

WHOLESALE WATER SERVICE AGREEMENT
(Wholesale Service to Western Water Company)

This *Water Service Agreement* (this “**Agreement**”) is entered into on the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation through its Greater Cincinnati Water Works (GCWW), with offices located at 4747 Spring Grove Avenue, Cincinnati, OH 45232 (“**Cincinnati**”), and the WESTERN WATER COMPANY, an Ohio non-profit corporation with an office located at 3639 Bennett Road, Morrow, Ohio 45152 (“**Western Water**”).

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. Western Water owns and operates a private rural water system and is licensed by the Ohio EPA as a R.C. 6109 public water system to supply and distribute water for its customers.
- C. Cincinnati and Western Water are parties to a certain *Agreement* dated December 12, 1996, (“**Prior Agreement**”) for Cincinnati to: 1) design and construct a transmission water main from Cincinnati’s water system in Hamilton County, Ohio to Western Water’s plant on Bennett Road in Warren County, Ohio; (2) sell wholesale water to Western Water for distribution to its retail customers. The Prior Agreement is set to expire December 31, 2026.
- D. The parties desire to terminate the Prior Agreement and enter into this Agreement for Cincinnati to continue to provide surplus water to Western Water for an additional 20 years under the terms described herein.
- E. This Agreement is authorized by Resolution of Western Water’s Board of Trustees 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, in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio.

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. “Western Water Distribution System”. The water storage, distribution, and related facilities owned and/or operated by Western Water for its customers, in accordance with powers conferred upon water systems by the Ohio Constitution and the laws of the State of Ohio. Except as may be expressly provided herein, the Western Water Distribution System shall include all facilities beyond the master meter, including the meter pit, backflow prevention, and all other valves and appurtenances.

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

F. “Cincinnati Transmission Mains”. Any water mains that are used by Cincinnati to furnish water to the Western Water plant, including, without limitation, the water mains constructed from the Cincinnati Water System to the master meter.

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

H. “City Manager”. The City Manager of the City of Cincinnati.

I. “CPI Index”. The Consumer Price Index for the Midwest East North Central division as published by the U.S. Department of Labor, Bureau of Labor Statistics

J. “Base Rate Calculation”. Beginning July 1, 2028, the new base rate shall be calculated according to the following formula: New Base Rate = Previous Base Rate + (Previous Base Rate × Percentage Change in CPI Index).

2. TERM; TERMINATION.

A. **Term.** As of the Effective Date, the Prior Agreement shall be terminated and the term of this Agreement shall commence on the Effective Date (as defined on the signature page hereto) and shall expire 20 years after the Effective Date at midnight ("**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 Western Water, and both parties agree to negotiate in good faith for a new agreement or an extension of the Term. If the Term is not extended as provided herein, 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 Western Water at rates established by Cincinnati for political subdivisions in accordance with then existing laws.

- B. **Termination.** From and after termination of this Agreement:
- i. Cincinnati shall retain ownership of the Cincinnati Transmission Mains.
 - ii. Cincinnati shall be entitled to retain ownership of the master meter and the equipment enclosure.
 - iii. Within a reasonable amount of time following termination, Western Water shall pay to Cincinnati:
 - a. the costs, if any, to Cincinnati of transitioning Western Water to an alternate water service, including without limitation transfer of system, engineering or customer billing/account information, installation of valves or other equipment. The costs, if any, of transitioning Western Water to an alternative water service that are the responsibility of Western Water under this Agreement will be agreed upon by Western Water prior to being incurred by Cincinnati.
 - b. the costs of any capital improvements installed by Cincinnati to provide water service to Western Water that are not retained by Cincinnati per section 2(B) to the extent that debt service (principal and interest) remains unpaid or that the asset has not been fully depreciated. Any costs of capital improvements that are the responsibility of Western Water under this Agreement will be agreed upon by Western Water prior to being incurred by Cincinnati.

C. After 10 years either party may terminate this Agreement with a two-year prior written notice in compliance with Section 7 below.

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 Western Water and its customers, 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 Western Water and its customers. 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 its customers including Western Water and the 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. WHOLESALE WATER SERVICE

A. Wholesale Service. Provided that the Cincinnati Water System has available Water as provided in Section 3 (*Supply of Water Not Guaranteed*) hereof, Cincinnati will make best efforts to furnish Water to Western Water through the Connections (as defined herein) to be used for provision of water through the Western Water Distribution System. Sale of the water supplied to Western Water under this Section 4 (*Wholesale Water Service*) shall be restricted to Western Water's retail customers, except in emergency situations or with advance written consent from the Director and shall be used for public water supply purposes only. Western Water shall pay for all water received through the Connections at the rates provided in Section 6 (*Billing and Water Rates*). Only water sourced from GCWW or Western Water's system shall be sold by Western Water, except in emergency situations or with advance written consent from the Director. The advance written consent shall not be unreasonably withheld. Cincinnati shall have no responsibility for the Western Water Distribution System, water distribution activities (including but not limited to billing, collection, improvement, maintenance, repair, or quality of water beyond the master meter), or water treatment activities.

B. Connections and Master Meters. The wholesale Water supplied by Cincinnati to Western Water shall be taken from Cincinnati mains through master meter connections between the Cincinnati Water System and the Western Water Distribution System (including any connections installed in the future, the "**Connections**"). Western Water shall not place any transmission main connections between the backflow prevention device and the master meter.

- i. Existing Connections. The existing Connections are as follows:

Master Meter Locations	Size
Zoar Road	16"

Cincinnati shall own and be responsible for maintaining and replacing the master meters at the Connections, including the equipment enclosure. Where such repairs are necessary as a result of an act or inaction on the part of Western Water or its employees or contractors, Western Water shall reimburse Cincinnati for all related costs to complete such repair. Western Water shall own and be responsible (at no cost to Cincinnati) for the maintenance, repair, operation, replacement and testing of the Connections, including the pressure regulator valves, meter pits, backflow preventer and other related appurtenances (including fittings, valves, vaults and other master meter appurtenances). Western Water 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, Western Water shall remove and plug the Connections subject to the inspection and approval of GCWW. Any and all work performed by Western Water pursuant to this Agreement shall conform in all respects to the Cincinnati Requirements and will be subject to GCWW inspection and approval.

- ii. Additional or Replacement Connections.

a. If additional Connections or replacement of existing Connections are determined by the Director to be needed for the benefit of or to accommodate the Cincinnati Water System (other than to meet existing Cincinnati Requirements or requirements under state or federal law), Cincinnati shall pay the expense related to such Connections, including installation of master meters, appurtenances (i.e. fittings, valves, vaults, etc.), backflow devices and pressure regulating devices.

b. If additional Connections or replacement of existing Connections are determined by Western Water to be needed for the benefit of or to accommodate the Western Water Distribution System (including to meet existing Cincinnati Requirements or requirements under state or federal law), Western Water shall pay the expense related to such Connections, including installation of master meters, appurtenances (i.e. fittings, valves, vaults, etc.), backflow devices and pressure regulating devices.

c. If additional Connections or replacement of existing Connections are determined by both parties to be needed for the mutual benefit of or to accommodate both the Western Water and Cincinnati systems, then the parties shall share in the expense related to such Connections, including installation of master meters, appurtenances (i.e. fittings, valves, vaults, etc.), backflow devices and pressure regulating devices in proportion to the benefit received by each party for the work or as may otherwise be agreed upon in writing.

d. All Connections and Master Meters shall be subject to the Cincinnati Requirements as provided in Section 5(B) hereof.

C. Industrial/Large User Water Availability. Western Water shall submit to GCWW all requests for new or significant increases in water usage (of 1MGD increase or greater) in order to determine, in the opinion of the Director, if the proposed increase can be adequately served without materially affecting the water service of existing consumers, which approval shall not be unreasonably withheld. If GCWW determines that additional infrastructure changes (ex-additional connections, master meter upgrades) are necessary, such changes shall be at Western Water's cost per Section 4(B) (*Wholesale Connections and Master Meters*).

D. Capital Improvement to Meet Maximum Flow. If the max flow reaches 5.0 MGD at any time during a day for 2 consecutive weeks within the contract period, GCWW will initiate, and Western Water shall engage in discussions to determine necessary improvements to increase the supply of water. The solutions may include, but are not limited to additional pumping, water mains, or other infrastructure to supply the additional water. Discussion will include the portion of the improvements that are attributable to the service to Western Water versus the portion that is a benefit to GCWW or its other customers.

5. OWNERSHIP; LAWS.

A. Ownership.

i. **Cincinnati Water System.** It is expressly agreed and understood by the parties that Western Water is contracting for the purchase of Water and other water related services under this Agreement and that nothing in this Agreement shall imply that Western Water 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. This Section 5(A)(i) shall survive termination of this Agreement.

ii. **Western Water System.** It is expressly agreed and understood by the parties that Western Water is the owner of the Western Water Distribution System, and that nothing in this Agreement shall imply that Cincinnati has ownership in any portion of the Western Water Distribution System, which is expressly acknowledged to be the property of and under the control and operation of Western Water.

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 (i) for the protection of health, lives, or property, (ii) renovation, replacement, or upgrade of facilities and appurtenances, (iii) to ensure compliance with applicable laws and regulations, and (iv) 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 Western Water, or any other customer or contracting jurisdiction, as to operation and management of the Cincinnati Water System. Unless otherwise specifically provided for herein, the Director is authorized to enforce 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 (including the Cincinnati Requirements) as interpreted by GCWW. Any facilities connected 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 Connections and Master Meters, all authority granted under applicable federal, state, and local laws related to the operation and management of a municipal water utility.

ii. **Western Water System.** Western Water, as the owner of the Western Water System, is solely responsible for and shall have sole discretion to manage and operate the Western Water Distribution System. Cincinnati shall not have any responsibility for the Western Water Distribution System or quality of water beyond the master meter, and Western Water shall not be subject to any requirements of Cincinnati in its management of the Western Water Distribution System.

6. BILLING AND WATER RATES.

A. Billing. Cincinnati will read the master meters and bill Western Water monthly for usage in accordance with the rates provided in this Section 6. The monthly bills shall be for water furnished during the preceding month and shall include the master meter readings, amount of water consumed, and the total water charge. The Western Water General Manager or authorized representative shall have the right to inspect the master meters and Cincinnati's records to verify the accuracy of the amount of water furnished to Western Water. In case of failure to obtain a master meter reading due to equipment failure, Cincinnati shall have the right to bill Western Water based on estimated water usage from historic data. If Western Water contests the basis for this estimated usage, the matter shall be submitted to a three-member board of arbitration composed of a Cincinnati appointee, a Western Water appointee and an appointee chosen by the Cincinnati and Western Water appointed members. The decision of the board of arbitration shall be final and binding. The costs of arbitration shall be shared equally by Cincinnati and Western Water.

B. Payment. Western Water shall pay Cincinnati on or before the due date stated on the bill, which shall be no earlier than 21 days from the date the bill is issued. If such bills are not paid when due, nonpayment fees shall be charged in accordance with the Cincinnati Requirements.

C. Rates.

i. **Usage Based Rate Tiers.** The amount charged shall be based on the calculation and applicable base rate shown in the table below. For each monthly billing period GCWW shall calculate Western Water's average daily usage for the month, which shall be used to determine the applicable rate calculation and base rate. If the average daily usage is below 2,005 CCF, the bill shall be based on the minimum usage of 2,005 CCF/day multiplied by the number of days in the billing cycle multiplied by the applicable base rate. If the average daily usage exceeds 2,005 CCF, the bill shall be based on the usage multiplied by the base rate.

Rate Tier Based on Average Daily Usage	Calculation	Applicable Base Rate		
		Start 7/1/2025	Start 7/1/2026	Start 7/1/2027
Below 2005 CCF/day (<1.5 MGD)	2005 CCF/day x No. of Days in Billing Cycle x Base Rate	\$3.83/CCF	\$3.41/CCF	\$2.99/CCF
Equal to or over 2,005 CCF (≥ 1.5 MGD)	Base Rate x Usage			

ii. **Consumer Price Index Based Rate Increases.** Beginning July 1, 2028 and each subsequent year on July 1st, the base rate will increase or remain the same in accordance with the percentage change, if any, in the CPI Index experienced from January 1 through December 31 of the immediately preceding calendar year. The new base rate shall be calculated in accordance with the Base Rate Calculation. In the event the percentage change, if any, in the CPI Index experienced from January 1 through December 31 of the immediately preceding calendar year is less than zero percent (0%), base rate will remain the same for the subsequent year.

iii. **CPI Index Changes.** In the event that the CPI Index is no longer published, the GCWW and Western Water shall agree on another comparable index by means of a written memorandum of understanding between the Director of GCWW and the General Manager of Western Water.

7. 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 Western Water:

Western Water Company
3639 Bennett Road
Morrow, Ohio 45152

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

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 Western Water.

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 Western Water 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 Western Water 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.

J. Entire Understanding; Supersedes Prior Agreements. This Agreement constitutes the entire agreement and understanding of the parties hereto and the parties agree that this Agreement shall supersede and replace all prior written and oral agreements with respect to GCWW's wholesale of water service to Western Water as of its Effective Date.

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

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

Western Water Company

By: _____
Scott Kirk, General Manager

Date: _____

APPROVED AS TO FORM BY:

General Counsel

[CITY OF CINCINNATI SIGNATURE PAGE FOLLOWS]

CITY OF CINCINNATI

By:

Sheryl M. M. Long, City Manager

Date: _____, 2025

RECOMMENDED BY:

APPROVED BY DEPARTMENT OF
ECONOMIC INCLUSION:

Andrea Yang, Interim Executive Director
Greater Cincinnati Water Works

Lydgia Sartor, Interim Director

APPROVED AS TO FORM BY:

CITY PURCHASING APPROVAL BY:

Assistant City Solicitor

Chief Procurement Officer

CERTIFICATION OF FUNDS:

Date: _____

Funding: _____

Amount: _____

Steve Webb, Cincinnati Finance Director