

EMERGENCY

City of Cincinnati

AWG/ESW

ALA

An Ordinance No. _____

- 2021

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

WHEREAS, the City of Cincinnati ("City") provides retail water service to the Village of Woodlawn, Ohio ("Woodlawn") pursuant to an agreement dated October 12, 1987 (as amended, the "Current Contract"); and

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

WHEREAS, the City and Woodlawn desire to enter into a new agreement, in a form substantially similar to Attachment A, for the City to provide retail water service to Woodlawn for 25 years with the rate differential of 1.25 times the rate for City residents; 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 *Retail Water Service Agreement* between the City of Cincinnati and the Village of Woodlawn, Ohio for the City to provide retail water service to Woodlawn, 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 Woodlawn, Ohio beyond the December 31, 2021 expiration date of the current contract.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

RETAIL WATER SERVICE AGREEMENT
(Village of Woodlawn)

This *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 VILLAGE OF WOODLAWN, an Ohio municipal corporation with office located at 10141 Woodlawn Boulevard, Cincinnati, Ohio 45215 ("**Woodlawn**").

RECITALS:

- A. Cincinnati owns and operates the Greater Cincinnati Water Works (GCWW), a City department and 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. GCWW is licensed by the Ohio EPA to operate as the Cincinnati Public Water System, a R.C. 6109 public water system
- B. Woodlawn is an Ohio municipal corporation empowered pursuant to Ohio Constitution Article XVIII, Section 4 to contract for water service for itself and its inhabitants.
- C. Cincinnati has provided retail water service to Woodlawn for over 60 years under a series of agreements, including an agreement dated October 12, 1987 (as amended, the "**1987 Agreement**"), which is set to expire December 31, 2021.
- D. The parties desire to enter into a new Agreement for Cincinnati to continue to provide retail water service to Woodlawn on the terms and conditions provided herein.
- E. This Agreement is authorized by Woodlawn City Council Ordinance no. _____ dated _____ and Cincinnati City Council Ordinance no. _____ dated _____.

NOW THEREFORE, for good and valuable consideration 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 2.

A. **GCWW.** "GCWW" means the Greater Cincinnati Water Works, a department of the City of Cincinnati.

B. Cincinnati Water System. The water supply, production, treatment, transmission, storage, distribution, and related facilities owned and/or operated by Cincinnati for itself, its inhabitants, and for all other areas served by Cincinnati (including Woodlawn), in accordance with powers conferred upon municipalities by the Constitution and the laws of the State of Ohio.

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

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

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

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

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

2. RETAIL WATER SERVICE.

A. 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 to Woodlawn, its inhabitants, and properties within the corporate limits of the Village of Woodlawn on the Effective Date as shown on Exhibit A (as may be modified per the process in Section 2(C) "**Service Area**").

B. In recognition of the need to properly plan for an adequate supply of finished water for the Cincinnati Water System users, the water supplied under this Agreement shall be restricted to usage within the Service Area unless the express written consent of the Director is obtained.

C. In case of the addition of property to the corporate limits of Woodlawn by merger, annexation, or otherwise after the Effective Date, Cincinnati shall have the right of first refusal to serve any such additional properties. Following Cincinnati written approval of the application of such additional property to connect to the Cincinnati Water System, it shall become part of the Service Area subject to the terms of this Agreement and the Cincinnati Requirements.

3. EXCLUSIVITY. During the Term, Woodlawn shall not furnish or contract with others to furnish Water to any property or inhabitants within the Service Area. The Cincinnati Water System shall be the sole supplier and furnisher of Water to Woodlawn,

its inhabitants and properties within the Service Area. If any property within the Service Area should subsequently be detached or annexed to another jurisdiction such that it is no longer under the jurisdiction of Woodlawn, the parties agree that Cincinnati's exclusivity as to Water service for such property shall not be waived, disturbed, altered or terminated, and Woodlawn agrees that it shall cooperate to ensure Cincinnati's continued exclusive right to service. Woodlawn acknowledges and agrees that Cincinnati's construction and continued capital improvements of a water system and appurtenances at a scale to serve Woodlawn is a significant expense for which Cincinnati may incur debt and rely on revenues from Woodlawn customers to service that debt during the Term.

4. AGREEMENT DURATION; TERMINATION.

A. **Term.** The term of this Agreement ("**Term**") shall commence on the Effective Date and shall remain in full force and effect until midnight of December 31, 2047 ("**Expiration Date**"). The existing water service agreement between Woodlawn and Cincinnati shall terminate on the Effective Date. One year prior to the Expiration Date, Cincinnati will notify Woodlawn 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 Woodlawn at rates to be established by Cincinnati in accordance with then existing laws.

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

i. Cincinnati shall be entitled to retain ownership of any capital improvements within the Woodlawn corporate limits constructed by Cincinnati as part of the Cincinnati Water System that are determined, in Cincinnati's sole discretion, to be useful and/or necessary to the Cincinnati Water System; and

ii. Within a reasonable amount of time, Woodlawn shall pay to Cincinnati:

a. the costs of all capital improvements within the Woodlawn corporate limits installed for the purpose of furnishing water to Woodlawn water customers that are not retained by Cincinnati per section 4(B)(i) 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 Woodlawn's discontinuation of water service.

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

iii. Once Woodlawn has paid to Cincinnati all amounts listed in 4(B)(ii), Cincinnati will transfer to Woodlawn ownership of the capital improvements within Woodlawn limits that have not been retained by Cincinnati pursuant to Section 4(B)(i).

iv. Following termination of this Agreement, for any capital improvements retained by Cincinnati pursuant to Section 4(B)(i), Cincinnati shall also retain the rights in Section 7(B) of this Agreement to use the easements and rights-of-way as long as the capital improvement is in use for Cincinnati Water System operations. Section (4)(B) shall survive termination of this Agreement.

5. OWNERSHIP; LAWS.

A. Ownership. It is expressly agreed and understood by the parties that Woodlawn is contracting for the purchase of Water and other water related services under this Agreement and that nothing in this Agreement shall imply that Woodlawn 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.

B. Control; Regulatory Compliance. The Cincinnati Water System is subject to strict federal, state, and local regulations, 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 Woodlawn, or any other contracting jurisdiction, as to operation and management of the Water System.

C. Cincinnati Requirements Applicable. Unless otherwise specifically provided for herein, the Director is authorized to enforce within the corporate boundaries of Woodlawn 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 within the Woodlawn corporate boundaries all authority granted under applicable federal, state, and local laws related to the operation and management of a municipal water utilities.

D. Lead Service Line Replacement. Cincinnati has a program to remove private and public lead water service lines throughout the Cincinnati Water System (the “Lead Program”). The Lead Program requirements shall be considered to be within the definition of the Cincinnati Requirements.

6. SUPPLY OF WATER NOT GUARANTEED. Water furnished under the terms and conditions of 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 Woodlawn, its inhabitants, and properties within the corporate limits of the Village of Woodlawn, 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); or c) where an insufficient supply of water exists, the City will use its best efforts to provide a potable, stable, and adequate supply of water to Woodlawn, its inhabitants, and properties within the corporate limits of the Village of Woodlawn. 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 the City 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.

7. WATER SYSTEM INFRASTRUCTURE.

A. Improvements For Water System Purposes. Cincinnati will plan for and perform capital improvements to the Cincinnati Water System that are determined to be necessary in Cincinnati’s sole discretion for the purpose of providing an adequate supply of Water throughout the Cincinnati Water System, including but not limited to construction of new tanks, pumps or other distribution facilities; extension of new distribution or transmission mains; and replacement, renovation, or upgrade of existing mains and other facilities. Cincinnati shall not be required to pay for capital improvements requested or required by Woodlawn or others that as determined by the Director are not necessary for the benefit of the water system (for example, relocation to accommodate utility or road/transportation improvements or economic development), which shall be subject to

the terms of Section 7(C) below.

B. Acquisition/Use of Rights-of-Way. Cincinnati shall have the right to use all existing all rights-of-way in Woodlawn, 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. Cincinnati shall obtain a street opening or other similar permit from and perform work according to the requirements of Woodlawn; however, Woodlawn shall not require Cincinnati to pay any permit, license, fees, or taxes of any kind, except as may be required by State law. Following construction, reconstruction, repair or maintenance in the streets of Woodlawn, Cincinnati shall restore such streets to their original condition to the satisfaction of Woodlawn. When required by Cincinnati, Woodlawn 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 Woodlawn or other right-of-way purpose, Cincinnati shall reimburse Woodlawn for the costs of acquisition, including appraisal costs, attorney fees, and just compensation to the owners of the property for which eminent domain is exercised.

C. Requested Water Mains Installation. Unless determined by the Director to be necessary for the benefit of the Cincinnati Water System per Section 7(A), any requested installation of water mains, including extension, relocation, upsizing, upgrading or replacement of distribution mains in or serving Woodlawn, shall be constructed by Woodlawn 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 contribute to such costs, if provided for in a Cincinnati Requirements plan for water main installation. Once a main has been connected and placed into service, it shall become part of the Cincinnati Water System. As provided in Section 5(C) hereof, installations, connections and improvements to the Cincinnati Water System shall be subject to the Cincinnati Requirements, including without limitation requirements for contractor bonding, plan review, and inspection and approval.

D. Water Availability. No water main extension or connection shall be made to serve a proposed subdivision or commercial development unless such proposed subdivision has been approved by the proper authorities in accordance with the Ohio Revised Code Chapter 711 and all other pertinent provisions of Ohio law, and, in the opinion of the Director, the subdivision or development can be adequately served, without materially affecting the water service of existing consumers, which opinion shall not be unreasonably withheld. All building permit applications in Woodlawn shall be submitted to the GCWW prior to issuance of the permit, for a determination of whether water service is available, which determination shall not be unreasonably withheld.

E. Maintenance and Operation. Cincinnati shall maintain, operate, repair, and replace the Cincinnati Water System within the corporate limits of Woodlawn. If

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

8. USE OF WATER; 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, all usage of Water provided under this Agreement shall be subject to the Cincinnati Requirements. No water shall be taken from fire hydrants other than for fire purposes except as provided by the Cincinnati Requirements.

B. Fire Hydrants.

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

iii. Any flushing of public fire hydrants by Woodlawn shall be conducted in accordance with the Cincinnati Requirements for the Cincinnati Water System. Woodlawn 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 Woodlawn on the basis of cost including overhead as calculated annually by Cincinnati for the Cincinnati Water System.

v. Each Party to this Agreement shall furnish to the other reproducible, detailed drawings showing the location of all pipes, special castings, valves, and fire hydrants installed under their responsibility.

9. SERVICE TO CUSTOMERS; CUSTOMER ACCOUNTS.

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

B. Billing and Collecting. In connection with retail water service under this Agreement, 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, all in accordance with Cincinnati Requirements which shall operate no differently for persons located in Cincinnati than for those located in Woodlawn.

C. 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 the accounts for such premises include the name of tenants, managing agents, or other persons.

D. Enforcement. 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 the Cincinnati's sole discretion and shall be available in addition to any other legal remedies available to Cincinnati.

10. WATER RATES.

A. 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.

B. During the Term, the rates, fees, and charges for Water and water services for accounts and properties in the Woodlawn shall be calculated by multiplying the rate differential of 1.25 times the corresponding rate or fee charged to Cincinnati customers.

C. The Parties agree that the rate differential established by this Section 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 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.

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 Woodlawn.

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 Woodlawn 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 Woodlawn in connection therewith. However, in the event that any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the parties agree that the exclusive venue for such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Ohio.

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

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

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

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

Exhibit A –*Map of 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 WOODLAWN

By: _____
Brian Poole, Mayor

Date: _____

RECOMMENDED BY:

Timothy Engel, Acting Municipal Manager

APPROVED AS TO FORM BY:

Law Director

[CITY OF CINCINNATI SIGNATURE PAGES FOLLOW]

CITY OF CINCINNATI

By:

Paula Boggs Muething, City Manager
Date: _____, 2021

RECOMMENDED BY:

Cathy B. Bailey, Executive 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

EXHIBIT A-Map of Service Area on Effective Date

