WATER AGREEMENT: CITY OF TOLEDO/CITY OF MAUMEE

This Agreement entered into this 30th day of December, 1985, by and between the CITY OF TOLEDO, Ohio, a municipal corporation, hereinafter "TOLEDO" acting through its City Manager and Director of Public Utilities, and the CITY OF MAUMEE, Ohio, a municipal corporation, hereinafter "MAUMEE," acting through its Mayor and Municipal Clerk,

WITNESSETH:

WHEREAS, Toledo has for many years been supplying surplus water to the City of Maumee, in accordance with the Toledo Municipal Code and a certain agreement by and between the parties dated February 27, 1961, the expiration date of which is February 26, 1986; and

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

WHEREAS, Maumee 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 17th day of December, 1985, duly enact Ordinance No. 861-85 of said City, authorizing and empowering the City Manager to enter into a contract on behalf of Toledo with Maumee for the furnishing of surplus water to said Maumee Water District from the water supply system of Toledo; and

WHEREAS, the Council of the City of Maumee, Ohio, did enact Ordinance No. 210-1985 on the 16th day of December, 1985, authorizing the Mayor and the Municipal Clerk of Maumee to enter into a contract with Toledo for the purchase of surplus water by Maumee from the water supply system of Toledo,

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

SECTION 1. SUPERSEDED AGREEMENT. The agreement executed by and between Toledo and Maumee dated February 27, 1961, shall remain in full effect and force through January 31, 1986, and shall be deemed wholly superseded and replaced by this Agreement as of February 1, 1986.

SECTION 2. DEFINITIONS.

A) "Maumee Water District" shall mean the territory consisting of and limited to the area within the corporate limits of the City of Maumee as said limits exist at the time of the execution of this contract. (See Attached "Exhibit A").

B) "Master Meter" shall mean all meters owned by the City of Maumee 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 Maumee of quality satisfactory to Maumee and to the Ohio Environmental Protection Agency or its successors, for use in the Maumee Water District during the contract period and receive compensation for said water so supplied.

SECTION 4. OBLIGATION OF MAUMEE. Maumee 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 Maumee at the following locations:

a. Through the trunk main commencing at the intersection of Eastgate Road and Heatherdowns Boulevard in the City of Toledo;

b. Through the trunk main on Detroit Avenue and Ohio Turnpike in the City of Toledo; and

c. In such other manner and at such locations as may be later agreed upon in writing between the parties in the event water mains or facilities are hereafter constructed by means of which water might be advantageously supplied to the Maumee Water District by the City of Toledo.

SECTION 6. RIGHT TO USE STREETS. Maumee shall have the right to use and shall have all necessary easements in the area extending in and along the right-of-way of Eastgate Road within Toledo's corporate limits from the said
intersection of Eastgate Road and Heatherdowns Boulevard required for the constructing, laying, locating, operating, repairing, replacing, removing and/or maintaining the existing 24-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 OPERATION. Maumee shall operate the entire water system in the Maumee 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 Maumee under this Agreement through the trunk mains and take off points provided for in Section 5, Maumee agrees to install and/or maintain at the expense of Maumee, 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 the 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 Maumee 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 Maumee, which in Toledo's sound judgment and discretion are of an emergency nature, without requiring the consent and/or authorization of Maumee; provided that Maumee is notified prior to commencement of such work.

The Maumee 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 rates. 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 Maumee at least thirty (30) days prior to the effective date thereof. Maumee 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 Maumee Water District and the City of Maumee 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 Maumee and all users now or hereafter connected within the Maumee
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 Maumee Water District is at all times subordinate to the needs of consumers within Toledo, and Toledo does not guarantee any 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 shutoff shall be given to the Mayor or Director of Public Service of Maumee, 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 Maumee Water District. Maumee 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. Maumee, 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 MAUMEE WATER DISTRICT. Maumee shall have the right to sell the said water herein agreed to be purchased by it solely to consumers within the Maumee 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, the controversy shall be investigated by Toledo and Maumee in accordance with the general purpose of this Agreement. 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 Maumee, and one designated by the two so appointed. The Advisory Board shall hold such hearings and make such investigations as it considers necessary and it shall make such findings and 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 Maumee.

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 February 1, 1986.

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 or 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 and Constitution of the State of Ohio, the Charter of the City of Toledo, and the Charter of the City of Maumee, 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 MAUMEE, by its Mayor and its Municipal Clerk, have hereunto set their hands this day and year first mentioned above.

WITNESSED:

Helen B. Harris

Jean N. Rice

CITY OF TOLEDO, OHIO
a municipal corporation

By: C. E. Riser, City Manager

APPROVED AS TO CONTENT:

By: Thomas L. Kovacik
Director of Public Utilities

APPROVED AS TO FORM:

By: Sheldon M. Rosen
Director of Law

WITNESSED:

Carol D. Williamson

Lydia C. Theaker

CITY OF MAUMEE, OHIO
a municipal corporation

By: James E. Zamel
Mayor

By: Charles H. Keery
Municipal Clerk

APPROVED AS TO FORM:

By: James D. Smith
Solicitor
The corporate limits of the City of Maumee, as they exist on the date of the execution of this contract, are as follows, to-wit:

a. On the north and east: the northerly boundary line of the Ohio Turnpike Commission, which is also the corporate limits of the City of Toledo;

b. On the west: the easterly boundary line of Interstate I-475; and

c. On the south and east: the center line or thread of the Maumee River, which is also the Lucas County - Wood County line;

all as more particularly set forth in the Records.