AMENDMENT TO
WATER SERVICE AGREEMENT
FOR DIRECT SERVICE

Between

THE CITY OF CLEVELAND

And

___________________________

THIS AMENDMENT to the Water Service Agreement ("Amendment") entered into by the parties on ____________ is made and entered into this _______ day of ________________, 20__, by and between the CITY OF CLEVELAND ("PURVEYOR") acting by and through its Director of Public Utilities under the authority of Ordinance No. 778-06, passed by the Council of the City of Cleveland on June 5, 2006, and _______________________________ ("MUNICIPALITY") acting under the authority of Ordinance/Resolution No. _____________, adopted on ________________, 20__.

RECITALS:

1) PURVEYOR and MUNICIPALITY previously entered into a Water Service Agreement for Direct Service to MUNICIPALITY ("Water Service Agreement").

2) PURVEYOR and MUNICIPALITY desire to amend such Water Service Agreement to revise its terms and conditions with respect to the rights and obligations of the parties and ownership of various water facilities.

3) PURVEYOR is willing to provide water and water-related services to MUNICIPALITY and its inhabitants on the terms, covenants, and conditions set forth in this Amendment to the Water Service Agreement.

For the reasons set forth above, and in consideration of the mutual promises set forth in this Amendment, PURVEYOR and MUNICIPALITY agree as follows:
ARTICLE 1. DEFINITIONS

The definitions contained in the Water Service Agreement are amended to include additional definitions as follows:

1.13 “Distribution System” means all distribution mains and appurtenances, including valves, pressure regulators, and city-side service connections, fire hydrants, and water storage and pumping facilities located within MUNICIPALITY’S territorial limits.

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

All other definitions contained in the Water Service Agreement under the DEFINITIONS provision shall remain unchanged.

ARTICLE 2. SERVICE DISTRICTS

[UNCHANGED]

ARTICLE 3. OBLIGATION TO FURNISH QUALITY WATER

[UNCHANGED]

ARTICLE 4. WATER RATES

[UNCHANGED]

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

[UNCHANGED]

ARTICLE 6. OPERATIONAL CONTROL OF WATERWORKS SYSTEM

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

The provision titled RIGHT TO USE STREETS, WATER MAINS AND EQUIPMENT is amended as follows:

7.02 “PURVEYOR shall have the right to use, extend, tap or connect into any and all water mains and other water transmission facilities, irrespective of whether or not they are owned or controlled by MUNICIPALITY, 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.”

The remainder of such provision is unchanged.

ARTICLE 8. INSTALLATION AND MAINTENANCE OF WATER FACILITIES

[UNCHANGED]

ARTICLE 9. INSTALLATION AND MAINTENANCE OF TRUNK MAINS

The provision titled INSTALLATION AND MAINTENANCE OF TRUNK MAINS is amended as follows:

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. PURVEYOR shall further have the right to use and shall bear the expense of repairing, maintaining, cleaning and relining the water mains identified on Exhibit B, which are defined as distribution mains but have been deemed by PURVEYOR to be distribution mains but have been deemed by PURVEYOR to be functioning as trunk mains. PURVEYOR shall not bear the expense of cleaning and relining any mains not herein expressly identified. A priority shall be established for cleaning and relining those mains listed on Exhibit B based primarily upon the Hazen-Williams “C” Coefficient of the interior of such mains. The mains having the lowest Hazen-Williams “C” Coefficient values, taking into consideration the demand on the system, shall be considered for cleaning and relining at the earliest possible time.”

The remainder of such provision is unchanged.
ARTICLE 10. INSTALLATION AND OWNERSHIP OF DISTRIBUTION MAINS

The provision titled INSTALLATION OF DISTRIBUTION MAINS is amended as follows:

The title of such provision is changed to “INSTALLATION AND OWNERSHIP OF DISTRIBUTION MAINS.”

10.01 PURVEYOR shall not be obligated to provide or install distribution mains or other equipment for the distribution within the geographical boundaries of MUNICIPALITY of water from trunk mains to service connections. With the exception of those water mains specifically identified on Exhibit B, MUNICIPALITY shall bear the expense of cleaning and relining all distribution mains located within MUNICIPALITY’S corporate limits.

10.01 Upon MUNICIPALITY’S execution of the Asset Transfer Agreement, attached as Exhibit “A”, 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 Water Council of Governments. PURVEYOR shall use best efforts to expend an average of Ten Million Dollars per year over the initial five years of the term of this Amendment toward suburban system-wide Capital Improvements, and shall use best efforts to expend Ten Million Dollars each subsequent year thereafter.

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

10.04 PURVEYOR’S maintenance responsibilities are described in Article 12 of the Water Service Agreement.

The remaining paragraphs in Article 10 shall be renumbered accordingly.

The remainder of such provision is unchanged.
ARTICLE 11. CONNECTION OF NEW DISTRIBUTION MAINS; INSPECTION AND TESTING

The provision titled CONNECTION OF NEW DISTRIBUTION MAINS; INSPECTION AND TESTING is amended as follows:

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 any new service connection unless and until all of the following provisions have been complied with:

The remainder of such provision is unchanged.

ARTICLE 12. MAINTENANCE OF DISTRIBUTION MAINS

[UNCHANGED]

ARTICLE 13. DAMAGE TO SYSTEM AND RELEASE OF LIABILITY

The provision titled DAMAGE TO SYSTEM AND RELEASE OF LIABILITY is amended as follows:

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.

The remainder of such provision is unchanged.

ARTICLE 14. MAINTENANCE OF DISTRIBUTION SYSTEM BY MUNICIPALITY

[UNCHANGED]

ARTICLE 15. SERVICE CONNECTIONS

[UNCHANGED]
ARTICLE 16. METERS

[UNCHANGED]

ARTICLE 17. FIRE HYDRANTS

The provision titled FIRE HYDRANTS is amended as follows:

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 Amendment, assume ownership, including all responsibilities to perform and pay for Capital Improvements relating to the hydrants. MUNICIPALITY shall perform and be responsible for and, except as otherwise provided herein, shall bear the expense of installation of, periodic inspections of and maintenance and/or repair, including flushing and painting, of all fire hydrants located within its corporate limits. MUNICIPALITY may repair or replace fire hydrants that are not functioning properly. If any such repair or replacement is required as the result of normal wear and tear, then MUNICIPALITY may bill PURVEYOR for the reasonable cost thereof upon submission to PURVEYOR of documentation of the work done and the actual cost thereof. PURVEYOR reserves the right to reject any bill for costs which PURVEYOR deems to be unreasonable."

The remainder of such provision is unchanged.

ARTICLE 18. CHANGE IN GRADE OF STREETS

[UNCHANGED]

ARTICLE 19. VACATION OF STREETS

[UNCHANGED]

ARTICLE 20. CAPITAL IMPROVEMENT PROGRAM

[UNCHANGED]

ARTICLE 21. ANNUAL REPORTS

[UNCHANGED]
ARTICLE 22. CURTAILMENT OF WATER SERVICE

[UNCHANGED]

ARTICLE 23. TERM OF AGREEMENT

The provision titled TERM OF AGREEMENT is amended as follows:

23.01 The term of this AGREEMENT Amended Water Service Agreement shall be for a minimum period of ten (10) twenty (20) years commencing on the first day after execution of this AGREEMENT Amendment by PURVEYOR, and shall automatically continue in effect from year to year thereafter. This Amendment may be cancelled by mutual agreement of the parties after the expiration of the initial twenty (20) year term. This AGREEMENT 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 five (5) fifteen (15) years after the date upon which this AGREEMENT 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, including provisions for reasonable compensation to PURVEYOR for its prior capital investments in the Distribution System. Any notice of cancellation shall be by certified mail, return receipt requested, addressed to the Director in the case of PURVEYOR or the highest ranking official in case of MUNICIPALITY. In the event of termination of this AGREEMENT Amendment, following notice of cancellation by either party, 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 so long as water is being supplied by PURVEYOR to said service area. PURVEYOR’S right to operate the Distribution System shall survive any mutual termination of the Amended Water Service Agreement. Such mutual termination shall not affect the validity of the Asset Purchase 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

[UNCHANGED]

ARTICLE 25. TERMINATION OF ALL PRIOR AGREEMENTS

[UNCHANGED]
ARTICLE 26. MODIFICATIONS; UNDERSTANDINGS; LEGALITY

[UNCHANGED]

ARTICLE 27. NOTICES

27.01 Notice of cancellation of this AGREEMENT shall be delivered by certified mail. All other notices required to be given under this AGREEMENT shall be delivered by regular mail.

27.02 Notice to PURVEYOR required to be given under this AGREEMENT shall be delivered to the following address: DIRECTOR OF PUBLIC UTILITIES, CITY OF CLEVELAND, 1201 LAKESIDE AVENUE, CLEVELAND, OHIO 44114.

A copy of any such notice shall be delivered to the following address:

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:

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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. ECONOMIC DEVELOPMENT AGREEMENT

29.01 The parties agree that, as a condition of this Amendment, MUNICIPALITY and PURVEYOR have entered into the Economic Development Agreement attached to this Amendment as Exhibit B.

[INTENTIONALLY LEFT BLANK]
The parties have executed this Amendment as of the day and year first written.

CITY OF CLEVELAND

By: _____________________________
   Barry Withers, Director
   Department of Public Utilities

The legal form and correctness of this Agreement are approved: ________________________________
   (Date)

ROBERT J. TRIOZZI
Director of Law

By: _______________________
   Steven L. Beeler
   Assistant Director of Law

Date: ______________________

MUNICIPALITY

By: _____________________________
   (Signature)
   (Printed Name)
   (Title)
   (Date)

The legal form and correctness of this Agreement are approved:

Director of Law

By: _____________________________
   (Signature)
   (Printed Name)
   (Title)
   (Date)
EXHIBIT A

ASSET TRANSFER AGREEMENT