

EMERGENCY

City of Cincinnati

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An Ordinance No. _____ - 2022

AUTHORIZING the City Manager to execute an *Amended and Restated Water Service Agreement* between the City of Cincinnati and the Village of Addyston, Ohio.

WHEREAS, the City of Cincinnati (“Cincinnati”) and the Village of Addyston, Ohio (“Addyston”) are parties to a certain *Water Contract* dated February 19, 1984 for Cincinnati to supply standby and retail water service to Addyston (as amended, the “1984 Contract”); and

WHEREAS, the 1984 Contract term is currently set to expire December 31, 2022; and

WHEREAS, the City and Addyston desire to amend and restate the terms of the 1984 Contract in order to, among other terms, allow for Cincinnati to continue to provide surplus water and retail service to Addyston until December 31, 2050; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute an *Amended and Restated Water Service Agreement* between the City of Cincinnati and the Village of Addyston (“Addyston”) in substantially the same form as Attachment A attached hereto.

Section 2. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the terms of the agreement as amended and restated.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the

emergency is the immediate need to execute the amended and restated agreement to enable Cincinnati to continue to provide water service to Addyston to beyond the current contract expiration date of December 31, 2022.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

**AMENDED AND RESTATED
WATER SERVICE AGREEMENT**
(standby and retail service to Village of Addyston)

This *Amended and Restated Water Service Agreement* (“**Agreement**”) is made and entered into effective as of the Effective Date (defined on the signature page hereof) between the CITY OF CINCINNATI, an Ohio municipal corporation, the address of which for the purposes of this Agreement is 4747 Spring Grove Avenue, Cincinnati, Ohio, 45232 (“**Cincinnati**”) and the VILLAGE OF ADDYSTON, an Ohio municipal corporation (“**Addyston**”) located at 235 Main Street, Addyston, Ohio 45001.

RECITALS

- A. Cincinnati owns and operates the Greater Cincinnati Water Works (GCWW), a city department and municipal water utility that treats and supplies water to properties within Cincinnati pursuant to Ohio Constitution Article XVIII, Section 4. Cincinnati is empowered pursuant to Ohio Constitution Article XVIII, Section 6 and Cincinnati City Charter Article IV, Section 9 to sell and deliver surplus water outside of the Cincinnati city limits as may be authorized by Cincinnati City council. GCWW is licensed by the Ohio EPA to operate as the Cincinnati Public Water System, a R.C. 6109 public water system.
- B. Addyston owns and operates the Addyston Village PWS, a municipal water utility, which is licensed by the Ohio EPA as a R.C. 6109 public water system to treat and distribute water to properties within its corporate boundaries, and is empowered pursuant to Ohio Constitution Article XVIII, Sec. 4 to contract with Cincinnati to purchase water and water service for properties within the Village of Addyston.
- C. Cincinnati and Addyston are parties to a *Water Contract* dated February 19, 1984, as amended by a *Supplement* dated February 14, 1989, a *Second Supplement* dated August 11, 1993 (adding an area of retail service), and a *Third Supplement* dated December 7, 1993, a *Fourth Amendment* dated January 18, 2006 (adding a second area of retail service), a *Fifth Amendment* dated December 21, 2017, a *Sixth Amendment* dated December 30, 2020, and *Seventh Amendment* dated December 27, 2021 (as amended “**Original Agreement**”) for Cincinnati to: 1) to provide Addyston with standby water service in case of emergency or maintenance of the Addyston PWS; and 2) provide retail water service to customers in retail area as defined in the Original Agreement, which will expire December 31, 2022.
- D. The parties desire to amend and restate the terms of the Original Agreement in order to allow for Cincinnati to continue to provide surplus water and retail water service to Addyston on the terms and conditions provided herein.

A. This Agreement is authorized by Addyston Village Council Ordinance no. _____ dated _____ and Cincinnati City Council Ordinance no. _____ dated _____.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, the parties do hereby agree as follows:

1. DEFINITIONS. Except as otherwise expressly indicated in this Agreement, the terms herein shall have the meaning defined in this Section 1 (*Definitions*).

A. “GCWW” shall mean the Greater Cincinnati Water Works, the department of the City of Cincinnati that operates the Cincinnati Water System.

B. “Cincinnati Water System”. The water supply, production, treatment, transmission, storage, distribution, billing, collections and related facilities owned and/or operated by Cincinnati for itself, its inhabitants, and for all other areas served by Cincinnati (including Addyston), in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio. The Cincinnati Water System shall include the Addyston Retail Water Area as defined herein.

C. “Cincinnati Requirements”. The Cincinnati ordinances (including, without limitation, applicable portions of the Cincinnati Municipal Code), laws, standards, specifications, engineering drawings, policies, and rules and regulations governing GCWW, as may be amended or changed by Cincinnati from time to time.

D. “Addyston Village PWS”. The wells, pumps, water storage, distribution, and related facilities owned and/or operated by Addyston for itself and its inhabitants, in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio. Except as may be expressly provided herein, the Addyston Village PWS shall include all facilities beyond the master meter in the Standby Area.

E. “Addyston Retail Water Area”. Also referred to as the “Retail Area”, shall mean the areas labeled on Exhibit A as “1993 Retail Section” and “2006 Retail Section” as depicted on Exhibit A.

F. “Addyston Standby Water Area”. Also referred to as the “Standby Area”, shall mean the area labeled “GCWW Standby Water Service Area” on Exhibit B.

G. Water. Surplus treated water determined in Cincinnati’s sole discretion not to be needed by Cincinnati or its inhabitants.

H. Distribution Main. “Distribution Main” means any main intended primarily to serve properties abutting the street or road in which the main is laid.

I. Director. “Director” means the Director of GCWW, also known as the Superintendent pursuant to the Charter of the City of Cincinnati.

J. City Manager. "City Manager" means the City Manager of Cincinnati.

2. TERM; TERMINATION.

A. **Term.** The parties intend and agree that this Agreement shall be a continuation of and supersede the Original Agreement in accordance with the amended and restated terms herein. Except for those provisions which expressly survive termination, this Agreement shall remain in full force and effect until midnight of December 31, 2050 ("**Expiration Date**", the effective period of this Agreement shall be referred to as the "**Term**"). During the year prior to the Expiration Date, Cincinnati will make best efforts to notify Addyston, and both parties agree to negotiate in good faith for a new agreement or an amendment to extend the Term. If the Term is not extended, this Agreement will expire on the Expiration Date. Following the termination of this Agreement for any reason, Cincinnati may continue, but shall not be required, to provide water service to Addyston at rates to be established by Cincinnati in accordance with then existing laws.

B. **Termination.** From and after termination of this Agreement:

i. Cincinnati shall be entitled to retain ownership of any capital improvements within the Addyston corporate limits that are determined, in Cincinnati's sole discretion, to be useful and/or necessary to serve any portions of the Cincinnati Water System outside of the corporate limits of the Village of Addyston. Cincinnati shall retain the rights to use the relevant easement and/or right of ways per Section 7 (*Right to Use*) of this Agreement as long as the improvements retained by Cincinnati under this subsection 2(B) (*Termination*) remain in use for Cincinnati Water System operations.

ii. Within a reasonable amount of time following termination, Addyston shall pay to Cincinnati:

- a. the costs of all capital improvements within the Addyston corporate limits that are not retained by Cincinnati per section 2(B)(i) above to the extent that debt service (principal and interest) remains unpaid or that the asset has not been fully depreciated;
- b. all associated and ongoing costs, if any, (including operation and maintenance, regulatory compliance, etc.) of such capital improvements, to fairly compensate Cincinnati for costs incurred by Cincinnati due to Addyston's discontinuation of water service, and
- c. the costs to Cincinnati of transitioning Addyston to an alternate water service, including without limitation transfer of system, engineering or customer billing/account information, installation of valves or other equipment.

iii. Once Addyston has paid to Cincinnati all amounts listed in 2(B)(ii), Cincinnati will transfer to Addyston ownership of those capital improvements within Addyston limits that have not been retained by Cincinnati pursuant to this Section 2(B).

3. SUPPLY OF WATER NOT GUARANTEED. Cincinnati's furnishing of water service under this Agreement is pursuant to Cincinnati's municipal authority under the Ohio Constitution to sell Water (defined above as surplus water). The Parties agree and acknowledge that the supply of Water to Addyston, its inhabitants, and properties within the corporate limits of the Village of Addyston, is at all times dependent upon the existence of a surplus of water beyond the amount of water needed for users located within the corporate boundaries of the City of Cincinnati. Except a) where a surplus does not exist; b) in the case of breaks in mains, serious damage to reservoirs or pumping equipment, or other emergencies or necessities (in which case the water may be shut off without notice); c) where an insufficient supply of water exists, or d) where insufficient water is available at the Connections located outside of the corporate limits of Cincinnati, Cincinnati will use its best efforts to provide a potable, stable, and adequate supply of water to Addyston, its inhabitants, and properties within the corporate limits of the Village of Addyston. In the event of the occurrence of any of the conditions in the preceding sentence, Cincinnati shall have the right to allocate and prioritize Water service on a reasonable basis among the other non-Cincinnati political subdivisions served by Cincinnati (including those served by standby, wholesale or other water service), and there shall be no prior rights to service by reason of earlier date of contract. Cincinnati shall not be liable for any damages for its failure to furnish water, and in no event shall Cincinnati be liable for consequential or special damages by reason of any failure to furnish water or to maintain any minimum of water pressure, it being understood that the pressure and supply of water is not guaranteed to consumers.

4. STANDBY WATER SERVICE

A. **Standby Service.** Provided that the Cincinnati Water System has available Water as provided in Section 3 (*Supply of Water Not Guaranteed*) hereof, following Addyston's prior notification to Cincinnati as provided below, Cincinnati will make best efforts to furnish standby water service to the Addyston Village PWS (*Standby Area*) on a temporary basis through the Connections (as defined herein) for the following needs and no others:

i. Emergency Use. Addyston shall obtain prior verbal approval from GCWW Distribution Dispatch at (513)591-7700 (24 hour) to operate the Connections to access emergency standby water. Within 24 hours of verbal approval, Addyston shall provide written notice to the GCWW Director of the reason for and extent of use of emergency standby water. For purposes of this section, an "Emergency" shall be defined as any situation arising from fire, flood, storm, contamination, water main break, or other malfunction or breakdown of a water system or unpotable condition of water in a water system, or a similar emergency condition causing an immediate threat to the life, health, property or normal business of the customers served by the water system experiencing

the emergency. The parties agree that inadequate water supply due to inadequate facilities and/or high seasonal demand shall not be considered an emergency.

ii. Non-Emergency Use. Addyston may request to purchase surplus water for non-emergency purposes, such as system maintenance, which shall only be accessed with the prior written approval of GCWW.

Addyston shall not supply the surplus water provided through standby service to properties outside of the corporate boundaries of the Village of Addyston (as may be modified from time to time). Addyston shall pay Cincinnati for standby water usage in accordance with Section 9 (*Water Rates*) hereof.

B. Connections and Master Meters. There is one existing connection for surplus water delivery between the Cincinnati Water System and the Addyston Village PWS located at approximately 250 First Street (Fiddler's Green Rd.) (including any connections installed in the future, the "**Connections**"). Cincinnati shall own and be responsible for maintaining and replacing the existing master meters at the Connections. Other than the master meters, Addyston shall own and be responsible for the maintaining, repairing, operating, replacing and testing of the water facilities comprising the Connections, including the pressure regulator valves, meter pits, backflow preventers and other related appurtenances, in accordance with the Cincinnati Requirements as well as any applicable state and federal regulations. Addyston may add or upgrade the Connections at its own cost and in accordance with plans approved by Cincinnati. The initial master meter cost at a new connection shall be Addyston's responsibility. Upon termination or expiration of this Agreement, Addyston shall remove and plug the Connections subject to the inspection and approval of GCWW. Any and all work performed by Addyston pursuant to this Agreement shall conform in all respects to the Cincinnati Requirements and will be subject to GCWW inspection and approval.

5. RETAIL WATER SERVICE

A. Retail Service. During the Term (as defined herein) and subject to the terms and conditions of this Agreement and the Cincinnati Requirements, Cincinnati shall provide Water and the water services described herein on a retail basis (including distribution, metering, billing, and collection) to the inhabitants and properties within the Retail Area.

B. 2006 Retail Section. Addyston may terminate GCWW retail water service to the 2006 Retail Section provided that Addyston has delivered to Cincinnati: 1) written notice of termination no less than three (3) months prior to the effective date of termination; 2) Addyston Village Engineer's certification that all necessary improvements have been completed to adequately provide retail service to the 2006 Retail Section; 3) documentation of Addyston Village Council approval of the termination; and 4) a letter from the Ohio Environmental Protection Agency (OEPA) indicating its approval of Addyston's plan to provide retail service to the 2006 Retail Section and of the termination of GCWW retail service to the 2006 Retail Section. The provisions of Section

2(B)(*Termination*) shall apply to the transition of ownership from Cincinnati to Addyston if GCWW retail service to the 2006 Retail Section is terminated in accordance with this subsection.

C. Cincinnati shall retain ownership of the water main between Affirmed Drive and Fiddler's Green Road (aka 1st Street), if such main has been constructed, along with the right to use any easements or rights-of-way owned by Addyston and needed for Cincinnati to maintain, operate, repair, or replace such water main. At Addyston's request, Addyston may construct, at its sole cost, an additional emergency Connection along the water main between Affirmed Drive and Fiddlers Green Road (at a mutually agreed upon site), provided that the design, inspection and construction of the interconnection shall be reviewed and approved by GCWW and conform with Cincinnati Requirements and that all OEPA required approvals are obtained by Addyston. Addyston shall purchase a master meter approved by Cincinnati for this emergency connection, and standby service shall be provided in accordance with the provisions of Section 4 (*Standby Water Service*) to this Agreement.

D. Restriction in Use. In recognition of the need to properly plan for an adequate supply of finished water for the Cincinnati Water System users, the water supplied to the Retail Area shall be restricted to usage within that area unless the expressed prior written consent of the Director is obtained.

E. Exclusivity. During the Term, Cincinnati Water System shall be the sole supplier and furnisher of Water to inhabitants and properties within the Retail Area. Addyston shall not furnish water to or allow others to furnish water to any property or inhabitants within the Retail Area. Addyston acknowledges and agrees that Cincinnati's construction and continued capital improvements of a water system and appurtenances to serve the Retail Area is a significant expense to Cincinnati, and revenues from Retail Area are necessary to offset those expenses and Cincinnati may rely on revenues from Addyston retail service customers to service any related debt. Addyston shall not take action or assist others in taking action, or contract with others to affect the construction or operation of any public water system to furnish Water to the Retail Area. If any property within the Retail Area should subsequently be detached or annexed to another jurisdiction such that it is no longer under the jurisdiction of the Village of Addyston, the parties agree that Cincinnati's exclusivity as to water service for such property shall not be waived, disturbed, altered or terminated, and Addyston agrees that it shall cooperate to ensure Cincinnati's continued exclusive right to service.

F. Billing and Collections. Cincinnati will read all meters; and deliver (by mail, electronically or otherwise) and collect payment of bills and charges, and audit accounts as to each account/property in the Retail Area, all in accordance with Cincinnati Requirements which shall operate no differently for persons located in Cincinnati than for those located in the Retail Area, except as expressly provided herein.

G. Maintenance and Operation. Cincinnati shall maintain, operate, repair, and replace Cincinnati Water System facilities within the Retail Area. If repairs and

replacements are necessitated as the result of negligence on the part of Addyston, or its employee(s) or contractor(s), Addyston shall reimburse Cincinnati for repair costs caused by such negligence.

H. Water Service Branches; Water Meters. Water service branches and water meters, including, without limitation, the charges for their installation, ownership, repair, replacement, and maintenance for properties in the Retail Area shall be in accordance with Cincinnati Requirements, which shall operate no differently for persons and properties located in Cincinnati than for those located in the Retail Area and other portions of the Cincinnati Water System.

I. Obligation of Owners of Property Served. Any owner of real property supplied with retail water service under this Agreement, shall be deemed to have accepted and be subject to: 1) the provisions of this Agreement, as may be amended from time to time, 2) the Cincinnati Requirements and Cincinnati enforcement thereof, and 3) liability for all water service charges for such premises, whether or not the accounts for such premises include the name of tenants, managing agents, or other persons.

J. Enforcement. As to the Retail Area, Cincinnati reserves the right to shut off service, discontinue service, disconnect the service branch and/or remove the meter to any property, consumer, or account for a breach of the terms of this Agreement, for nonpayment of bills or other violation of the Cincinnati Requirements in accordance with the Cincinnati Requirements. Such remedies shall be non-exclusive and at Cincinnati's sole discretion and shall be available in addition to any other legal remedies available to Cincinnati.

K. Retail Area Water Infrastructure.

i. Improvements for Cincinnati Water System Purposes. Cincinnati will plan for and perform replacements of existing capital improvements to Cincinnati Water System facilities in the Retail Area that are determined in Cincinnati's sole discretion to be necessary for the purpose of providing an adequate supply of Water within the Retail Area. Cincinnati shall not be required to pay for initial capital improvements requested by Addyston in the Retail Area that are determined by the Director not to be necessary for the benefit of the Cincinnati Water System (for example, relocation to accommodate utility/road improvements or economic development), which shall be subject to the terms of Section 5(K)(ii) (*Requested Water Mains*) below.

ii. Requested Water Mains. Unless determined by the Director to be necessary for the benefit of the Cincinnati Water System per Section 5(K)(i) (*Improvements for Cincinnati Water System Purposes*), any requested installation of water mains, including extension, relocation, upsizing, upgrading or replacement of distribution mains in or serving the Retail Area, shall be constructed by Addyston, developer or other requestor, and Cincinnati shall not be required to contribute to the cost of such installation from Cincinnati Water System revenue; however, Cincinnati may elect

to contribute to such costs, in accordance with an applicable plan for water main installation in Cincinnati Municipal Code Chapter 401. Once a main has been connected and placed into service, it shall become part of the Cincinnati Water System. As provided in Section 6(B) (*Control; Regulatory Compliance/Cincinnati Water System*) hereof, installations, connections and improvements to the Cincinnati Water System in the Retail Area shall be subject to the Cincinnati Requirements and Cincinnati approval, including without limitation requirements for contractor bonding, plan review, warranty and inspection and approval. Addyston shall provide Cincinnati with detailed drawings showing the location of all pipes, special castings, valves and fire hydrants installed by Addyston.

iii. **Building Permits/Water Availability.** No water main extension or service connection shall be made to serve a proposed subdivision or commercial development unless such proposed subdivision has been approved by the proper authorities in accordance with the Ohio Revised Code Chapter 711 and all other pertinent provisions of Ohio law, and, in the opinion of the Director, the subdivision or development can be adequately served, without materially affecting the water service of existing consumers, which opinion shall not be unreasonably withheld. Addyston shall submit to GCWW all building permit applications potentially affecting water usage in the Retail Area (except single family residences in subdivisions for which Cincinnati has determined within the prior 12 months that adequate water service is available) prior to issuance of the permit, for a determination of whether adequate water service is available.

6. OWNERSHIP; LAWS.

A. Ownership.

i. **Cincinnati Water System.** It is expressly agreed and understood by the parties that Addyston is contracting for the purchase of Water and other water related services under this Agreement and that nothing in this Agreement shall imply that Addyston has ownership in any portion of the Cincinnati Water System, which is expressly acknowledged to be the property of and under the control and operation of Cincinnati. During the Term, and until Cincinnati transfers ownership following termination in accordance with Section 2(B) (*Termination*) hereof, the water facilities used by Cincinnati to provide retail service within the Retail Area shall be part of the Cincinnati Water System and shall be owned by Cincinnati. This Section 6(A)(i) shall survive termination of this Agreement.

ii. **Addyston Village PWS.** It is expressly agreed and understood by the parties that Addyston is the owner of the Addyston Village PWS, and that nothing in this Agreement shall imply that Cincinnati has ownership or responsibility in any portion of the Addyston Village PWS, which is expressly acknowledged to be the property of and under the control and operation of Addyston.

B. Control; Regulatory Compliance.

i. **Cincinnati Water System.** The Cincinnati Water System is subject to strict federal, state, and local regulations related to the water system, including, without limitation, compliance with treatment and water quality requirements, management of the distribution system, billing and other standards related to the water system. Cincinnati is ultimately responsible for and shall have sole discretion to manage and operate the Cincinnati Water System, including but not limited to, capital improvements associated with the quality of water, water production or treatment facilities, water quality related equipment and facilities, decisions involving treatment techniques, rate setting, and billing and collections, including, without limitation, actions (a) for the protection of health, lives, or property, (b) renovation, replacement, or upgrade of facilities and appurtenances, (c) to ensure compliance with applicable laws and regulations, and (d) sound operation of the water utility. Because the Cincinnati Water System must operate as a whole to serve numerous jurisdictions, Cincinnati shall not be subject to the requirements of Addyston, or any other contracting jurisdiction, as to operation and management of the Cincinnati Water System. Unless otherwise specifically provided for herein, the Director is authorized to enforce within the Retail Area and as to all Connections and Master Meters all applicable Cincinnati Requirements, now or hereafter lawfully in effect. Cincinnati may at any time change the Cincinnati Requirements. The materials and workmanship of all facilities connecting to the Cincinnati Water System, including mains, reservoirs, tanks, pumping stations, and other works, shall conform to the engineering standards of GCWW (and all other Cincinnati Requirements) as interpreted by GCWW. Any facilities connecting or integrated into the Cincinnati Water System shall be subject to approval and inspection of the Director or their duly authorized representative and to GCWW inspection costs. Cincinnati shall have the right to exercise in its management of the Cincinnati Water System, including the Retail Area, Connections and Master Meters, all authority granted under applicable federal, state, and local laws related to the operation and management of a municipal water utilities.

ii. **Addyston Village PWS.** Addyston, as the owner and operator of the Addyston Village PWS, is solely responsible for and shall have sole discretion to manage and operate the Addyston Village PWS. Cincinnati shall not have any responsibility for the Addyston Village PWS, and Addyston shall not be subject to the Cincinnati Requirements in its management of the Addyston Village PWS. Cincinnati shall not have any responsibility or liability for any claims arising from Addyston's failure to maintain or repair any facilities for which it is responsible under this Agreement.

7. RIGHT TO USE. Cincinnati, its successors and assigns as to the ownership of the Cincinnati Water System, shall have the right to use all existing easements and rights-of-way within the Village of Addyston when required for any purposes under this contract, including, but not limited to construction, operation, maintenance, repair, and replacement of water mains and other appurtenances to the Cincinnati Water System which right shall not be terminated as long as Cincinnati, its successor or assigns are furnishing water to Addyston or through Addyston to other areas of the Cincinnati Water System. Cincinnati shall obtain a street opening or other similar permit from and perform work according to

the requirements of Addyston; however, Addyston shall not require Cincinnati to pay any permit, license, fees, or taxes of any kind, except as may be required by State law. When required by Cincinnati, Addyston shall apply its power of eminent domain to acquire easements or other property ownership necessary for the Cincinnati Water System capital improvements. Provided that the exercise of eminent domain does not also serve an Addyston or other right-of-way purpose, Cincinnati shall reimburse Addyston for the costs of just compensation to the owners of the property for which eminent domain is exercised. Following construction, reconstruction, maintenance, repair, laying, relaying or replacement of water mains in the streets of Addyston, Cincinnati shall restore such streets to their original condition to the satisfaction of Addyston; however, Cincinnati shall not be required to repave or resurface any part of any street not opened by it in connection with such work. Cincinnati shall make best efforts to complete all water main work in the Village of Addyston within a reasonable amount of time following commencement.

8. FIRE HYDRANTS.

A. Use of Water. With the exception of the use of Water from public fire hydrants for firefighting by fire departments organized under Ohio law, no water shall be taken from fire hydrants in the Retail Area other than for fire purposes, except: 1) as may be authorized in advance in writing by Cincinnati in accordance with the Cincinnati Requirements, and 2) provided a permit is obtained from GCWW.

B. Fire Hydrants. Fire hydrants within the Retail Area shall be subject to the terms below:

i. Addyston shall be responsible for installation, removal, flushing, testing, maintenance, operation, repair, and replacement of all public fire hydrants in Addyston at no cost to Cincinnati.

ii. Installation, maintenance, repair, operation, replacement and removal of fire hydrants connected to the Cincinnati Water System shall conform to the Cincinnati Requirements, and be subject to GCWW inspection, which inspection shall be at no cost to Addyston.

iii. Any flushing of public fire hydrants by Addyston shall be conducted in accordance with the Cincinnati Requirements for the Cincinnati Water System. Addyston shall be responsible for any damage to the Cincinnati Water System caused by flushing of fire hydrants conducted in contravention of the Cincinnati Requirements.

iv. Any other expenses incurred by Cincinnati in connection with any installation, repair, maintenance, replacement, or removal of fire hydrants performed on an emergency basis shall be paid by Addyston on the basis of cost including overhead as calculated annually by Cincinnati for the Cincinnati Water System. The respective fire officials will, on a quarterly basis, provide the Director an estimate of the amount of water used by them for fire purposes.

v. Addyston shall furnish to Cincinnati reproducible, detailed drawings showing the location of all pipes, special castings, valves, and fire hydrants installed in the Retail Area under their responsibility.

vi. Addyston may impose and enforce additional requirements for private fire protection facilities beyond those required for the Cincinnati Water System. Cincinnati shall have no obligation to enforce such requirements.

9. WATER RATES. From time to time, Cincinnati City Council shall fix by ordinance the charges for water supplied to political jurisdictions and to retail customers in the City of Cincinnati. Nothing in this Agreement shall limit in any way Cincinnati’s right to establish rates for water supplied to customers in Cincinnati. During the Term, the rates for service under this Agreement shall be as follows:

A. Standby Water. Addyston shall pay for emergency and non-emergency standby water at rates for water used by political subdivisions (currently Cincinnati Municipal Code 401-81 "Political Subdivision Rates") as fixed by ordinance of the Council of Cincinnati from time to time. The current rates established for 2023 and 2024 are:

Period	Political Subdivision rate
Winter (Jan-May & Nov-Dec 2023)	\$3.45/ccf
Summer (May - Oct 2023)	\$4.11/ccf
Winter (Jan-May & Nov-Dec 2024)	\$3.64/ccf
Summer (May - Oct 2024)	\$4.33/ccf

Payment for standby water furnished shall be made within 30 days after billing by Cincinnati. Payment is agreed to be for the purchase of water and water service and shall not be interpreted to be for the purchase of any portion of the Cincinnati Water System or other Cincinnati-owned property used in providing water and/or water service.

B. Retail Water Service. Notwithstanding any other provisions in this Agreement, the rate charged to the retail customers under this Agreement shall be fixed at 1.25 times (“**Rate Differential**”) the rate charged to customers in the City of Cincinnati pursuant to the Cincinnati Municipal Code as may be amended from time to time. The Parties agree that the Rate Differential established by this Section 9(B) (*Water Rates/Retail Water Service*) has been set by agreement, in consideration of the mutual promises set forth herein. No Party shall claim or contend, in any court, arbitration, or other dispute resolution forum, based on any statute or otherwise, that the rate established by this Agreement is improper or the product of non-acceptable methodology, and the Parties hereby waive any such rights and covenant not to bring any such claim. Billing and collection of retail water service customers (including, but not limited to meter reading, billing, collection, auditing, and appeals) shall be in accordance with the Cincinnati Requirements and other procedures, which shall operate no differently for

persons located in Addyston than for those located in the City of Cincinnati (except as to the Rates).

10. NOTICES

All legal notices required under this Agreement shall be personally served or sent by first class U.S. mail, postage prepaid, addressed to the parties as follows, or to such other addresses as a party may designate in writing for such purpose:

To Cincinnati:

City of Cincinnati
Greater Cincinnati Water Works
Attention: Director's Office
4747 Spring Grove Ave
Cincinnati, Ohio 45232

To Addyston:

Village of Addyston
235 Main St.
Addyston, OH 45001

However, if Addyston sends a notice to Cincinnati alleging that it is in default under this Agreement or that Addyston desires to terminate or not renew the Agreement, it shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, and Cincinnati, OH 45202.

11. GENERAL PROVISIONS

A. No Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Cincinnati or Addyston.

B. Waiver. This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

C. Entirety; Conflict. This Agreement and any documents, laws, codes, regulations, or written policies specifically identified herein and in the Exhibits contain the entire contract between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

D. Severability. In the event that any provision of this Agreement is declared

to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions. Each provision of this Agreement will be and is deemed to be separate and separable from each other provision.

E. Choice of Law; Joint Preparation. This Agreement is entered into and is to be performed in the State of Ohio. Cincinnati and Addyston agree that the laws of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties under and related to this Agreement and shall govern the interpretation of this Agreement without regard to choice of law and conflicts of law principles. This Agreement has been jointly prepared by the parties hereto and shall not be construed more strictly against either party.

F. Forum Selection. The parties, their successors and assigns acknowledge and agree that all state courts of record sitting in Hamilton County, Ohio, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment or attachment thereto, including any duty owed by Cincinnati to Addyston in connection therewith. However, in the event that any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the parties agree that the exclusive venue for such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Ohio.

G. Electronic, Counterpart and PDF Signatures. This Agreement may be executed in counterparts, and an electronic, facsimile or PDF signature shall be deemed to be, and shall have the same force and effect as, an original signature.

H. Official Capacity. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of Cincinnati in other than his or her official capacity.

I. Amendment. This Agreement may be modified or amended only by a written instrument duly executed by the parties hereto.

12. EXHIBITS. The following exhibits are attached hereto and incorporated herein by reference.

- Exhibit A –Map of Retail Area
- Exhibit B – Map of Standby Area

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates reflected below, effective as of the later of such dates ("**Effective Date**").

VILLAGE OF ADDYSTON

By: _____
Lisa Mear, Mayor

Date: _____, 2022

Approved as to Form by:

Village of Addyston, Law Director

[CITY OF CINCINNATI SIGNATURE PAGES FOLLOW]

CITY OF CINCINNATI

By:

Sheryl M. M. Long, City Manager
Date: _____, 2022

RECOMMENDED BY:

Verna J. Arnette, Interim Executive Director
Greater Cincinnati Water Works

APPROVED BY DEPARTMENT OF
ECONOMIC INCLUSION:

Collin Mays, Director

APPROVED AS TO FORM BY:

Assistant City Solicitor

CITY PURCHASING APPROVAL BY:

Bobbi Hageman,
Chief Procurement Officer

CERTIFICATION OF FUNDS:

Date: _____
Funding: _____
Amount: _____

Karen Alder, Cincinnati Finance Director

EXHIBIT B-Map of Standby Area (on Effective Date)

