

CITY OF CLEVELAND
DUPLICATE ORIGINAL



**WATER SERVICE
AGREEMENT**

with

City OF WESTLAKE

EXHIBIT B

WATER SERVICE AGREEMENT FOR DIRECT SERVICE

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WATER SERVICE AGREEMENT FOR DIRECT SERVICE

THIS AGREEMENT is made and entered into this _____ day of _____ by and between the CITY OF CLEVELAND ("PURVEYOR") acting by and through its Mayor by authority of Section 129.16 of the Codified Ordinances of the City of Cleveland and the CITY OF WESTLAKE ("MUNICIPALITY") acting by authority of Ordinance No. _____, passed on _____, 19____.

WHEREAS, PURVEYOR owns and operates a waterworks system under the management and control of its Division of Water and Heat, Department of Public Utilities, pursuant to the Constitution and laws of the State of Ohio and the Charter and ordinances of the City of Cleveland; and

WHEREAS, PURVEYOR under authority of the Charter of the City of Cleveland and Article XVIII, Section 6, of the Ohio Constitution is empowered to sell and deliver its surplus water to inhabitants and others outside its municipal boundaries; and

WHEREAS, MUNICIPALITY seeks to represent itself and its inhabitants to PURVEYOR for itself and its inhabitants; and

WHERE S, PURVEYOR has been the sole supplier of water to MUNICIPALITY; and

WHEREAS, MUNICIPALITY will continue to utilize PURVEYOR to provide water to MUNICIPALITY and its inhabitants and is willing to contract with PURVEYOR as the sole and exclusive supplier of water for itself and its inhabitants on the terms, covenants, and conditions and

WHEREAS, PURVEYOR is willing to continue to provide water and water related services to MUNICIPALITY and its inhabitants on the terms, covenants, and conditions hereinafter set forth;

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual promises and agreements hereinafter set forth, PURVEYOR and MUNICIPALITY agree as follows:

ARTICLE I. DEFINITIONS

1.01 "Director" means the Director of the Department of Public Utilities of the City of Cleveland.

1.02 "Division of Water" means the Division of Water and Heat of the Department of Public Utilities of the City of Cleveland.

1.03 "Commissioner" means the Commissioner of the Division of Water and Heat of the Department of Public Utilities

1.04 "Waterworks Facilities" means all waterworks facilities including but not limited to water treatment facilities, storage facilities, and pumping stations but excluding water mains.

1.05 "Water Main" means any pipe, regardless of size or function, which is used to transport water from Lake Erie as part of PURVEYOR'S waterworks system to any service connection.

1.06 "Trunk Main" means a water main that is twenty inches (20") in diameter or larger.

1.07 "Distribution Main" means a water main that is less than twenty inches (20") in diameter.

1.08 "Service Connection" means any tap or connection to a distribution main to enable the furnishing of water from such distribution main to any water consumer.

1.09 "Direct Service Customer" means an owner of premises located outside PURVEYOR'S municipal boundaries who receives water and water related services from PURVEYOR and who is billed by and pays to PURVEYOR directly for such water and water services.

1.10 "Master Meter Customer" means a governmental entity which purchases water from PURVEYOR for resale and delivery to water consumers.

1.11 "Suburban Water Council of Governments" means a council of governments formed pursuant to Chapter 167 of the Ohio Revised Code whose membership is limited to and open to those political subdivisions who receive water and/or water related services or whose inhabitants receive water and/or water related services from PURVEYOR.

ARTICLE 2. SERVICE DISTRICTS

2.01 PURVEYOR has divided the geographic area in which it supplies water into service districts, designated Low, First High, Second High and Third High. It is agreed that the service districts located within the territorial boundaries of MUNICIPALITY are as set forth in the Map which is attached hereto as Exhibit A. Only for the purpose of preserving the hydraulic integrity of the system, PURVEYOR may change the service district and the consequent rate to be applied to any geographic territory located within MUNICIPALITY upon sixty (60) days written notice to MUNICIPALITY from PURVEYOR'S engineer describing the engineering changes actually made in the grid system.

ARTICLE 3. OBLIGATION TO FURNISH QUALITY WATER

3.01 In accordance with and subject to the terms of this AGREEMENT, PURVEYOR agrees to continue to furnish water and water related services to MUNICIPALITY and its inhabitants, including persons, commercial businesses, industry, and other existing direct service customers. PURVEYOR has the right to prohibit the installation or extension of any water mains only when the Commissioner determines, on the basis of engineering data, that the installation or extension would adversely affect water pressure and/or water volume being provided to PURVEYOR'S existing water consumers or in accordance with Article 10, Section 10.04(b) hereof.

3.02 The water furnished by PURVEYOR shall at all times be at least equal to the quality of water that is furnished by PURVEYOR to water consumers located within the territorial boundaries of the City of Cleveland.

3.03 PURVEYOR does not guarantee any fixed volume or pressure of water, the same being subject to varying conditions of tuberculation of water mains and other conditions relating to the operation and maintenance of PURVEYOR'S waterworks system. However, MUNICIPALITY shall have a cause of action against PURVEYOR if any such condition arises as the direct result of PURVEYOR'S breach of any term of this AGREEMENT. When necessitated by the need to repair breaks in water mains, serious damage to reservoirs, serious damage to pumping machinery or other emergencies, water may be shut off or curtailed without notice and the failure to furnish water under such circumstances shall in no case render PURVEYOR liable in damages. However, as soon as reasonably possible, the Mayor and/or Service or Safety Director of MUNICIPALITY will be notified, so that fire protection precautions may be taken.

3.04 PURVEYOR shall have the right to discontinue serving any Direct Service Customer who fails to pay in full within the period of time set by PURVEYOR any water bill or who violates any of the provisions of this AGREEMENT or any ordinances, rules or regulations of PURVEYOR that are applicable to the supplying of water to him by PURVEYOR. The same right to discontinue service shall apply to service to MUNICIPALITY except that service may be discontinued only if such violation or failure to pay continues for four (4) months after written notice is given by PURVEYOR of the alleged violation or failure to pay.

ARTICLE 4. WATER RATES

4.01 Rates charged to all customers of PURVEYOR shall be set by the Board of Control of the City of Cleveland subject only to the approval of its Council. PURVEYOR hereby agrees that, for a period of ten (10) years from and after the effective date of this AGREEMENT, the dollar amount of any and all increases in water rates charged by the City of Cleveland to any Direct Service Customer shall not exceed the dollar amount of the increase for any direct service customer within the City of Cleveland by more than 75% in the Low or First High Service District outside the City of Cleveland; by more than 100% in the Second High Service District outside the City of Cleveland; or by more than 130% in the Third High Service District outside the City of Cleveland. Rates shall be calculated on a dollars per mc (one thousand cubic feet of water) basis. Rate increases for Master Meter Customers shall be 75% of the rate increases for Direct Service Customers located in comparable service districts and 63% of the first rate increase reflecting the elimination of a separate maintenance charge. No increase shall be made in the rate for any customer without simultaneously increasing the rates for all other customers, except that customers entitled to a Homestead Exemption as presently specified and defined by the Codified Ordinances of the City of Cleveland need not be increased.

4.02 Rate increases for the following classes of customers shall not be limited by the provisions of Paragraph 4.01 above:

- 1) The rate to be charged to all customers or classes of customers who have taken steps toward leaving the Cleveland water system;
- 2) All rates and charges for unmetered fire supply connections pursuant to Section 535.21 of the Codified Ordinances of the City of Cleveland;
- 3) All rates and charges for water supplied from a public fire hydrant set pursuant to Article 17 hereof; and
- 4) All special rates for the use of water under special circumstances as determined by the Commissioner of Water pursuant to Section No. 535.26 of the Codified Ordinances of the City of Cleveland.

4.03 PURVEYOR agrees that no water rate shall be changed, instituted or revoked prior to sixty (60) days after the Suburban Water Council of Governments receives written notice of the proposed change, institution or revocation.

ARTICLE 5. COVENANT NOT TO SUE ON WATER RATES; EXCLUSIVE FRANCHISE

5.01 In consideration of the agreement of PURVEYOR and provided that PURVEYOR conforms all water rate increases strictly to the provisions of Article 4 of this AGREEMENT, and in consideration of the agreement of PURVEYOR to finance and construct the capital improvements provided for in Article 20 of this AGREEMENT, MUNICIPALITY agrees that it will not directly or indirectly, alone or together with others, by court proceedings or in any other way attempt to obstruct, enjoin, hinder or disable PURVEYOR from setting, charging, and collecting rates that PURVEYOR in its sole discretion deems necessary to enable PURVEYOR to fulfill its obligations hereunder. In addition, MUNICIPALITY agrees that PURVEYOR shall be the sole and exclusive supplier of water to MUNICIPALITY and its inhabitants for the term of this AGREEMENT.

ARTICLE 6. OPERATIONAL CONTROL OF WATERWORKS SYSTEM

6.01 PURVEYOR has the right to regulate and control, in accordance with the terms and conditions of this AGREEMENT, the operation, engineering, construction, expansion, maintenance, repair and use of the entire waterworks system, including all water treatment facilities, water storage facilities, pumping stations, water transmission facilities, and water mains. The Commissioner has the right to determine through which water mains, water shall be delivered to any Direct Service Customer of PURVEYOR.

ARTICLE 7. RIGHT TO USE STREETS, WATER MAINS, AND EQUIPMENT

7.01 PURVEYOR shall have the right to use the easements, streets, and other public ways and places of MUNICIPALITY to the extent MUNICIPALITY has such rights, for the purpose of laying, extending, maintaining and repairing water mains and doing such other acts as PURVEYOR shall deem to be necessary for the delivery of water to all of PURVEYOR'S present and potential consumers, whether located inside or outside of the territorial boundaries of MUNICIPALITY.

7.02 PURVEYOR shall have the right to use, extend, tap or connect into any and all water mains and other water transmission facilities, irrespective of whether or not they are owned or controlled by MUNICIPALITY, without any fee or charges by MUNICIPALITY to PURVEYOR for the exercise of such right, provided such water mains and/or other water transmission facilities are connected into PURVEYOR'S waterworks system.

7.03 The surface easements and streets shall be restored to previous condition (after laying, extending, repairing and maintaining water mains) by MUNICIPALITY at PURVEYOR'S expense unless otherwise agreed to in writing by MUNICIPALITY and PURVEYOR.

ARTICLE 8. INSTALLATION AND MAINTENANCE OF WATER FACILITIES

8.01 PURVEYOR shall have the obligation to provide, at its own cost and expense, the planning, engineering, purchasing, construction, installation, Waterworks Facilities that PURVEYOR in its sole discretion deems necessary or conducive to the proper and efficient functioning of the waterworks system, unless otherwise provided in this AGREEMENT.

8.02 When, in the opinion of the Commissioner, additional Waterworks Facilities need to be installed within the corporate limits of MUNICIPALITY, MUNICIPALITY shall cooperate with PURVEYOR in the construction or installation of such facilities to the extent such cooperation shall not impose any additional cost to MUNICIPALITY, unless otherwise provided in this AGREEMENT, and PURVEYOR shall provide MUNICIPALITY with due notice as to the location of the proposed Waterworks Facilities. MUNICIPALITY shall not charge PURVEYOR for any permits in connection with such installation, and MUNICIPALITY shall cooperate in providing all permits, easements, rights-of-way, access, traffic control and other rights and privileges necessary to facilitate PURVEYOR'S work. PURVEYOR shall pay for the restoration of areas in which construction is carried on, shall pay for any property taken for such construction, and to the extent allowed by law, hold MUNICIPALITY harmless from all damages or claims for damages to persons or property arising from the performance by PURVEYOR or its agents of any work to install or repair or maintain Waterwork Facilities, unless otherwise provided in this AGREEMENT. MUNICIPALITY reserves the right to require its own inspectors where it deems necessary on work performed within its boundaries. The cost of any such inspections shall be paid by MUNICIPALITY. However, where construction of new, extension or replacement Waterworks Facilities is being carried on at the request of PURVEYOR and not at the request of MUNICIPALITY, and where MUNICIPALITY'S inspection is not routine, then the cost of such inspection shall be paid by PURVEYOR.

ARTICLE 9. INSTALLATION AND MAINTENANCE OF TRUNK MAINS

9.01 PURVEYOR shall have the right to use and shall bear the expense of repairing, maintaining, cleaning and relining all trunk mains located within MUNICIPALITY'S corporate limits. PURVEYOR shall further have the right to use and shall bear the expense of repairing, maintaining, cleaning and relining the water mains identified on Exhibit B, which are defined as distribution mains but have been deemed by PURVEYOR to be functioning as trunk mains. PURVEYOR shall not bear the expense of cleaning and relining any mains not herein expressly identified. A priority shall be established for cleaning and relining

those mains listed on Exhibit B based primarily upon the Hazen-Williams "C" Coefficient of the interior of such mains. The mains having the lowest Hazen-Williams "C" Coefficient values, taking into consideration the demand on the system, shall be considered for cleaning and relining at the earliest possible time.

9.02 When in the opinion of the Commissioner, additional trunk mains or extensions of trunk mains shall be installed to supply MUNICIPALITY or any territory beyond MUNICIPALITY'S corporate limits, such mains or extensions thereof shall be installed, repaired, maintained, cleaned, and relined by PURVEYOR at its expense. PURVEYOR is hereby authorized to install new trunk mains within the corporate limits of MUNICIPALITY after due notice to MUNICIPALITY as to the location of the proposed mains or extensions thereof. MUNICIPALITY shall not charge PURVEYOR for any permits or inspection fees in connection with such installation and MUNICIPALITY shall cooperate in providing all permits, easements, rights-of-way, access, traffic control and other rights and privileges necessary to facilitate PURVEYOR'S work. PURVEYOR shall pay for the restoration of areas in which construction is carried on and shall, to the extent allowed by law, save the MUNICIPALITY harmless from all damages or claims for damages to persons or property arising from the performance by PURVEYOR or its agents of any work to repair, maintain, or install trunk mains.

9.03 When the purpose in performing any of the work referred to in this Article 9 is, in the opinion of the Commissioner, primarily to provide additional water supply to MUNICIPALITY and its inhabitants, and such water is requested by the MUNICIPALITY, and if it is necessary to remove or rearrange the property of any other utility to perform such work, the MUNICIPALITY shall remove or rearrange or cause to be removed or rearranged, at no expense to PURVEYOR, the property of the other utility. If, however, the work performed is, in the opinion of the Commissioner, not primarily to provide additional supply to MUNICIPALITY, or its inhabitants, and the work is not requested by the MUNICIPALITY, and it is necessary to remove or rearrange the property of other utilities to perform the work, then MUNICIPALITY will not be responsible for rearranging or bearing the cost of rearranging the property of such utility but will in all events cooperate as far as legally possible, without expense to itself, in obtaining the rearrangement or removal of such utilities' property.

ARTICLE 10. INSTALLATION OF DISTRIBUTION MAINS

10.01 PURVEYOR shall not be obligated to provide or install distribution mains or other equipment for the distribution within the geographic boundaries of MUNICIPALITY of water from trunk mains to service connections. With the exception of those water mains specifically identified on Exhibit B, MUNICIPALITY shall bear the expense of cleaning and relining all distribution mains located within MUNICIPALITY'S corporate limits.

10.02 PURVEYOR may install water mains less than twenty inches (20") in diameter within the corporate limits of MUNICIPALITY when, in the opinion of the Commissioner, such installation is suitable and necessary to supply a large segment of PURVEYOR'S service area, whether or not such area is totally or partially within MUNICIPALITY'S corporate limits, provided MUNICIPALITY and PURVEYOR sign a written agreement authorizing PURVEYOR to construct said main. Whenever PURVEYOR and MUNICIPALITY agree in writing that PURVEYOR may install such a main less than twenty inches (20") in diameter within the corporate limits of MUNICIPALITY, and PURVEYOR agrees to bear the cost of installation, then PURVEYOR shall bear the cost of construction, installation, repairing, maintaining, cleaning and relining such main for all time. PURVEYOR shall not be liable for the cost of installation of any such main less than twenty inches (20") in diameter in the absence of such written agreement. In the event that PURVEYOR shall install and bear the expense of such main, then PURVEYOR shall have the

right to restrict the use of the main so that it would not be permitted to be tapped for service connections or connecting water mains. PURVEYOR shall have the right to allow service connections to be tapped to such main, and shall have the right to condition such permission on the payment of a tap-in charge representing a fair proportion of PURVEYOR'S cost of installation of such main. Such tap-in charges shall be in addition to established connection charges and in lieu of any other assessment. Where a permit is issued for the connection of a fire hydrant, the entire cost of such fire hydrant installation to such main installed by PURVEYOR shall be paid in advance to PURVEYOR by MUNICIPALITY or the party requesting such installation. No tap-in charge shall be assessed by PURVEYOR for the privilege of connecting a distribution main to any water main constructed under the provisions

10.03 No main less than twenty inches (20") in diameter, which primarily functions as a trunk main, that is, primarily furnishing water to other distribution mains and not to service connections, shall be installed at the cost of MUNICIPALITY without MUNICIPALITY'S consent in writing.

10.04 No distribution main or fire hydrant shall be constructed and connected to the waterworks system unless the following requirements have been satisfied:

(a) Prior to construction of the main, preliminary plans shall be furnished to the Commissioner in duplicate which shall show:

(1) the street and other public ways and places in which such distribution main is to be installed, with the location of all monuments or stakes necessary to establish the centerline of such streets or other public ways;

(2) the present surface of the street;

(3) the established grade of the street, (including cases where the grade is established, but the street or public way has not been graded in accordance with the established grade);

(4) the proposed size and location of all mains, pipes, valves, hydrants and other appurtenances and the location of existing or proposed sanitary sewers. PURVEYOR may request modification to said plans and final plans shall be drafted and submitted incorporating all modifications required by Commissioner. Eight copies of the final plans shall be furnished to Commissioner in accordance with the provisions of this AGREEMENT. Upon approval of final plans, installation of the main may commence. Six copies of the final plans will be retained by the Commissioner in the files of the Division of Water. Two copies of the plans shall be returned to MUNICIPALITY, one of which shall be retained in the files of the MUNICIPALITY.

(b) PURVEYOR shall have the right to refuse to approve the construction of a new water main or the extension of an existing water main and the right to refuse connection of a new water main or service connection to the existing water system in any area where sanitary sewers and sewage treatment facilities, or plans for such facilities, have not been approved by the local sewer authority and MUNICIPALITY or in any area where the Ohio Environmental Protection Agency has imposed a tap-in ban prohibiting additional connections to the existing sewer system serviced by the local sewer authority. In the event that PURVEYOR has approved construction of a water main on the basis of plans for sewer facilities, PURVEYOR may refuse to approve connection of such water main until the sewer facilities have been constructed.

(c) When distribution mains are to be installed in a street dedicated by the owner to the public and properly recorded, but not accepted by the MUNICIPALITY, said distribution mains may not be constructed until the owner shall grant and record an easement for the full length and width of such street to MUNICIPALITY and PURVEYOR, providing for the installation of water mains, service connections and appurtenances and their maintenance pending acceptance of the street by MUNICIPALITY.

(d) All pipes and fittings shall comply with standard Department of Public Utilities specifications, as same shall be modified from time to time by the Commissioner. All valves, valve boxes, hydrants, and service connections with their fittings such as corporation cocks, stop cocks, and stop cock boxes and the like, shall be of the same pattern and type and of the same quality of material and shall operate in substantially the same manner as those used by PURVEYOR within its corporate limits with the exception of the hydrant threads, which shall be standard threads if so desired by MUNICIPALITY. All construction, including backfill, shall be that required by PURVEYOR. No better type or quality of materials and construction shall be required by PURVEYOR in MUNICIPALITY than is required of PURVEYOR.

(e) The Commissioner shall have the right to determine the size of all mains, pipes, and service connections used for the supply of water hereunder; the same shall conform to the requirements established by PURVEYOR within its own corporate limits under similar circumstances.

(f) All mains twelve inches (12") or less in diameter and all service connections, shall be laid not less than six feet (6') below the established grade of the street or other public way measured down to the top of mains or service connections. Mains sixteen inches (16") in diameter shall be laid not less than five feet (5') below the established grade.

ARTICLE II. CONNECTION OF NEW DISTRIBUTION MAINS; INSPECTION AND TESTING

11.01 PURVEYOR shall not be obligated to supply water service to any new distribution water main or any new service connection unless and until all of the following provisions have been complied with:

(a) Before the installation of any main may proceed, MUNICIPALITY shall cause a professional engineer to set the required line and grade stakes so that the main and appurtenances are placed in the proper location and at the correct elevation. The cost of such services shall be borne by MUNICIPALITY or other interested party.

(b) Parties seeking to install a new main shall notify Commissioner of the intention to begin work on the installation of any water main at least three days prior to such starting date. PURVEYOR shall have the right to inspect and test any and all materials used or to be used in the construction and installation of any part of the water supply and distribution system within the corporate limits of MUNICIPALITY. The times and method of inspection and testing shall be determined by the Commissioner. MUNICIPALITY shall grant PURVEYOR access to all streets, public ways, all parts of the water system and all other places where materials are located, or construction or any work to be done is carried on, and shall cooperate with PURVEYOR to carry out the work of inspection and testing as provided herein.

(c) All water mains shall be disinfected and chlorinated by PURVEYOR at the expense of the party installing the main. The party installing the main shall give Commissioner reasonable notice as to when the mains are ready for such work. The process of disinfection and chlorination, and the rate of application shall be determined by the Commissioner.

(d) All water mains shall be tested with hydraulic pressure by MUNICIPALITY or other interested party at its expense under procedures for hydrostatic testing and the pressure to be applied to be determined by the Commissioner. MUNICIPALITY shall cause to be prepared and delivered to PURVEYOR record prints prior to final testing of the main.

11.02 All work of inspection and testing performed by PURVEYOR pursuant to Section 11.01 (b) above shall be at the expense of PURVEYOR provided, however, that if such expense in the MUNICIPALITY shall become greater than the average expense for such services on behalf of other municipal users of the water system during a comparable period, then in that event, PURVEYOR shall have the right to charge the party requesting such services for all or a portion of the excess cost that is greater than the average cost in other municipalities. Such excess costs shall be paid within thirty (30) days from the date of PURVEYOR'S bill for such services. All work of inspection and testing performed by

MUNICIPALITY shall be at the expense of the MUNICIPALITY.

ARTICLE 12. MAINTENANCE OF DISTRIBUTION MAINS

12.01 PURVEYOR shall be responsible for and shall bear the expense of the repair and maintenance of all distribution mains and appurtenances, except as otherwise provided herein. Effective as of the first rate increase pursuant to Article 4, the cost of said repair and maintenance will be included as a part of the water rate on a system wide basis.

ARTICLE 13. DAMAGE TO SYSTEM AND RELEASE OF LIABILITY

13.01 MUNICIPALITY agrees to make no claim against PURVEYOR on account of any break or leak in any water main, or fire hydrant in any public street, highway or easement which claim arises before PURVEYOR has notice of such leak and before PURVEYOR has had a reasonable period of time to act after such notice is received to cure any such condition.

13.02 MUNICIPALITY shall bear the cost of repairing water mains and service connections that may be damaged due to being embedded wholly or partly within a sewer, manhole or catch basin. MUNICIPALITY shall save PURVEYOR harmless from any claim for damages caused by a break in any water main, pipe or service connection that results from the water main, pipe or service connection being embedded wholly or partly within a sewer, manhole or catch basin in violation of regulations of any environmental protection agency.

13.03 Repair and maintenance of new valve boxes, hydrants, service connections and their appurtenances installed by a contractor shall be the obligation of MUNICIPALITY for a period of two years after completion, unless the contract for such installation provides for such maintenance to be furnished by the contractor or some other party.

13.04 If any contractor employed by MUNICIPALITY damages any water mains or other water plant facilities which are the property of PURVEYOR, MUNICIPALITY shall be responsible for the repair of said facilities or pay PURVEYOR for such damage, upon receipt of bill.

ARTICLE 14. MAINTENANCE OF DISTRIBUTION SYSTEM BY MUNICIPALITY

14.01 In the event that MUNICIPALITY desires to undertake the repair and maintenance of all or any part of the distribution system located within its geographic territory, MUNICIPALITY and PURVEYOR may, by mutual agreement, enter into a written agreement supplemental to this AGREEMENT modifying and amending this AGREEMENT with respect to the duties, responsibilities and liabilities related to such maintenance and repair work. Nothing in this AGREEMENT shall prohibit MUNICIPALITY from becoming a Master Meter Community if MUNICIPALITY and PURVEYOR can reach mutually agreeable terms and conditions for such change in status.

ARTICLE 15. SERVICE CONNECTIONS

15.01 No service connection or meter vault may be constructed or connected to the waterworks system until a permit for such construction or connection has been obtained from PURVEYOR.

15.02 Before a permit for a service connection and/or meter vault is issued by PURVEYOR, the applicant requesting same shall procure a certificate from MUNICIPALITY indicating: (1) the location and desired size of the proposed service connection or meter vault; (2) that applicant has made satisfactory arrangements with MUNICIPALITY for any necessary openings in the street or public highway, excavating trenches, disposal of excavating material, backfilling of trenches with sand, placing temporary wearing surface, maintenance of surface, maintenance of surface in advance of permanent replacement of roadway, sidewalks or driveways, including the erection and maintenance of lights, signs and barricade for

same without expense to PURVEYOR and relieving PURVEYOR of all responsibility and liability that may arise from the performance of any work by applicant or his contractor.

15.03 Only distribution mains within the corporate limits of MUNICIPALITY shall be tapped for the purpose of making service connections for the general supply of water to any premises within the corporate limits of MUNICIPALITY.

15.04 A service connection to a water main shall be permitted only if the water main extends across the full length of frontage of the premises to receive water service from the service connection. Service connections shall be permitted only to premises which abut a street in which a distribution main is situated or where an easement for water supply purposes extends from the premises to a street in which a distribution main is located.

15.05 A single service connection shall supply no more than one building. In multi-unit buildings, such as are located in shopping centers, or such other structures where units within that structure may be sold individually, the Commissioner shall determine the number of service connections necessary to adequately provide service to the building.

15.06 All service connections to any main located in a street or other public way or place shall be installed by PURVEYOR at the expense of the party ordering the service. The service line shall be installed by PURVEYOR up to a point approximately two feet (2') back of the curb line. Such installations shall include all stop cocks and valves.

15.07 No service connections shall be extended beyond the curb box or valve at the curb to a building until permits for such extension, for the setting of a meter thereon, and for water to be used for construction purposes have been obtained from PURVEYOR. Said permit will be issued only after submission to PURVEYOR of a written application, together with a building permit issued by MUNICIPALITY. MUNICIPALITY agrees that its officers vested with the authority to issue building permits will, before issuing any permit for construction work which will require the use of water, first require the applicant to furnish a certificate secured from PURVEYOR stating that the rules and regulations of the Division of Water have been complied with, and that arrangements have been made with the Division of Water for use of water and for payment of all water used. The extension of a service connection from the stop cock box or valve at or near the curb ("pipe") shall be installed by and at the expense of the Direct Service Customer. The pipe must be of a type approved by the Commissioner and left uncovered in the trench until it has been tested and inspected by PURVEYOR at the expense of PURVEYOR. The water shall not be turned on until the pipe has been inspected and approved. MUNICIPALITY shall provide PURVEYOR with a copy of each occupancy permit or equivalent document issued by MUNICIPALITY within ten (10) days of issuance.

ARTICLE 16. METERS

16.01 Water meters and remote registers shall be installed on all service connections established within the territorial boundaries of MUNICIPALITY in such locations as the Commissioner shall determine. Water meters and remote registers shall be supplied by PURVEYOR and shall remain the property of PURVEYOR. The cost of the water meters and remote registers and the cost of their installation shall be paid for by the Direct Service Customer.

16.02 Meters shall be set in a vault within the dedicated right-of-way when required by the Commissioner. When vaults are required, they shall be furnished and installed by the Direct Service Customer and approved by the Commissioner, all in strict conformity with the rules and regulations of the Division of Water.

16.03 Water meters and remote registers on existing service connections that were not originally supplied by PURVEYOR to the water consumer, did not meet the specifications of PURVEYOR at the time of installation and do not accurately register the consumption of water, shall be repaired and/or replaced by PURVEYOR at the expense of the Direct Service Customer. All water meters and/or remote registers which must be replaced and/or repaired as the result of theft or damage from causes other than normal wear and tear shall be repaired and/or replaced by PURVEYOR at the expense of the Direct Service Customer. Notwithstanding anything to the contrary in this paragraph, a water meter and/or remote register supplied by PURVEYOR which must be repaired or replaced as a result of defects in material or workmanship, or normal wear and tear, shall be repaired and/or replaced at PURVEYOR'S expense.

16.04 In cases where, with the consent of PURVEYOR, the Direct Service Customer is the owner of a reregistering meter, maintenance and repairs on said meter shall be made by PURVEYOR at the expense of the Direct Service Customer on the basis of the cost of material and labor plus twenty-five percent (25%) of the cost of materials and labor to compensate PURVEYOR for supervision and overhead expenses.

16.05 If any water meter shall fail to register correctly within the limitations established in the ordinances and rules and regulations of PURVEYOR applicable thereto, the Direct Service Customer shall be charged for water usage based on the consumer's average daily rate of consumption. The consumer's average daily rate of consumption shall be estimated by Commissioner based upon water usage registered under similar conditions when the meter was in working order. PURVEYOR shall use the same criteria in estimating consumption of Direct Service Customers and customers within the City of Cleveland.

ARTICLE 17. FIRE HYDRANTS

17.01 MUNICIPALITY shall not use nor permit the use of water from fire hydrants, valves or other openings within the corporate limits of MUNICIPALITY unless the use of such water is metered or is in conformance with the provisions of this Article 17.

17.02 MUNICIPALITY has the right to connect fire hydrants to PURVEYOR'S water supply system and to make use of all water required by MUNICIPALITY for the extinguishment of fires, the flushing of fire hydrants, streets and sewers and for such other use as is specifically authorized by Commissioner. For this right, MUNICIPALITY shall pay an annual fee in advance at such rates, in such manner, and at such times as shall be provided in applicable ordinances or rules and regulations of PURVEYOR existing at the time this AGREEMENT is executed or as amended in the future. The rate charged for the use of water from a fire hydrant shall be calculated to cover only PURVEYOR'S actual cost of estimated water losses for uses other than extinguishment of fires, but in no event shall said rate exceed the rate authorized to be charged to a Direct Service Customer located in the same service district. MUNICIPALITY shall maintain records of its use of water from fire hydrants for the purpose of establishing charges for such use. Except as otherwise provided in this Article 17, there shall be no unaccounted for or other free use of water by MUNICIPALITY.

17.03 No water shall be taken from any fire hydrant for construction or any other purpose except as provided in Paragraph 17.02 without first obtaining a permit for said use from the Commissioner. The issuance of such permit shall be conditioned upon compliance with rules and regulations issued by PURVEYOR, including but not limited to, prepayment for water which said applicant may reasonably be expected to use, at rates not higher than the rates in effect for the service district in which the fire hydrant is located. The Commissioner shall have the power to revoke any permit issued in order to protect PURVEYOR against waste of water or for any other reasonable purpose.

17.04 MUNICIPALITY shall be responsible for and, except as otherwise provided herein, shall bear the expense of installation of, periodic inspections of and maintenance and/or repair of all fire hydrants located within its corporate limits. MUNICIPALITY may repair or replace fire hydrants that are not functioning properly. If any such repair or replacement is required as the result of normal wear and tear, then MUNICIPALITY may bill PURVEYOR for the reasonable cost thereof upon submission to PURVEYOR of documentation of the work done and the actual cost thereof. PURVEYOR reserves the right to reject any bill for costs which PURVEYOR deems to be unreasonable.

ARTICLE 18. CHANGE IN GRADE OF STREETS

18.01 Where the established grade of any street or public way under which trunk mains, mains, pipes, or service connections are installed is to be altered or re-established at more than one foot (1') below the grade used for the installations, then MUNICIPALITY shall lower or shall cause to be lowered the trunk mains, mains, pipes, or service connections to the depth required in Paragraph 10.04(f), at no cost to PURVEYOR.

18.02 Where the established grade of any street or public way under which trunk mains, mains, pipes, or service connections are installed is to be altered or re-established at more than two feet (2') above the grade used for such installation, MUNICIPALITY shall replace or shall cause to be replaced such trunk mains, mains, pipes, or service connections to the depth required in Paragraph 10.04(f), at no cost to PURVEYOR.

18.03 Where relocation or re-establishment of grade is made of any street or public way by MUNICIPALITY, or with its consent or approval, which relocation or re-establishment of the street or public way causes all or part of existing trunk mains, mains, hydrants, service connections or meter vaults to be located outside of the relocated street or public way, then MUNICIPALITY shall cause such trunk mains, mains, hydrants, service connections or meter vaults to be relocated within the limits of the relocated street or public way at no cost to PURVEYOR or shall cause an easement to be granted to PURVEYOR and MUNICIPALITY covering the property within which such trunk mains, mains, hydrants, service connections or meter vaults are located for the purposes of using, installing, repairing and maintaining such facilities.

ARTICLE 19. VACATION OF STREETS

19.01 Where any dedicated or proposed street, wholly or partly improved with water facilities, is to be vacated in a MUNICIPALITY, the MUNICIPALITY or the owner of the street shall file a notice of such proposed vacation with PURVEYOR before the effective date of the vacation.

19.02 Within thirty (30) days of the receipt of the notice provided for in Paragraph 19.01, PURVEYOR shall notify MUNICIPALITY in writing of any relocation or alteration in water facilities required by the street vacation. Such relocation or alteration shall not be required if the existing water facilities are located within an easement to the MUNICIPALITY and PURVEYOR in a form satisfactory to the PURVEYOR.

19.03 Any relocation or alteration of water mains, service connections, fire hydrants, valves, curb cocks, meters, or meter vaults or other water facilities in any street or public way necessitated by a street vacation, shall be at the expense of MUNICIPALITY, or the benefiting party. Should MUNICIPALITY, or the benefiting party, be unwilling or unable to make the relocation or alteration required, then PURVEYOR may proceed with the relocation or alterations and be reimbursed as hereinafter provided. MUNICIPALITY or the party benefiting from the street vacation shall be billed for the total cost of such relocation or alteration and shall have two months from the date of receipt to pay PURVEYOR the total amount of the bill. If the total amount due and owing is not paid within the two month period, permission

for any additional extensions of water mains or any additional service connections within MUNICIPALITY'S corporate limits may be withheld until the amount is paid in full.

ARTICLE 20. CAPITAL IMPROVEMENT PROGRAM

20.01 PURVEYOR'S engineers have determined that the capital improvements listed in Exhibit C attached hereto will be beneficial to the efficient operation and expansion of the water system as a whole and PURVEYOR plans and agrees to complete these improvements within ten (10) years from the date of this AGREEMENT provided that necessary funding can be obtained from the issuance and purchase of bonds and through the collection of water revenues and provided further that the collection of water revenues from PURVEYOR'S customers are sufficient to meet PURVEYOR'S obligations under the terms of its bond indentures, both existing and to be issued, and are sufficient to meet the expenses of all of PURVEYOR'S obligations to provide services under this AGREEMENT, and are sufficient to meet the Division of Water and Heat's general operating and administrative expenses. PURVEYOR specifically agrees and covenants that it will make a good faith effort to issue and sell bonds needed to complete the capital improvement program contemplated herein and will make a good faith effort to set rates sufficient to meet the obligations set forth herein.

20.02 MUNICIPALITY agrees that in the event any of the capital improvements listed in Exhibit C is located within MUNICIPALITY'S corporate limits or the construction or completion thereof can be affected in any way by any act or failure to act by MUNICIPALITY then MUNICIPALITY will cooperate with PURVEYOR to facilitate such construction and in the acquisition by PURVEYOR of land for such construction, provided such action does not require MUNICIPALITY to incur any expense.

ARTICLE 21. ANNUAL REPORTS

21.01 MUNICIPALITY shall furnish to PURVEYOR, within thirty (30) days after a written request from PURVEYOR, the location and size of all water pipes, valves, service connections and fire hydrants laid or placed within the corporate limits of MUNICIPALITY during the preceding year. PURVEYOR may request such information for periods of time longer than the preceding year if available and MUNICIPALITY shall be required to furnish such information within a reasonable period of time. Within ninety (90) days from the date of a request by PURVEYOR, MUNICIPALITY shall furnish to PURVEYOR, MUNICIPALITY'S best estimate of its requirements for expansion and future needs for water service for the next five (5) years.

ARTICLE 22. CURTAILMENT OF WATER SERVICE

22.01 When emergency conditions necessitate the temporary curtailment of water usage to insure that all water consumers will have adequate volume and pressure of water for essential health and safety purposes, PURVEYOR may order a temporary curtailment of water supply in all or any part of the geographic territory within MUNICIPALITY'S boundaries.

22.02 Upon telephone communication, public media announcement or other actual notice of an order to the Mayor or City Manager and/or the Safety or Service Director for temporary curtailment of water service, MUNICIPALITY agrees to take every reasonable and appropriate action to curtail the use of water by its inhabitants and users throughout the geographic territory affected by the order by enforcement of the ordinance referred to in Paragraph 22.03.

22.03 Within sixty (60) days after the execution of this AGREEMENT, MUNICIPALITY agrees to adopt legislation substantially in the form provided in Exhibit D and agrees to enforce its provisions in good faith. PURVEYOR shall have the right to inspect copies of any and all ordinances, rules and regulations, police citations reports and inspection memoranda regarding enforcement by MUNICIPALITY of

PURVEYOR'S order to curtail use of water.

22.04 Failure of MUNICIPALITY to make a good faith effort to enforce a curtailment order against an inhabitant of MUNICIPALITY after PURVEYOR has provided hand delivered written notice to MUNICIPALITY of the identity of an inhabitant who is in violation of the order, shall subject MUNICIPALITY to a penalty in the amount of Five Hundred Dollars (\$500.00) per day for each day MUNICIPALITY fails to make a good faith effort to enforce the curtailment order against said inhabitant. Before assessing the penalty authorized by this Paragraph, PURVEYOR shall provide the highest ranking official of MUNICIPALITY with hand delivered written notice of PURVEYOR'S intent to assess the penalty and of the reason for the proposed penalty. MUNICIPALITY shall have the opportunity to remedy and remove the penalty by making good faith effort to enforce the curtailment order against the violating inhabitant within six (6) hours. If, within the six (6) hour time period, MUNICIPALITY has taken appropriate action, PURVEYOR shall waive any penalty.

22.05 Permission for any additional water mains, extension of water mains or any additional service connections within MUNICIPALITY'S corporate limits shall be denied until any unpaid penalties assessed in accordance with this Article 22 have been paid.

22.06 A curtailment order under this Article 22 shall automatically expire seven (7) days after it is instituted unless renewed prior to that time by PURVEYOR and PURVEYOR notifies MUNICIPALITY of the renewal.

22.07 MUNICIPALITY hereby agrees that the penalties provided for herein are necessary to allow PURVEYOR to preserve the hydraulic integrity of the water supply system and are not excessive.

ARTICLE 23. TERM OF AGREEMENT

23.01 The term of this AGREEMENT shall be for a minimum period of ten (10) years commencing on the first day after execution of this AGREEMENT by PURVEYOR, and shall automatically continue in effect from year to year thereafter. This AGREEMENT may be cancelled by either party hereto by giving written notice to the other party at least five (5) years prior to the effective date of termination, provided that no such notice may be given until five (5) years after the date upon which this AGREEMENT is executed by PURVEYOR. Any notice of cancellation shall be by certified mail, return receipt requested, addressed to the Director in case of PURVEYOR or the highest ranking official in case of MUNICIPALITY. In the event of termination of this AGREEMENT, following notice of cancellation by either party, the Director or his designated representative shall have sole control over the terms and conditions of the operation of the water system within MUNICIPALITY'S geographic territory, so long as water is being supplied by PURVEYOR to said territory.

ARTICLE 24. MISCELLANEOUS PROVISIONS

24.01 MUNICIPALITY, and PURVEYOR expressly agree that the terms, covenants and conditions made in this AGREEMENT shall bind its respective council, officers, mayors and officials for the term of this AGREEMENT and they have authority to execute this AGREEMENT.

24.02 If any governmental unit, department, division, body or office referred to in this AGREEMENT shall cease to exist or shall cease to retain any part of its powers and duties, material to the performance of this AGREEMENT, which are vested in them at the time of the execution of this AGREEMENT, then all references to them shall be deemed to include whatever governmental units, department, division, body or office shall then succeed to or have the powers and duties material to performance of this AGREEMENT without regard to title or formal designation.

24.03 PURVEYOR and MUNICIPALITY agree that in performing the rights, duties and obligations under this AGREEMENT they must at all times act in good faith.

24.04 MUNICIPALITY agrees that all ordinances, rules and regulations of PURVEYOR now or hereafter applicable to the operation, management and control of PURVEYOR'S water system shall be included in this AGREEMENT for all purposes, provided the ordinances, rules and regulations are not in conflict with provisions of this AGREEMENT. If any such ordinances, rules or regulations are in conflict with provisions of this AGREEMENT, the provision of this AGREEMENT shall apply.

24.05 Whenever under the terms of this AGREEMENT, PURVEYOR is required to bear any expense or fund any improvement to the water system, MUNICIPALITY agrees the cost of said expense or funding shall be recovered from revenues of the Division of Water and Heat and not from PURVEYOR'S General Fund.

ARTICLE 25. TERMINATION OF ALL PRIOR AGREEMENTS

25.01 All prior water service agreements, supplemental water service agreements and conditions of water service between PURVEYOR and MUNICIPALITY, verbal or written, are hereby terminated.

25.02 MUNICIPALITY and PURVEYOR release each other of any and all claims arising under or in connection with any previous water service agreements between them.

ARTICLE 26. MODIFICATIONS; UNDERSTANDINGS; LEGALITY

26.01 No covenant, agreement or condition of this AGREEMENT shall be waived, altered or modified except by a written instrument executed by the party against whom enforcement of such waiver, alteration or modification is sought. No waiver of any covenant, term or condition of this AGREEMENT shall affect any other covenant, term or condition of this AGREEMENT.

26.02 This AGREEMENT contains all the promises, agreements, conditions, inducements and understandings between MUNICIPALITY and PURVEYOR, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, other than as set forth in this AGREEMENT.

26.03 In the event any term or provision of this AGREEMENT shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this AGREEMENT shall be interpreted and construed as if such term or provision, to the extent the same have been held to be invalid, illegal or unenforceable, had never been contained herein.

ARTICLE 27. NOTICES

27.01 Notice of cancellation of this AGREEMENT shall be delivered by certified mail. All other notices required to be given under this AGREEMENT shall be delivered by regular mail.

27.02 Notice to PURVEYOR required to be given under this AGREEMENT shall be delivered to the following address: DIRECTOR OF PUBLIC UTILITIES, CITY OF CLEVELAND, 1201 LAKESIDE AVENUE, CLEVELAND, OHIO 44114.

A copy of any such notice shall be delivered to the following address: COMMISSIONER, DIVISION OF WATER, CITY OF CLEVELAND, 1201 LAKESIDE AVENUE, CLEVELAND, OHIO 44114.

DUPLICATE ORIGINAL

27.03 Notices to MUNICIPALITY required to be given under this AGREEMENT shall be delivered to the following address:

MAYOR'S OFFICE
CITY OF WESTLAKE
27216 HILLIARD BOULEVARD
WESTLAKE, OHIO 44145

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the day and year first above written.

IN THE PRESENCE OF:

THE CITY OF CLEVELAND

By: [Signature] 3/19/90
ACOM Director, Department of Public Utilities

William E. Blaker

CITY OF WESTLAKE
MUNICIPALITY

By: Dennis M. Clough
(Name)

Loraine Osterkorn

Mayor
(Title)

3/15/90
Approved as to Legal Form
with Memorandum of Understanding
Patrick A. Mason
Director of Law
City of Westlake, 15

EXHIBIT A (SEE BACK COVER)

(A map of the service districts located within the territorial boundaries of MUNICIPALITY will be attached).

EXHIBIT B

PURVEYOR shall bear the expense of cleaning and relining only the following distribution mains:

Name of Street or Road	From:	To:
Grantwood Road/Broadview Road/East Ridgewood Drive/Crossview Road/Chestnut Road	State Road	Brecksville Road
Pleasant Valley Road	Hoertz Road	District Line at I-77
Broadview Road	Skyview Drive	Sprague Road
Ridge Road	North of Sprague Road	South of Ohio Turnpike
State Road	Pleasant Valley Road	Boston Road
Wallings Road	Ridge Road	Broadview Road
Pearl Road	Luckia Avenue	Bagley Road
West 130 Street	Snow Road	Drake Road
York Road	Pearl Road	Akins Road
Center Ridge Road	Wooster Road	Clague Road
Hilliard Road/Boulevard	Wooster Road	Clague Road
Wagar Road/ West 210 Street	Westway Drive	Westwood Avenue
Columbia Road	Hilliard Boulevard	Sprague Road
Rockside Road/ Broadview Road	Brecksville Road	Brookpark Road
Aurora Road/South Miles	Northfield Road	County Line
Bainbridge Road	South of Detroit Road	Mill Road
Dover Center Road	Nottingham Road	East 230 Street
Lake Shore Boulevard	South Woodland Road	U.S. Route 422
S.O.M. Center Road	Detroit Road	Lorain County Line
Bradley Road	Richmond Heights West	
Chardon Road	Corporation Line	Worrell Road
West Lake Road	Detroit Road	Lorain County Line
Snow Road	West 130 Street	Broadview Road
S.O.M. Center Road	Willoughby Hills North	Mayfield Village South
	Corporation Line	Corporation Line
Bishop Road	Eddy Road	Wilson Mills Road
Mayfield Road	Mayfield Heights West	Cardinal Line
	Corporation Line	
S.O.M. Center Road	Mayfield Heights North	Deadend South of
	Corporation Line	Fairmount Blvd.
Bradley Road	Westlake Road	Detroit Road

Dover Center Road	Westlake Road	Detroit Road
Royalton Road	Pearl Road	District Line West of Bennett Road
Green Road	Baintree Road	Chagrin Boulevard
Wallings Road	Broadview Road	District Line at Pershing Drive
Royalton Road	District Line, West of Bennett Road	District Line at I-77
Lorain Road	West 208 Street	Clague Road
Warrensville Center Road	Mayfield Road	South Euclid
Cedar Glen (Cedar Hill)	Murray Hill	South Corporation Line
		Euclid Heights Boulevard

EXHIBIT C

PURVEYOR'S engineers have determined that the following capital improvements will be beneficial to the efficient operation and expansion of the water system as a whole:

PHASE 1

Columbus Road Bridge Water Main
 Warrensville Reservoir Construction
 Engle Rd. 10 MG Reservoir & Bagley/Whitney Supply Water Main Construction
 Broadway Booster Pump Station Land Purchase
 New Division Filter Plant Design and Construction Management Services
 Nottingham Pump Station First High Service Improvements, 36" 1st HS Main
 Installation of Dual-Drive Backup Pump at Pleasant Valley Pump Station
 Blossom Water Tower — 3 MG Storage
 Construction of Broadway Booster and Pump Station and Related Supply Mains
 Division Water Pumping Plant Office, Maintenance and Heating Facilities
 Installation of Dual-Drive Backup Pump at Cedar-Winchester Pump Station
 Installation of Dual-Drive Backup Pump at Independence Pump Station
 Construction of Willow Booster Station
 Cleaning and Relining Water Mains
 Construction of Baldwin Filter Plant Restoration
 Division Railroad Track Replacement
 Division Site Fence Replacement
 Construction Division Chemical House Exhaust Scrubber System
 Construction of Woodhill Road 2nd High Service Supply Main
 Nottingham Plant Coagulation, Filt. & Res. Modification & Replacement Engrg.
 Construction of Falmount Raw Water Reservoir Skewalls and Bottom
 Nottingham Pumping 2nd High Service Improvement-Engrg.
 Nottingham Pumping 2nd HS Improvements

Construction of Crown Site Erosion Control
 Crown Purification Instrumentation Replacement
 Baldwin Purification Sludge Collection, Backwash Recirculation and Disposal Facilities Engineering
 Construction of Division Pumping Station Roadway and Site Improvements
 Construction of Division Pumping Station House Electrical Service
 Construction of Crown Heating Boiler Replacement
 Construction of Power Positioner in Parma Control Center
 Construction of Southwest Side Maintenance Yards
 Purchase & Installation of Hydrants, Valves & Pipe Replacement
 Construction of Nottingham Plant Washwater Inlets
 Baldwin Plant Washwater Pump Replacement
 Construction of New Distribution Mains
 Purchase & Installation of Remote Outside-Reading Meters
 Construction of Nottingham Roofs
 Crown Site Perimeter Fence
 Construction of Fairmount Pump Station Roof
 Construction of Security Facilities—All Locations
 System Planning Engineer Report
 Crown Intake Improvements

PHASE 2

Construction of Baldwin Clearwell Joint Seals
 System Hydraulic Survey Service
 Construction of Independence Reservoir
 Construction of Nottingham Roadway & Site Improvements
 Construction of Highland-Brecksville 3rd High Service Pump Station
 Construction of Brecksville Reservoir
 Construction of Brecksville Supply Main
 Remodel Lakeside Pump Station for Offices
 Construction of Division Purification Settling Basin Bracing and Sealing
 Construction of Phase I of New Division Filter Plant
 Cleaning and Relining Water Mains
 Purchase and Installation of Hydrants, Valves & Pipe Replacement
 Construction of New Distribution Mains
 Purchase and Installation of Remote Outside Reading Meters
 Construction of Security Facilities—All Locations

PHASE 3

Construction of Nottingham Sludge Disposal Facilities
 Replacement of Filter Valves & Controls at Baldwin Water Plant
 Construction of Nottingham Plant Coagulation Filtration and Reservoir Modification & Replacement
 Construction of Crown Sludge Collection and Disposal Facilities
 Construction of Baldwin Sludge Facilities
 Construction of Primary Pumping Station Transformer Coolant Containment Dikes

Construction of Southeast Side Maintenance Yard
 Construction of Crown Plant Railroad Track Extension
 Nottingham Electrical, Valve, Piping, Instrument, Control & Heating & Ventilating Engrs.
 Construction of State-Brecksville Supply Main
 Fairmount Pump Station First High Service Pressure Study
 Crown Plant Expansion Engineering
 Kirtland Intake Crib Renovation
 Construction of Oakes/Broadview-Avery Supply Main
 Construction of Kirtland Pumping Station Machine Shop Roof
 Construction of Fairmount Pumping Station Roadway and Site Improvements
 Electric Motors in Secondary Pumping Stations
 Installation of Cathodic Protection at Kirtland Raw Water Pump Station
 Chemical Feed Facilities for Outlying Areas
 Construction of Harvard Yard Truck Wash
 Construction of Phase 2 of New Division Filter Plant
 Cleaning and Relining Water Mains
 Purchase & Installation of Hydrants, Valves & Pipe Replacement
 Construction of New Distribution Mains
 Purchase and Installation of Remote Outside Reading Meters
 System Hydraulic Survey Service
 Construction of Security Facilities—All Locations

PHASE 4

New Solon Water Tower
 Installation of Ball Valves in Secondary Pumping Stations
 Construction of Belvoir-Glenridge Supply Main
 Conversion of Fire Protection Mains to Downtown Low Service Use
 New Forest Hills Water Tower
 Installation of Carbon Slurry Feed System at Crown Plant
 Construction of Baldwin Purification Heating Boilers
 Construction of Euclid Creek Channel Thru Nottingham Site
 Construction of Shepard Reservoir
 Construction of Chagrin Reservoir
 Construction of Tungsten-Babbitt Supply Main
 Construction of Phase 3 New Division Filter Plant
 Cleaning and Relining Water Mains
 Purchase & Installation of Hydrants, Valves & Pipe Replacement
 Construction of New Distribution Mains
 Purchase and Installation of Remote Outside Reading Meters
 System Hydraulic Survey Service
 Construction of Security Facilities—All Locations

PHASE 5

Construction of Nottingham Electrical, Valve, Piping, Instrument, Control Heating, Ventilating
Construction of Crown Plant Expansion
Division Intake Improvements
Construction of Warrensville-Broadway Supply Main
Construction of Engle Road Booster Pump Station
Installation of Cathodic Protection at Division Pump Station
Construction of New Warrensville 3rd High Service Pump Station
New North Hills Water Tower
Cleaning and Relining Water Mains
Purchase and Installation of Hydrants, Valves & Pipe Replacement
Construction of New Distribution Mains
Purchase and Installation of Remote Outside Reading Meters
System Hydraulic Survey Service
Construction of Security Facilities—All Locations

PHASE 6

Fairmount Pump Station Truck Loading Dock
Construction of Fulton/Denison-Brookpark Supply Main
Construction of Fulton-Brecksville Supply Main
New Chemical Feed & Storage Facilities at Baldwin Water Purification Plant
Installation of Random Supply Water Mains
Division Filter Plant Site Structure Removal
Remodel Fairmount Boiler & Coal Storage Building to Administration & General Storage
Replacement of Filter Valves & Controls at Division Water Purification Plant
Construction of 2nd Pleasant Valley Reservoir
Installation of 1st Section Crown-Sprague Supply Main
Division Water Plant Clear Well Restoration
Construction of Ridge Road Supply Main
New Bedford-Alexander Water Tower
New Miner Water Tower
Construction of Crown Shore Shaft Erosion Control
Construction of Lake Shore-Lakeland Supply Main
Construction of Brookpark-Deering Supply Main
Installation of 2nd Section Crown-Sprague Supply Main
Nottingham Plant Addition to Clear Well, Engrg.
Construction of 2nd Parma Reservoir
Construction of West 73rd-Denison Standpipe Reservoir
Construction of 2nd Engle Road Reservoir
Expansion of Engle Road 2nd High Service Pump Station
Installation of Sprague-Pearl Supply Main
Construction of Columbia-Sprague 2nd High Service Pump Station
Construction of Nottingham Plant Addition 24 Million Gallon Clear Well Reservoir
Crown Plant Addition to Clear Well, Engrg.
Construction of Crown Plant Additional 20 Million Gallon Clear Well Reservoir
System Hydraulic Survey Service

EXHIBIT D
CURTAILMENT OF WATER USE (ORDINANCE TO BE ADOPTED BY
MUNICIPALITY)

Upon notice from the City of Cleveland, Division of Water and Heat of the Department of Public Utilities that a shortage of water supply exists which threatens the public health and safety and that the shortage makes it necessary to curtail water use within all or any part of (Municipality), the (Mayor) shall proclaim a water use emergency throughout all or any part of (Municipality).

A water use emergency proclamation shall specify:

- (a) the geographic area affected by the water use emergency;
- (b) the length of time the emergency shall be in effect which time shall not exceed seven (7) days; and
- (c) the degree of water use curtailment.

During a water use emergency, the (Mayor) may order a water use curtailment by prohibiting unnecessary use or consumption of water during all or specified hours of the day and/or may order that specified premises curtail necessary use or consumption of water on specified days only as the (Mayor) shall determine to be necessary.

A proclamation of a water use emergency shall become effective at the time of issuance by the (Mayor). Notice thereof shall be given to a newspaper of general circulation in (Municipality) and shall be reported to a local radio and television station for broadcast.

As used in this section, unnecessary use or consumption means the use or consumption of water for purposes other than personal health, safety, sanitation and bodily consumption. "Unnecessary use or consumption" of waters includes but is not limited to sprinkling or watering lawns, other land irrigation, the washing of automobiles, houses or other structures and the use of water for recreational purposes such as the maintenance of swimming pools. The use of water for private construction such as the mixing and curing of concrete, the puddling of backfill in excavations, the moistening of masonry walls preparatory to pointing or sealing, and other similar uses is not an unnecessary use or consumption of water. The use of water to scrub and rinse areas such as hard-surfaced drives, garage floors, patios and similar uses where necessary for the purpose of sanitation and the protection of health is not an unnecessary use and consumption of water.

No person or entity shall during a water use emergency use water in violation of the terms and conditions of the Mayor's water use emergency proclamation.

Whoever violates this ordinance is guilty of a minor misdemeanor and shall be fined not more than one hundred dollars (\$100.00). Whoever violates this ordinance having been previously convicted of a violation of this ordinance is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

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.

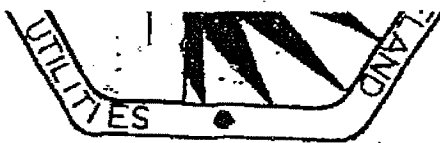
Westlake acknowledges that, as of the date of the Contract, Cleveland has been and will continue to be the sole supplier of water to Westlake and its inhabitants during the term of the Contract because there are no alternative sources of water supply to the community.

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.

VICE
PRESIDENT



CLEVELAND
PUBLIC UTILITIES BOARD

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: Dennis M. Clough Mayor

CITY OF CLEVELAND

By: [Signature] 7/9/90

The legal form and correctness
of the within instrument
hereby approved:

CRAIG S. MILLER
Director of Law

By: Marlene Sauer
Assistant Director of Law

Date: 2-26-90

VCM212

VICE
PRESIDENT



LAND
MANAGEMENT