

EMERGENCY

City of Cincinnati

AEY

An Ordinance No. _____ - 2020

AUTHORIZING the City Manager to execute a *Water Service Agreement* between the City of Cincinnati and the City of Wyoming, Ohio for the continued sale of standby water to the City of Wyoming.

WHEREAS, the City of Cincinnati (“Cincinnati”) owns and operates the Greater Cincinnati Water Works (GCWW), a municipal water utility that supplies water to its inhabitants, and 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; and

WHEREAS, the City of Wyoming, Ohio (“Wyoming”) owns and operates the Wyoming Water Works, a municipal water utility that supplies water to its inhabitants and is empowered pursuant to Ohio Constitution Article XVIII, Section 4 to contract to purchase water to be supplied to its inhabitants; and

WHEREAS, for several decades, Cincinnati has provided standby surplus water to Wyoming pursuant to a certain *Agreement* between the parties dated May 15, 1958, as amended by a *First Amendment* dated December 20, 2017, which will expire December 31, 2020; and

WHEREAS, the parties desire to enter into a new *Water Service Agreement* to provide updated terms for Cincinnati to continue to provide standby water service to Wyoming; 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 a *Water Service Agreement* between the City of Cincinnati (the “City”) and the City of Wyoming, Ohio (“Wyoming”) in substantially the form of Exhibit A attached hereto (the “Agreement”).

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*.

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 4. of the Charter, be effective immediately. The reason for the

emergency is the immediate need to execute the Agreement prior to the December 31, 2020 expiration of the current water service contract.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

WATER SERVICE AGREEMENT
(standby service to City of Wyoming)

This *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 CITY OF WYOMING, an Ohio municipal corporation, the address of which 800 Oak Avenue Wyoming, OH 45215 ("**Wyoming**").

RECITALS

- A. Cincinnati owns and operates the Greater Cincinnati Water Works (GCWW), a municipal water utility that supplies water to its inhabitants, and 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.
- B. Wyoming owns and operates the Wyoming Water Works, a municipal water utility that supplies water to its inhabitants and is empowered pursuant to Ohio Constitution Article XVIII, Section 4 to contract to purchase water to be supplied to its inhabitants.
- C. For several decades, Cincinnati has provided standby surplus water to Wyoming pursuant to a certain *Agreement* between the parties dated May 15, 1958, as amended by a *First Amendment* dated December 20, 2017 ("**1958 Agreement**"), which will expire December 31, 2020.
- D. The parties desire to enter into a new Agreement for Cincinnati to provide standby emergency water service to Wyoming on the terms and conditions provided herein.
- E. This Agreement is authorized by Wyoming City 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, Cincinnati and Wyoming do hereby agree as follows:

- 1. **TERM.** The term of this Agreement shall commence on the Effective Date and continue until December 31, 2051. This Agreement may be terminated by either party upon one hundred and eighty (180) days prior written notice to the other party. The 1958 Agreement shall terminate effective as of the Effective Date.

2. **DEFINITIONS.** Except as otherwise expressly indicated in this Agreement, the terms herein shall have the meaning defined in this Section 2.

- A. **Cincinnati Water System.** The water supply, production, treatment, transmission, storage, distribution, and related facilities owned and/or operated by Cincinnati for itself, its inhabitants, and for all other areas served by Cincinnati, in accordance with powers conferred upon municipalities by the Constitution and the laws of the State of Ohio.
- B. **Wyoming Water System.** The water supply, production, treatment, transmission, storage, distribution, and related facilities owned and/or operated by Wyoming for itself, its inhabitants, and for all other areas served by Wyoming, in accordance with powers conferred upon municipalities by the Constitution and the laws of the State of Ohio.
- C. **Cincinnati Rules and Regulations.** The ordinances (including relevant portions of the Cincinnati Municipal Code), laws, standards, specifications, rules, and regulations governing the Cincinnati Water Works.

3. **STANDBY WATER SERVICE**

- A. **Service from Cincinnati to Wyoming.** Provided that the Cincinnati Water System has available surplus water as provided in Section 3(b) hereof, following Wyoming prior notification to Cincinnati as provided below, Cincinnati will make best efforts to furnish standby water service to Wyoming on a temporary basis through the Connections (as defined herein) for the following needs and no others:
 - i. **Emergency.** Wyoming 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, Wyoming shall provide written notice to the GCWW Director of the reason for and extent of use of emergency standby water. For purposes of this Agreement, an "Emergency" is defined as any situation arising from fire, flood, storm, 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. It is especially understood and agreed that inadequate water supply due to inadequate facilities and/or high seasonal demand shall not be considered an emergency.
 - ii. **Non-Emergency Use.** In the event Wyoming wishes to purchase surplus water from Cincinnati for non-emergency purposes, such as system maintenance, said water may only be provided with the prior written approval of Cincinnati.
- B. **Surplus Water.** The parties agree that Cincinnati shall supply standby water service to Wyoming only when Cincinnati has available surplus water beyond the water service needs of customers within the City of Cincinnati. Notwithstanding anything to the contrary in this Agreement, Cincinnati shall be excused from providing standby water if it is experiencing an

exigency or emergency such as in the case of mains breaks, serious damage to reservoirs or pumping equipment, or other emergencies or necessities (in which case the water may be shut off without notice). Wyoming further agrees and understands that since the location of Wyoming's connections to the Cincinnati Water System are not within the corporate limits of Cincinnati, that service to Wyoming, or any other areas on a standby basis, is at all times dependent upon the availability of sufficient water to Wyoming's connection.

- C. **No Priority; Guarantee.** Cincinnati shall have the right to prioritize water service to the residents of the City of Cincinnati over all other customers. Cincinnati shall have sole discretion to adjust the prioritization and allocation of water service among non-Cincinnati customers. Cincinnati does not guarantee the ability to furnish water or minimum pressure to Wyoming.

- D. **Connections.** There currently are two existing connections for surplus water delivery between Cincinnati Water System and the Wyoming Water System located at Burns Avenue (at Washington Avenue) and near 559 Compton Avenue (including any subsequently added connections, the "Connections"). Cincinnati shall own and be responsible for maintaining and replacing the master meters, gate valves, and piping at the Connections as well as maintenance of the meter pit. Wyoming shall own and be responsible for the maintenance, repair, operation, replacement and testing of the Connections, including the pressure regulator valves, surge valve, backflow preventer and other related appurtenances. Wyoming may add or upgrade the Connections at its own cost and in accordance with plans approved by Cincinnati. Upon termination or expiration of this Agreement, Wyoming shall remove and plug the Connections subject to the inspection and approval of GCWW. Any and all work performed by Wyoming pursuant to this Agreement shall conform in all respects to the Cincinnati Rules and Regulations and standards and will be subject to GCWW inspection and approval.

4. COMPENSATION.

- A. Wyoming shall pay for standby water used for emergency and non-emergency purposes at rates fixed from time to time by ordinance of the Council of Cincinnati for water used by political subdivisions (currently Cincinnati Municipal Code 401-81). The "Political Subdivision Rates" for 2021 are:

Period	Political Subdivision rate
Jan 1 -- Apr 30, 2021	\$3.15/ccf
Nov 1 – Dec 31, 2021	
May 1 -- Oct 31, 2021	\$3.75/ccf

- B. **Payment.** Payment for 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 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.

5. RIGHT TO USE. Cincinnati, its successors and assigns as to the ownership of the Cincinnati Water System, shall have the continuing right to use all existing easements and rights-of-way within the City of Wyoming for construction, operation, maintenance, repair, and replacement of existing GCWW water mains and other appurtenances as granted in the 1958 Agreement. Cincinnati's rights in this paragraph shall not be terminated or considered abandoned as long as Cincinnati, its successor or assigns are furnishing water to Wyoming or areas north, northeast or northwest of Wyoming and shall survive expiration or other termination of this Agreement. The existing water main in Burns Avenue, Chestnut Avenue, North Park Avenue, North Avenue and Springfield Pike as generally depicted in Exhibit A (*Location of GCWW Water Main easement*) hereto and related appurtenances are expressly included in this easement. Cincinnati shall have the right to record a copy of this Agreement in the Official Records of the Hamilton County Recorder memorializing the location and terms of this easement.

6. CONSTRUCTION AND RESTORATION. Following construction, reconstruction, maintenance, repair, laying, relaying or replacement of water mains in the streets of Wyoming, Cincinnati shall restore such streets to their original condition to the satisfaction of Wyoming; 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 City of Wyoming within a reasonable amount of time following commencement.

7. EXCLUSIONS OF DAMAGES; LIMITATIONS OF LIABILITY. Except with respect to (i) a breach or inaccuracy of any representations or warranties hereunder, (ii) a breach of obligations to follow applicable laws and regulations; or (iii) a party's gross negligence, willful misconduct or fraud, neither party shall be liable for any damages. Notwithstanding the foregoing: (x) neither party shall be liable, for any indirect, incidental, special or consequential damages suffered by the other party hereto as a result of any breach of this agreement, even if the other party has been advised of the possibility of such damages, and (y) nothing Agreement shall be construed to make Cincinnati in any way responsible for the Wyoming Water System, including but not limited to its improvement, maintenance, repair or the quality of the water beyond the connection, and (z) Cincinnati shall not have any liability for damages regarding supply of water or minimum pressure.

8. 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 Wyoming.
- 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. In the
 - 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 Wyoming 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 Wyoming 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.
9. **EXHIBITS.** The following exhibits are attached hereto and incorporated herein by reference.
Exhibit A –Location of GCWW Water Main easement

[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**").

CITY OF WYOMING

By: _____
Rusty Herzog, Acting City Manager

Date: _____

APPROVED AS TO FORM BY:

Emily Supinger, City Solicitor

[CITY OF CINCINNATI SIGNATURE PAGES FOLLOW]

CITY OF CINCINNATI

By: _____

Paula Boggs Muething,
City Manager

Date: _____, 2020

RECOMMENDED BY:

Cathy B. Bailey, Director
Greater Cincinnati Water Works

**APPROVED BY DEPARTMENT OF
ECONOMIC INCLUSION:**

Jennifer Mackenzie, Interim 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 A -Location of GCWW Water Main easement

