

**AGREEMENT BETWEEN THE CITIES OF**

**CLEVELAND**

**and**

**CITY OF NORTH ROYALTON**

**for**

**SUBURBAN DISTRIBUTION ASSET RENEWAL PROGRAM**

**PROJECT REIMBURSEMENT**

THIS AGREEMENT is agreed to on the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Cleveland, Department of Public Utilities, Division of Water (“PURVEYOR”), under the authority of Ordinance No. 778-06, passed by the Council of the City of Cleveland on June 5, 2006 and Ordinance No. 1928-07, passed by the Council of the City of Cleveland on December 10, 2007, and the (“CITY”), under the authority of Ordinance No. 12-45.

RECITALS:

1) The parties entered into an Amended Water Service Agreement under which CITY transferred ownership of its water distribution assets to PURVEYOR; and

2) Under the Amended Water Service Agreement, PURVEYOR is responsible for the capital improvements to such distribution assets, including water main replacements and rehabilitations (the “Projects”); and

3) In lieu of PURVEYOR performing all of the Projects, the parties have determined that it would be beneficial to have CITY perform certain Projects, as mutually agreed-upon by the parties, and for PURVEYOR to reimburse CITY the cost of such Projects, as further described in this Agreement.

AGREEMENT:

PURVEYOR and CITY agree as follows:

1. Scope of Agreement. This Agreement shall apply to any Projects performed by CITY for which PURVEYOR is providing reimbursement during the term of this Agreement. In instances where both parties determine that deviations from this Agreement are necessary due to the unique circumstances of a particular Project, the parties shall execute a letter agreement specifying any modifications to this Agreement. Such letter agreement shall apply solely to the particular Project for which modifications are necessary, unless otherwise specified in the letter agreement.

2. Engineering Consultants and Preparation of Design and Specifications.

A. Hiring Consultants. CITY shall hire consultants as required by its Charter and ordinances only after obtaining the written approval of PURVEYOR to perform each Project; the consultants shall design the Projects, prepare the specifications, provide engineer’s estimates of the costs of the Projects, provide construction

administration services, and preparation of as-built drawings. All designs shall be prepared in accordance with PURVEYOR's standards and details.

- B. Payments to Consultant. CITY shall be responsible for making all payments to its consultants. Throughout each Project, CITY 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 CITY's payments to the consultants. CITY need not obtain approval of PURVEYOR prior to making payments to CITY's consultants; however, PURVEYOR shall inform CITY of any problems PURVEYOR identifies within the documentation provided, and the parties shall cooperate in resolving such problems.
- C. Approval of Design. CITY shall obtain PURVEYOR's written approval of all final designs and cost estimates prior to bidding the construction portion of a Project. Projects 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 CITY obtains PURVEYOR's written approval of the completed design.
- D. Inspectors. In addition to CITY'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. CITY'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 Construction Administration. CITY shall obtain PURVEYOR's final approval of the as-built drawings. CITY shall submit the as-built drawings to PURVEYOR prior to PURVEYOR disinfecting the water main. Failure by CITY to submit accurate as-built drawings within the time frame required under this section may preclude funding for subsequent Projects.

3. Reimbursement of Consulting Costs.

- A. PURVEYOR shall reimburse CITY for the consulting services described in this Agreement as follows:
  - i.) Reimbursement of Design Costs. PURVEYOR shall reimburse CITY the actual amount CITY paid its consultants to perform design services for each Project up to 8% of the actual construction costs of the water work portion of the project. PURVEYOR shall pay CITY after receipt of an invoice and concurrent with PURVEYOR's payment of the estimated construction costs described in Paragraph 5 A. below.
  - ii.) Approval of Construction Administration Costs. CITY 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.

- iii.) Reimbursement of Construction Administration Costs. PURVEYOR shall reimburse CITY for construction administration for actual costs incurred, but not to exceed 5% of the actual construction cost of the water work, as calculated under Paragraph 5 A below. PURVEYOR shall pay CITY after receipt of an invoice in accordance with the time schedule set forth in Paragraph 5 A below.

4. Soliciting Bids, Selecting a Contractor, and Constructing the Project.

- 1. CITY shall perform the bid process for each Project pursuant to its charter and ordinances, and enter into a contract with the contractor(s) for the work. CITY shall provide the bid prices of each bidder to PURVEYOR within five (5) days of CITY's bid opening. CITY shall award the contract to the contractor after consulting with and obtaining the written approval of PURVEYOR after the bid opening and prior to hiring the contractor(s).
- B. Payments to Contractor(s). CITY shall be responsible for making all payments to its contractor(s). Throughout each Project, CITY 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 this Agreement, CITY need not obtain approval of PURVEYOR prior to making payments to CITY's contractor(s); however, PURVEYOR shall inform CITY of any problems PURVEYOR identifies within the documentation provided, and CITY shall cooperate with PURVEYOR in resolving such problems.
- C. Bid Items. CITY shall bid the water work portion of its Projects on an itemized unit price basis. Table 1 lists the water work unit items. CITY shall include in the bid sheets. Allowable water work bid items may include reasonable contingency (10% or less) and other allowance items. When bidding in conjunction with a road project, CITY shall ensure that the water work is clearly 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 project, PURVEYOR shall reimburse CITY for pavement restoration up to a total width not to exceed twelve (12) feet. PURVEYOR shall not reimburse the cost of pavement restoration when water work is performed in conjunction with roadwork or resurfacing projects, except that PURVEYOR will reimburse the cost of providing back-fill and temporary pavement when street reconstruction projects are performed, and shall additionally reimburse the cost of base replacement within the trench area when resurfacing projects are performed.
- E. Warranty. CITY 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, including re-taps 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 Project. 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. CITY shall not include a contingency allowance of greater than 10% of the water work for any Project and must obtain the prior written approval of PURVEYOR before authorizing the performance of any contingency work greater than \$20,000 or 5% of the water work portion of the project, whichever is less.
- H. Change Orders. CITY shall obtain the prior written approval of PURVEYOR prior to issuing any change orders greater than \$20,000 or 5% of the water work portion of the project, whichever is less, including but not limited to, orders for changes in bid item quantities and compensation for changes in work site conditions.
5. Reimbursement of Costs.
- A. PURVEYOR shall pay CITY in advance for the estimated Construction, Administrative and Design costs of each Project. PURVEYOR shall compensate CITY based on the bid prices of the winning bidder, provided that the average total cost (defined as the total water work cost divided by the lineal feet of water main work) to perform the water work portion of each Project falls within a range as shown in Table 2. Should the average total cost fall outside the range of acceptable average costs as shown in Table 2, PURVEYOR shall instead pay the upper or lower limit value shown in Table 2, whichever is closer to the actual average total cost. PURVEYOR shall pay CITY for the actual design and estimated administrative and construction costs within thirty (30) days of receipt of an invoice.
- i.) Approval of Construction Costs and Release of Retainage. CITY shall obtain PURVEYOR's written approval of the final payments made to CITY's contractor(s) prior to the release of any retainage. PURVEYOR shall cooperate in issuing its written approvals to ensure that CITY is able to release any retainage within the time frames which may be required by the Charter and Codified Ordinances of CITY.
- ii) Actual Construction Costs. Within fifteen (15) days after completion of the water work portion of each Project, CITY shall determine the actual cost of the water work portion of the Project, and shall either invoice PURVEYOR for any deficiency in the amount paid in advance, or reimburse PURVEYOR for any overpayment within forty five (45) days of completion of a Project. The amount reimbursed shall not exceed nor fall below the range of the approved average total cost for the water work, as more fully described above.
- iii.) In accordance with Article 8.02 of the Water Service Agreement between the parties, PURVEYOR shall not be obligated to reimburse CITY for any street opening and traffic permits.

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

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

8. Notices. All notices that may be proper or necessary to be served shall be sent by regular mail, postage prepaid, to the following address or to such other addresses as the parties may designate:

To the PURVEYOR:

Commissioner  
Division of Water  
City Of Cleveland Department of Public Utilities  
1201 Lakeside Avenue  
Cleveland, OH 44114-1175

To the CITY:

City Engineer  
11545 Royalton Road  
North Royalton, OH 44133

9. Term. The term of this Agreement shall begin on the date set forth above, and expire on December 31, 2012, at which point, all work performed pursuant to Projects under this agreement shall be completed and invoiced. Any outstanding warranties shall survive the expiration of this Agreement.

10. Definition. The definitions contained in this Agreement shall be the same as those contained in the Water Service Agreement entered into between the parties.

11. 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 this 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.

The parties have signed their approval to the terms and conditions of this Agreement:

**CITY OF CLEVELAND**

**CITY OF NORTH ROYALTON**

By: \_\_\_\_\_

By: \_\_\_\_\_

BARRY A. WITHERS  
Printed Name

Robert A Stefanik  
Printed Name

DIRECTOR OF PUBLIC UTILITIES  
Title

MAYOR  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

The legal form and correctness of this Agreement are approved.

The legal form and correctness of this Agreement are approved.

**BARBARA A. LANGHENRY**  
Interim Director of Law

By \_\_\_\_\_  
Anka M. Davis  
Assistant Director of Law

By: \_\_\_\_\_  
Thomas Kelly  
Director of Law

Date: \_\_\_\_\_

Date: \_\_\_\_\_