

EMERGENCY

City of Cincinnati

ALA

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An Ordinance No. \_\_\_\_\_

- 2021

**AUTHORIZING** the City Manager to execute a *Water Service Agreement* between the City of Cincinnati and the Village of Glendale, Ohio.

WHEREAS, the City of Cincinnati (“City”) provides standby and retail water service to the Village of Glendale, Ohio (“Glendale”) pursuant to a *Water Service Contract* dated June 17, 1997 (as amended, the “Current Contract”); and

WHEREAS, the Current Contract term will expire December 31, 2021; and

WHEREAS, the City and Glendale desire to enter into a new agreement, in a form substantially similar to Attachment A, for the City to provide retail and standby water service to Glendale for 30 years with retail water service charged at a rate differential of 1.25 times the rate for City residents for retail water service, and standby water charged at rates fixed from time to time by City Council ordinance; 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 and the Village of Glendale, Ohio for the City to provide standby and retail water service to Glendale, which agreement shall be in substantially the same form as Attachment A attached hereto (“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 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to execute the Agreement to enable the City to continue to provide water

service to the Village of Glendale, Ohio beyond the December 31, 2021 expiration date of the current contract.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

**ATTACHMENT A**

**WATER SERVICE AGREEMENT**

(standby service to Village of Glendale and retail service to school)

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 VILLAGE OF GLENDALE, an Ohio municipal corporation, the address of which 30 Village Square, Glendale, OH 45246 (“**Glendale**”).

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. Glendale owns and operates the Glendale 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. Since 1958, Cincinnati has provided surplus water to Glendale, most recently pursuant to a *Water Service Contract* between the parties dated June 17, 1997, as amended by a *First Amendment* dated July 26, 2006, a *Second Amendment* dated December 20, 2017, and a *Third Amendment* dated December 23, 2020 (“**1997 Agreement**”), which will expire December 31, 2021.
- D. Under the 1997 Agreement, Cincinnati agreed to provide Glendale with standby water service as well as retail water service to the Glendale Elementary School.
- E. The parties desire to enter into this new Agreement for Cincinnati to continue to provide surplus water service to Glendale on the terms and conditions provided herein.
- F. This Agreement is authorized by Glendale 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, Cincinnati and Glendale do hereby agree as follows:

1. **TERM.** The term (“**Term**”) of this Agreement shall commence on the Effective Date and continue until December 31, 2050. This Agreement may be terminated by either party upon one hundred and eighty (180) days prior written notice to the other party. The 1997 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 shall mean 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. Glendale Water System shall mean the water supply, production, treatment, transmission, storage, distribution, and related facilities owned and/or operated by Glendale for itself, its inhabitants, and for all other areas served by Glendale, in accordance with powers conferred upon municipalities by the Constitution and the laws of the State of Ohio.

C. Cincinnati Rules and Regulations shall mean the ordinances (including relevant portions of the Cincinnati Municipal Code), laws, standards, specifications, rules, and regulations governing the Cincinnati Water Works.

3. **SURPLUS WATER.** The parties agree that Cincinnati shall supply surplus water service to Glendale only when Cincinnati has available surplus water beyond the water service needs of customers within the City of Cincinnati. 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, and shall not be liable for failure, to furnish water or minimum pressure to Glendale. Glendale shall not supply the surplus water herein to properties outside of the corporate boundaries of the Village of Glendale (as may be modified from time to time), which are shown on Exhibit A.

4. **APPLICABLE LAWS.** Except as otherwise expressly provided herein, the parties agree that the Cincinnati Rules and Regulations (as may be modified by Cincinnati from time to time) shall apply to and be enforceable as to all aspects of Cincinnati’s water service to Glendale under this Agreement, including but not limited to billing and ownership and maintenance of facilities and appurtenances to the water system. Cincinnati shall apply the Cincinnati Rules and Regulations no differently as to Glendale as to within the City of Cincinnati, except as expressly provided herein. The Cincinnati Water System is subject to strict federal, state and local regulations regarding water quality and water treatment practices. Cincinnati is ultimately responsible for water quality of and shall have sole discretion to manage the Cincinnati Water System to ensure compliance with these requirements, and to protect health, lives, and property including, but not limited to decisions as to capital improvements and their replacement associated with the quality

of water, water production, treatment techniques, and water quality analysis equipment and facilities.

## 5. **STANDBY WATER SERVICE**

A. **Standby Service.** Provided that the Cincinnati Water System has available surplus water as provided in Section 3 hereof, following Glendale prior notification to Cincinnati as provided below, Cincinnati will make best efforts to furnish standby water service to Glendale on a temporary basis through the Connections (as defined herein) for the following needs and no others:

- i. **Emergency Use.** Glendale 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, Glendale 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, 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.** Glendale 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.

B. **Connections.** There are three existing connections for surplus water delivery between the Cincinnati Water System and the Glendale Water System located at Springfield Pike, Congress Ave and East Sharon Road (including any connections installed in the future, the "Connections").

Cincinnati shall be responsible for maintaining and replacing the existing master meters at the Connections. Other than the master meters, Glendale 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 GCWW Rules and Regulations as well as any applicable state and federal regulations. Glendale 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, Glendale shall remove and plug the Connections subject to the inspection and approval of GCWW. Any and all work performed by Glendale pursuant to this Agreement shall conform in all respects to the standards, ordinances, laws, rules and regulations of Cincinnati, as described in Chapter 401 of the Cincinnati Municipal Code, and will be subject to GCWW inspection and approval.

C. 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). Glendale further agrees and understands that since the location of Glendale’s connections to the Cincinnati Water System are not within the corporate limits of Cincinnati, that service to Glendale, or any other areas on a standby or emergency basis, is at all times dependent upon the availability of sufficient surplus water to Glendale’s connection.

**6. RETAIL WATER SERVICE**

A. Service to Glendale Elementary School. Provided that the Cincinnati Water System has available surplus water as provided in Section 3 hereof, Cincinnati will provide retail water service to the Glendale Elementary School property located at 930 Congress Avenue and all parcels assigned to this address in the Village of Glendale (“Retail Area”). The retail water service provided in this section shall not be used for any uses outside of the Service Area. No other retail water service shall be furnished by Cincinnati within the corporate limits of the Glendale unless authorized by an amendment to this Agreement.

B. Obligation of Owners of Property Served. Any owner of the real property supplied retail water services under this Agreement, shall be considered as accepting and being subject to : 1) the provisions of this Agreement, as may be amended from time to time, 2) the applicability and enforcement of the Cincinnati Rules and Regulations, and 3) liability for all water service charges for such premises, whether the accounts for such premises are carried in the name of such owner or in the name of tenants or other persons.

C. Billing and Collecting. In connection with retail water service under this Agreement, Cincinnati will read all meters; print, deliver (by mail or otherwise) and collect payment of bills and charges, and audit accounts as to each property.

**7. COMPENSATION.** 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. Glendale 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 for 2022 and 2023 are:

Period	Political Subdivision rate
Winter (Jan-May & Nov-Dec 2022)	\$3.27/ccf
Summer (May - Oct 2022)	\$3.89/ccf

Winter (Jan-May & Nov-Dec 2023)	\$3.45/ccf
Summer (May - Oct 2023)	\$4.11/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.

- A. **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 Rules and Regulations as may be amended from time to time. The Parties agree that the Rate Differential established by this Section 6(C) 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 Rules and Regulations and other procedures, which shall operate no differently for persons located in Glendale than for those located in the City of Cincinnati.

8. **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 Glendale for construction, operation, maintenance, repair, and replacement of existing GCWW water mains and other appurtenances (including public water service branches), which right shall not be terminated as long as Cincinnati, its successor or assigns are furnishing water to Glendale or through Glendale to other areas of the GCWW Water System. Notwithstanding the foregoing, nothing in this Agreement shall be construed to waive any rights of Cincinnati may have to lay water mains in the streets of the Village of Glendale without Glendale’s consent, for the purpose of furnishing water to consumers in the GCWW Water System.

9. **FURNISHING OF DETAILED DRAWINGS.** Glendale shall furnish to Cincinnati reproducible, detailed drawings showing the location of all pipes, special castings, valves and fire hydrants installed under their responsibility in connection with this Agreement.

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



**11. 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 the Cincinnati:

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

To Glendale:

David Lumsden  
Village Administrator  
Village of Glendale  
30 Village Square  
Glendale, Ohio 45246

However, if Glendale sends a notice to Cincinnati alleging that it is in default under this Agreement or that Glendale 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.

**12. 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 Glendale 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.

**13. GENERAL PROVISIONS**

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

- ii. **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.
- iii. **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.
- iv. **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.
- v. **Choice of Law; Joint Preparation.** This Agreement is entered into and is to be performed in the State of Ohio. Cincinnati and Glendale 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.
- vi. **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 Glendale 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.
- vii. **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.
- viii. **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.
- ix. **Amendment.** This Agreement may be modified or amended only by a written instrument duly executed by the parties hereto.

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

Exhibit A –Map of Service Area (on Effective Date)

**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 GLENDALE**

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

Donald Lofty, Mayor

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

RECOMMENDED BY:

\_\_\_\_\_  
David Lumsden, Village Administrator

APPROVED AS TO FORM BY:

\_\_\_\_\_  
Glendale Village 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:

\_\_\_\_\_  
Edgar DeVeyra, 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

