provider's billed charges or Medical Mutual's negotiated rate with the provider.

¹Maximum family deductible. Member deductible is the same as single deductible.

²The office visit copay applies to the cost of the office visit only.

³Preventive services include evidence-based services that have a rating of "A" or "B" in the United States Preventive Services Task Force, routine immunizations and other screenings, as provided for in the Patient Protection and Affordable Care Act.

⁴Copay waived if admitted. The copay applies to room charges only. All other covered charges are not subject to deductible.

⁵Copay waived if admitted. The copay applies to room charges only. All other covered charges are subject to deductible and coinsurance.

CITY OF BROOK PARK, OHIO

P/O 6/7/16 Finance
GA 6/14/16
1st R 6/21/16
2nd R _____
3rd R _____
B/C _____

ORDINANCE NO: 10028-2016

INTRODUCED BY: MAYOR COYNE

AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO AN
AGREEMENT WITH G&G FITNESS
FOR THE PURCHASE OF PERFORMANCE CARDIO EQUIPMENT
AND DECLARING AN EMERGENCY

WHEREAS, the City of Brook Park received three proposals for performance cardio equipment; and

WHEREAS, after reviewing each proposal thoroughly, G & G Fitness was selected; and

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The Mayor is hereby authorized to enter into an agreement with G & G Fitness, as set forth in Exhibit "A" attached hereto.

SECTION 2: The money needed for the aforesaid transaction shall be paid from capital improvements fund no. 401 and recreation center fund no. 341; therefore appropriated or to be appropriated for said purpose and shall not exceed \$37,969.00.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for reason to allow the City to purchase performance cardio equipment; provided this ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in

force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

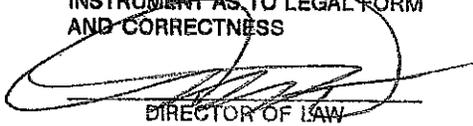
PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW



7350 Transit Road
 Williamsville, NY 14221

Quote # 934755
 Rep: JPOLACEK
 Date: 2016-05-18

Commercial Consultant: James Polacek Phone: (440) 653-7026 Fax: (716) 204-2521

SOLD TO

Brookpark Recreation [155631]
 17400 Holland Rd.

 Brookpark, OH 44142
 Contact 1: Maryann Fields 1-216-433-1545
 Contact 2:

SHIP TO

Brookpark Recreation
 17400 Holland Rd.

 Brookpark, OH 44142
 Contact:
 Email: Mfields@cityofbrookpark.com
 Phone:
 Fax:
 Cell:

Description	Qty	MSRP	Price	Ext. Price
Octane Elliptical Pro3700 W/standard Console Model: 103042-550	2	\$4,999.00	\$3,171.00	\$6,342.00
Octane Xr6000 Xride W/standard Console Model: 103498-550	4	\$4,899.00	\$3,034.00	\$12,136.00
Octane Xt-one W/standard Console Model: 109100-500	3	\$7,899.00	\$4,922.00	\$14,766.00
Assault Air Bike Model: AS-ASSAULTB	3	\$1,299.00	\$680.00	\$2,040.00

Estimated Lead Time: Cardio lead times are approximately 4 weeks, Strength lead times are approximately 12 weeks, Custom logo lead times 12-16 weeks.

Requirements: All treadmills require a 120 volt 20 amp dedicated outlet (NEMA 5-20R receptacle). 220 volt treadmills are special order and require an 8 week lead time.

Desired Delivery Date: _____
Frame Color: _____
Upholstery Color: _____
Power Cord Length: _____
Ground Floor Delivery: _____
Door Size: _____
Lift Gate: _____

Delivery/Assembly	\$2,685.00
Taxable Subtotal	\$37,969.00
Sales Tax 0%	\$0.00
TOTAL	\$37,969.00

Comments:

Terms and Conditions

Please select the payment terms desired:

___ Pre-paid: 50% (or more) of total invoice due as down-payment when order is placed. Balance due prior to scheduling delivery.

____ (Initials)

___ Net ___ Days: On approved credit or government purchase order. Full payment will be due on or before the the specified number of days.

____ (Initials)

1. Any and all late payments will be assessed a 1.5% late fee charged on the remaining outstanding balance. Additional late fee charges will accrue thereafter at a rate of 1.5% per 10 day period. Orders with Pre-pay or COD terms will be effectively due on day of delivery for purposes of late charge calculations.
2. If partial deliveries are accepted by the customer, payment for those items is due as they are delivered, per the terms of the sale.
3. G&G Fitness reserves the right to reacquire any equipment equal to the dollar amount owed should late payments exceed 14 days or if regular payment schedules are defaulted at any time.
4. Any and all attorney's fees and other agency fees that may result from non-payment will be charged to the party in default and may be subject to all applicable late fees and charges.
5. Terms and Conditions of sale which appear on purchaser's documents (including purchase orders) and which are inconsistent with these terms shall be voided.
6. Orders canceled after shipment (or after production starts for built-to-order products) are subject to a 20% restocking fee.
7. Delays in delivery at customer request are subject to storage fees of \$10 per month per piece.
8. Customers with sites located beyond twenty-five miles from our nearest service depot may be responsible for additional travel charges for service on equipment even when covered under a manufacturer's labor warranty.
9. Orders over ten thousand dollars paid with a credit card will incur a 2% convenience fee.

Customer Approval Signature

Date

--	--

Quote Valid for 30 Days

By signing you affirm that you are authorized to enter into a purchase agreement on behalf of the aforementioned organization and that you have read and agreed to all specifications, terms and conditions.

P/C 6/7/16 Finance
CA 6/14/16
1st R 6/21/16
2nd R _____
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 10029-2016

INTRODUCED BY: MAYOR COYNE

AN ORDINANCE
AUTHORIZING THE CITY OF BROOK PARK'S PARTICIPATION
IN THE STATE OF OHIO PURCHASING PROGRAM,
FOR THE PURCHASE OF STRENGTH EQUIPMENT,
CARDIO EQUIPMENT AND TREADMILLS,
AND DECLARING AN EMERGENCY

WHEREAS, Section 125.04(B) of the Ohio Revised Code provides the opportunity for political subdivisions in the State of Ohio to participate in contracts of the Ohio Department of Administrative Services for the purchase of equipment for the Recreation Center.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The Mayor hereby requests authority, in the name of the City of Brook Park to participate in the Ohio Department of Administrative Services contract for the purchase of strength equipment, cardio equipment and treadmills pursuant to the Ohio Revised Code Section 125.04(B). Specifically the City of Brook Park requests authority to purchase this equipment for use within the City of Brook Park's Recreation Center.

SECTION 2: The Mayor of the City of Brook Park is hereby authorized to be bound by all terms and conditions as the Department of Administrative Services prescribes.

SECTION 3: The Mayor of the City of Brook Park is authorized to directly pay vendors, under each such contract of the Ohio Department of Administrative Services in which the City of Brook Park participates, for items it receives pursuant to the contract.

SECTION 4: The money needed for the aforesaid transaction shall be paid from capital improvements fund no. 401 and recreation center fund no. 341; theretofore appropriated or to be appropriated for said purpose; the total amount of the purchase of said equipment is \$92,228.00, attached hereto as Exhibit "A-1, A-2 and A-3."

SECTION 5: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 6: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to allow the City to participate in the Ohio Department of Administrative Services in purchasing said strength equipment, cardio equipment and treadmills; provided this ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

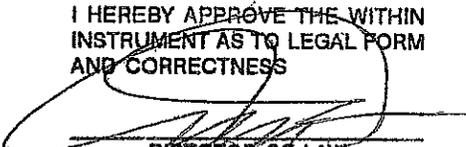
PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW



7350 Transit Road
 Williamsville, NY 14221

Quote # 934962
 Rep: JPOLACEK
 Date: 2016-05-18

Commercial Consultant: James Polacek Phone: (440) 653-7026 Fax: (716) 204-2521

SOLD TO

Brookpark Recreation [155631]
 17400 Holland Rd.

 Brookpark, OH 44142
 Contact 1: Maryann Fields 1-216-433-1545
 Contact 2:

SHIP TO

Brookpark Recreation
 17400 Holland Rd.

 Brookpark, OH 44142
 Contact:
 Email: Mfields@cityofbrookpark.com
 Phone:
 Fax:
 Cell:

Description	Qty	MSRP	Price	Ext. Price
Hammer Ground Base Jammer Model: GBJ	1	\$1,839.00	\$1,420.00	\$1,420.00
Hammer Iso-lateral Shoul- Der Press Model: ILSP	1	\$2,259.00	\$1,752.00	\$1,752.00
Hammer Iso-lat. Wide Pulldown Model: ILWPD	1	\$2,189.00	\$1,705.00	\$1,705.00
Hammer Iso-lat Chest Press Model: MTSCP	1	\$4,619.00	\$3,248.00	\$3,248.00
Hammer Mts Decline Press Model: MTSDP	1	\$4,639.00	\$3,271.00	\$3,271.00
Hammer Incline Press Model: MTSIP	1	\$4,619.00	\$3,248.00	\$3,248.00
Hammer Front Pulldown Model: MTSFP	1	\$4,619.00	\$3,248.00	\$3,248.00
Hammer Bicep Curl Model: MTSBC	1	\$4,619.00	\$3,248.00	\$3,248.00
Hammer Mts Tricep Extens- Ion Model: MTSTE	1	\$4,619.00	\$3,248.00	\$3,248.00

Estimated Lead Time: Cardio lead times are approximately 4 weeks, Strength lead times are approximately 12 weeks, Custom logo lead times 12-16 weeks.

Requirements: All treadmills require a 120 volt 20 amp dedicated outlet (NEMA 5-20R receptacle). 220 volt treadmills are special order and require an 8 week lead time.

Desired Delivery Date: _____

Frame Color: _____

Upholstery Color: _____

Power Cord Length: _____

Ground Floor Delivery: _____

Door Size: _____

Lift Gate: _____

Delivery/Assembly	\$1,689.00
Taxable Subtotal	\$26,077.00
Sales Tax 0%	\$0.00
TOTAL	\$26,077.00

Comments:

STATE CONTRACT

Schedule Number: 800300

Index Number: STS650

Vendor OAKS Contract ID: 800300-4



Terms and Conditions

Please select the payment terms desired:

___ Pre-paid: 50% (or more) of total invoice due as down-payment when order is placed. Balance due prior to scheduling delivery.

_____ (Initials)

___ Net ___ Days: On approved credit or government purchase order. Full payment will be due on or before the the specified number of days.

_____ (Initials)

1. Any and all late payments will be assessed a 1.5% late fee charged on the remaining outstanding balance. Additional late fee charges will accrue thereafter at a rate of 1.5% per 10 day period. Orders with Pre-pay or COD terms will be effectively due on day of delivery for purposes of late charge calculations.
2. If partial deliveries are accepted by the customer, payment for those items is due as they are delivered, per the terms of the sale.
3. G&G Fitness reserves the right to reacquire any equipment equal to the dollar amount owed should late payments exceed 14 days or if regular payment schedules are defaulted at any time.
4. Any and all attorney's fees and other agency fees that may result from non-payment will be charged to the party in default and may be subject to all applicable late fees and charges.
5. Terms and Conditions of sale which appear on purchaser's documents (including purchase orders) and which are inconsistent with these terms shall be voided.
6. Orders canceled after shipment (or after production starts for built-to-order products) are subject to a 20% restocking fee.
7. Delays in delivery at customer request are subject to storage fees of \$10 per month per piece.
8. Customers with sites located beyond twenty-five miles from our nearest service depot may be responsible for additional travel charges for service on equipment even when covered under a manufacturer's labor warranty.
9. Orders over ten thousand dollars paid with a credit card will incur a 2% convenience fee.

Customer Approval Signature

Date

--	--

Quote Valid for 30 Days

By signing you affirm that you are authorized to enter into a purchase agreement on behalf of the aforementioned organization and that you have read and agreed to all specifications, terms and conditions.



7350 Transit Road
 Williamsville, NY 14221

Quote # 933634
 Rep: JPOLACEK
 Date: 2016-05-18

Commercial Consultant: James Polacek Phone: (440) 653-7026 Fax: (716) 204-2521

SOLD TO

Brookpark Recreation [155631]
 17400 Holland Rd.

 Brookpark, OH 44142
 Contact 1: Maryann Fields 1-216-433-1545
 Contact 2:

SHIP TO

Brookpark Recreation
 17400 Holland Rd.

 Brookpark, OH 44142
 Contact:
 Email: Mfields@cityofbrookpark.com
 Phone:
 Fax:
 Cell:

Description	Qty	MSRP	Price	Ext. Price
Life Fitness Integrity Elliptical Domestic Model: CLSX-DOMXX-05	1	\$4,880.00	\$3,174.00	\$3,174.00
Life Fit Integrity Recumbent Cycle Domestic Model: CLSR-DOMXX-05	4	\$3,524.00	\$2,213.00	\$8,852.00
Life Fitness Integrity Upright Cycle Domestic Model: CLSC-DOMXX-05	2	\$3,419.00	\$1,973.00	\$3,946.00
Life Fitness Stairclimber Integrity Domestic Model: CLSS-DOMXX-05	2	\$3,940.00	\$2,545.00	\$5,090.00
Life Fit Adjustable Cable Crossover Connects Cores Model: MJAXO-STA	1	\$4,339.00	\$3,037.00	\$3,037.00
Life Fitness Core Tower - Multi Gym Model: MJ-CORE	2	\$1,279.00	\$895.00	\$1,790.00
Life Fitness Row For Mj Station Model: MJRW-STA	2	\$2,329.00	\$1,635.00	\$3,270.00
Life Fit Lat Pulldown For Mj Station Model: MJLP-STA	2	\$2,329.00	\$1,635.00	\$3,270.00
Life Fit Tricep Pushdown For Mj Station Model: MJTP-STA	2	\$1,669.00	\$1,167.00	\$2,334.00

Estimated Lead Time: Cardio lead times are approximately 4 weeks, Strength lead times are approximately 12 weeks, Custom logo lead times 12-16 weeks.
Requirements: All treadmills require a 120 volt 20 amp dedicated outlet (NEMA 5-20R receptacle). 220 volt treadmills are special order and require an 8 week lead time.
Desired Delivery Date: _____
Frame Color: _____
Upholstery Color: _____
Power Cord Length: _____
Ground Floor Delivery: _____
Door Size: _____
Lift Gate: _____

Delivery/Assembly	\$3,270.00
Taxable Subtotal	\$38,033.00
Sales Tax 0%	\$0.00
TOTAL	\$38,033.00

Comments:
 STATE CONTRACT

Schedule Number: 800300

Index Number: STS650

Vendor OAKS Contract ID: 800300-4



Terms and Conditions

Please select the payment terms desired:

___ Pre-paid: 50% (or more) of total invoice due as down-payment when order is placed. Balance due prior to scheduling delivery.

____ (Initials)

___ Net ___ Days; On approved credit or government purchase order. Full payment will be due on or before the the specified number of days.

____ (Initials)

1. Any and all late payments will be assessed a 1.5% late fee charged on the remaining outstanding balance. Additional late fee charges will accrue thereafter at a rate of 1.5% per 10 day period. Orders with Pre-pay or COD terms will be effectively due on day of delivery for purposes of late charge calculations.
2. If partial deliveries are accepted by the customer, payment for those items is due as they are delivered, per the terms of the sale.
3. G&G Fitness reserves the right to reacquire any equipment equal to the dollar amount owed should late payments exceed 14 days or if regular payment schedules are defaulted at any time.
4. Any and all attorney's fees and other agency fees that may result from non-payment will be charged to the party in default and may be subject to all applicable late fees and charges.
5. Terms and Conditions of sale which appear on purchaser's documents (including purchase orders) and which are inconsistent with these terms shall be voided.
6. Orders canceled after shipment (or after production starts for built-to-order products) are subject to a 20% restocking fee.
7. Delays in delivery at customer request are subject to storage fees of \$10 per month per piece.
8. Customers with sites located beyond twenty-five miles from our nearest service depot may be responsible for additional travel charges for service on equipment even when covered under a manufacturer's labor warranty.
9. Orders over ten thousand dollars paid with a credit card will incur a 2% convenience fee.

Customer Approval Signature

Date

--	--

Quote Valid for 30 Days

By signing you affirm that you are authorized to enter into a purchase agreement on behalf of the aforementioned organization and that you have read and agreed to all specifications, terms and conditions.



7350 Transit Road
 Williamsville, NY 14221

Quote # 934961
 Rep: JPOLACEK
 Date: 2016-05-18

Commercial Consultant: James Polacek Phone: (440) 653-7026 Fax: (716) 204-2521

SOLD TO

Brookpark Recreation [155631]
 17400 Holland Rd.

 Brookpark, OH 44142
 Contact 1: Maryann Fields 1-216-433-1545
 Contact 2:

SHIP TO

Brookpark Recreation
 17400 Holland Rd.

 Brookpark, OH 44142
 Contact:
 Email: Mfields@cityofbrookpark.com
 Phone:
 Fax:
 Cell:

Description	Qty	MSRP	Price	Ext. Price
Life Fitness Integrity Treadmill Domestic Model: CLST-DOMXX-05	6	\$7,650.00	\$4,369.00	\$26,214.00

Estimated Lead Time: Cardio lead times are approximately 4 weeks, Strength lead times are approximately 12 weeks, Custom logo lead times 12-16 weeks.

Requirements: All treadmills require a 120 volt 20 amp dedicated outlet (NEMA 5-20R receptacle). 220 volt treadmills are special order and require an 8 week lead time.

Desired Delivery Date: _____
Frame Color: _____
Upholstery Color: _____
Power Cord Length: _____
Ground Floor Delivery: _____
Door Size: _____
Lift Gate: _____

Delivery/Assembly	\$1,904.00
Taxable Subtotal	\$28,118.00
Sales Tax 0%	\$0.00
TOTAL	\$28,118.00

Comments:

STATE CONTRACT

Schedule Number: 800300

Index Number: STS650

Vendor OAKS Contract ID: 800300-4

Terms and Conditions

Please select the payment terms desired:

___ Pre-paid: 50% (or more) of total invoice due as down-payment when order is placed. Balance due prior to scheduling delivery.

___ (Initials)

___ Net ___ Days: On approved credit or government purchase order. Full payment will be due on or before the the specified number of days.

___ (Initials)



1. Any and all late payments will be assessed a 1.5% late fee charged on the remaining outstanding balance. Additional late fee charges will accrue thereafter at a rate of 1.5% per 10 day period. Orders with Pre-pay or COD terms will be effectively due on day of delivery for purposes of late charge calculations.
2. If partial deliveries are accepted by the customer, payment for those items is due as they are delivered, per the terms of the sale.
3. G&G Fitness reserves the right to reacquire any equipment equal to the dollar amount owed should late payments exceed 14 days or if regular payment schedules are defaulted at any time.
4. Any and all attorney's fees and other agency fees that may result from non-payment will be charged to the party in default and may be subject to all applicable late fees and charges.
5. Terms and Conditions of sale which appear on purchaser's documents (including purchase orders) and which are inconsistent with these terms shall be voided.
6. Orders canceled after shipment (or after production starts for built-to-order products) are subject to a 20% restocking fee.
7. Delays in delivery at customer request are subject to storage fees of \$10 per month per piece.
8. Customers with sites located beyond twenty-five miles from our nearest service depot may be responsible for additional travel charges for service on equipment even when covered under a manufacturer's labor warranty.
9. Orders over ten thousand dollars paid with a credit card will incur a 2% convenience fee.

Customer Approval Signature

Date

--	--

Quote Valid for 30 Days

By signing you affirm that you are authorized to enter into a purchase agreement on behalf of the aforementioned organization and that you have read and agreed to all specifications, terms and conditions.

P/C 3/15/16 Legislative
CA 6/14/16
1st R 6/21/16
2nd R _____
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 16-2016

INTRODUCED BY: MAYOR COYNE

A RESOLUTION
AUTHORIZING THE MAYOR
TO ENTER INTO A RESTATEMENT OF THE
WATER SERVICE AGREEMENT FOR DIRECT
SERVICE WITH THE CITY OF CLEVELAND,
AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: The Mayor be, and he hereby is, authorized to enter into a Restatement of the Water Service Agreement for direct Service with the City of Cleveland for the transfer of water service assets, a copy of which Agreement is attached hereto as Exhibit "A."

SECTION 2: It is found and determined that all formal actions of this Council concerning and relating to this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City and to authorize the Mayor to enter into a Restatement of Water Service Agreement for Direct Service with the City of Cleveland; therefore provided this Resolution receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

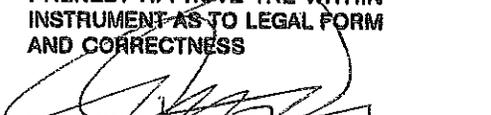
PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW

**RESTATEMENT OF THE WATER SERVICE AGREEMENT
FOR DIRECT SERVICE**

Between

THE CITY OF CLEVELAND

And

THE CITY OF BROOK PARK



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WATER SERVICE AGREEMENT FOR DIRECT SERVICE

THIS AGREEMENT is made and entered into this ___ day of _____, 2016, by and between the CITY OF CLEVELAND ("PURVEYOR"), acting by and through its Director of Public Utilities by authority of Section 129.16 of the Codified Ordinances of the City of Cleveland and the City of Brook Park ("MUNICIPALITY"), acting by authority of Ordinance No. _____, passed on _____, 20__.

WHEREAS, PURVEYOR owns and operates a waterworks system under the management and control of its Division of Water, Department of Public Utilities, pursuant to the Constitution and laws of the State of Ohio and the Charter and ordinances of the City of Cleveland; and

WHEREAS, PURVEYOR under authority of the Charter of the City of Cleveland and Article XVIII, Section 6, of the Ohio Constitution is empowered to sell and deliver its surplus water to inhabitants and others outside its municipal boundaries; and

WHEREAS, MUNICIPALITY seeks to represent itself and its inhabitants to obtain potable water from PURVEYOR for itself and its inhabitants; and

WHEREAS, PURVEYOR has been the sole supplier of water to MUNICIPALITY; and

WHEREAS, MUNICIPALITY shall utilize PURVEYOR to provide water to MUNICIPALITY and its inhabitants and is willing to contract with PURVEYOR as the sole and exclusive supplier of water for itself and its inhabitants on the terms, covenants, and conditions hereinafter set forth; and

RECITALS:

1) Since entering into the Water Service Agreement for Direct Service to MUNICIPALITY ("Water Service Agreement"), PURVEYOR has offered amendments to the Agreement's terms and conditions with respect to the rights and obligations of the parties and ownership of various water facilities.

2) Beginning in 2006, PURVEYOR offered to MUNICIPALITY an amendment to the Water Service Agreement related to improvement of MUNICIPALITY'S distribution system and joint economic development ("2006 Amended Water Service Agreement").

3) PURVEYOR and MUNICIPALITY desire to further revise the terms of the 2006 Amended Water Service Agreement regarding the reimbursement for Capital Improvement Projects ("2013 Amended Water Service Agreement").

4) To the extent that MUNICIPALITY executed the 2006 Amended Water Service Agreement or similar agreement, the terms of the Asset Transfer Agreement (the form of which is attached), and the Joint Economic Development Zone Agreement, now known as the municipal utility district agreement (attached as Exhibit E) are incorporated herein and remain binding on the Parties to this Amendment, as amended.

5) To the extent that MUNICIPALITY has not executed the 2006 Amended Water Service Agreement or a similar agreement, PURVEYOR will provide water and related services to MUNICIPALITY and its inhabitants pursuant to the terms, covenants, and conditions set forth in the Water Service Agreement, as amended in 2013.

6) This Restatement of the Water Service Agreement restates the original Water Service Agreement and the amendments that have been incorporated into the Water Service Agreement from 1981 to 2013.

WHEREAS, PURVEYOR is willing to provide water and water related services to MUNICIPALITY and its inhabitants on the terms, covenants, and conditions hereinafter set forth;

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual promises set forth in this Agreement, as amended, PURVEYOR and MUNICIPALITY agree as follows:

ARTICLE 1. DEFINITIONS

1.01 "Director" means the Director of the Department of Public Utilities of the City of Cleveland.

1.02 "Division of Water" means the Division of Water of the Department of Public Utilities of the City of Cleveland.

1.03 "Commissioner" means the Commissioner of the Division of Water of the Department of Public Utilities of the City of Cleveland.

1.04 "Waterworks Facilities" means all waterworks facilities including but not limited to water treatment facilities, storage facilities, and pumping stations but excluding water mains.

1.05 "Water Main" means any pipe, regardless of size or function, which is used to transport water from Lake Erie as part of PURVEYOR'S waterworks system to any service connection.

1.06 "Trunk Main" means a water main that is twenty inches (20") in diameter or larger.

1.07 "Distribution Main" means a water main that is less than twenty inches (20") in diameter.

1.08 "Service Connection" means any tap or connection to a distribution main to enable the furnishing of water from such distribution main to any water consumer.

1.09 "Direct Service Customer" means an owner of premises located outside PURVEYOR'S municipal boundaries who receives water and water related services from PURVEYOR and who is billed by and pays to PURVEYOR directly for such water and water services.

1.10 "Master Meter Customer" means a governmental entity which purchases water from PURVEYOR for resale and delivery to water consumers.

1.11 "Suburban Water Council of Governments" means a council of governments formed pursuant to Chapter 167 of the Ohio Revised Code whose membership is limited to and open to those political subdivisions who receive water and/or water related services from PURVEYOR.

1.12 "Service Area" means the entire area of the Municipality or the area designated and outlined on the Map as further described in Paragraph 2.01 and attached as Exhibit A to the Water Service Agreement.

1.13 "Distribution System" means all distribution mains and appurtenances, including valves, pressure regulators, city-side service connections, and fire hydrants located within MUNICIPALITY'S territorial limits.

1.14 "Capital Improvements" means cleaning, relining, and completing other capital repairs and replacements of the Distribution System.

ARTICLE 2. SERVICE DISTRICTS

2.01 PURVEYOR has divided the geographic area in which it supplies water into service districts. It is agreed that the service districts located within the territorial boundaries of MUNICIPALITY are as set forth in the Map which is attached hereto as Exhibit A. Only for the purpose of preserving the hydraulic integrity of the system, PURVEYOR may change the service district and the consequent rate to be applied to any geographic territory located within the MUNICIPALITY upon sixty (60) days written notice to MUNICIPALITY from PURVEYOR'S engineer describing the engineering changes actually made in the grid system.

ARTICLE 3. OBLIGATION TO FURNISH QUALITY WATER

3.01 In accordance with and subject to the terms of this Agreement, PURVEYOR agrees to continue to furnish water and water related services to MUNICIPALITY and its inhabitants, including persons, commercial businesses, industry, and other existing direct service customers. PURVEYOR has the right to prohibit the installation or extension of any water mains only when the Commissioner determines, on the basis of engineering data, that the installation or extension would adversely affect water pressure and/or water volume being provided to PURVEYOR'S existing water consumers or in accordance with Article 10, Section 10.08(b) hereof.

3.02 The water furnished by PURVEYOR shall at all times be at least equal to the quality of water that is furnished by PURVEYOR to water consumers located within the territorial boundaries of the City of Cleveland.

3.03 PURVEYOR does not guarantee any fixed volume or pressure of water, the same being subject to varying conditions of tuberculation of water mains and other conditions relating to the operation and maintenance of PURVEYOR'S waterworks system. However, MUNICIPALITY shall have a cause of action against PURVEYOR if any such condition arises as the direct result of PURVEYOR'S breach of any term of this Agreement. When necessitated by the need to repair breaks in water mains, serious damage to reservoirs, serious damage to pumping machinery or other emergencies, water may be shut off or curtailed without notice and the failure to furnish water under such circumstances shall in no case render PURVEYOR liable in damages. However, as soon as reasonably possible, the Mayor and/or Service or Safety Director of MUNICIPALITY will be notified, so that fire protection precautions may be taken.

3.04 PURVEYOR shall have the right to discontinue serving any Direct Service Customer who fails to pay in full within the period of time set by PURVEYOR any water bill or who violates any of the provisions of this Agreement or any ordinances, rules or regulations of PURVEYOR that are applicable to the supplying of water to him by PURVEYOR. The same right to discontinue service shall apply to service to MUNICIPALITY except that service may be discontinued only if such violation or failure to pay continues for four (4) months after written notice is given by PURVEYOR of the alleged violation or failure to pay.

ARTICLE 4. WATER RATES

4.01 Rates charged to all customers of PURVEYOR shall be set by the Board of Control of the City of Cleveland subject only to the approval of its Council. PURVEYOR hereby agrees that, for a period of ten (10) years from and after the effective date of this Agreement, the dollar amount of any and all increases in water rates charged by the City of Cleveland to any Direct Service Customer shall not exceed the dollar amount of the increase for any direct service customer within the City of Cleveland by more

than 75% in the Low or First High Service District outside the City of Cleveland; by more than 100% in the Second High Service District outside the City of Cleveland; or by more than 130% in the Third High Service District outside the City of Cleveland. Rates shall be calculated on a dollars per mcf (one thousand cubic feet of water) basis. Rate increases for Master Meter Customers shall be 75% of the rate increases for Direct Service Customers located in comparable service districts and 63% of the first rate increase reflecting the elimination of a separate maintenance charge. No increase shall be made in the rate for any customer without simultaneously increasing the rates for all other customers, except that customers entitled to a Homestead Exemption as specified and defined by the Codified Ordinances of the City of Cleveland need not be increased.

4.02 Rate increases for the following classes of customers shall not be limited by the provisions of Paragraph 4.01 above:

- 1) The rate to be charged to all customers or classes of customers who have taken steps toward leaving the Cleveland water system;
- 2) All rates and charges for unmetered fire supply connections pursuant to Section 535.21 of the Codified Ordinances of the City of Cleveland;
- 3) All rates and charges for water supplied from a public fire hydrant set pursuant to Article 17 hereof; and
- 4) All special rates for the use of water under special circumstances as determined by the Commissioner of Water pursuant to Section 535.26 of the Codified Ordinances of the City of Cleveland.

4.03 PURVEYOR agrees that no water rate shall be changed, instituted or revoked prior to sixty (60) days after the Suburban Water Council of Governments receives written notice of the proposed change, institution or revocation.

**ARTICLE 5. COVENANT NOT TO SUE ON WATER RATES;
EXCLUSIVE FRANCHISE**

5.01 In consideration of the agreement of PURVEYOR and provided that PURVEYOR conforms all water rate increases strictly to the provisions of Article 4 of this Agreement, MUNICIPALITY agrees that it will not directly or indirectly, alone or together with others, by court proceedings or in any other way attempt to obstruct, enjoin, hinder or disable PURVEYOR from setting, charging and collecting rates that PURVEYOR in its sole discretion deems necessary to enable PURVEYOR to fulfill its obligations hereunder. In addition, MUNICIPALITY agrees that PURVEYOR shall be the sole and exclusive supplier of water to MUNICIPALITY and its inhabitants in the designated Service Area for the term of this Agreement.

ARTICLE 6. OPERATIONAL CONTROL OF WATERWORKS SYSTEM

6.01 PURVEYOR has the right to regulate and control, in accordance with the terms and conditions of this Agreement, the operation, engineering, construction, expansion, maintenance, repair and use of the entire waterworks system, including all water treatment facilities, water storage facilities, pumping stations, water transmission facilities, and water mains. The Commissioner has the right to determine through which water mains, water shall be delivered to any Direct Service Customer of PURVEYOR.

ARTICLE 7. RIGHT TO USE STREETS, WATER MAINS AND EQUIPMENT

7.01 PURVEYOR shall have the right to use the easements, streets, and other public ways and places of MUNICIPALITY to the extent MUNICIPALITY has such rights, for the purpose of laying, extending, maintaining and repairing water mains and doing such other acts as PURVEYOR shall deem to be necessary for the delivery of water to all of PURVEYOR'S present and potential consumers, whether located inside or outside of the territorial boundaries of MUNICIPALITY.

7.02 PURVEYOR shall have the right to use, extend, tap or connect into any and all water mains and other water transmission facilities, without any fee or charges by MUNICIPALITY to PURVEYOR for the exercise of such right, provided such water mains and/or water transmission facilities are connected into PURVEYOR'S waterworks system.

7.03 After laying, extending, repairing and maintaining water mains PURVEYOR shall backfill all excavations, and the surface easements and streets shall then be restored to previous condition by MUNICIPALITY at PURVEYOR'S expense, unless otherwise agreed to in writing by MUNICIPALITY and PURVEYOR. PURVEYOR will pay only those costs for surface restoration which PURVEYOR would have incurred using its own materials, labor and equipment.

ARTICLE 8. INSTALLATION AND MAINTENANCE OF WATER FACILITIES

8.01 PURVEYOR shall have the obligation to provide, at its own cost and expense, the planning, engineering, purchasing, construction, installation, and to place in operation, maintain and repair all Waterworks Facilities that PURVEYOR in its sole discretion deems necessary or conducive to the proper and efficient functioning of the waterworks system, unless otherwise provided in this Agreement.

8.02 When, in the opinion of the Commissioner, additional Waterworks Facilities need to be installed within the corporate limits of MUNICIPALITY, MUNICIPALITY shall cooperate with PURVEYOR in the construction or installation of such facilities to the extent such cooperation shall not impose any additional cost to MUNICIPALITY, unless otherwise provided in this Agreement, and PURVEYOR shall provide MUNICIPALITY with due notice as to the location of the proposed Waterworks Facilities. MUNICIPALITY shall not charge PURVEYOR for any permits in connection with such installation, and MUNICIPALITY shall cooperate in providing all permits, easements, rights-of-way, access, traffic control and other rights and privileges necessary to facilitate PURVEYOR'S work. PURVEYOR shall pay for the restoration of areas in which construction is carried on, shall pay for any property taken for such construction, and to the extent allowed by law, hold MUNICIPALITY harmless from all damages or claims for damages to persons or property arising from the performance by PURVEYOR or its agents of any work to install or repair or maintain Waterwork Facilities, unless otherwise provided in this Agreement. MUNICIPALITY reserves the right to require its own inspectors where it deems necessary on work performed within its boundaries. The cost of any such inspections shall be paid by MUNICIPALITY. However, where construction of new, extension or replacement Waterworks Facilities is being carried on at the request of PURVEYOR and not at the request of MUNICIPALITY, and where MUNICIPALITY'S inspection is not routine, then the cost of such inspection shall be paid by PURVEYOR.

ARTICLE 9. INSTALLATION AND MAINTENANCE OF TRUNK MAINS

9.01 PURVEYOR shall have the right to use and shall bear the expense of repairing, maintaining, cleaning and relining all trunk mains located within MUNICIPALITY'S corporate limits.

9.02 When, in the opinion of the Commissioner, additional trunk mains or extensions of trunk mains shall be installed to supply MUNICIPALITY or any territory beyond MUNICIPALITY'S corporate limits, such mains or extensions thereof shall be installed, repaired, maintained, cleaned, and relined by PURVEYOR at its expense. PURVEYOR is hereby authorized to install new trunk mains within the corporate limits of MUNICIPALITY after due notice to MUNICIPALITY as to the location of the proposed mains or extensions thereof. MUNICIPALITY shall not charge PURVEYOR for any permits or inspection fees in connection with such installation and MUNICIPALITY shall cooperate in providing all permits, easements, rights-of-way, access, traffic control and other rights and privileges necessary to facilitate PURVEYOR'S work. PURVEYOR shall pay for the restoration of areas in which construction is carried on and shall, to the extent allowed by law, save the MUNICIPALITY harmless from all damages or claims for damages to persons or property arising from the performance by PURVEYOR or its agents of any work to repair, maintain, or install trunk mains.

9.03 When the purpose in performing any of the work referred to in this Article 9 is, in the opinion of the Commissioner, primarily to provide additional water supply to MUNICIPALITY and its inhabitants, and such water is requested by the MUNICIPALITY, and if it is necessary to remove or rearrange the property of any other utility to perform such work, the MUNICIPALITY shall remove or rearrange or cause to be removed or rearranged, at no expense to PURVEYOR, the property of the other utility. If, however, the work performed is, in the opinion of the Commissioner, not primarily to provide additional supply to MUNICIPALITY, or its inhabitants, and the work is not requested by the MUNICIPALITY, and it is necessary to remove or rearrange the property of other utilities to perform the work, then MUNICIPALITY will not be responsible for rearranging or bearing the cost of rearranging the property of such utility but will in all events cooperate as far as legally possible, without expense to itself, in obtaining the rearrangement or removal of such utilities' property.

**ARTICLE 10. INSTALLATION AND OWNERSHIP OF DISTRIBUTION
MAINS**

10.01 Upon MUNICIPALITY'S execution of the Asset Transfer Agreement, the form of which is attached to this Agreement, PURVEYOR shall own the existing Distribution System presently owned by MUNICIPALITY. Upon such transfer, PURVEYOR shall have the obligation to perform at its cost all Capital Improvements relating to the existing Distribution System. PURVEYOR in its sole discretion shall determine the schedule of Capital Improvements, based upon criteria such as break history, water quality, fire flow information, street construction projects, and the recommendation for approval of such schedule by the Suburban Water Council of Governments. PURVEYOR shall use best efforts to expend an average of Ten Million Dollars per year toward suburban system-wide Capital Improvements. PURVEYOR will provide to the Suburban Water Council of Governments an annual report identifying the funds expended on Capital Improvement projects in the prior year.

10.02 PURVEYOR shall not be responsible to construct or pay for the installation of new distribution mains or the extension of existing distribution mains where a distribution main did not previously exist. Once PURVEYOR approves a completed installation, PURVEYOR shall issue a notice of acceptance of the new or extended distribution main and, subject to MUNICIPALITY'S obligations set forth in Paragraph 13.03 of the Water Service Agreement, assume ownership, including all responsibilities to perform and pay for Capital Improvements.

10.03 When mutually agreed upon by PURVEYOR and MUNICIPALITY, in lieu of PURVEYOR making Capital Improvements to a designated part of the Distribution System, MUNICIPALITY shall make the Capital Improvement and PURVEYOR shall reimburse MUNICIPALITY for the cost of the Capital Improvement in accordance with the Capital Improvement Project Reimbursement Terms and Conditions, attached as

Exhibit F, and incorporated herein for purposes of the making the Capital Improvements.

10.04 The Cost of the above-referenced Capital Improvements will be included as a part of the water rate on a system-wide basis.

10.05 PURVEYOR'S maintenance responsibilities are described in Article 12 of the Water Service Agreement.

10.06 PURVEYOR may install water mains less than twenty inches (20") in diameter within the corporate limits of MUNICIPALITY when, in the opinion of the Commissioner, such installation is suitable and necessary to supply a large segment of PURVEYOR'S service area, whether or not such area is totally or partially within MUNICIPALITY'S corporate limits. Whenever PURVEYOR installs such a main less than twenty inches (20") in diameter within the corporate limits of MUNICIPALITY, and PURVEYOR agrees in writing to bear the cost of installation, then PURVEYOR shall bear the cost of construction, installation, repairing, maintaining, cleaning and relining such main for all time. PURVEYOR shall not be liable for the cost of installation of any such main less than twenty inches (20") in diameter in the absence of such written notice. In the event that PURVEYOR shall install and bear the expense of such main, then PURVEYOR shall have the right to restrict the use of the main so that it would not be permitted to be tapped for service connections or connecting water mains. PURVEYOR shall have the right to allow service connections to be tapped to such main, and shall have the right to condition such permission on the payment of a tap-in charge presenting a fair proportion of PURVEYOR'S cost of installation of such main. Such tap-in charge shall be in addition to established connection charges and in lieu of any other assessment. Where a permit is issued for the connection of a fire hydrant, the entire cost of such fire hydrant installation to such main installed by PURVEYOR shall be paid in advance to PURVEYOR by MUNICIPALITY or the party requesting such installation. No tap-in charge shall be assessed by PURVEYOR for the privilege of connecting a distribution main to any water main constructed under the provisions of this paragraph 10.06.

10.07 No main less than twenty inches (20") in diameter, which primarily functions as a trunk main, that is, primarily furnishing water to other distribution mains and not to service connections, shall be installed at the cost of MUNICIPALITY without MUNICIPALITY'S consent in writing.

10.08 No distribution main or fire hydrant shall be constructed and connected to the waterworks system unless the following requirements have been satisfied:

(a) Prior to construction of the main, preliminary plans shall be furnished to the Commissioner in duplicate which shall show:

(1) the street and other public ways and places in which such distribution main is to be installed, with the location of all monuments or stakes necessary to establish the centerline of such streets or other public ways;

(2) the present surface of the street;

(3) the established grade of the street, (including cases where the grade is established, but the street or public way has not been graded in accordance with the established grade);

(4) the proposed size and location of all mains, pipes, valves, hydrants and other appurtenances and the location of existing or proposed sanitary sewers. PURVEYOR may request modification to said plans and final plans shall be drafted and submitted incorporating all modifications required by Commissioner. Eight copies of the final plans shall be furnished to Commissioner in accordance with the provisions of this Agreement. Upon approval of final plans, installation of the main may commence. Six copies of the final plans will be retained by the Commissioner in the files of the Division of Water. Two copies of the plans shall be returned to MUNICIPALITY, one of which shall be retained in the files of the MUNICIPALITY.

(b) PURVEYOR shall have the right to refuse to approve the construction of a new water main or the extension of an existing water main and the right to refuse connection of a new water main or service connection to the existing water system in any area where sanitary sewers and sewage treatment facilities, or plans for such facilities, have not been approved by the local sewer authority and MUNICIPALITY or in any area where the Ohio Environmental Protection Agency has imposed a tap-in ban prohibiting additional connections to the existing sewer system serviced by the local sewer authority. In the event that PURVEYOR has approved construction of a water main on the basis of plans for sewer facilities, then PURVEYOR may refuse to approve connection of such water main until the sewer facilities have been constructed.

(c) When distribution mains are to be installed in a street dedicated by the owner to the public and properly recorded, but not accepted by the MUNICIPALITY, said distribution main may not be constructed until the owner shall grant and record an easement for the full length and width of such street to MUNICIPALITY and PURVEYOR, providing for the installation of water mains, service connections and appurtenances and their maintenance pending acceptance of the street by MUNICIPALITY.

(d) All mains, pipes and fittings shall comply with standard Department of Public Utilities specifications, as same shall be modified from time to time by the Commissioner. All valves, valve boxes, hydrants, and service connections with their fittings such as corporation cocks, stop cocks, and stop cock boxes and the like, shall be

of the same pattern and type and of the same quality of material and shall operate in substantially the same manner as those used by PURVEYOR within its corporate limits with the exception of the hydrant threads, which shall be standard threads if so desired by MUNICIPALITY. All construction, including backfill, shall be that required by PURVEYOR. No better type or quality of materials and construction shall be required by PURVEYOR in MUNICIPALITY than is required of PURVEYOR.

(e) The Commissioner shall have the right to determine the size of all mains, pipes, and service connections used for the supply of water hereunder; the same shall conform to the requirements established by PURVEYOR within its own corporate limits under similar circumstances.

(f) All mains twelve inches (12") or less in diameter and all service connections shall be laid not less than six feet (6') below the established grade of the street or other public way measured down to the top of mains or service connections. Mains sixteen inches (16") in diameter shall be laid not less than five feet (5') below the established grade.

**ARTICLE 11. CONNECTION OF NEW DISTRIBUTION MAINS;
INSPECTION AND TESTING**

11.01 PURVEYOR shall not be obligated to supply water service to any new distribution water main constructed by MUNICIPALITY or a third party or Capital Improvement constructed by MUNICIPALITY or a third party or any new service connection unless and until all of the following provisions have been complied with:

(a) Before the installation of any main may proceed, MUNICIPALITY shall cause a professional engineer to set the required line and grade stakes so that the main and appurtenances are placed in the proper location and at the correct elevation. The cost of such services shall be borne by MUNICIPALITY or other interested party.

(b) Parties seeking to install a new main shall notify Commissioner of the intention to begin work on the installation of any water main at least three days prior to such starting date. PURVEYOR shall have the right to inspect and test any and all materials used or to be used in the construction and installation of any part of the water supply and distribution system within the corporate limits of MUNICIPALITY. The times and method of inspection and testing shall be determined by the Commissioner. MUNICIPALITY shall grant PURVEYOR access to all streets, public ways, all parts of the water system and all other places where materials are located, or to areas work is to be performed, and MUNICIPALITY shall cooperate with and inspection and testing performed by PURVEYOR.

(c) All water mains shall be disinfected and chlorinated by PURVEYOR at the expense of the party installing the main. The party installing the main shall give Commissioner reasonable notice as to when the mains are ready for such work. The process of disinfection and chlorination, and the rate of application shall be determined by the Commissioner.

(d) All water mains shall be tested with hydraulic pressure by MUNICIPALITY or other interested party at its expense under procedures for hydrostatic testing and the pressure to be applied to be determined by the Commissioner. MUNICIPALITY shall cause to be prepared and delivered to PURVEYOR record prints prior to final testing of the main.

11.02 Any work of inspection and testing performed by PURVEYOR pursuant to Section 11.01(b) above shall be at the expense of PURVEYOR provided, however, that if such expense in the MUNICIPALITY shall become greater than the average expense for such services on behalf of other municipal users of the water system during a comparable period, then in that event, PURVEYOR shall have the right to charge the party requesting such services for all or a portion of the excess cost that is greater than the average cost in other municipalities. Such excess costs shall be paid within thirty (30) days from the date of PURVEYOR'S bill for such services. All work of inspection and testing performed by MUNICIPALITY shall be at the expense of the MUNICIPALITY.

ARTICLE 12. MAINTENANCE OF DISTRIBUTION MAINS

12.01 PURVEYOR shall be responsible for and shall bear the expense of the repair and maintenance of all distribution mains and appurtenances, except as otherwise provided herein. The cost of said repair and maintenance will be included as a part of the water rate on a system wide basis.

ARTICLE 13. DAMAGE TO SYSTEM AND RELEASE OF LIABILITY

13.01 MUNICIPALITY agrees to make no claim against PURVEYOR on account of any break or leak in any water main, or fire hydrant in any public street, highway or easement which claim arises before PURVEYOR has notice of such leak and before PURVEYOR has had a reasonable period of time to act after such notice is received to cure any such condition.

13.02 MUNICIPALITY shall bear the cost of repairing water mains and service connections that may be damaged due to being embedded wholly or partly within a sewer, manhole or catch basin. MUNICIPALITY shall save PURVEYOR harmless from any claim for damages caused by a break in any water main, pipe or service connection that results from the water main, pipe or service connection being embedded wholly or partly within a sewer, manhole or catch basin in violation of regulations of any environmental protection agency.

13.03 Repair and maintenance of new valve boxes, hydrants, distribution mains, and service connections and their appurtenances installed by a contractor shall be the obligation of MUNICIPALITY for a period of two years after completion, unless the contract for such installation provides for such maintenance to be furnished by the contractor or some other party.

13.04 If any contractor employed by MUNICIPALITY damages any water mains or other water plant facilities which are the property of PURVEYOR, MUNICIPALITY shall be responsible for the repair of said facilities or pay PURVEYOR for such damage, upon receipt of bill.

ARTICLE 14. MAINTENANCE OF DISTRIBUTION SYSTEM BY MUNICIPALITY

14.01 In the event that MUNICIPALITY desires to undertake the repair and maintenance of all or any part of the distribution system located within its geographic territory, MUNICIPALITY and PURVEYOR may, by mutual agreement, enter into a written agreement supplemental to this Agreement modifying and amending this Agreement with respect to the duties, responsibilities and liabilities related to such maintenance and repair work. Nothing in this Agreement shall prohibit MUNICIPALITY from becoming a Master Meter Community if MUNICIPALITY and PURVEYOR can reach mutually agreeable terms and conditions for such change in status.

ARTICLE 15. SERVICE CONNECTIONS

15.01 No service connection or meter vault may be constructed or connected to the waterworks system until a permit for such construction or connection has been obtained from PURVEYOR.

15.02 Before a permit for a service connection is issued by PURVEYOR, the applicant requesting same shall: (1) submit a plan with the location and desired size of the proposed connection and submit all other information requested by PURVEYOR or PURVEYOR'S application form; (2) make satisfactory arrangements with MUNICIPALITY for any necessary openings in the street or public highway, excavating trenches, disposal of excavating material, backfilling trenches, placing temporary wearing surface, maintenance of surface in advance of permanent replacement of roadway, sidewalks, or driveways, including the erection and maintenance of lights, signs and barricades without expense to PURVEYOR; and (3) submit a release relieving PURVEYOR of all responsibility and liability that may arise from the performance of any work by applicant or his contractor or from any damages which occur due to improperly installed service connections.

15.03 Only distribution mains within the corporate limits of MUNICIPALITY shall be tapped for the purpose of making service connections for the general supply of water to any premises within the corporate limits of MUNICIPALITY.

15.04 A service connection to a water main shall be permitted only if the water main extends across the full length of frontage of the premises to receive water service from the service connection. Service connections shall be permitted only to premises which abut a street in which a distribution main is situated or where an easement for water supply purposes extends from the premises to a street in which a distribution main is located.

15.05 A single service connection shall supply no more than one building. In multi-unit buildings, such as are located in shopping centers, or such other structures where units within that structure may be sold individually, the Commissioner shall determine the number of service connections necessary to adequately provide service to the building.

15.06 All service connections to any main located in a street or other public way or place shall be installed by PURVEYOR at the expense of the party ordering the service. The service line shall be installed by PURVEYOR up to a point approximately two feet (2') back of the curb line or edge of pavement. Such installations shall include all stop cocks and valves. The extension of a service connection from the stop cock box or valve at or near the curb pipe shall be installed by and at the expense of the Direct Service Customer. The service pipe and connections shall be of a type approved by the Commissioner. The pipe and connection must be left uncovered in the trench or at all points where fittings are located to afford PURVEYOR an opportunity to test and inspect at PURVEYOR'S expense. The water shall not be turned on until the pipe and connections have been inspected and approved by PURVEYOR.

15.07 MUNICIPALITY shall provide PURVEYOR with all building permits issued for each month and a list of occupancy permits or equivalent documents issued by MUNICIPALITY within ten (10) days of issuance. MUNICIPALITY agrees that its officers vested with authority to issue building permits will, before issuing any permit for construction work which will require the use of water, first require the applicant to furnish a certificate secured from PURVEYOR stating that the rules and regulations of the Division of Water have been complied with, and that arrangements have been made with the Division of Water for use of water and for payment of all water used.

ARTICLE 16. METERS

16.01 Water meters and remote registers shall be installed on all service connections established within the service area of MUNICIPALITY in such locations as the Commissioner shall determine. Water meters and remote registers shall be supplied by PURVEYOR and shall remain the property of PURVEYOR. The cost of the

water meters and remote registers and the cost of their installation shall be paid for by the Direct Service Customer.

16.02 Meters shall be set in a vault within the dedicated right-of-way when required by the Commissioner. When vaults are required, they shall be furnished and installed by the Direct Service Customer and approved by the Commissioner, all in strict conformity with the rules and regulations of the Division of Water.

16.03 Water meters and remote registers on existing service connections that were not originally supplied by PURVEYOR to the water consumer, and did not meet the specifications of PURVEYOR at the time of installation and do not accurately register the consumption of water, shall be repaired and/or replaced by PURVEYOR at the expense of the Direct Service Customer. All water meters and/or remote registers which must be replaced and/or repaired as the result of theft or damage from causes other than normal wear and tear shall be repaired and/or replaced by PURVEYOR at the expense of the Direct Service Customer. Notwithstanding anything to the contrary in this paragraph, a water meter and/or remote register supplied by PURVEYOR which must be repaired or replaced as a result of defects in material or workmanship, or normal wear and tear, shall be repaired and/or replaced at PURVEYOR'S expense.

16.04 In cases where, with the consent of PURVEYOR, the Direct Service Customer is the owner of a reregistering meter, maintenance and repairs on said meter shall be made by PURVEYOR at the expense of the Direct Service Customer on the basis of the cost of material and labor plus twenty-five (25%) of the cost of materials and labor to compensate PURVEYOR for supervision and overhead expenses.

16.05 If any water meter shall fail to register correctly within the limitations established in the ordinances and rules and regulations of PURVEYOR applicable thereto, the Direct Service Customer shall be charged for water usage based on the consumer's average daily rate of consumption. The consumer's average daily rate of consumption shall be estimated by Commissioner based upon water usage registered under similar conditions when the meter was in working order. PURVEYOR shall use the same criteria in estimating consumption of Direct Service Customers as customers within the City of Cleveland.

ARTICLE 17. FIRE HYDRANTS

17.01 MUNICIPALITY shall not use nor permit the use of water from fire hydrants, valves or other openings within the corporate limits of MUNICIPALITY unless the use of such water is metered or is in conformance with the provisions of this Article 17.

17.02 MUNICIPALITY has the right to connect fire hydrants to PURVEYOR'S water supply system and to make use of all water required by MUNICIPALITY for the extinguishment of fires, the flushing of fire hydrants, streets and sewers and for such other use as is specifically authorized by Commissioner. For this right, MUNICIPALITY shall pay an annual fee in advance at such rates, in such manner, and at such times as shall be provided in applicable ordinances or rules and regulations of PURVEYOR existing at the time this Agreement is executed or as amended in the future. The rate charged for the use of water from a fire hydrant shall be calculated to cover only PURVEYOR'S actual cost of estimated water losses for uses other than extinguishment of fires, but in no event shall said rate exceed the rate authorized to be charged to a Direct Service Customer located in the same service district. MUNICIPALITY shall maintain records establishing charges for such use. Except as otherwise provided in this Article 17, there shall be no unaccounted for or other free use of water by MUNICIPALITY.

17.03 No water shall be taken from any fire hydrant for construction or any other purpose except as provided in Paragraph 17.02 without first obtaining a permit for said use from the Commissioner. The issuance of such permit shall be conditioned upon compliance with rules and regulations issued by PURVEYOR, including but not limited to, prepayment for water which said applicant may reasonably be expected to use, at rates not higher than the rates in effect for the service district in which the fire hydrant is located. The Commissioner shall have the power to revoke any permit issued in order to protect PURVEYOR against waste of water or for any other reasonable purpose.

17.04 MUNICIPALITY shall be responsible to install at its own cost all new fire hydrants located within its corporate limits. Once PURVEYOR approves a completed installation, PURVEYOR shall issue a notice of acceptance of the installation and, subject to MUNICIPALITY'S obligations set forth in Paragraph 13.03 of this Agreement, as amended, assume ownership, including all responsibilities to perform and pay for Capital Improvements related to the hydrants. MUNICIPALITY shall perform and bear the expense of periodic inspections of and maintenance and/or repair, including but not limited to flushing, greasing, painting, and flow testing as determined to be performed by MUNICIPALITY of all fire hydrants located within its corporate limits.

ARTICLE 18. CHANGE IN GRADE OF STREETS

18.01 Where the established grade of any street or public way under which trunk mains, mains, pipes, or service connections are installed is to be altered or re-established at more than one foot (1') below the grade used for the installations, then MUNICIPALITY shall lower or shall cause to be lowered the trunk mains, mains, pipes, or service connections to the depth required in Paragraph 10.08(f), at no cost to PURVEYOR.

18.02 Where the established grade of any street or public way under which trunk mains, mains, pipes, or service connections are installed is to be altered or re-established at more than two feet (2') above the grade used for such installation, MUNICIPALITY shall replace or shall cause to be replaced such trunk mains, mains, pipes or service connections to the depth required in Paragraph 10.08(f), at no cost to PURVEYOR.

18.03 Where relocation or re-establishment of grade is made of any street or public way by MUNICIPALITY, or with its consent or approval, which relocation or re-establishment of the street or public way causes all or part of existing trunk mains, mains, hydrants, service connections or meter vaults to be located outside of the relocated street or public way, then MUNICIPALITY shall cause such trunk mains, mains, hydrants, service connections or meter vaults to be relocated within the limits of the relocated street or public way at no cost to PURVEYOR or shall cause an easement to be granted to PURVEYOR and MUNICIPALITY covering the property within which such trunk mains, mains, hydrants, service connections or meter vaults are located for the purposes of using, installing, repairing and maintaining such facilities.

ARTICLE 19. VACATION OF STREETS

19.01 Where any dedicated or proposed street, wholly or partly improved with water facilities, is to be vacated in a MUNICIPALITY, the MUNICIPALITY or the owner of the street shall file a notice of such proposed vacation with PURVEYOR before the effective date of the vacation.

19.02 Within thirty (30) days of the receipt of the notice provided for in paragraph 19.01, PURVEYOR shall notify MUNICIPALITY in writing of any relocation or alteration in water facilities required by the street vacation. Such relocation or alteration shall not be required if the existing water facilities are located within an easement to the MUNICIPALITY and PURVEYOR in a form satisfactory to the PURVEYOR.

19.03 Any relocation or alteration of water mains, service connections, fire hydrants, valves, curb cocks, meters, or meter vaults or other water facilities in any street or public way necessitated by a street vacation, shall be at the expense of MUNICIPALITY, or the benefitting party. Should MUNICIPALITY, or the benefitting party, be unwilling or unable to make the relocation or alteration required, then PURVEYOR may proceed with the relocation or alterations and be reimbursed as hereinafter provided. MUNICIPALITY or the party benefitting from the street vacation shall be billed for the total cost of such relocation or alteration and shall have two months from the date of receipt to pay PURVEYOR the total amount of the bill. If the total amount due and owing is not paid within the two month period, permission for any additional extensions of water mains or any additional service connections within MUNICIPALITY'S corporate limits may be withheld until the amount is paid in full.

ARTICLE 20. CAPITAL IMPROVEMENT PROGRAM

20.01 If the PURVEYOR determines that capital improvements are necessary or desirable for the efficient operation and expansion of the water system as a whole, and PURVEYOR desires to locate such capital improvements within MUNICIPALITY'S corporate limits or if the construction or completion thereof can be affected in any way by any act or failure to act by MUNICIPALITY, then MUNICIPALITY will cooperate with PURVEYOR to facilitate such construction and in the acquisition by PURVEYOR of land for such construction, provided such action does not require MUNICIPALITY to incur any expense.

ARTICLE 21. ANNUAL REPORTS

21.01 MUNICIPALITY shall furnish to PURVEYOR, within thirty (30) days after a written request from PURVEYOR, the location and size of all water pipes, valves, service connections and fire hydrants laid or placed within the corporate limits of MUNICIPALITY during the preceding year. PURVEYOR may request such information for periods of time longer than the preceding year if available, and MUNICIPALITY shall be required to furnish such information within a reasonable period of time. Within ninety (90) days from the date of a request by PURVEYOR, MUNICIPALITY shall furnish to PURVEYOR, MUNICIPALITY'S best estimate of its requirements for expansion and future needs for water service for the next five (5) years.

ARTICLE 22. CURTAILMENT OF WATER SERVICE

22.01 When emergency conditions necessitate the temporary curtailment of water usage to insure that all water consumers will have adequate volume and pressure of water for essential health and safety purposes, PURVEYOR may order a temporary curtailment of water supply in all or any part of the geographic territory within MUNICIPALITY'S boundaries.

22.02 Upon telephone communication, public media announcement or other actual notice of an order to the Mayor or City Manager and/or the Safety or Service Director for temporary curtailment of water service, MUNICIPALITY agrees to take every reasonable and appropriate action to curtail the use of water by its inhabitants and users throughout the geographic territory affected by the order by enforcement of the ordinance referred to in paragraph 22.03.

22.03 Within sixty (60) days after the execution of this Agreement, MUNICIPALITY agrees to adopt legislation substantially in the form provided in Exhibit D and agrees to enforce its provisions in good faith. PURVEYOR shall have the right to inspect copies of any and all ordinances, rules and regulations, police citations, reports and inspection memoranda regarding enforcement by MUNICIPALITY of PURVEYOR'S order to curtail use of water.

22.04 Failure of MUNICIPALITY to make a good faith effort to enforce a curtailment order against an inhabitant of MUNICIPALITY after PURVEYOR has provided hand delivered written notice to MUNICIPALITY of the identity of an inhabitant who is in violation of the order, shall subject MUNICIPALITY to a penalty in the amount of Five Hundred Dollars (\$500.00) per day for each day MUNICIPALITY fails to make a good faith effort to enforce the curtailment order against said inhabitant. Before assessing the penalty authorized by this Paragraph, PURVEYOR shall provide the highest ranking official of MUNICIPALITY with hand delivered written notice of PURVEYOR'S intent to assess the penalty and of the reason for the proposed penalty. MUNICIPALITY shall have the opportunity to remedy and remove the penalty by making good faith effort to enforce the curtailment order against the violating inhabitant within six (6) hours. If, within the six (6) hour time period, MUNICIPALITY has taken appropriate action, PURVEYOR shall waive any penalty.

22.05 Permission for any additional water mains, extension of water mains or any additional service connections within MUNICIPALITY'S corporate limits shall be denied until any unpaid penalties assessed in accordance with this Article 22 have been paid.

22.06 A curtailment order under this Article 22 shall automatically expire seven (7) days after it is instituted unless renewed prior to that time by PURVEYOR and PURVEYOR notifies MUNICIPALITY of the renewal.

22.07 MUNICIPALITY hereby agrees that the penalties provided for herein are necessary to allow PURVEYOR to preserve the hydraulic integrity of the water supply system and are not excessive.

ARTICLE 23. TERM OF AGREEMENT

23.01 The term of this Agreement as amended by this 2013 Amendment shall be for a minimum period of twenty (20) years, commencing on the first day after execution of this Amendment by PURVEYOR, and shall automatically continue in effect from year to year thereafter. This Agreement as amended or the terms contained in this Amendment may be cancelled by either party hereto by giving written notice to the other party at least five (5) years prior to the effective date of termination, provided that no such notice may be given until fifteen (15) years after the date upon which this Amendment is executed by PURVEYOR. Should either party give written notice of cancellation to the other, PURVEYOR shall execute an appropriate asset transfer agreement to transfer ownership of the Distribution System back to MUNICIPALITY. If MUNICIPALITY cancels this Agreement as amended, MUNICIPALITY shall also pay to PURVEYOR reasonable compensation in the amount of the replacement costs less a depreciated value that is calculated at a 100 year useful life on a straight line basis for PURVEYOR's prior Capital Improvements in the Distribution System. Any notice of cancellation shall be pursuant to Article 27, including subsections 27.01 to 27.03. In

the event of termination of this Agreement as amended, the Director or his designated representative shall have sole control over the terms and conditions of the operation of the water system within MUNICIPALITY'S service area. PURVEYOR'S right to operate the Distribution System shall survive any termination of the Amended Water Service Agreement. Such termination shall not affect the validity of the Asset Transfer Agreement or PURVEYOR'S ownership interest in the Distribution System unless and until the parties have transferred ownership of the assets as described in this paragraph.

ARTICLE 24. MISCELLANEOUS PROVISIONS

24.01 MUNICIPALITY and PURVEYOR expressly agree that the terms, covenants and conditions made in this Agreement shall bind its respective council, officers, mayors and officials for the term of this Agreement and they have authority to execute this Agreement.

24.02 If any governmental unit, department, division, body or office referred to in this Agreement shall cease to exist or shall cease to retain any part of its powers and duties, material to the performance of this Agreement which are vested in them at the time of the execution of this Agreement, then all references to them shall be deemed to include whatever governmental units, department, division, body or office shall then succeed to or have the powers and duties material to performance of this Agreement without regard to title or formal designation.

24.03 PURVEYOR and MUNICIPALITY agree that in performing the rights, duties and obligations under this Agreement, they must at all times act in good faith.

24.04 MUNICIPALITY agrees that all ordinances, rules and regulations of PURVEYOR now or hereafter applicable to the operation, management and control of PURVEYOR'S water system shall be included in this Agreement for all purposes, provided the ordinances, rules and regulations are not in conflict with provisions of this Agreement. If any such ordinances, rules or regulations are in conflict with provisions of this Agreement, the provision of this Agreement shall apply.

24.05 Whenever under the terms of this Agreement, PURVEYOR is required to bear any expense or fund any improvement to the water system, MUNICIPALITY agrees the cost of said expense or funding shall be recovered from revenues of the Division of Water and not from PURVEYOR'S General Fund.

ARTICLE 25. TERMINATION OF ALL PRIOR AGREEMENTS

25.01 All prior water service agreements, supplemental water service agreements and conditions of water service between PURVEYOR and MUNICIPALITY, verbal or written, are hereby terminated.

25.02 MUNICIPALITY and PURVEYOR release each other of any and all claims arising under or in connection with any previous water service agreements between them.

ARTICLE 26. MODIFICATIONS; UNDERSTANDINGS; LEGALITY

26.01 No covenant, agreement or condition of this Agreement shall be waived, altered, or modified except by a written instrument executed by the party against whom enforcement of such waiver, alteration or modification is sought. No waiver of any covenant, term or condition of this Agreement shall affect any other covenant, term or condition of this Agreement.

26.02 This Agreement contains all the promises, agreements, conditions, inducements and understandings between MUNICIPALITY and PURVEYOR, and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, express or implied, other than as set forth in this Agreement.

26.03 In the event any term or provision of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same have been held to be invalid, illegal or unenforceable, had never been contained herein.

ARTICLE 27. NOTICES

27.01 Notice of cancellation of this Agreement as amended or the terms contained in this Amendment shall be delivered by certified mail. All other notices required to be given under this Agreement as amended shall be delivered by regular mail.

27.02 Notice to PURVEYOR required to be given under this Agreement shall be delivered to the following addresses:

Primary Notice:	Copy:
Director of Public Utilities City of Cleveland 1201 Lakeside Avenue Cleveland, Ohio 44114	Commissioner Division of Water City of Cleveland 1201 Lakeside Avenue Cleveland, Ohio 44114

27.03 Notices to MUNICIPALITY required to be given under this Agreement shall be delivered to the following address:

[Chief Elected Official] _____
City of Brook Park
Brook Park City Hall
6161 Engle Road
Brook Park, Ohio 44142

ARTICLE 28. FORM OF AGREEMENT

28.01 MUNICIPALITY acknowledges that there may be variations between the Article numbers and titles contained in MUNICIPALITY'S Water Service Agreement and this Amendment. MUNICIPALITY agrees that the revisions to each provision set forth in this Amendment shall apply to the applicable provision of MUNICIPALITY'S particular Water Service Agreement, irrespective of the corresponding Article number associated with that provision.

ARTICLE 29. MUNICIPAL UTILITY DISTRICT AGREEMENT

29.01 The parties agree that, as a condition of this Amendment, MUNICIPALITY and PURVEYOR have entered into the Municipal Utility District Agreement, a form of which is attached to this Amendment.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed as of the day and year first written.

**CITY OF CLEVELAND
PURVEYOR**

**CITY OF BROOK PARK
MUNICIPALITY**

Robert L. Davis, Director
Department of Public Utilities

Thomas J. Coyne, Mayor

The legal form and correctness of this instrument are approved:

The legal form and correctness of this instrument are approved:

Barbara A. Langhenry
Director of Law

Carol Dillon Horvath, Director of Law

Kate E. Ryan
Assistant Director of Law

Date: _____

EXHIBIT A

A Map of the service area and service districts located within the territorial boundaries of MUNICIPALITY will be attached.

EXHIBIT B

[The original list of distribution mains, identified for cleaning and relining in the 1981 Agreement, is obsolete and deleted. (Art. 9, Paragraph 9.01)]

EXHIBIT C

[Deleted]

EXHIBIT D

CURTAILMENT OF WATER USE **(ORDINANCE TO BE ADOPTED BY MUNICIPALITY)**

Upon notice from the City of Cleveland, Division of Water of the Department of Public Utilities that a shortage of water supply exists which threatens the public health and safety and that the shortage makes it necessary to curtail water use within all or any part of (Municipality), the (Mayor) shall proclaim a water use emergency throughout all or any part of (Municipality).

A water use emergency proclamation shall specify:

- (a) the geographic area affected by the water use emergency;
- (b) the length of time the emergency shall be in effect which time shall not exceed seven (7) days; and
- (c) the degree of water use curtailment.

During a water use emergency, the (Mayor) may order a water use curtailment by prohibiting unnecessary use or consumption of water during all or specified hours of the day and/or may order that specified premises curtail necessary use or consumption of water on specified days only as the (Mayor) shall determine to be necessary.

A proclamation of a water use emergency shall become effective at the time of issuance by the (Mayor). Notice thereof shall be given to a newspaper of general circulation in (Municipality) and shall be reported to a local radio and television station for broadcast.

As used in this section, unnecessary use or consumption means the use or consumption of water for purposes other than personal health, safety, sanitation and bodily consumption. "Unnecessary use or consumption" of waters includes but is not limited to sprinkling or watering lawns, other land irrigation, the washing of automobiles, houses or other structures and the use of water for recreational purposes such as the maintenance of swimming pools. The use of water for private construction such as the mixing and curing of concrete, the puddling of backfill in excavations, the moistening of masonry walls preparatory to pointing or sealing, and other similar uses is not an unnecessary use or consumption of water. The use of water to scrub and rinse areas such as hard-surface drives, garage floors, patios and similar uses where necessary for the purpose of sanitation and the protection of health is not an unnecessary use or consumption of water.

No person or entity shall during a water use emergency use water in violation of the terms and conditions of the (Mayors) water use emergency proclamation.

Whoever violates this ordinance is guilty of a minor misdemeanor and shall be fined not more than one hundred dollars (\$100.00). Whoever violates this ordinance having been previously convicted of a violation of this ordinance is guilty of a misdemeanor of the third-degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

EXHIBIT E

MUNICIPAL UTILITY DISTRICT AGREEMENT

Between

THE CITY OF CLEVELAND

And

THE CITY OF BROOK PARK

THIS MUNICIPAL UTILITY DISTRICT AGREEMENT ("Agreement"), entered into pursuant to Section 715.84 of the Ohio Revised Code ("R.C.") and Article XVIII, Sections 3, 4 and 6 of the Ohio Constitution as of the _____ day of _____, 20__ ("Effective Date"), by and between the City of Cleveland, Ohio ("Cleveland"), pursuant to the authority of Ordinance No. 1683-06, passed by Cleveland City Council on October 30, 2006, and the City of _____ ("City"), pursuant to the authority of Ordinance No. _____, passed by City's Council on _____, 20__; Cleveland and City (collectively the "Parties") are municipal corporations in, and political subdivisions of, the State of Ohio (the "State"), and duly organized and validly existing under the laws of the State.

RECITALS:

1. Cleveland provides a long-term, reliable supply of high quality water service to political subdivisions in the region including City that facilitates new and expanded commercial and industrial growth and strengthens the tax base for the benefit of City residents.
2. The provision of Cleveland water facilitates economic development, creates and preserves jobs, improves property values, and advances the economic welfare of the inhabitants and businesses located within Cuyahoga County.
3. The provision of Cleveland water outside its borders may have negative economic impacts for Cleveland through the loss of economic development that may otherwise have occurred within Cleveland.
4. The Parties desire to work toward a regional economy focused on growth, innovation, and cooperative efforts, rather than competition amongst municipal neighbors within Cuyahoga County.
5. As part of this regional approach, Cleveland is willing to extend the terms of existing water service agreements with the Parties and assume ownership of the water distribution systems owned by the Parties, thus relieving them of the financially burdensome responsibilities to perform capital repairs and replacements of the distribution systems.
6. To facilitate the transfer of ownership of such distribution systems, as well as cleaning, relining, maintenance, repair, and replacement responsibilities, the Parties have entered into a Restatement of the Water Service Agreement, dated as of _____, 20__.
7. The Parties intend to enter into this Agreement to create and provide for the operation of a municipal utility district in accordance with R.C. §715.84 for the purpose of

facilitating new or expanded growth for commercial or economic development for the benefit of their residents and of the State.

8. Cleveland is an impacted city as defined in R.C. §1728.01(C).

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the Parties hereto agree and bind themselves, their agents, employees and successors, as follows:

Section 1. Creation of the Municipal Utility District: Name.

The Parties, by their combined action evidenced by the signing of this Agreement, hereby create a municipal utility district in accordance with the terms and provisions of this Agreement. The municipal utility district created pursuant to this Agreement shall be known as the "Cleveland – _____ Municipal Utility District" (the "District").

Section 2. Purpose. In accordance with R.C. §715.84, the Parties intend that the creation and operation of the District shall, and it is the purpose of the District to, facilitate new or expanded growth for commercial or economic development for the benefit of their residents and of the State.

Section 3. Territory of the District. The territorial boundary of the District shall be the combined total area of the municipal boundaries of the Parties

Section 4. Term. Unless earlier terminated in accordance with its terms, or amended by mutual written agreement of the Parties, this Agreement shall be for a term of twenty (20) years commencing on the first day after execution of this Agreement by Cleveland, and shall automatically continue in effect from year to year thereafter. This Agreement may be cancelled by either Party by giving written notice to the other at least five (5) years prior to the effective date of termination, provided that no such notice may be given until fifteen (15) years after the date upon which this Agreement is executed by Cleveland.

Section 5. Contribution to the District.

(a) Cleveland's Contribution. Cleveland's contribution to the District is its agreement to extend the term of water service agreement in accordance with the Restatement of the Water Service Agreement, executed by Cleveland and City; the assumption of ownership of the distribution systems; the cleaning, relining, maintenance, repair, and replacement responsibilities related to all infrastructure; and performance of all other covenants of Cleveland stated in this Agreement.

(b) City's Contribution. City's contribution to the District is its agreement to encourage commercial and industrial development necessary or appropriate to promote economic development within the District; provide appropriate municipal services and public improvements to promote economic development; and perform all other covenants of City stated in this Agreement.

Section 6. Limitation on the use of Tax Abatements; Allowable Incentives; Uniform training incentives.

(a) Real Estate Tax Abatements. The Parties agree that for any business relocating between Cleveland and City, there shall be a limit on any new industrial or commercial real estate tax abatement to a term not to exceed 10 years. The abatement shall not exceed 75 percent.

(b) Income Tax Abatements. The Parties agree that they shall not provide any income tax abatement to any businesses relocating between Cleveland and City.

(c) Allowable Incentives. Notwithstanding the provisions of subsections (a) and (b) of this Section 6, the Parties may continue to offer incentives including, but not limited to, the discounted sale of property, low-interest loans, and tax increment financing as provided for in R.C. §§5709.40 and 5709.41. The limitations provided in subsections (a) and (b) of this Section 6 shall not apply to business relocation from outside of the territorial boundaries of the District as defined in Section 3 above.

Section 7. Income Tax Sharing for Moves Within the District.

(a) The Parties agree that if any business with an annual gross payroll of more than \$500,000 relocates from one Party (the "Losing Party") to another Party (the "Gaining Party"), the Losing Party shall be entitled to receive from the Gaining Party, for a period of 5 years, 50 percent of future income tax revenue based upon payroll in existence immediately prior to the relocation. The Gaining Party's 50 percent share shall be calculated based upon the Gaining Party's employment-based tax rate as may be amended from time to time, minus the percentage that may be earmarked for a city's school district pursuant to city ordinance. The Gaining Party's 5 year income tax sharing obligation for any business that relocates during the term of this Agreement is a continuing obligation that shall survive the termination of this Agreement.

(b) The 5 year tax sharing obligation may be earlier terminated or reduced if the Losing Party "backfills" space at the same payroll value with a similar business, as follows: (i) the business that moved jobs adds equivalent new payroll anywhere in the Losing Party's jurisdiction, this new payroll shall qualify as "backfill" for purposes of this Section 7; and (ii) if the moving business replaces part of the vacated space with new jobs and payroll, the aggregate employment-based income tax paid to the Losing Party will be deducted from this tax sharing obligation. Upon becoming aware that "backfilling" has occurred, the Losing Party shall provide the Gaining Party with written notice within 30 days as provided for in Section 20.

For example, if new employees are hired anywhere in Cleveland by the relocated employer, the employment-based income tax from those employees that is paid to Cleveland shall reduce the amount to be paid by City to Cleveland in an amount equal to the employment-based income tax paid by or on behalf of those employees. For purposes of the above example, "new" Cleveland employees are permanent employees who are hired due to the creation of new positions within Cleveland versus new or existing employees that are hired to fill existing vacant positions created by employee turnover, retirement, or other reason.

Section 8. Administration of Agreement.

(a) After execution of this Agreement, Parties may provide that the income tax sharing provisions in this Agreement be administered jointly by City and Cleveland, or by either the Central Collection Agency, Regional Income Tax Authority, or both. The administrator will be responsible for collecting annual employment and income tax data from a relocating business, calculating the aggregate employment and payroll, determining the annual income tax to be shared and determining if the agreement should be terminated due to occurrence of any of the triggering events.

(b) If for any reason a relocating business is unable or unwilling to provide the payroll information necessary to make the tax sharing calculations specified in Section 7, the Parties agree to confer in good faith to determine an appropriate alternative calculation.

Section 9. Access to Records; Audit. During the tax sharing period provided in Section 7, City and Cleveland shall provide access to the other Party's tax withholding and estimated tax records related to the relocating business during normal business hours. Either Party, through its representatives or employees, shall be permitted to make and keep photocopies of portions of the other Party's records that pertain to such tax withholdings and estimates. Once a year, both Parties shall have the right to have an independent auditor inspect and audit the books and records of the other Party.

Section 10. Informal Dispute Resolution. Prior to invoking the provisions of Section 11, if City or Cleveland disagrees with the implementation or interpretation of this Agreement, the Parties will use their best efforts to settle such dispute between themselves. If, despite good faith efforts the disagreement cannot be resolved, City or Cleveland may request informal dispute resolution by providing written notice to the other. The disagreement shall be submitted to the President of the Cuyahoga County Mayors and Managers Association for mediation. Unless otherwise agreed to by the Parties, mediation shall be concluded no later than 30 days after receipt of the notice provided for in this Section.

Section 11. Defaults and Remedies. A failure to comply with the terms of this Agreement shall constitute a default. The Party in default shall have 60 days after receiving written notice from the other Party of the event of default to cure that default. If the default is not cured within that time period, the non-defaulting Party may sue the defaulting Party for specific performance under this Agreement or for damages or both. This Agreement may not be terminated because of a default unless the Parties agree to such cancellation or termination.

Section 12. Amendments. This Agreement may be amended by the Parties only in a writing approved by the legislative authorities of both Parties by appropriate legislation authorizing that amendment. In order for such amendment to be effective, the legislative actions of the Parties that amend this Agreement must occur and be effective within a period of 90 days of each other.

Section 13. Binding Effect. This Agreement shall be binding upon the Parties and their respective permitted successors, subject, however, to the specific provisions hereof. This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence.

Section 14. Signing Other Documents. The Parties agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments and documents, and to take such other actions, in order to effectuate the purposes of this Agreement.

Section 15. Severability. In the event that any section, paragraph or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason: (1) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein; (2) the illegality or invalidity or any applications hereof or thereof shall not affect any legal and valid application hereof or thereof; and (3) each section, paragraph, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Section 16. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of Ohio, and in particular R.C. §715.84.

Section 17. Captions and Heading. The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

Section 18. No Third-Party Beneficiaries. Nothing contained herein, and nothing that may be implied hereby, is intended to or shall be construed to confer upon any person or entity, other than the Parties hereto, any right or remedy under or by reason of this Agreement.

Section 19. Consideration, Utility Agreement. The amendment, renewal or termination of a separate contract for utility services does not constitute any part of the consideration for this Agreement. Further, other substantial consideration exists to support this Agreement, and this Agreement has been entered into between the Parties without duress or coercion related to the amendment, renewal or termination of a separate contract for utility services.

Section 20. Forms of Notice. Any notice or demand required or permitted to be given by or to the Parties and every alleged breach of a warranty, representation, or agreement contained in this Agreement shall be made in writing and shall be deemed to have been given or delivered, as the case may be, when personally delivered to the Mayor of the respective city, or two (2) days after deposit in the U.S. Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows (or as to each Party, to such other address as the Party may designate by a notice give in accordance with the provisions of this Section):

	Notice	With a copy to:
Notice to Cleveland shall be addressed to:	Director of Economic Development City of Cleveland Cleveland City Hall 601 Lakeside Avenue, Room 210 Cleveland, Ohio 44114	Director of Law City of Cleveland 601 Lakeside Avenue, Room 106 Cleveland, Ohio 44114
Notice to City shall be addressed to:	_____ _____ _____ Attn: _____	Director of Law _____ _____ _____

Section 21. Counterparts. This Agreement may be executed in any number of counterparts, all of which, when so executed and delivered, shall constitute but one and the same instrument. The following documents attached hereto are hereby incorporated with and made a part of this Agreement:

The Parties have executed this instrument as of the day and year first written.

CITY OF CLEVELAND

CITY OF _____

Name, Director
Department of Finance

Printed name and title

The legal form and correctness of this instrument are approved:

The legal form and correctness of this instrument are approved:

Name _____
Director of Law

Printed name and title (Director of Law)

Name
Assistant Director of Law

Name of authorized designee

Date: _____

EXHIBIT F

CAPITAL IMPROVEMENT PROJECT REIMBURSEMENT TERMS AND CONDITIONS

In addition to the Water Service Agreement, as amended, PURVEYOR and MUNICIPALITY agree as follows:

- I. Scope of Agreement. This Agreement shall apply to any Capital Improvements performed by MUNICIPALITY for which PURVEYOR is providing reimbursement during the term of the Water Service Agreement, as amended ("Agreement"). In instances where both parties determine that deviations from this Agreement are necessary due to the unique circumstances of a particular Capital Improvement project, the parties shall execute a letter agreement specifying any modifications to this Agreement for that particular project. Such letter agreement shall apply solely to the particular Capital Improvement project for which modifications are necessary, unless otherwise specified in the letter agreement.

- II. Engineering Consultants and Preparation of Design and Specifications.
 - A. Hiring Consultants. MUNICIPALITY shall hire consultants and authorize work as required by its charter and ordinances only after obtaining the written approval of PURVEYOR to perform each Capital Improvement; the consultants shall design the Capital Improvement, prepare the specifications, provide engineer's estimates of the costs of the Capital Improvement, provide construction administration services, and prepare as-built drawings. All designs shall be prepared in accordance with PURVEYOR's standards and details.

 - B. Payments to Consultant. MUNICIPALITY shall be responsible for making all payments to its consultants. Throughout each Capital Improvement, MUNICIPALITY shall provide on-going documentation to PURVEYOR related to the work performed by the consultants, including, but not limited to, consultants' requests for payment and MUNICIPALITY's payments to the consultants. MUNICIPALITY need not obtain approval of PURVEYOR prior to making payments to MUNICIPALITY's consultants; however, PURVEYOR shall inform MUNICIPALITY of any problems PURVEYOR identifies within the documentation provided, and the parties shall cooperate in resolving such problems.

 - C. Approval of Design. MUNICIPALITY shall obtain PURVEYOR's written approval of all final designs and engineer's cost estimates of water work prior to bidding the construction portion of a Capital Improvement. Capital Improvements for which designs have been completed prior to the parties entering into this Agreement may be eligible for reimbursement under this Agreement so long as MUNICIPALITY obtains PURVEYOR's written approval of the completed design.

 - D. Inspectors. In addition to MUNICIPALITY's construction site inspector, PURVEYOR shall have the right to have its own inspector or other designee present during all construction work. PURVEYOR's inspectors and/or designees shall be present to observe all water main hydrostatic testing, chlorination, final inspections, and warranty inspections. MUNICIPALITY's inspection costs shall be considered reimbursable

construction administration costs. PURVEYOR's inspector shall have the final authority with respect to water work performed.

- E. Approval of As-Builts. MUNICIPALITY shall obtain PURVEYOR's final approval of the as-built drawings. MUNICIPALITY shall submit the as-built drawings to PURVEYOR prior to PURVEYOR disinfecting the water main. Failure by MUNICIPALITY to submit accurate as-built drawings within the time frame required under this section may preclude funding for subsequent, future Capital Improvements under these Terms and Conditions and the Agreement, as amended.

III. Soliciting Bids, Selecting Contractors, and Constructing the Capital Improvement.

- A. Bidding Construction Contracts. MUNICIPALITY shall perform the bid process for each Capital Improvement pursuant to its charter and ordinances, and enter into a contract with the contractor(s) for the work. MUNICIPALITY shall provide the unit bid prices of each bidder in a bid tabulation document to PURVEYOR after bid opening. MUNICIPALITY shall award the contract to the selected contractor only after consulting with and obtaining the written approval of PURVEYOR, which approval shall not be unreasonably withheld. Any disapproval, and the reasons therefore, shall be provided in writing to MUNICIPALITY.
- B. Payments to Contractor(s). MUNICIPALITY shall be responsible for making all payments to its contractor(s). Throughout each Capital Improvement, MUNICIPALITY shall provide on-going documentation to PURVEYOR related to the work performed by the contractor(s), including but not limited to contractors' requests for payment, and payments made to contractor(s). Except as otherwise stated in these Terms and Conditions, MUNICIPALITY need not obtain approval of PURVEYOR prior to making payments to MUNICIPALITY's contractor(s); however, PURVEYOR shall inform MUNICIPALITY of any problems PURVEYOR identifies within the documentation provided, and MUNICIPALITY shall cooperate with PURVEYOR in resolving such problems.
 - 1. Release of Retainage. MUNICIPALITY shall obtain PURVEYOR's written approval prior to the release of any retainage to the contractor. PURVEYOR shall cooperate in issuing its written approvals to ensure that MUNICIPALITY is able to release any retainage within the time frames which may be required by the MUNICIPALITY'S charter and codified ordinances, and its specifications and contract with the contractor.
- C. Bid Items. MUNICIPALITY shall bid the water work portion of its Capital Improvements on an itemized unit price basis. Table 1 (attached to these Terms and Conditions) lists the water work unit items MUNICIPALITY shall include in the bid sheets. Table 1 may be revised by PURVEYOR, and sent to the Suburban Water Council of Governments ("COG") for comment and to any MUNICIPALITY with a Capital Improvement project in the upcoming year, no more often than January of each year. Any revision to Table 1 will in no way interfere with PURVEYOR'S obligation to maintain the distribution mains and the water works system. Allowable water work bid items may include reasonable contingency (10% or less). When bidding in conjunction with a road capital

improvement, MUNICIPALITY shall ensure that the water work is expressly separated from other types of work in the bid documents and on the bid sheets.

- D. Pavement Costs. When water work is performed without a corresponding roadwork capital improvement, PURVEYOR shall reimburse MUNICIPALITY for pavement restoration up to a total width not to exceed twelve (12) feet per PURVEYOR'S pavement restoration standards for distribution main replacement projects or such other standards established by the COG with the approval of PURVEYOR.

PURVEYOR shall not reimburse the cost of pavement restoration when water work is performed in conjunction with roadwork or resurfacing capital improvements, except that PURVEYOR will reimburse the cost of providing back-fill and temporary pavement when street reconstruction capital improvements are performed, and shall additionally reimburse the cost of concrete base replacement within the trench area when resurfacing capital improvements are performed.

- E. Warranty. MUNICIPALITY shall include warranty language in its bid specifications that is substantially similar to the following:

A two-year warranty commencing from the date of acceptance of final chlorination of the water main installation shall be required of contractor for all water work should any leaks occur or repairs be required due to deficient materials or poor workmanship.

- F. Third Party Beneficiary and Additional Insured. The bid specifications shall include a provision naming the City of Cleveland as a third-party beneficiary of any warranties related to each Capital Improvement. The bid specifications shall also include provisions requiring contractors to name the City of Cleveland as an additional insured on the contractors' insurance policies and performance bonds.

- G. Water Work Contingency Allowance. MUNICIPALITY may include a contingency allowance of not greater than 10% of the water work for any Capital Improvement.

- H. Change Orders. MUNICIPALITY shall obtain the prior written approval of PURVEYOR before issuing any change orders greater than \$20,000, or 5% of the water work portion of the Capital Improvement, whichever is less, including but not limited to orders for changes in bid item quantities and compensation for changes in work site conditions. PURVEYOR shall provide its approval or disapproval, in writing, within five (5) business days after receiving a request for approval of a change order submitted pursuant to this paragraph, or sooner if conditions reasonably require a more rapid approval of the change order. PURVEYOR may increase the minimum thresholds for approval by PURVEYOR of change orders as fixed in this Paragraph III. H, no more often than January of each year and send the revised standards to MUNICIPALITY.

IV. Reimbursement of Capital Improvement Project Costs.

- A. Reimbursement of Consulting Costs. PURVEYOR shall reimburse MUNICIPALITY for the consulting services described in this Agreement as follows:

1. Reimbursement of Design Costs. PURVEYOR shall reimburse MUNICIPALITY the actual amount MUNICIPALITY paid its consultants to perform design services for each Capital Improvement, up to a maximum of 8% of the actual construction costs of the water work portion of the Capital Improvement. PURVEYOR shall pay MUNICIPALITY after receipt of an invoice in accordance with the provisions set forth in Paragraph IV. C below.
 2. Approval of Construction Administration Costs. MUNICIPALITY shall provide cost estimates and schedules to PURVEYOR relative to construction administration services, including inspection services and preparation of as-built drawings, and shall obtain PURVEYOR's written approval prior to commencement of construction.
 3. Reimbursement of Construction Administration Costs. PURVEYOR shall reimburse MUNICIPALITY for construction administration for actual costs incurred, but not to exceed 5% of the actual construction cost of the water work. PURVEYOR shall pay MUNICIPALITY after receipt of an invoice in accordance with the provisions set forth in Paragraph IV. C below.
- B. Reimbursement of Construction Costs. PURVEYOR shall compensate MUNICIPALITY for the estimated construction costs based on the bid prices of the winning bidder.
1. In those Capital Improvements projects that include items in addition to the approved water work, the cost of which is at least 10% of the total contract value, the average total cost (defined as the total water work cost, not including any contingency allowance, divided by the lineal feet of water main work) to perform the water work portion of each Capital Improvement must fall within a range of acceptable average costs, identified in Table 2 (attached to these Terms and Conditions). Should the average total cost fall outside the range, PURVEYOR shall pay the upper or lower limit value shown in Table 2, whichever is closer to the actual, average total cost.
 - a. PURVEYOR shall adjust, in accordance with the index in the Engineering News Record, Table 2 no more often than January of each year. PURVEYOR shall send the revised Table 2 to the COG and to any municipality with a Capital Improvement project in the upcoming year. Such adjustments shall apply only to those construction contracts that are bid after the adjustments have been promulgated.
 2. In those Capital Improvement projects in which the cost of the water work is more than 90% of the total contract value, the ranges in Table 2 shall not apply.
 3. In accordance with Article 8.02 of the Water Service Agreement, as amended, between the parties, PURVEYOR shall not be obligated to reimburse MUNICIPALITY for any street opening and traffic permits.
- C. Payment Process for Reimbursement of Project Costs. PURVEYOR shall pay MUNICIPALITY for the actual Design costs (subject to the limits articulated in Paragraph

IV. A, 1 and in advance for the estimated Construction and Administrative costs of each Capital Improvement. PURVEYOR shall pay MUNICIPALITY for the design, administrative and construction costs within forty-five (45) days of receipt of an approvable invoice that is in compliance with PURVEYOR'S policies. MUNICIPALITY shall invoice PURVEYOR for the design, administrative and construction costs following PURVEYOR'S review and approval of MUNICIPALITY awarding the project construction contract.

1. Actual Costs. Within forty-five (45) days after substantial completion of the entire Capital Improvement, MUNICIPALITY shall determine the actual cost of the water work portion including design, administration and construction of the Capital Improvement. MUNICIPALITY shall, within said forty-five (45) days, either 1) invoice PURVEYOR for any deficiency in the amount paid in advance; or 2) notify PURVEYOR of the amount of any overpayment based on its calculations. In the event of an underpayment, PURVEYOR shall remit the additional amount due to the MUNICIPALITY within forty-five (45) days of its receipt of MUNICIPALITY'S invoice.
2. Reimbursement of Overpayment. In the event of overpayment and following the PURVEYOR'S verification of the amount due, the PURVEYOR shall submit an invoice to the MUNICIPALITY for reimbursement of the amount of overpayment. MUNICIPALITY shall remit payment of invoice to PURVEYOR within forty-five (45) days of receipt of PURVEYOR'S invoice.

V. Reporting Requirements. MUNICIPALITY shall submit progress monthly reports to PURVEYOR. The first report shall be submitted one month after MUNICIPALITY issued its intent to take on the execution of the project. Thereafter, MUNICIPALITY shall issue updates on a monthly basis until project close out. The monthly reports shall be in compliance with the format as specified by PURVEYOR which will be more fully defined within a specific project letter to be received by Municipality from the Division of Water Engineering Section that outlines reimbursement terms and reporting requirements. The monthly reports shall cover, but not be limited to the following:

- Proposed start and finish dates of design, bidding process, and construction;
- Estimated cost of design, construction, and project administration;
- Percent of completion of design and construction;
- Actual expenditure (cost) of design, construction, and project administration; and
- Any complications, delay and delay causes, change orders, or deviation from the original scope.

VI. Right to Audit Records. PURVEYOR shall have the right, during the period during which the subject records are required to be retained by MUNICIPALITY, to audit any of MUNICIPALITY's records related to any Capital Improvements performed pursuant to this Agreement, including financial and technical documentation.

VII. Cooperation. The parties shall meet as required to ensure that both parties coordinate their efforts for the entire term of the Capital Improvement, and shall cooperate in exchanging any documents and information necessary for the successful completion of any Capital Improvements performed as well as the administration of the Agreement. The parties further agree to cooperate in amending these Terms and Conditions or the Agreement should it become necessary for the effective administration of the Agreement or to clarify the intent of the Agreement.

VIII. Claims by employees, Immunity and Defenses. Each party is responsible for providing worker's compensation benefits and administering worker's compensation for its own personnel and for injury or damage to any of its own employees as it would be responsible in the normal course of business. Nothing in these Terms and Conditions or in the Agreement shall act, or be construed, as a waiver of any statutory or common-law immunity or a waiver of any other defense or exemption or limitation that either party may enjoy.

TABLE 1

Allowable Water Items for CWD Reimbursement

- Installation of New Water Mains (various sizes)
- Clean & Line Water Mains (various sizes)
- Remove & Replace Existing Valve with New Valve
- Install New Cut-in Valves
- Installation of a Supplemental Connection (Connection between two Water Mains of Various Sizes, typically a Transmission Main and a Local Distribution Main)
- Replace or Install New Fire Hydrant
- Replacement of Service Connections from Main to Curb Valve (all sizes / In R/W)
- Abandon Water Service Connection (all sizes, plugging of connections as per CWD specification)
- Provide Temporary Water Mains and Service Connections
- Video Taping Services of Pipe Lining (inside pipe for Cleaning & Lining)
- Temporary Connections (house to house or building to building)
- Installation of Spool Pieces (used for removing tees, taps, hydrants, connections, main abandonment)
- Preconstruction Video of right of way (on water only projects)
- As-built drawings (as per CWD specification)
- Flowable Fill or Granular Fill for Water Main Trench
- Pavement Restoration (including base and asphalt pavement not to exceed 12 feet in total width)
- Cathodic protection (including Corrosivity Report, Electrical Bonding, Test Stations, as specified by CWD)
- Allowance for fees

TABLE 2

Allowable Cost/Foot Reimbursement Ranges for Water Items
(Effective January, 2015)

	6" – 12" diameter mains		16" diameter mains	
	<i>Min.</i>	<i>Max.</i>	<i>Min.</i>	<i>Max.</i>
Cleaning & Lining	\$59.02	\$94.43	\$70.83	\$106.24
Water Main Replacement	\$141.65	\$212.48	\$177.06	\$236.08

PURVEYOR will apply an escalator adjustment to the amounts each year as of January 1st, pursuant to the construction cost index in the Engineering News Record.

ATTACHMENTS

Asset Transfer Agreement, Executed by the Parties

Municipal Utility District Agreement, Executed by the Parties

P/C 3/15/16 Legislative
CA 6/14/16
1st R 6/21/16
2nd R _____
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 17-2016

INTRODUCED BY: MAYOR COYNE

A RESOLUTION
AUTHORIZING THE MAYOR
TO ENTER INTO AN ASSET TRANSFER
AGREEMENT WITH THE CITY OF CLEVELAND
FOR THE TRANSFER OF WATER SERVICE ASSETS,
AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: The Mayor be, and he hereby is, authorized to enter into an Asset Transfer Agreement with the City of Cleveland for the transfer of water service assets, a copy of which Agreement is attached hereto as Exhibit "A."

SECTION 2: It is found and determined that all formal actions of this Council concerning and relating to this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City and to authorize the Mayor to enter into an Asset Transfer Agreement with the City of Cleveland; therefore provided this Resolution receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

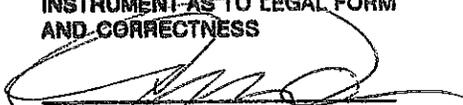
PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW

ASSET TRANSFER AGREEMENT

THIS ASSET TRANSFER AGREEMENT (the "Agreement") is made this ____ day of _____, 2016 between the CITY OF CLEVELAND ("Transferee") acting through its Director of Public Utilities under the authority of Ordinance No. 778-06, passed by the Council of the City of Cleveland on June 5, 2006, and the CITY OF BROOK PARK ("Transferor") acting by authority of Ordinance No. _____, adopted on _____, 20__.

RECITALS

1. Transferor owns and controls a water distribution system;
2. The parties entered into a Restatement of the Water Service Agreement to which this Agreement shall be attached;
3. As partial consideration for the Restatement of the Water Service Agreement, Transferor agreed to transfer ownership of its distribution system to Transferee; and
4. Transferor desires to transfer to Transferee all rights of Transferor in and to the distribution system and Transferee desires to acquire from Transferor the distribution system upon the terms and conditions set forth in this Agreement.

In consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

ARTICLE I. TRANSFER OF ASSETS

1.01 Subject to the terms and conditions of this Agreement, on the Closing Date (as defined below), Transferor agrees to assign, transfer and deliver to Transferee and Transferee agrees to accept from Transferor, all of Transferor's right, title and interest in and to the following (collectively referred to as the "Assets"):

- (a) Distribution System – All water distribution mains and appurtenances, including valves, pressure regulators, city-side connections, and fire hydrants located within Transferor's territorial limits.
- (b) Real Estate Interests – Defined below.

1.02 Liabilities Not Assumed. Transferee will not assume or be liable for any liabilities or obligations of Transferor or any predecessor, whether known or unknown, relating to the ownership or use of the Assets prior to the Closing Date.

1.03 Real Estate Interests. Transferor grants to Transferee those rights in real estate necessary and/or desirable for the effective ownership, use and maintenance of the Distribution System. Transferor shall execute any additional documents that may be or become necessary to effect the purposes of this Section 1.03.

EXHIBIT

A

1.04 Disclosure of Assets, Liabilities, and Real Estate Interests. Transferor shall document for Transferee all assets to be transferred under this Agreement, along with a description of any corresponding liabilities and real estate interests associated with each asset. Transferor's assets, provided on Transferee's Section Sheet or GIS map depicting the location of the assets, shall satisfy the documentation required in this Section. Such documentation shall be attached as Exhibit "1" to this Agreement.

1.05 Future Capital Investments by Transferor. Should Transferor desire to undertake water main replacements within the Distribution System, the parties may execute an asset transfer agreement transferring said assets to Transferor. Upon Transferor's satisfaction of all related liens, encumbrances, obligations, and claims, the parties shall execute an asset transfer agreement transferring such assets back to Transferee.

ARTICLE II. CONSIDERATION

2.01 Consideration. In consideration of the transfer of the Assets, Transferee shall assume responsibility for cleaning, relining and other capital repairs and replacements of the Distribution System, at Transferee's expense and in accordance with the Restatement of the Water Service Agreement. Transferor shall not be entitled to any monetary compensation for transferring ownership of the Assets to Transferee.

ARTICLE III. WARRANTIES AND REPRESENTATIONS OF TRANSFEROR

Transferor warrants and represents to Transferee that as of the date of this Agreement:

3.01 Power and Authority. Transferor has full power and authority to execute and perform this Agreement and the transactions and other agreements and instruments contemplated by this Agreement. This Agreement and all other agreements and instruments to be executed and delivered by Transferor, constitutes the legal, valid and binding obligation of Transferor, enforceable in accordance with its terms. All consents, approvals, authority and other requirements prescribed by law, rule or regulation, or any contract, agreement, commitment or undertaking that must be obtained or satisfied by Transferor for the execution, delivery and performance of this Agreement and the transfer of the Assets contemplated by this Agreement have been obtained and satisfied. The person signing this Agreement and all other agreements and instruments to be executed and delivered by Transferor has been duly authorized to execute and deliver this Agreement and such other agreements and instruments on behalf of Transferor.

3.02 No Conflicts; Defaults. Neither the execution and delivery of this Agreement and the other related agreements and instruments to be executed and delivered by Transferor, nor the performance by Transferor of the transactions contemplated under this Agreement, will (a) result in the creation or imposition of any liens in favor of any third person or entity upon any of the Assets; (b) violate any law, statute, judgment, decree, order, rule or regulation of any governmental authority; (c)

constitute an event which, after notice or lapse of time or both, would result in such violation, conflict, default, acceleration, or creation or imposition of liens.

3.03 Title to the Assets. Transferor has good title to, or has the right to use and transfer the Assets to Transferee. The delivery to Transferee of the instruments of transfer of ownership contemplated by this Agreement will vest good, marketable and exclusive title to the Assets to Transferee, free and clear of all liens, encumbrances, obligations and claims of any kind or nature whatsoever. None of the Assets are subject to, or held under, any lease, mortgage, security agreement, conditional sales contract or other title retention agreement. Transferee shall not assume ownership of any Assets containing obligations as set forth in this Section until such obligations are satisfied by Transferor, at which time such Assets shall automatically transfer to Transferee.

ARTICLE IV. FURTHER ASSURANCES

4.01 Further Assurances. Transferor agrees that from time to time, Transferor will promptly execute and deliver all further instruments and documents, and take all further action that may be necessary or desirable, or that Transferee may request, in order to perfect and protect Transferee's title and/or possession in and to the Assets, including, but not limited to, any and all Assets to which Transferor obtains title or ownership following the Closing.

4.02 Remedies. Transferor acknowledges that its respective covenants contained in this Agreement constitute a material inducement for the Transferee to enter into this Agreement. Transferor further acknowledges that if Transferor breaches any covenants and agreements contained in this Agreement, the injury that will be suffered by Transferee will be irreparable and Transferee will not have an adequate remedy at law. The parties agree that in the event of such a breach, Transferee shall be entitled to relief by way of injunction from any court of proper jurisdiction (with or without bond), to enforce the agreements and covenants set forth in this Agreement, in addition to all other rights that Transferee may have at law or in equity.

4.03 Severability. All provisions of this Article IV are intended to be severable. In the event any provision or restriction contained in this Agreement is held to be invalid or unenforceable in any respect, in whole or in part, such finding shall in no way affect the legality, validity or enforceability of all other provisions of this Article IV. The parties further agree that any such unenforceable provision or restriction shall be deemed modified so that it shall be enforced to the greatest extent permissible under law, and to the extent that any court of competent jurisdiction determines any restriction to be overly broad or unenforceable, such court is empowered and authorized to limit such restriction so that it is enforceable to the fullest extent permissible under applicable law.

ARTICLE V. CLOSING

5.01 Closing. Provided that the deliveries set forth in this Article V and all other conditions are either satisfied or waived, the consummation of the transaction contemplated under this Agreement (the "Closing") shall take place on the date first stated above, which shall be the date that execution by both parties is completed, or such other date as is mutually agreed upon between the parties (the "Closing Date"). The Closing shall take place at such time and location as the parties shall mutually agree on the Closing Date. Possession of the Assets shall be deemed given to Transferee on the Closing Date. All risk and loss with respect to the Assets shall be borne by Transferor until the Closing Date.

5.02 Closing Documents. Both parties shall deliver or cause to be delivered to the other at Closing all documents and consents necessary for the parties to carry out their obligations under this Agreement.

ARTICLE VI. MISCELLANEOUS

6.01 Amendment. This Agreement may only be amended by an instrument in writing, executed by both parties.

6.02 Entire Agreement. Except as expressly set forth in this Agreement or in an instrument in writing signed by the parties, which makes reference to this Agreement, this Agreement embodies the entire agreement in relation to the subject matter, and no representations, warranties, covenants, understandings or agreements exist between the parties.

6.03 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties and their respective administrators, legal representatives, successors and assigns. If any governmental unit, department, division, body, or office referred to in this Agreement shall cease to exist or shall cease to retain any part of its powers and duties, material to the performance of this Agreement which are vested in them at the time of the execution of this Agreement, then all references to them shall be deemed to include whatever governmental units, department, division, body, or office shall then succeed to or have the powers and duties material to performance of this Agreement without regard to title or formal designation.

6.04 Governing law. This Agreement shall in all respects be interpreted, construed, and governed by and in accordance with the laws of the State of Ohio. The parties submit to the personal jurisdiction of the state and federal courts located in Cuyahoga County, Ohio.

6.05 Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be delivered personally, sent by facsimile transmission (with immediate confirmation thereafter) or sent by certified, registered or express mail, postage prepaid, or by a nationally recognized overnight courier service, marked for overnight delivery. Any such notice shall be deemed given when so

delivered personally, or sent by facsimile transmission (with immediate confirmation thereafter) or, if mailed, five (5) business days after the date of deposit in the mails, or if sent by overnight courier marked for overnight delivery, two (2) business days after the date of delivery to the courier service, as follows:

(a) If to Transferor: [Chief Elected Official]
City of Brook Park
Brook Park City Hall
6161 Engle Road
Brook Park, Ohio 44142
Facsimile: 216-433-7193 (Service Dept.)

(b) If to Transferee: Director of Public Utilities
City of Cleveland
1201 Lakeside Avenue
Cleveland, Ohio 44114
Facsimile (216) 664-3330

with copies to: Commissioner
Division of Water
City of Cleveland
1201 Lakeside Avenue
Cleveland, Ohio 44114; and

Director of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114

6.06 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement.

6.07 Assignment. Neither party shall have the right to assign this Agreement to a non-affiliated third party without the prior written consent of the other party.

6.08 Further Assurances. The parties agree without expense to the other party (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

6.09 Rights of Third Parties. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and permitted assigns. Nor is anything in this Agreement intended to release or discharge the obligation or liability of any third persons to any party to this Agreement.

6.10 Severability. In the event any provision of this Agreement conflicts with the law under which this Agreement is to be construed, such provision shall be deleted from the Agreement and the Agreement shall be construed to give effect to the remaining provisions.

6.11 Survival. The representations, warranties, covenants and agreements set forth in this Agreement shall survive the Closing. This Agreement shall survive the termination of any Water Service Agreement entered into between the parties.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

**CITY OF CLEVELAND
TRANSFeree**

**CITY OF BROOK PARK
TRANSFEROR**

Robert L. Davis, Director
Department of Public Utilities

Thomas J. Coyne, Mayor

The legal form and correctness of this instrument are approved:

The legal form and correctness of this instrument are approved:

Barbara A. Langhenry
Director of Law

Carol Dillon Horvath, Director of Law

Kate E. Ryan
Assistant Director of Law

Date: _____

EXHIBIT 1

DISCLOSURE OF ASSETS, LIABILITIES, AND REAL ESTATE INTERESTS

P/C 3/15/16 Legislativ
CA 6/14/16
1st R 6/21/16
2nd R _____
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 18-2016

INTRODUCED BY: MAYOR COYNE

A RESOLUTION
AUTHORIZING THE MAYOR
TO ENTER INTO A MUNICIPAL UTILITY
DISTRICT AGREEMENT WITH THE CITY
OF CLEVELAND IN CONNECTION WITH
THE PROVISION OF WATER SERVICE,
AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: The Mayor be, and he hereby is, authorized to enter into a Municipal Utility District Agreement with the City of Cleveland in connection with the provision of water service, a copy of which Agreement is attached hereto as Exhibit "A."

SECTION 2: It is found and determined that all formal actions of this Council concerning and relating to this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City and to authorize the Mayor to enter into a Municipality Utility District Agreement with the City of Cleveland; therefore provided this Resolution receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS


DIRECTOR OF LAW

MUNICIPAL UTILITY DISTRICT AGREEMENT

Between

THE CITY OF CLEVELAND

And

THE CITY OF BROOK PARK

THIS MUNICIPAL UTILITY DISTRICT AGREEMENT ("Agreement"), entered into pursuant to Section 715.84 of the Ohio Revised Code ("R.C.") and Article XVIII, Sections 3, 4 and 6 of the Ohio Constitution as of the ___ day of _____, 2016 ("Effective Date"), by and between the City of Cleveland ("Cleveland"), pursuant to the authority of Ordinance No. 1683-06, passed by Cleveland City Council on October 30, 2006, and the City of Brook Park ("City"), pursuant to the authority of Ordinance No. _____, passed by City's Council on _____, 2016; Cleveland and City (collectively the "Parties") are municipal corporations in, and political subdivisions of, the State of Ohio (the "State"), and duly organized and validly existing under the laws of the State.

RECITALS:

1. Cleveland provides a long-term, reliable supply of high quality water service to political subdivisions in the region including City that facilitates new and expanded commercial and industrial growth and strengthens the tax base for the benefit of City residents.
2. The provision of Cleveland water facilitates economic development, creates and preserves jobs, improves property values, and advances the economic welfare of the inhabitants and businesses located within Cuyahoga County.
3. The provision of Cleveland water outside its borders may have negative economic impacts for Cleveland through the loss of economic development that may otherwise have occurred within Cleveland.
4. The Parties desire to work toward a regional economy focused on growth, innovation, and cooperative efforts, rather than competition amongst municipal neighbors within Cuyahoga County.
5. As part of this regional approach, Cleveland is willing to extend the terms of existing water service agreements with the Parties and assume ownership of the water distribution systems owned by the Parties, thus relieving them of the financially burdensome responsibilities to perform capital repairs and replacements of the distribution systems.
6. To facilitate the transfer of ownership of such distribution systems, as well as cleaning, relining, maintenance, repair, and replacement responsibilities, the Parties have entered into a Restatement of the Water Service Agreement, dated _____, 2016.
7. The Parties intend to enter into this Agreement to create and provide for the

EXHIBIT

A

operation of a municipal utility district in accordance with R.C. §715.84 for the purpose of facilitating new or expanded growth for commercial or economic development for the benefit of their residents and of the State.

8. Cleveland is an impacted city as defined in R.C. §1728.01(C).

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the Parties hereto agree and bind themselves, their agents, employees and successors, as follows:

Section 1. Creation of the Municipal Utility District: Name.

The Parties, by their combined action evidenced by the signing of this Agreement, hereby create a municipal utility district in accordance with the terms and provisions of this Agreement. The municipal utility district created pursuant to this Agreement shall be known as the "Cleveland – Brook Park Municipal Utility District" (the "District").

Section 2. Purpose. In accordance with R.C. §715.84, the Parties intend that the creation and operation of the District shall, and it is the purpose of the District to, facilitate new or expanded growth for commercial or economic development for the benefit of their residents and of the State.

Section 3. Territory of the District. The territorial boundary of the District shall be the combined total area of the municipal boundaries of the Parties

Section 4. Term. Unless earlier terminated in accordance with its terms, or amended by mutual written agreement of the Parties, this Agreement shall be for a term of twenty (20) years commencing on the first day after execution of this Agreement by Cleveland, and shall automatically continue in effect from year to year thereafter. This Agreement may be cancelled by either Party by giving written notice to the other at least five (5) years prior to the effective date of termination, provided that no such notice may be given until fifteen (15) years after the date upon which this Agreement is executed by Cleveland.

Section 5. Contribution to the District.

(a) Cleveland's Contribution. Cleveland's contribution to the District is its agreement to extend the term of water service agreement in accordance with the Restatement of the Water Service Agreement, executed by Cleveland and City; the assumption of ownership of the distribution systems; the cleaning, relining, maintenance, repair, and replacement responsibilities related to all infrastructure; and performance of all other covenants of Cleveland stated in this Agreement.

(b) City's Contribution. City's contribution to the District is its agreement to encourage commercial and industrial development necessary or appropriate to promote economic development within the District; provide appropriate municipal services and public improvements to promote economic development; and perform all other covenants of City stated in this Agreement.

Section 6. Limitation on the use of Tax Abatements; Allowable Incentives; Uniform training incentives.

(a) Real Estate Tax Abatements. The Parties agree that for any business relocating between Cleveland and City, there shall be a limit on any new industrial or commercial real estate tax abatement to a term not to exceed 10 years. The abatement shall not exceed 75 percent.

(b) Income Tax Abatements. The Parties agree that they shall not provide any income tax abatement to any businesses relocating between Cleveland and City.

(c) Allowable Incentives. Notwithstanding the provisions of subsections (a) and (b) of this Section 6, the Parties may continue to offer incentives including, but not limited to, the discounted sale of property, low-interest loans, and tax increment financing as provided for in R.C. §§5709.40 and 5709.41. The limitations provided in subsections (a) and (b) of this Section 6 shall not apply to business relocation from outside of the territorial boundaries of the District as defined in Section 3 above.

Section 7. Income Tax Sharing for Moves Within the District.

(a) The Parties agree that if any business with an annual gross payroll of more than \$500,000 relocates from one Party (the "Losing Party") to another Party (the "Gaining Party"), the Losing Party shall be entitled to receive from the Gaining Party, for a period of 5 years, 50 percent of future income tax revenue based upon payroll in existence immediately prior to the relocation. The Gaining Party's 50 percent share shall be calculated based upon the Gaining Party's employment-based tax rate as may be amended from time to time, minus the percentage that may be earmarked for a city's school district pursuant to city ordinance. The Gaining Party's 5 year income tax sharing obligation for any business that relocates during the term of this Agreement is a continuing obligation that shall survive the termination of this Agreement.

(b) The 5 year tax sharing obligation may be earlier terminated or reduced if the Losing Party "backfills" space at the same payroll value with a similar business, as follows: (i) the business that moved jobs adds equivalent new payroll anywhere in the Losing Party's jurisdiction, this new payroll shall qualify as "backfill" for purposes of this Section 7; and (ii) if the moving business replaces part of the vacated space with new jobs and payroll, the aggregate employment-based income tax paid to the Losing Party will be deducted from this tax sharing obligation. Upon becoming aware that "backfilling" has occurred, the Losing Party shall provide the Gaining Party with written notice within 30 days as provided for in Section 20.

For example, if new employees are hired anywhere in Cleveland by the relocated employer, the employment-based income tax from those employees that is paid to Cleveland shall reduce the amount to be paid by City to Cleveland in an amount equal to the employment-based income tax paid by or on behalf of those employees. For purposes of the above example, "new" Cleveland employees are permanent employees who are hired due to the creation of new positions within Cleveland versus new or existing employees that are hired to fill existing vacant positions created by employee turnover, retirement, or other reason.

Section 8. Administration of Agreement.

(a) After execution of this Agreement, the Parties may provide that the income tax sharing provisions in this Agreement be administered jointly by City and Cleveland, or by either the Central Collection Agency, Regional Income Tax Authority, or both. The administrator will be responsible for collecting annual employment and income tax data from a relocating business, calculating the aggregate employment and payroll, determining the annual income tax to be shared and determining if the agreement should be terminated due to occurrence of any of the triggering events.

(b) If for any reason a relocating business is unable or unwilling to provide the payroll information necessary to make the tax sharing calculations specified in Section 7, the Parties agree to confer in good faith to determine an appropriate alternative calculation.

Section 9. Access to Records; Audit. During the tax sharing period provided in Section 7, City and Cleveland shall provide access to the other Party's tax withholding and estimated tax records related to the relocating business during normal business hours. Either Party, through its representatives or employees, shall be permitted to make and keep photocopies of portions of the other Party's records that pertain to such tax withholdings and estimates. Once a year, both Parties shall have the right to have an independent auditor inspect and audit the books and records of the other Party.

Section 10. Informal Dispute Resolution. Prior to invoking the provisions of Section 11, if City or Cleveland disagrees with the implementation or interpretation of this Agreement, the Parties will use their best efforts to settle such dispute between themselves. If, despite good faith efforts the disagreement cannot be resolved, City or Cleveland may request informal dispute resolution by providing written notice to the other. The disagreement shall be submitted to the President of the Cuyahoga County Mayors and Managers Association for mediation. Unless otherwise agreed to by the Parties, mediation shall be concluded no later than 30 days after receipt of the notice provided for in this Section.

Section 11. Defaults and Remedies. A failure to comply with the terms of this Agreement shall constitute a default. The Party in default shall have 60 days after receiving written notice from the other Party of the event of default to cure that default. If the default is not cured within that time period, the non-defaulting Party may sue the defaulting Party for specific performance under this Agreement or for damages or both. This Agreement may not be terminated because of a default unless the Parties agree to such cancellation or termination.

Section 12. Amendments. This Agreement may be amended by the Parties only in a writing approved by the legislative authorities of both Parties by appropriate legislation authorizing that amendment. In order for such amendment to be effective, the legislative actions of the Parties that amend this Agreement must occur and be effective within a period of 90 days of each other.

Section 13. Binding Effect. This Agreement shall be binding upon the Parties and their respective permitted successors, subject, however, to the specific provisions hereof.

This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence.

Section 14. Signing Other Documents. The Parties agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments and documents, and to take such other actions, in order to effectuate the purposes of this Agreement.

Section 15. Severability. In the event that any section, paragraph or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason: (1) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein; (2) the illegality or invalidity or any applications hereof or thereof shall not affect any legal and valid application hereof or thereof; and (3) each section, paragraph, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Section 16. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of Ohio, and in particular R.C. §715.84.

Section 17. Captions and Heading. The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

Section 18. No Third-Party Beneficiaries. Nothing contained herein, and nothing that may be implied hereby, is intended to or shall be construed to confer upon any person or entity, other than the Parties hereto, any right or remedy under or by reason of this Agreement.

Section 19. Consideration, Utility Agreement. The amendment, renewal or termination of a separate contract for utility services does not constitute any part of the consideration for this Agreement. Further, other substantial consideration exists to support this Agreement, and this Agreement has been entered into between the Parties without duress or coercion related to the amendment, renewal or termination of a separate contract for utility services.

Section 20. Forms of Notice. Any notice or demand required or permitted to be given by or to the Parties and every alleged breach of a warranty, representation, or agreement contained in this Agreement shall be made in writing and shall be deemed to have been given or delivered, as the case may be, when personally delivered to the Mayor of the respective Party, or two (2) days after deposit in the U.S. Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows (or as to each Party, to such other address as the Party may designate by a notice give in accordance with the provisions of this Section):

P/C 6/7/16
CA 6/14/16 - amended
1st R 6/20/16
2nd R _____
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 19-2016

INTRODUCED BY: COUNCILMAN TROYER, AND COUNCIL MEMBERS BURGIO, McCORMICK, POWERS, SCOTT, MENCINI, SALVATORE, COUNCIL PRESIDENT ASTORINO AND MAYOR COYNE

A RESOLUTION
HONORING CLAIRE DAVIS
FOR HER MANY ACCOMPLISHMENTS
AND DECLARING AN EMERGENCY

WHEREAS, Claire Davis a recent Berea/Midpark Graduate is the daughter of Mary and David Davis and granddaughter of Jack and Kathy Thomas and John and Fay Collier of Brook Park; and

WHEREAS, Claire Davis had a 4.26 cumulative GPA, graduated Magna Cum Laude and received the following scholarships:

- Deans Scholarship from the College of Wooster
- Brian James Floria Memorial Scholarship
- Outstanding Athlete Award from the U.S. Navy
- Archie Griffin Sportsmanship Award

WHEREAS, Claire Davis was a member of the National Honors Society and Principals Honor Roll for four years;

WHEREAS, Claire Davis was the varsity soccer captain her junior and senior year, received the MVP award during her junior and senior year, and had 6 varsity letters;

WHEREAS, Claire Davis was a team captain for Cleveland Futbol Club U-16 through U-18; and

WHEREAS, Claire Davis was honored Best of Brook Park 2012 for her academic achievement and positive attitude;

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: The Mayor and Council wish to honor and commend Claire Davis for both her academic and athletic accomplishments and making a difference in the City of Brook Park.

adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Resolution shall take effect and be in force from and after the earliest time allowed by law.

PASSED: _____

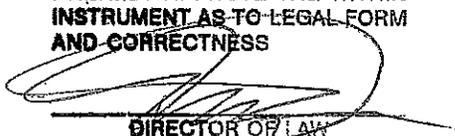
PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW

P/C 6/7/16 Legislative
CA 6/14/16
1st R 6/21/16
2nd R _____
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 20-2016

INTRODUCED BY: COUNCILMAN MENCINI and Council Members Troyer, Scott, Burgio

A RESOLUTION
URGING THE BEREA CITY SCHOOL DISTRICT
TO BUILD A NEW ELEMENTARY SCHOOL ON THE CURRENT
SITE OF BROOK PARK MEMORIAL SCHOOL,
AND DECLARING AN EMERGENCY

WHEREAS, the Berea City School District is proposing that two elementary schools within the City of Brook Park be closed due to a decrease in enrollment and the age of the schools; and

WHEREAS, the City of Brook Park objects strongly to the closing of Brook Park Memorial and Brookview elementary; and

WHEREAS, the Council and the City administration hereby requests the Berea City School District to work with Brook Park to see that if those schools do close, then the new proposed elementary school be built on the current site of Brook Park Memorial School; and

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: That Council does hereby request that Brook Park Memorial be the new site for the proposed elementary school.

SECTION 2: This Council and the Administration urge the residents of Brook Park to show their support of this Resolution and ask them to write the Berea City School District requesting that the new elementary school be built on the current Brook Park Memorial School site.

SECTION 3: That the Clerk of Council is hereby authorized and directed to forward a certified copy of this Resolution to the Berea City School District and to post it on the City's website.

SECTION 4: It is found and determined that all formal actions of this Council concerning and relating to this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121:22 of the Ohio Revised Code.

SECTION 5: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for further reason to urge the Berea City School District build the new elementary school on the current site of Brook Park Memorial School; therefore, provided this Resolution receives the affirmative vote of at least (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

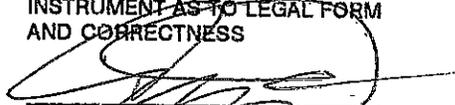
PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS


DIRECTOR OF LAW

P/C 6/7/16 Legislative
CA 6/14/16
1st R 6/21/16
2nd R _____
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 21-2016

INTRODUCED BY: COUNCILMAN MENCINI

A RESOLUTION
URGING THE BEREA CITY SCHOOL DISTRICT
TO BUILD A NEW HIGH SCHOOL ON THE CURRENT
SITE OF FORD INTERMEDIATE SCHOOL,
AND DECLARING AN EMERGENCY

WHEREAS, the Berea City School District is proposing that two elementary schools within the City of Brook Park be closed due to a decrease in enrollment and the age of the schools; and

WHEREAS, the City of Brook Park objects strongly to the closing of Brook Park Memorial and Brookview elementary; and

WHEREAS, the Council and the City administration hereby requests the Berea City School District to work with Brook Park to see that if those schools do close, then the new proposed high school be built on the current site of Ford Intermediate School; and

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: That Council does hereby request that Ford Intermediate School be the new site for the proposed high school.

SECTION 2: This Council and the Administration urge the residents of Brook Park to show their support of this Resolution and ask them to write the Berea City School District requesting that the new high school be built on the current Ford Middle School site.

SECTION 3: That the Clerk of Council is hereby authorized and directed to forward two certified copies of this Resolution to the Berea City School District.

SECTION 4: It is found and determined that all formal actions of this Council concerning and relating to this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 5: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for further reason to urge the Berea City School District build the new high school on the site of Ford Intermediate School; therefore, provided this Resolution receives the affirmative vote of at least (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

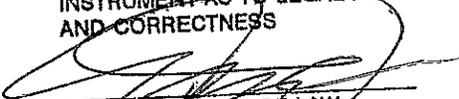
PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW

P/C 6/7/16 Legislative
CA 6/14/16
1st R 6/21/16
2nd R _____
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 22-2016

INTRODUCED BY: COUNCILWOMAN POWERS and COUNCIL MEMBERS TROYER, MENCINI,
SCOTT, BURGIO, MCCORMICK, SALVATORE, COUNCIL PRESIDENT ASTORINO

A RESOLUTION
HONORING THE POLARIS CAREER CENTER'S CULINARY TEAM
IN WINNING THE 2016 NATIONAL PROSTART INVITATIONAL
CULINARY TEAM COMPETITION,
AND DECLARING AN EMERGENCY

WHEREAS, the Polaris Career Center Chef Training Program is instructed by Chris Olszewski; and

WHEREAS, the five students that were chosen for the 2016 National Prostart Invitational Culinary Team were Chris Hritz, Therese Napier, Emily Leopold, Dakota Stevens, and Amber Stevens; and

WHEREAS, the 2016 Polaris Culinary Team won the State of Ohio Prostart Invitational this year, the seventh time in a row that Polaris has won this event; and

WHEREAS, the 2016 Polaris Culinary Team was victorious in Grapevine, Texas at the 2016 National Prostart Invitational Culinary Team Competition; and

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: The Mayor and Council wish to congratulate and honor Chef Training Instructor, Chris A. Olszewski along with members of the 2016 National Prostart Invitational Culinary Team Chris Hritz, Therese Napier, Emily Leopold, Dakota Stevens, and Amber Stevens for their dedication and hard work in being chosen the winner of the 2016 National Prostart Invitational Culinary Team.

SECTION 2: The Clerk of Council is hereby directed to forward a certified copy of this Resolution to the Polaris Career Center, Attention: Chris Olszewski.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for further reason to honor the 2016 National Prostart Invitational Culinary Team of Polaris Career Center; therefore, provided this Resolution receives the affirmative vote of at least (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

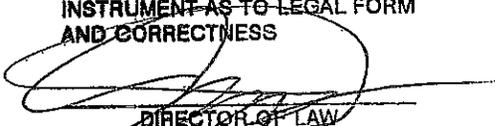
PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 13-2016

INTRODUCED BY: COUNCILWOMAN MCCORMICK

P/C 5/17/16 Legislativ
CA 5/24/16
1st R 6/7/16
2nd R 6/21/16
3rd R _____
B/C _____

A RESOLUTION
SUPPORTING OHIO HOUSE BILL 523 TO LEGALIZE
MEDICAL MARIJUANA IN THE STATE OF OHIO,
AND DECLARING AN EMERGENCY

WHEREAS, Ohio House Bill 523 would legalize marijuana use for individuals with qualifying medical conditions with a doctor's recommendation; and

WHEREAS, the Ohio House passed HB 523 in a bipartisan 71-26 vote on Tuesday, May 10, 2016; and

WHEREAS, Ohio HB 523 has been sent to the Ohio Senate for consideration; and

WHEREAS, the City Council has a vested interest in ensuring that Brook Park residents have access to all viable medical options that could address symptoms associated with chronic, painful, or terminal diseases; and

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: The Council of the City of Brook Park hereby supports the passage of Ohio HB 523.

SECTION 2: The Council of the City of Brook Park hereby urges the Ohio Senate to pass HB 523.

SECTION 3: The Council of the City of Brook Park encourages the Executive Branch of the State of Ohio to sign into law HB 523, once it passes through the Senate.

SENATE 4: The Council of the City of Brook Park supports the rights of residents to access medical care to alleviate the pain and suffering from qualified medical conditions as determined by the State of Ohio;

SECTION 5: The Clerk of Council is hereby authorized and instructed to forward a certified copy of this Resolution to Representative Stephen Huffman, and to have it posted to the City's website.

SECTION 6: It is found and determined that all formal actions of this Council concerning and relating to this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 5: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for further reason to support House Bill 523 to legalize medical marijuana in the State of Ohio; provided that this Resolution receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law

PASSED: _____

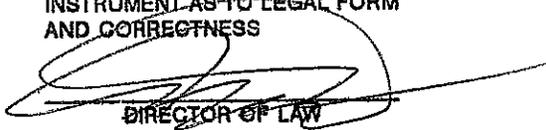
PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS


DIRECTOR OF LAW

B/C 5/17/16 Legislative
CA 5/23/16
1st R 6/7/16
2nd R 6/21/16
3rd R _____
B/C _____

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 14-2016

INTRODUCED BY: COUNCILWOMAN POWERS AND COUNCIL MEMBERS
TROYER, MENCINI, MCCORMICK & COUNCIL PRESIDENT ASTORINO

A RESOLUTION
ENCOURAGING PEOPLE TO CREATE MONARCH BUTTERFLY WAYSTATIONS

WHEREAS, the Monarch butterfly, once common in the United States is being considered for listing on the endangered species list; and

WHEREAS, the Monarch butterfly's population has decreased by 90% over the past twenty years; and

WHEREAS, the decline in the Monarch butterfly's population is due to development, widespread use of herbicides, and the frequent planting and mowing of grass along roadsides, all of which constitute to the loss of milkweed plants which are necessary for monarch butterflies to find and reproduce; and

WHEREAS, to offset the loss of milkweeds and nectar sources we need to create, conserve, and protect milkweed/monarch habitats; and

WHEREAS, Monarch Waystations are places that provide resources necessary for Monarchs to produce successive generations and sustain their migration in home gardens, at schools, businesses, along roadsides, and on other unused plots of land; and

WHEREAS, by creating and maintaining a Monarch Waystation you are contributing to monarch conservation, an effort that will help assure the preservation of the species.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: The Council of the City of Brook Park does hereby encourage Brook Park residents and businesses to create Monarch Waystations by planting milkweed, thereby creating new monarch butterfly habitats.

SECTION 2: The Council encourages the Berea City School District to develop educational programs at the elementary and middle school levels involving the Monarch butterfly and Monarch Waystation Habitats for monarch butterfly conservation.

SECTION 3: The Clerk of Council is hereby authorized and instructed to forward a certified copy of this Resolution to be posted on the City's website.

SECTION 4: It is found and determined that all formal actions of this Council concerning and relating to this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 5: This Resolution shall take effect and be in force from and after the earliest time allowed by law.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW

Free Milkweed for Restoration Projects Request Form 2016

We are currently reviewing "Free Milkweed for Restoration Projects" applications for Spring 2016. Please enter your name and email address on the next page if you would like to be notified when we begin accepting applications again.

NRPA?

If you are applying with connections to the National Parks and Recreation Association, check NRPA below. If you are not connected with the NRPA

NRPA

Important Information

If you are hoping to apply for a free flat of milkweeds for school or non-profit gardens, you will need to contact milkweed@monarchwatch.org. This form is not the correct form to fill out for that grant.

We will reply to your request in the order it was received.

About Us

Monarch Watch is a nonprofit education, conservation, and research program based at the University of Kansas that focuses on the monarch butterfly, its habitat, and its spectacular fall migration. Our team is made up of three full-time employees and our director, Dr. Chip Taylor. One team member handles milkweed sales to over 1900 customers. We are not a nursery or a company. Our goal is large-scale habitat restoration with a small budget and a small team.

Your purchase of milkweed will support our efforts to restore milkweed/monarch habitat throughout the range of the monarch migration.

NEXT

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Google Forms

