WATER AGREEMENT: CITY OF TOLEDO/CITY OF PERRYSBURG

This Agreement entered into this 10th day of December, 1987, by and between the CITY OF TOLEDO, a municipal corporation, hereinafter "TOLEDO," acting through its City Manager and Director of Public Utilities, and the City of Perrysburg, Ohio, a municipal corporation, hereinafter "PERRYSBURG," acting through its Mayor and Municipal Clerk.

WITNESSETH;

WHEREAS, Toledo has for many years been supplying surplus water to the City of Perrysburg, in accordance with the Toledo Municipal Code and a certain agreement by and between the parties dated March 7, 1952, the expiration date of which is March 7, 1992; and

WHEREAS, water mains, trunks and appurtenances located in the City of Perrysburg, through which Toledo water has been carried to consumers, have been constructed and installed by or under the supervision of said City of Perrysburg and maintained by it in accordance with law as part of Perrysburg's water distribution system; and

WHEREAS, there is a continuing need for a water supply to adequately furnish same to existing and future consumers in the Perrysburg Water District, hereinafter defined; and

WHEREAS, Toledo has surplus water to dispose of and is willing to continue selling the same, subject to the limitations and conditions herein provided, to outside consumers including the City of Perrysburg, and

WHEREAS, Perrysburg desires to contract for a supply of water upon such terms and conditions; and

WHEREAS, the Council of the City of Toledo, did, on the 23rd day of June, 1987, duly enact Ordinance No. 510-87 of said City, authorizing and empowering the City Manager to enter into a contract on behalf of Toledo with Perrysburg for the furnishing of surplus water to said Perrysburg Water District from the water supply system of Toledo; and

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and the performance hereof, it is agreed by and between Toledo and Perrysburg as follows:

SECTION 1. SUPERSEDED AGREEMENT. The Agreement executed by and between Toledo and Perrysburg dated March 7, 1952, shall remain in full effect and force through December 9, 1987, and shall be deemed wholly superseded and replaced by the Agreement as of December 10, 1987.
SECTION 2. DEFINITIONS.

A) "Perrysburg Water District" shall mean the territory consisting of and limited to the area described in Exhibit "A" attached hereto and made a part hereof.

B) "Master Meter" shall mean all meters owned by the City of Perrysburg for the purpose of measuring the volume of water received from the City.

SECTION 3. PURPOSE OF AGREEMENT. The purpose of this Agreement is to establish the terms and conditions under which Toledo will sell and deliver water to Perrysburg of quality satisfactory to Perrysburg and to the Ohio Environmental Protection Agency or its successors, for use in the Perrysburg Water District during the contract period and receive compensation for said water so supplied.

SECTION 4. OBLIGATION OF PERRYSBURG. Perrysburg shall pay for said water furnished under this Agreement at the rate set forth below at Section 9. Bills shall be rendered monthly and shall be paid in accordance with the Toledo Municipal Code, Chapter 933 and the Rules and Regulations of the Department of Public Utilities.

SECTION 5. TAKE-OFF POINTS. Toledo shall deliver water to Perrysburg at the following locations:

(a) Through the trunk main commencing on the Anthony Wayne Trail in the City of Toledo.

(b) Through the trunk main connecting at the northeast corner of the intersection of East Boundary Street and East River Road in Perrysburg, Ohio.

(c) Such other take-off points that may be established by the parties in the future.

SECTION 6. RIGHT TO USE STREETS. Perrysburg shall have the right to use and shall have all necessary easements in the area extending in and along the right-of-way on the Anthony Wayne Trail within Toledo's corporate limits required for the constructing, laying, locating, operating, repairing, replacing, removing and/or maintaining the existing 16-inch trunk main and meter. If there is need to do any of the heretofore mentioned items, there will be no permit fee or license fee. The Director of Public Utilities of Toledo, the Commissioner of Water of Toledo and/or their duly authorized assistants shall be notified in writing. Any of the above shall be subject to approval and inspection of the Commissioner of Water of Toledo.

SECTION 7. MAINTENANCE AND OPERATING. Perrysburg shall operate the entire water system in the Perrysburg Water District and shall maintain and replace when necessary, at its cost, all mains, reservoirs, tanks, pumping stations and other improvements and equipment now in existence or hereafter constructed.
SECTION 8. METERS. For the purpose of maintaining accurate records of the water sold to Perrysburg under this Agreement through the trunk mains and take off points provided for in Section 5, Perrysburg agrees to install and/or maintain at the expense of Perrysburg, satisfactorily master meters of the same standard of material and workmanship as are now or may hereafter be required by the Toledo Municipal Code or Rules, Regulations or Standards of the Department of Public Utilities now or hereafter lawfully in effect.

All said master meters shall be unrestrictively accessible to Toledo and Perrysburg and each party hereto shall be furnished a key to each of the said master meters. The master meters shall be available at all times for inspection, calibration and reading by authorized officers and employees of the parties hereto. Toledo is hereby authorized to effect repairs and maintenance of the said, master meters at the expense of Perrysburg, which in Toledo's sound judgment and discretion are of an emergency nature, without requiring the consent and/or authorization of Perrysburg; provided that Perrysburg is notified prior to commencement of such work.

The Perrysburg master meters shall be tested pursuant to applicable provisions of the Toledo Municipal Code and the Department of Public Utilities Rules and Regulations.

SECTION 9. WATER RATES. The rates charged for water furnished hereunder shall be the basic rate charged during the contract period to users within the corporate limits of the City of Toledo plus an additional amount or surcharge of forty percent (40%) of such rate. Toledo shall have the right to amend such basic rates as provided in the Toledo Municipal Code at any time; provided, however, no increase of such basic rates shall become effective unless Toledo shall have furnished a notice to substantiate such increase to Perrysburg at least thirty (30) days prior to the effective date thereof. Perrysburg may elect, upon giving Toledo written notice of such election within thirty (30) days of receipt of notice of change of basic rates, to contest the increase on the basis that said increase is not substantiated. That portion of Toledo's amended basic rates representing an increase which are paid shall, to the extent of any increase therein, be considered on behalf of the users in the Perrysburg Water District and the City of Perrysburg to be paid under protest.

SECTION 10. WATER SUPPLY: PRESSURE. Toledo undertakes to the extent that it shall have water supply in excess of the requirements of Toledo consumers, to supply to Perrysburg and all users now or hereafter connected within the Perrysburg Water District all water required by them for domestic, commercial or industrial purposes. It is, however, specifically agreed and understood by the parties that such supply of water to the Perrysburg Water District is at all times subordinate to the needs of consumers within Toledo, and Toledo does not guarantee a fixed pressure or continuous supply of water.
In the event of serious damage to reservoirs or pumping stations or other emergencies, water may be shut off for the reasonable duration of the emergency without notice to consumers. Notice of such shut off shall be given to the Mayor or Service-Safety Director of Perrysburg, which notice may be given by telephone or letter. Any suspension of water services or inadequacy of water pressure for any of the foregoing causes and/or for any reasons beyond the control of Toledo shall in no case render Toledo liable for damages to any person, firm, corporation and/or governmental body in the Perrysburg Water District. Perrysburg agrees to abide by and enforce any emergency restrictions as to water use which may be imposed upon consumers within Toledo pursuant to Title III, Chapter 939, Section 939.14 of the Toledo Municipal Code.

SECTION 11. ADHERENCE TO RULES AND TOLEDO MUNICIPAL CODE. Perrysburg, as a customer, shall abide by the applicable Rules and Regulations, as well as Toledo Municipal Code sections, which are now or hereinafter in effect for Toledo's customers.

SECTION 12. WATER TO BE USED ONLY IN PERRYSBURG WATER DISTRICT. Perrysburg shall have the right to sell the said water herein agreed to be purchased by it solely to consumers within the Perrysburg Water District.

SECTION 13. ADVISORY BOARD. Should any situation arise during the term of this Agreement for which no clear provision is made by the Agreement relating to the purpose of this Agreement, or should the parties be unable to agree, a special Advisory Board shall be set up consisting of one member appointed by Toledo, one appointed by Perrysburg, and one designated by the two so appointed. The Advisory Board shall hold such hearings and make such findings as recommendations with respect to controversy as it shall consider just and equitable in accordance with the intent and purpose of this Agreement. The cost of the fact finding by the Advisory Board shall be paid one-half by Toledo and one-half by Perrysburg.

SECTION 14. TERM OF CONTRACT. Except as otherwise provided herein, this contract shall be in force for a period of forty (40) years from and after December 10, 1987.

SECTION 15. SEVERABILITY CLAUSE. The provisions of this Agreement are declared to be severable and the holding as invalid of any section or provision hereof shall not impair or invalidate the remaining sections of provisions hereof.

SECTION 16. TERMINATION BY OPERATION OF LAW. It is agreed by the parties hereto that if the intent and purpose of this Agreement cannot be legally carried out by virtue of the Statutes of Constitution of the State of Ohio, the Charter of the City of Toledo and the Charter of the City of Perrysburg, this Agreement shall be null and void.
IN WITNESS WHEREOF, the CITY OF TOLEDO, by its City Manager and its Director of Public Utilities, and the CITY OF PERRYSBURG, by its Mayor and its Municipal Clerk, have hereunto set their hands this day and year first mentioned above.

WITNESSED:

[Signatures]

CITY OF TOLEDO, OHIO
A Municipal Corporation

By: [Signature]
City Manager

APPROVED AS TO CONTENT:

By: [Signature]
Director of Public Utilities

By: [Signature]
Commissioner of Administrative Services

APPROVED AS TO FORM:

By: [Signature]
Director of Law

WITNESSED:

[Signature]

CITY OF PERRYSBURG, OHIO
A Municipal Corporation

By: [Signature]
Mayor

By: [Signature]
Municipal Clerk

APPROVED AS TO FORM:

By: [Signature]
City Solicitor
Beginning at the intersection of the easterly right-of-way line of East Boundary Street and the Maumee River; thence southeasterly along said easterly right-of-way of East Boundary Street to a point, said point being the northwesterly corner of a parcel of land owned by McBalfra, Incorporated, as recorded in the Record of Deeds, Volume 431, page 542, Wood County, Ohio Recorder's Office; thence northeasterly along the northwesterly line of said parcel, a distance of 360 feet; thence southeasterly along the northeasterly line of said parcel a distance of 120 feet to a point, said point being on the northerly property line of a parcel of land owned by the Perrysburg Water Works as recorded in Volume 324 of Deeds, page 478, Wood County, Ohio, Records; thence northeasterly along the northwesterly line a distance of 385.23 feet to a point; thence southeasterly along the northeasterly line of said parcel and the extension thereof to a point, on the southeasterly right-of-way of the Baltimore and Ohio Railroad; thence northeasterly along said southeasterly right-of-way line of the Baltimore and Ohio Railroad to the southeasterly corner of a 3.50 acre parcel of land now or formerly owned by PAR Holding Company, as recorded in Volume 427 of Deeds, page 593, Wood County, Ohio Records; thence easterly along the southerly line of said parcel to the northeasterly corner of a parcel of land now or formerly owned by Clara Ward Wenz as recorded in Volume 416 of Deeds, page 422, Wood County, Ohio Records; thence southerly along the easterly line of said parcel to the southeasterly corner of a 19.95 acre parcel of land now or formerly owned by Clara Ward Wenz as recorded in Volume 416 of Deeds, page 422, Wood County, Ohio Records, said southeasterly corner also being on the northerly line of a 11.10 acre parcel of land now or formerly owned by Lester A. and Robert F. Lusher as recorded in Volume 558 of Deeds, page 512, Wood County, Ohio Records; thence easterly along the northerly line of said 11.10 acre parcel to the northeasterly corner thereof; thence southerly along the easterly line of said 11.10 acre parcel and any extension thereof to its intersection with the center line of State Route 795; thence easterly along said center line of State Route 795 and the northwesterly right-of-way line of Interstate Route 75; thence southwesterly along said northwesterly right-of-way line of Interstate Route 75 to a point at the intersection of the northwesterly right-of-way line of Interstate Route 75 with the center line of the right-of-way of Simmons Road; thence southerly along said center line of the right-of-way of Simmons Road to its intersection with the center line of right-of-way of U.S. Route 20 (Fremont Pike); thence southeasterly along said center line of right-of-way of U.S. Route 20 to its intersection with the center line of right-of-way of Thompson Road; thence southerly along said center line of right-of-way of Thompson Road to its intersection with the center line of Roachton Road; thence westerly along the center line of Roachton Road to its intersection with the westerly right-of-way line of Interstate Route 75; thence three hundred (300) feet southerly along said westerly right-of-way line of Interstate Route 75 to its intersection with a line parallel to and three hundred (300) feet south of the center line of Roachton Road; thence westerly along said line of Roachton Road and the westerly extension thereof to the Maumee River; thence northeasterly along the Maumee River to the place of beginning.