

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 City of Reading, Ohio.

WHEREAS, the City of Cincinnati (“Cincinnati”) and the City of Reading, Ohio (“Reading”) are parties to: 1) a certain *Contract* dated December 30, 1993 for Cincinnati to supply retail and wholesale water service to Reading (as amended, the “1993 Contract”), and 2) a certain *Agreement* dated January 23, 1957 (as amended, the “1957 Agreement”) in which Reading granted to Cincinnati the right to install, repair, operate, and maintain and replace GCWW water transmission mains in Ridge Road, Columbia Road, and Reading Road in the City of Reading; and

WHEREAS, the 1993 Contract term is currently set to expire on December 31, 2022; and

WHEREAS, the City and Reading desire to amend and restate the terms of the 1993 Contract and the 1957 Agreement in order to, among other terms, allow for Cincinnati to continue to provide surplus water and retail service to Reading until December 31, 2047, and to include the terms from the 1957 Agreement regarding Cincinnati’s use of the specified Reading rights-of-way for water transmission mains serving jurisdictions to the north of Reading; 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 City of Reading, Ohio 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 Reading 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
(Wholesale and Retail Service to City of Reading, Ohio)

This *Amended and Restated Water Service Agreement* (this "**Agreement**") is entered into effective 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 CITY OF READING, an Ohio municipal corporation with office located at 1000 Market St., Cincinnati, Ohio 45215 ("**Reading**").

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. Reading owns and operates the City of Reading Public Water System, a municipal water utility, which is licensed by the Ohio EPA as a R.C. 6109 public water system to distribute treated water to properties within its corporate boundaries and empowered pursuant to Ohio Constitution Article XVIII, Sec. 4 to contract with Cincinnati to purchase water and water service for properties within the City of Reading.
- C. Cincinnati and Reading are parties to:
 - a. A certain *Contract* dated August 26, 1993, as subsequently amended by a *First Amendment* dated December 30, 1993, a *Second Amendment* dated May 14, 1996, a *Third Amendment* dated December 21, 2017, a *Fourth Amendment* dated December 30, 2020, and a *Fifth Amendment* dated December 23, 2021 (collectively, the "**1993 Contract**") for Cincinnati to: 1) sell wholesale water to Reading for distribution to the wholesale area as defined in the 1993 Contract, and 2) provide retail water service to customers in retail area defined by the 1993 Contract. The 1993 Contract is set to expire December 31, 2022.
 - b. A certain *Agreement* dated January 23, 1957 ("**1957 Agreement**") in which Reading granted to Cincinnati the right to install, repair, operate and maintain and replace water mains in Ridge Road, Columbia Road and Reading Road in the City of Reading, and Cincinnati agreed to restore the portion of the streets

disturbed by work on the water mains. Sections 3 and 4 of the 1957 Agreement were superseded by the terms of the 1993 Contract, while Sections 1 and 2 remained in place.

- D. The parties desire to amend and restate the terms of the 1993 Contract and the 1957 Agreement in order to allow for Cincinnati to continue to provide surplus water and retail water service to Reading, and to include the active terms from the 1957 Agreement regarding Cincinnati's use of the Reading rights-of-way as provided herein.
- E. This Agreement is authorized by Reading 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, 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 Reading), 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 Reading 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. "Reading Distribution System". The water storage, distribution, and related facilities owned and/or operated by Reading 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 Reading Distribution System shall include all facilities in the Wholesale Area beyond the master meter.

E. "Reading Retail Water Area". Also referred to as the "Retail Area", shall mean the area so labeled on Exhibit A.

F. "Reading Wholesale Water Area". Also referred to as the "Wholesale Area", shall mean the area so labelled on Exhibit B. The Wholesale Area includes specified

portions of the Village of Evandale and the City of Blue Ash that are provided retail service by the Reading Distribution System.

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

H. Cincinnati Transmission Mains. "Cincinnati Transmission Mains" means any water mains that are used by Cincinnati to furnish water to areas to the north, northeast or northwest of Reading, including, without limitation, the water mains in Ridge Road, Columbia Road, and Reading Road depicted in Exhibit C hereto.

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

J. Director. "Director" means the Director of GCWW, also known as the Superintendent pursuant to the Charter of the City of Cincinnati.

K. 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 the 1957 Contract and the 1993 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, 2047 ("**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 Reading, 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 Reading 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 retain ownership of the Cincinnati Transmission Mains, as well as the rights to use the relevant easement and/or right of ways per Section 7 (*Easements and Rights of Way*) of this Agreement as long as the Cincinnati Transmission Mains are in use for Cincinnati Water System operations.

ii. Cincinnati shall be entitled to retain ownership of any capital improvements within the Reading 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 City of Reading. Cincinnati shall retain the rights to use the relevant easement and/or right of ways per Section 7 (*Easements and*

Rights of Way) of this Agreement as long as the improvements retained by Cincinnati under this subsection 2(B)(ii) (*Term; Termination*) remain in use for Cincinnati Water System operations.

iii. Within a reasonable amount of time following termination, Reading shall pay to Cincinnati:

a. the costs of all capital improvements within the Reading 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 Reading's discontinuation of water service, and

c. the costs to Cincinnati of transitioning Reading to an alternate water service, including without limitation transfer of system, engineering or customer billing/account information, installation of valves or other equipment.

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

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 Reading, its inhabitants, properties within the corporate limits of the City of Reading, and properties in the Wholesale Area, 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 Reading, its inhabitants, and properties within the corporate limits of the City of Reading. 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. WHOLESALE WATER SERVICE

A. Wholesale Area. 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 Reading through the Connections (as defined herein) to be used for provision of water through the Reading Distribution System in the Wholesale Area. The water supplied to the Reading under this Section 4 (*Wholesale Water Service*) shall be restricted to usage within the Wholesale Area unless the Director has provided advance written consent and shall be used for public water supply purposes only. Reading shall pay for all water received through the Connections at the rates provided in Section 9 (*Water Rates*). No water from sources other than GCWW shall be sold by Reading in the Wholesale Area or Retail Area. Cincinnati shall have no responsibility for the Reading Distribution System or water distribution activities (including billing and collection) within the Wholesale Area.

Reading may use water from other sources, including the Reading wells for fire suppression, irrigation and other non-potable purposes, provided that during the term, no physical connection shall be made or exist between such sources and either the Cincinnati Water System or the Reading Distribution System.

B. Connections and Master Meters. The wholesale Water supplied by Cincinnati to Reading shall be taken from Cincinnati mains through master meter connections between the Cincinnati Water System and the Reading Distribution System (including any connections installed in the future, the “**Connections**”).

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

Master Meter Locations	Size
515 E. Columbia Ave	10”
9701 Reading Rd	6”
8374 Reading Rd	8”

Cincinnati shall own and be responsible for maintaining and replacing the master meters at the Connections. Other than the master meters, Reading 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). Reading 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, Reading shall remove and plug the Connections subject to the inspection and approval of GCWW. Any and all work performed by Reading pursuant to

this Agreement shall conform in all respects to the Cincinnati Requirements and will be subject to GCWW inspection and approval.

The parties agree that all connections contemplated in the original 1993 Agreement have been completed.

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 Reading to be needed for the benefit of or to accommodate the Reading Distribution System (including to meet existing Cincinnati Requirements or requirements under state or federal law), Reading 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 Reading 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 6(C) hereof.

c. **Wholesale Charges.**

i. Billing. Cincinnati will read the master meters and bill Reading monthly for usage in accordance with the wholesale rate provided in Section 9 (*Water Rates*) hereof. 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 Reading Safety/Services Director 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 Reading. In case of failure to obtain a master meter reading due to equipment failure, Cincinnati shall have the right to bill Reading based on

estimated water usage from historic data. If Reading 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 Reading appointee and an appointing chosen by the Cincinnati and Reading 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 Reading.

ii. Payment. Reading 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.

D. Industrial/Large User Water Availability. Reading shall submit to GCWW all requests for new or significant increases in water usage (of 1MGD increase or greater) in the Wholesale Area 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 additional infrastructure changes (ex-additional connections, master meter upgrades), such costs shall be at Reading's cost per Section 4(B) (*Wholesale Connections and Master Meters*).

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. 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.

C. Exclusivity. During the Term, Cincinnati Water System shall be the sole supplier and furnisher of Water to inhabitants and properties within the Retail Area. Reading shall not furnish water to or allow others to furnish water to any property or inhabitants within the Retail Area. Reading 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 Reading retail service customers to service any related debt. Reading 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 City of Reading, the parties agree that Cincinnati's exclusivity as to water service for such property shall not be waived, disturbed, altered or terminated, and Reading agrees that it shall cooperate to ensure

Cincinnati's continued exclusive right to service.

D. 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.

E. 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 Reading, or its employee(s) or contractor(s), Reading shall reimburse Cincinnati for repair costs caused by such negligence.

F. 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.

G. Obligation of Owners of Property Served. Any owner of real property supplied with 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.

H. 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.

I. Retail Area Water Infrastructure.

i. Improvements for Cincinnati Water System Purposes. Cincinnati will plan for and perform 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 capital improvement requested by Reading 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(I)(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(I)(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 Reading, 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. As provided in Section 6(B)(i) (*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. Once a GCWW approved main has been connected and placed into service, it shall become part of the Cincinnati Water System. Reading shall provide Cincinnati with detailed drawings showing the location of all pipes, special castings, valves and fire hydrants installed by Reading.

iii. **Building Permits/Water Availability.** No water main extension or service connection shall be made to serve a proposed subdivision or commercial or industrial development unless such proposed subdivision or development 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 approval shall not be unreasonably withheld. Reading 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 previously determined that adequate water service is available) prior to issuance of the permit, for a determination of whether adequate water service is available and to ensure compliance with all Cincinnati Requirements.

6. OWNERSHIP; LAWS.

A. Ownership.

i. **Cincinnati Water System.** It is expressly agreed and understood by the parties that Reading is contracting for the purchase of Water and other water related services under this Agreement and that nothing in this Agreement shall imply that Reading 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 in accordance with Section 2(B) (*Term*) 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. **Reading Distribution System.** It is expressly agreed and understood by the parties that Reading is the owner of the Reading Distribution System, and that nothing in this Agreement shall imply that Cincinnati has ownership in any portion of the Reading Distribution System, which is expressly acknowledged to be the property of and under the control and operation of Reading.

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 Reading, 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 (including the 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. **Reading Distribution System.** Reading, as the owner of the Reading Distribution System is solely responsible for and shall have sole discretion to manage and operate the Reading Distribution System. Cincinnati shall not have any responsibility for the Reading Distribution System, and Reading shall not be subject to any requirements of Cincinnati in its management of the Reading Distribution System.

iii. **Reading Water Treatment Facilities.** In order to maintain the integrity of the Cincinnati Water System, and to comply with the final orders of the Ohio EPA, Reading has discontinued operation of its water treatment facilities in accordance with the terms of the 1993 Contract.

7. EASEMENTS AND RIGHTS OF WAY.

A. 1957 Easement for Cincinnati Transmission Mains. Per the 1957 Contract, Reading granted and conveyed to Cincinnati, its successors and assigns as to the ownership of the Cincinnati Water System, a perpetual easement for constructing, reconstructing, laying, relaying, maintaining, repairing, and replacing the Cincinnati Transmission Mains as depicted in Exhibit C hereto. Cincinnati's rights in this paragraph shall not be considered as terminated or abandoned as long as Cincinnati, its successor or assigns, are furnishing water to areas north, northeast or northwest of Reading, and shall survive expiration or other termination of this Agreement. 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.

B. Acquisition/Use of Rights-of-Way. Cincinnati shall have the right to use all rights-of-way in the Retail Area, including those held under easements, whether used as highways, streets, and alleys, or unimproved when required for any purposes under this contract, including, but not limited to, the construction, operation, maintenance, repair, and replacement of water mains or other appurtenances of the Cincinnati Water System, which right shall not be terminated as long as Cincinnati, its successor or assigns are furnishing water to Reading or through Reading to other areas of the GCWW Water System. Cincinnati shall obtain a street opening or other similar permit from and perform work according to the requirements of Reading; however, Reading 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, Reading 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 a Reading or other right-of-way purpose, Cincinnati shall reimburse Reading 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 Reading, Cincinnati shall restore such streets to their original condition to the satisfaction of Reading; 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 Reading 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, Reading may use reasonable amounts of water, without charge, for the flushing of public sewers or for the repair of streets within the Retail Area.

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

i. Reading shall be responsible for installation, removal, flushing, testing, maintenance, operation, repair, and replacement of all public fire hydrants in Reading 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 the Reading.

iii. Any flushing of public fire hydrants by Reading shall be conducted in accordance with the Cincinnati Requirements for the Cincinnati Water System. Reading 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 Reading 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. Reading 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. Reading 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. Cincinnati City Council shall fix the charges for water supplied to customers in the corporate boundaries of Cincinnati. Nothing in this Agreement shall limit in any way Cincinnati's right to establish rates for water supplied or for water services in the City of Cincinnati.

A. Retail Area. During the Term, the rates, fees, and charges for Water and water services for accounts and properties in the Retail Area shall be the same as for customers in the unincorporated territory of Hamilton County under the water service contract between Cincinnati and the Board of County Commissioners of Hamilton County as may be amended from time to time (the "**County Contract**"). For reference, the version of the County Contract current at the time of execution of this Agreement is the *Amended and Restated County Water Area Contract* dated December 11, 2019, which provides for customers in the unincorporated areas to pay a differential rate 1.25 times the rate charged to customers within the corporate limits of the City of Cincinnati. The Cincinnati City Council shall, from time to time, fix by ordinance the charges for water supplied to customers in Cincinnati. Nothing in this Agreement shall limit in any way Cincinnati's right to establish rates for water supplied to customers in the City of Cincinnati.

B. Wholesale Area. During the Term, the rates, fees, and charges for Water and water services for the Wholesale Area shall be calculated by multiplying the rate differential of 1.1 times the second block commodity rate charged to Cincinnati customers (usage between 20 to 600 CCF/month).

C. The Parties agree that the rate differentials established by this Section 9 (*Water Rates*) have 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 differential 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.

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 Reading:

{00351753-1}

City of Reading
1000 Market St.
Cincinnati, Ohio 45215

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

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 Reading 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 Reading 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.

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

Exhibit A – *Map of Retail Area*

Exhibit B – *Map of Wholesale Area*

Exhibit C -- *Map of Cincinnati Transmission Mains and easement*

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 READING

By: _____
Patrick G. Ross, Safety Service Director
Date: _____

APPROVED AS TO FORM BY:

David Stevenson, 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 AS TO FORM BY:

Assistant City Solicitor

CERTIFICATION OF FUNDS:

Date: _____
Funding: _____
Amount: _____

Karen Alder, Cincinnati Finance Director

APPROVED BY DEPARTMENT OF
ECONOMIC INCLUSION:

Collin Mays, Director

CITY PURCHASING APPROVAL BY:

Bobbi Hageman,
Chief Procurement Officer

EXHIBIT A - GCWW RETAIL AREA IN READING

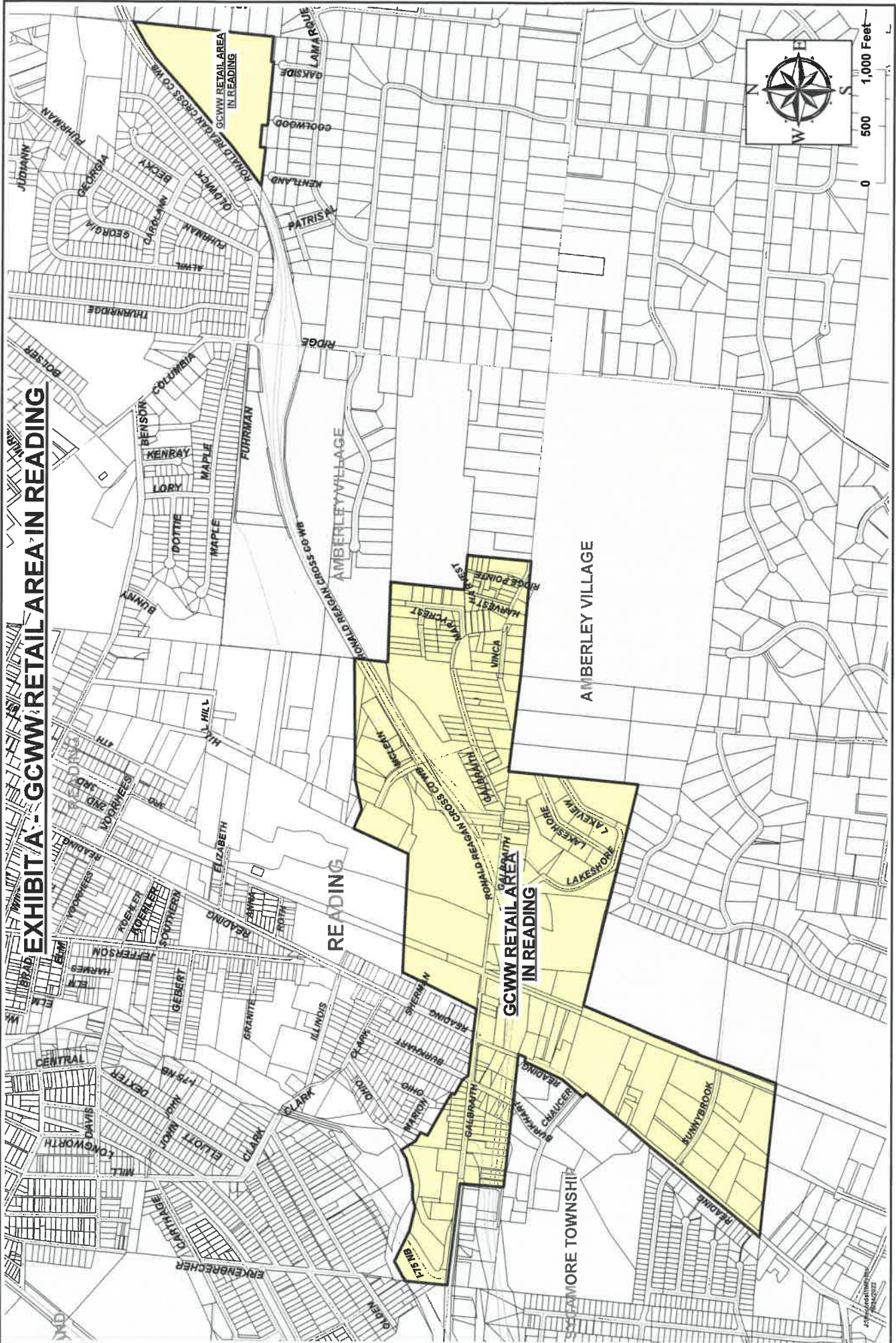


EXHIBIT B - GCWW WHOLESAL E AREA IN READING

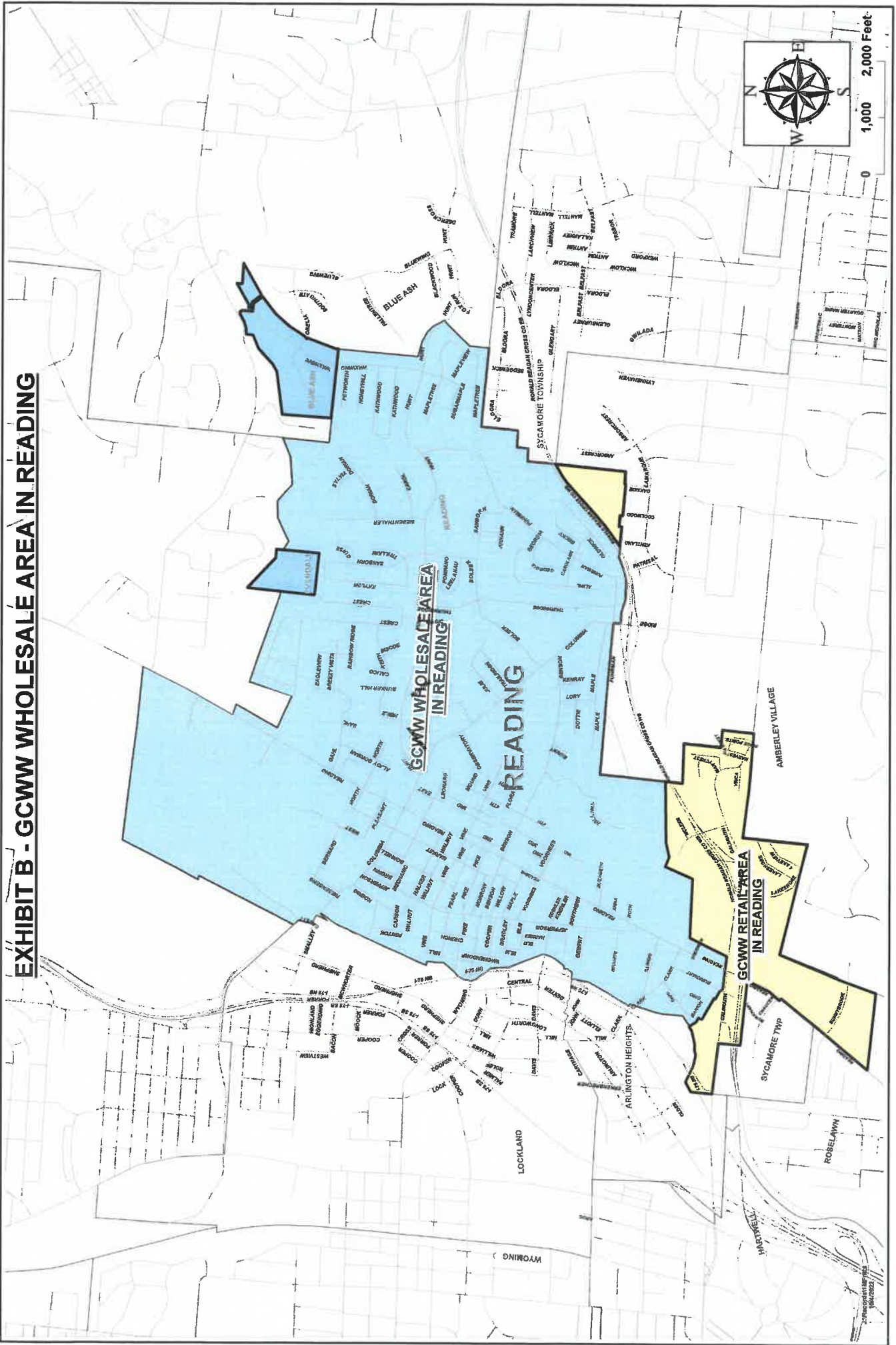


EXHIBIT C - GCWW WATER MAIN IN READING

