

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER  
INTO A WATER SERVICE AGREEMENT FOR DIRECT  
SERVICE WITH THE CITY OF CLEVELAND.

WHEREAS, the City of Cleveland, by virtue of its Charter and the Constitution of the State of Ohio, is empowered to sell and deliver its surplus water to inhabitants and others outside of its municipal boundaries, and

WHEREAS, the City of Westlake desires to enter into an Agreement with the City of Cleveland to continue to obtain potable water for itself and its inhabitants.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WESTLAKE,  
COUNTY OF CUYAHOGA AND STATE OF OHIO:

SECTION 1: That the Mayor be and he is hereby authorized to enter into a Water Service Agreement for direct service for furnishing to the City of Westlake and its inhabitants potable water, which said Agreement is attached hereto and made a part hereof as though fully rewritten herein and marked Exhibit "A", and further provided that the terms and conditions of the Agreement do not conflict with any provision of the Charter of the City of Westlake.

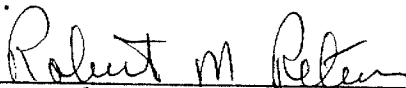
SECTION 2: That a duly authenticated copy of the Water Service Agreement shall be kept in the Clerk of Council's Office and the Department of Engineering.

SECTION 3: That this Council grants to the City of Cleveland, pursuant to Article XI, Section 5, a non-exclusive franchise to construct and operate a public utility for the furnishing to the City of Westlake and its inhabitants potable water for a period of twenty-five (25) years.

SECTION 4: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 5: That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: 2-15-90



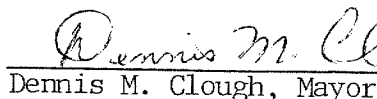
Robert M. Peterson  
President of Council

Presented to Mayor: 2-16-90

Approved: 2-16-90

ATTEST:

  
Nora T. Hill, Clerk of Council

  
Dennis M. Clough, Mayor

Protel 2-16-90

1989-7

# DUPLICATE ORIGINAL

## MEMORANDUM OF UNDERSTANDING

WHEREAS, the City of Cleveland ("Cleveland") and the City of Westlake ("Westlake") have entered into a Water Service Agreement dated March 19, 1990, known as City of Cleveland Contract No. 42180 ("Contract"); and

WHEREAS, Cleveland and Westlake desire to memorialize their understanding of certain provisions of the Contract;

NOW, THEREFORE, Cleveland and Westlake in consideration of the execution of the Contract do hereby mutually agree as follows:

1. Article 5 of the Contract provides that Cleveland will be the sole and exclusive supplier of water to Westlake. Cleveland and Westlake agree that the language of Article 5 of the Contract is not intended to grant an exclusive franchise to provide water service to Westlake and its inhabitants in violation of Westlake's Charter which prohibits the granting of an exclusive franchise for utility service to any utility company.

Westlake acknowledges that, as of the date of the Contract, Cleveland has been and will continue to be the sole supplier of water to Westlake and its inhabitants during the term of the Contract because there are no alternative sources of water supply to the community.

However, in the event that the second sentence of Article 5 of the Contract is construed to be invalid, illegal or unenforceable, pursuant to paragraph 26.03 of the Contract, such invalidity shall not affect any other term or provision of the Contract, and the Contract shall be interpreted and construed as if the sentence had never been contained therein.

2. Cleveland and Westlake agree that in any construction project performed by Cleveland or its contractor in Westlake, pursuant to the Contract, Cleveland shall designate Westlake's inspectors to oversee all aspects of pavement restoration at no cost to Cleveland or its contractor. Westlake, through its Director of Engineering, agrees to furnish a list of names of inspectors and such other pertinent information to Cleveland. Westlake further agrees to cooperate with Cleveland to resolve any problems regarding pavement restoration under the terms of the Contract.

3. Cleveland agrees that payments will not be made to Cleveland's contractor for pavement restoration work in Westlake until Westlake states in writing that the work has been completed to Westlake's satisfaction and that all areas disturbed by Cleveland's contractor, or those in its employ, have been satisfactorily restored.

The undersigned, by signing below, agree that the foregoing represents their understanding of the provisions of the Contract and agree that this Memorandum of Understanding shall remain on file with said Contract.

CITY OF WESTLAKE

BY: Pennis M. Clough Meyer

CITY OF CLEVELAND

BY: [Signature] 3/9/90

The legal form and correctness of the within instrument is hereby approved.

CRAIG S. MILLER  
Director of Law

BY: Marilyn S. Smith  
Assistant Director of Law

Date: 2-26-90

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