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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: July 9, 2016 SPECIAL COUNCIL

PRESIDENT OF COUNCIL

ATTEST: Michelle Blazek
Clerk of Council

APPROVED:
MAYOR

7/9/2016
DATE

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

DIRECTOR OF LAW

CERTIFICATE

Michelle Blazak, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance/Resolution No. 10025-2016 passed on the 9th day of July 20 16 by said council.

Michelle Blazak
Clerk of Council

I, Michelle Blazak, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at six of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #1 Fire Station 5590 Smith Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days.

commencing July 11, 2016

Michelle Blazak
MICHELLE BLAZAK
Clerk of Council

	Yea	Nay
Troyer		✓
Mencini	✓	
Powers		✓
Scott	✓	
Burgio	✓	
McCormick		✓
Salvatore	✓	

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 the have been incorporated into the Water Service Agreement from 1981 to 2013.

WHEREAS, PURVEYOR is willing to provide water and water related services to MUNICPALITY 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 MUNCIPALITY'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 MUNICIPALTIY, 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

_____
Robert L. Davis, Director
Department of Public Utilities

CITY OF BROOK PARK
MUNICIPALITY

_____
Thomas J. Coyne, Mayor

The legal form and correctness of this instrument are approved:

Barbara A. Langhenry
Director of Law

_____
Kate E. Ryan
Assistant Director of Law

Date: _____

The legal form and correctness of this instrument are approved:

_____
Carol Dillon Horvath, Director of Law

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 curtain 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 of 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

_____

Name, Director_____
Department of Finance

The legal form and correctness of this instrument are approved:

Name_____
Director of Law

_____

Name_____
Assistant Director of Law

Date: _____

CITY OF _____

_____

Printed name and title

The legal form and correctness of this instrument are approved:

_____

Printed name and title (Director of Law)

_____

Name of authorized designee

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 MUNICIAPLITY 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, MUNICPALITY 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**	
	Min.	*Max.*	*Min.*	*Max.*
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