

APPROVAL OF WATER SUPPLY AGREEMENT

WITH THE VILLAGE OF WATERVILLE December 26, 1989 NO. 89-2079

Commissioner Wilkowski offered the following resolution:

WHEREAS, Lucas County and the Village of Waterville have a contract to supply Lucas County residences with water until County supply lines are available; and

WHEREAS, Lucas County now is prepared to supply water to the Village of Waterville, thereby terminating the old agreement; and

WHEREAS, the Village of Waterville desires to acquire its water supply from Lucas County and participate in the construction of a 16 inch trunk water main; and

WHEREAS, the County Prosecuting Attorney has approved the form of this agreement; now, therefore, be it

RESOLVED, by the Board of County Commissioners, Lucas County, Ohio, that any two commissioners are authorized to sign the 1989 Lucas County-Waterville, Ohio Agreement.

On the foregoing Commissioner Wilkowski voted aye  
" Isenberg voted aye  
" Holzemer voted aye

Herbert O. Hoehning  
Herbert O. Hoehning, Clerk

I hereby certify the foregoing to be a true and correct copy of resolution adopted by the Board of County Commissioners, Lucas County, Ohio, on December 26, 1989

*Herbert O. Hoehning*

WATER AGREEMENT

between

LUCAS COUNTY, OHIO

and

THE MUNICIPALITY OF WATERVILLE, OHIO

This Agreement entered into this 26<sup>th</sup> day of December, 1989, by and between the COUNTY OF LUCAS, a political subdivision organized and existing under the laws of the State of Ohio, hereinafter referred to as the "County", acting through its Board of Commissioners, duly authorized by a Resolution adopted by its Board of Commissioners on the 26<sup>th</sup> day of December, 1989, and the MUNICIPALITY OF WATERVILLE, a municipal corporation organized and existing under the laws of the State of Ohio, hereinafter referred to as "Waterville", acting through its Municipal Administrator, duly authorized by Resolution No. 28-89 adopted by its Council on the 9<sup>th</sup> day of October, 1989.

WITNESSETH:

WHEREAS, the City of Toledo has been heretofore supplying surplus water to incorporated and unincorporated territory outside its municipal limits, in accordance with the provisions of Title III, Chapters 933, 935, 937, and 939 of the Toledo Municipal Code; and

WHEREAS, Toledo is willing to furnish the same to the County upon the terms and conditions set forth in the "Southwest Lucas County-Toledo Water Service Area" Agreement as hereinafter defined, a copy of which is attached hereto, as Exhibit A, and made a part hereof; and

WHEREAS, the County under Chapter 6103 of the Ohio Revised Code does have the authority to construct and maintain and operate a waterline to a connection point within the County to serve Waterville; and

WHEREAS, the County by virtue of the terms of the "Southwest Lucas County-Toledo Water Service Area" Agreement with Toledo hereinafter defined has the right to contract with the Municipality of Waterville for the supply of Toledo water to that area; and

WHEREAS, Waterville desires to contract with the County for water to be supplied upon such terms and conditions set forth hereafter.

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

SECTION 1. DEFINITIONS.

- A. "Waterville Water District" is defined and is to be known as the Territory consisting of and limited to the area set forth in Exhibit B, which is attached hereto and made a part hereof.
- B. "Master Meter" shall mean all meters owned by Waterville for the purpose of measuring the volume of water received from the County.
- C. "Southwest Agreement" shall mean the Southwest Lucas County-Toledo Water Service Agreement between the County and Toledo dated May 31, 1983.

D. "Toledo" shall mean the City of Toledo from whom the water is being supplied.

SECTION 2. PURPOSE OF AGREEMENT. The purpose of this Agreement is to establish the terms and conditions under which the County shall supply Toledo water to Waterville of quality satisfactory to Waterville and to the Ohio Environmental Protection Agency or its successors for use in the Waterville Water District during the contract period as well as the basis of compensation for the water so supplied.

SECTION 3. OBLIGATION OF WATERVILLE. Waterville shall pay Toledo for said water furnished under this Agreement at the rate set forth below in Section 8. 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 Utilities.

In addition to the above payment to Toledo for water service, Waterville shall also pay the following amounts to the County for the construction, operation, maintenance, and debt service on the County's southwest water distribution system:

A. Commencing with the date that Waterville begins to draw its water supply from the Lucas County distribution system, Waterville shall pay an amount equal to \$2.9353 per 1,000 cubic feet of water furnished under this Agreement to the County for the operation, maintenance, and debt service on the County's southwest water distribution system. Said rate shall be subject to review, recalculation, and/or renegotiation upon the request of either Waterville or the County. Any proposed adjustment in said rate may be submitted to the Advisory Board established by Section 13 of this Agreement.

B. The construction and engineering costs for the 16-inch water main to serve Waterville have been estimated at \$1,236,500. The County and Waterville do hereby agree that the County's share of said costs shall be \$836,500 (67.65%) and Waterville's share of said costs shall be \$400,000 (32.35%). If the actual costs for the water supply line are less than the estimated costs, then each entity's share shall be reduced proportionately. If the actual costs for the water supply line exceed the estimated costs, the County shall be responsible for the full amount of the extra costs. In no case shall Waterville's share of the construction and engineering costs exceed \$400,000.

As a means of monitoring the water being furnished under this Agreement, and, further, as a method of protecting the health and welfare of all water users within the Southwest Lucas County-Toledo Water Service Area, as defined in the Southwest Agreement, no water facilities transmitting water furnished by Toledo shall be utilized for the transmission of water from any other source or supplier.

SECTION 4. OBLIGATIONS OF COUNTY; CONNECTION POINTS. The County shall deliver water to Waterville at two connection points. The first, and major, connection point shall be on Waterville-Monclova Road approximately 1,265 feet north of the centerline of Freedom Lane.

The County shall construct a sixteen (16)-inch water main westerly along Dutch Road and southerly along Waterville-Monclova Road from the existing twenty (20)-inch water main at the intersection of U.S. Route 24 and Dutch Road to the point of connection. There shall be no direct connection from the sixteen (16)-inch trunk main into the Waterville Water District except as otherwise expressly provided in this Section.

The second, and minor, connection point shall be at the southeast corner of the intersection of Dutch Road and North River Road. The County shall construct an eight (8)-inch water main easterly along Dutch Road from the existing twenty (20)-inch water main at the intersection of U.S. Route 24 and Dutch Road to the point of connection.

The County shall own, operate, maintain and be responsible for future replacement, if any, of the sixteen (16)-inch main and the eight (8)-inch main constructed as outlined above.

The County will, to the extent that it may lawfully do so and to the best of its ability, supply to Waterville and all customers now or hereafter within the "Waterville Water District" all water required by them for domestic, commercial, or industrial purposes.

In the event of serious damage to reservoirs or pumping stations of the Toledo or County water system, or other emergencies, water may be shut off by Toledo or the County for the reasonable duration thereof. Toledo or the County shall give immediate notice of such shut-off to the Municipal Administrator of Waterville, which notice may be given by telephone or radio message. Any suspension of water service or inadequacy of water pressure for any of the foregoing causes and/or for any reason beyond the control of Toledo or the County shall in no case render Toledo or the County liable for damages to any person, firm, corporation, and/or governmental body in the "Waterville Water District".

Waterville agrees to abide by and enforce any emergency restrictions as to water use that may be imposed upon consumers within Toledo Pursuant to Title III, Chapter 939, Section 939.14 of the Toledo Municipal Code.

SECTION 5. USE OF RIGHTS-OF-WAY WITHIN THE WATERVILLE DISTRICT WITHIN LUCAS COUNTY. The County shall have the right to use all rights-of-way and easements required for the constructing, laying, locating, operating, repairing, replacing, removing and/or maintaining trunk mains without payment or license fees of any kind. In the event Waterville annexes areas within the County which are outside the Waterville Water District, the foregoing rights shall continue to be available to the County.

SECTION 6. MAINTENANCE AND OPERATION. Waterville shall operate the entire water system in the Waterville Water District, with the exception of County-owned water lines No. 1100 and No. 1179, 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.

The County agrees that all existing County water lines situated within the Waterville Water District as of the date of execution of the Agreement with the exception of County-owned water lines No. 1100 and No. 1179 shall become the sole property of Waterville when all assessments levied for costs associated with the construction of said water lines are paid in full. At such time, Waterville shall become solely responsible for the continued operation and maintenance of said water lines within the Waterville Water District and shall hold the County harmless from any further liability or damages whatsoever arising out of or associated with said water lines.

The provisions of the two preceding paragraphs notwithstanding, Waterville hereby stipulates, and the County hereby concurs, that Waterville shall not be obligated to accept ownership of and responsibility for County Water Line No. 229 until said water line has been cleaned and cement-lined and until the structural integrity and condition of said water line has been properly documented to the sole satisfaction of Waterville.

SECTION 7. METERS. For the purpose of maintaining accurate records of the water sold to Waterville under this Agreement through the trunk mains and take off points provided for in

Section 4, Waterville agrees to satisfactorily install and/or maintain at the expense of Waterville, 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 unrestrictedly accessible to Toledo, Lucas County, and Waterville 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 Waterville, which in Toledo's sound judgment and discretion are of an emergency nature, without requiring the consent and/or authorization of Waterville; provided that Waterville is notified prior to commencement of such work.

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

SECTION 8. 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 fifty percent (50%) of such rates; provided, however, that should the surcharge levied against other consumers within the Southwest Lucas County-Toledo Water Service Area be reduced to less than fifty percent (50%) during the contract period, then the surcharge levied against consumers within the Waterville Water District shall likewise be reduced.

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 Waterville at least thirty (30) days prior to the

effective date thereof. Waterville 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 Waterville Water District and the Municipality of Waterville to be paid under protest.

SECTION 9. FUTURE IMPROVEMENTS. The County shall be responsible for the construction, operation, and maintenance of any future capital improvement projects necessary to supply the water specified in Section 4 of this Agreement.

SECTION 10. ADHERENCE TO RULES AND TOLEDO MUNICIPAL CODE. Waterville, 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 11. WATER TO BE USED ONLY IN WATERVILLE WATER DISTRICT. Waterville shall have the right to sell the said water herein agreed to be purchased by it solely to the customers within the Waterville Water District.

Waterville hereby agrees that it will not require any customers or potential customers within the Waterville Water District to annex to the Municipality of Waterville as a condition precedent to receiving water covered by this Agreement.

SECTION 12. RENEGOTIATION OF AGREEMENT. Either party hereto shall have the right to request renegotiation of any of the terms of this Agreement, and, upon ninety (90) days written notice to the other party, the parties hereto shall meet for the purpose of undertaking such renegotiation. In the event, as the result of the foregoing renegotiation, the parties hereto mutually agree upon the modification of any of the terms of the within Agreement, such modification shall be submitted to the City of Toledo for its approval. Upon such approval being given, this Agreement shall be amended to reflect the agreed modification.



SECTION 13. ADVISORY BOARD. Should any situation arise during the term of this Agreement for which no clear provision is made by the Agreement or should any difference arise between the County and Waterville with respect to the interpretation and effect of this Agreement, including any of their respective rights, obligations, or liabilities hereunder, the controversy shall be investigated by the County and Waterville 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 the County, one appointed by Waterville, and one appointed by Toledo and two others designated by the three so appointed. The five-member 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-third by the County, one-third by Waterville, and one-third by Toledo.

Unless contrary to law, the decision of the Advisory Board shall be final and binding on the parties to this Agreement.

SECTION 14. TERM OF CONTRACT. Except as otherwise provided herein, this Agreement shall expire on October 10, 2014.

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, and the Charter of the Municipality of Waterville, this Agreement shall be null and void.

SECTION 17. APPROVALS OF OTHER AUTHORITIES. This agreement shall be submitted to and shall require the approval of the City of Toledo.

SECTION 18. SUPERSEDED AGREEMENT. The Agreement executed by and between the County and Waterville and dated October 20, 1986, a copy of which is attached hereto, as Exhibit C, and made a part hereof, shall remain in full effect and force through December 31/1989, and shall be deemed wholly superseded and replaced by this Agreement as of December 31, 1989; provided, however, that any unpaid financial obligations from the County to Waterville pursuant to Paragraph 8 of said 1986 Agreement shall remain an obligation of the County and shall be paid in accordance with the provisions of said Paragraph 8.

SECTION 19. RESERVATION OF RIGHT TO AMEND SOUTHWEST AGREEMENT. The County does hereby specifically reserve and shall unconditionally have the right to, and may, without the consent or approval of Waterville to do so, amend and/or modify the Southwest Agreement in any manner whatsoever which is mutually agreed upon by the parties to the Southwest Agreement, namely the County and the City of Toledo, providing such amendment and/or modification does not modify the terms of the within Agreement.

IN WITNESS WHEREOF, the County of Lucas, by its Board of Commissioners, and the Municipality of Waterville, by its Municipal Administrator have hereunto set their hands the day and year first above-mentioned.

LUCAS COUNTY, OHIO

By [Signature]  
By [Signature]  
By [Signature]

THE MUNICIPALITY OF WATERVILLE

By Don E. Holycross

APPROVED AS TO FORM:

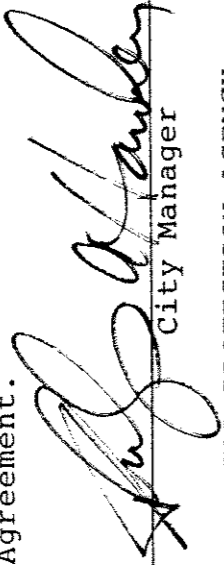
[Signature]  
County Prosecuting Attorney  
[Signature]  
Municipal Law Director

Date: 1/5, 1989

Date: Dec 1, 1989

CONSENT AND APPROVAL OF THE CITY OF TOLEDO

The City of Toledo, Ohio, acting through its City Manager, hereby approves and consents to the terms, conditions, and provisions of the within Agreement.

  
\_\_\_\_\_  
City Manager

APPROVAL BY OHIO ENVIRONMENTAL PROTECTION AGENCY

Pursuant to Section 6103.22 of the Ohio Revised Code, the foregoing contract is hereby approved.

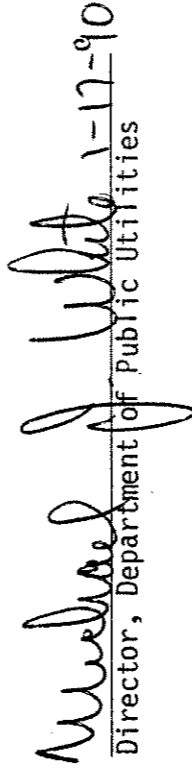
Ohio Environmental Protection Agency

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Asst. Director, Law Department

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Director, Department of Public Utilities 1-17-90