

**THE RETAIL WATER SERVICE AGREEMENT BETWEEN
THE CITY OF CINCINNATI AND THE CITY OF MASON, OHIO**

This agreement, made and entered into this _____ day of _____ 2001, by and between the City of Cincinnati, Ohio, herein sometimes referred to as "Cincinnati" and the City of Mason, Ohio, herein sometimes referred to as "Mason".

WITNESSETH:

WHEREAS, Cincinnati owns and operates the Cincinnati Water Works, a public water supply system and has been supplying Mason surplus wholesale water under a water service agreement between Cincinnati and Mason dated June 17, 1997 (the "1997 Agreement"); and

WHEREAS, Mason owns and operates the Mason water treatment plant and the associated water distribution system and has been supplementing water service from its water treatment plant to its consumers with wholesale water service from Cincinnati under the 1997 Agreement; and

WHEREAS, Cincinnati and Mason desire to terminate the 1997 Agreement and replace the 1997 Agreement with this Retail Water Service Agreement ("the Agreement"); and

WHEREAS, Mason desires, as further described and provided for herein, to retain Cincinnati to operate and maintain Mason's water distribution system, water treatment plant and associated infrastructure and to use the same and Cincinnati's water facilities to distribute water to Mason's citizens and Mason's water utility customers in satisfying Mason's obligations as a water utility; and

WHEREAS, Cincinnati is willing, as further described and provided for herein, to provide retail water services to Mason's water utility customers and to operate and maintain Mason's water distribution system, water treatment plant and associated infrastructure in a manner comparable to the quality of services provided to consumers in the Cincinnati Water System and the City of Cincinnati; and

WHEREAS, the City of Mason and the City of Cincinnati shall continue to be water utilities and to own, consistent with the terms of this agreement, their respective public utility water systems for the benefit of, and service to, their respective municipalities and inhabitants and that this contract is intended to further the purposes set forth in and authorized by Article XVIII, Section 4 of the Ohio Constitution for both the City of Cincinnati and the City of Mason;

WHEREAS, Mason has the authority to contract for water service from Cincinnati pursuant to the Constitution of the State of Ohio and the Ohio Revised Code; and

WHEREAS, Cincinnati, pursuant to the Constitution of the State of Ohio, the Ohio Revised Code, and the Cincinnati Charter and Municipal Code, has the power to sell surplus water and water-related services to Mason;

- g. Cincinnati Water System. The municipal water system of Cincinnati, now or hereafter owned or operated by Cincinnati as a public utility, including any extensions, modifications, enlargements or additions thereto, and including other water systems operated but not owned by Cincinnati (including specifically, during the term of this Agreement, the Mason Water Utility), other than a "Separate System" as defined in the Cincinnati Trust Agreement, which shall not include the Mason Water Utility.
- h. City Manager. The City Manager of Cincinnati.
- i. Director. The Director of the Water Works of Cincinnati, also known as the Superintendent, pursuant to the Cincinnati Charter.
- j. Effective Date. The date on which Cincinnati commences responsibility for the day-to day operation of the Mason Water System under the terms and conditions of this Agreement, which date shall be March 1, 2002.
- k. Ending Inventory. The spare parts, tools, furniture, machinery, devices, material and supplies at the Mason Water Utility on the Termination Date that Cincinnati provides to Mason.
- l. Mason. City of Mason, Ohio.
- m. Mason City Council. The City Council of Mason , Ohio.
- n. Mason Public Utilities Superintendent. *The Superintendent of Mason Public Utilities, as appointed by the Mason City Council and identified in writing by Mason to Cincinnati.*
- o. Mason Retail Water Area (herein sometimes referred to as the "Retail Area"). The area approximately delineated on the plats attached hereto and made a part hereof and designated "Appendix A".
- p. Mason Rules and Regulations. The ordinances, laws, standards, specifications, rules and regulations governing the operation of the Mason Water and Sewer Systems, as the same may be amended from time to time in accordance with the Mason Charter and general law, but subject to this Agreement.
- q. Mason Water Utility. The municipal water system of Mason, now or hereafter owned by Mason as a public utility, including any extensions, modifications, enlargements or additions thereto.
- r. Current City of Mason City Limits as Potential Retail Water Service Area. The current City of Mason city limits and the area approximately delineated on the plats attached hereto and made a part hereof and designated "Appendix D"
- s. Termination Date. The date on which this Agreement terminates and is no longer in force or effect, which date shall be thirty-five (35) years from the Effective Date unless extended by amendment or sooner terminated as provided herein.

Section 10. Risk; Liability; Claims and Notices of Claims

Cincinnati agrees, to the fullest extent permitted by law, though subject to the limitation set forth below, to bear responsibility for, and hold Mason harmless from, and indemnify, save and defend Mason against, all actionable claims, losses, expenses, actions and damages to persons or property with regard to the operation of the Mason Water Utility except any claims, losses, expenses, actions or damages which (a) pre-date the Effective Date of this Agreement, (b) result from challenges to Mason's legal authority to enter into this Agreement, or (c) result from the negligent, intentional or reckless acts of Mason's employees, contractors or agents. In addition to all other applicable legal limitations on and conditions to Cincinnati's obligations to make payments under this paragraph, those obligations are, consistent with Section 3.A. of this Agreement, limited to the revenue that Cincinnati derives from the ownership and operation of the Cincinnati Water System, including, without limitation, revenues derived from and within the Mason Water Utility during the term of this Agreement.

Mason agrees, to the fullest extent permitted by law, to bear responsibility for, and hold Cincinnati harmless from, and indemnify, save and defend Cincinnati against all actionable claims, losses, expenses, actions and damages relating to the operation of the Mason Water Utility, which pre-date the Effective Date of this Agreement, and all legal actions challenging Mason's legal authority to enter into this Agreement. Mason agrees, to the fullest extent permitted by law, to be liable to Cincinnati for expenses, losses and damages relating to the operation of the Mason Water Utility arising from the negligent, intentional or reckless acts of Mason's employees, contractors or agents.

Neither Cincinnati nor Mason shall be required to waive its defense of governmental immunity.

Each party hereto shall give to all others prompt and timely written notice of any claim made or suit-instituted coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects or might affect any party, and each shall have the right to participate in the defense of the same to the extent of its own interest

Section 11. Agreement Duration, Termination, and Default

This Agreement shall be in force for a period of thirty (30) years from the effective date of March 1, 2002. Should this Agreement not be fully authorized and executed on or before March 1, 2002, this Agreement shall be effective on the date so executed, but nevertheless shall terminate thirty years from March 1, 2002.

Upon default of any of the terms of this Agreement including but not limited to failure to pay or account for any amounts due, violation of any material provision of this Agreement, law, or regulation, the non-defaulting party may terminate this Agreement by giving 180-day notice; however, during the 180-day notice period, the defaulting party shall have the right to cure any such default. The right-to-cure period may be extended by mutual agreement of the parties. If either party shall default or terminate this agreement without cause during the term of this Agreement, it will be required to pay all resultant damages and otherwise be subject to all rights and remedies afforded by law.

For good cause demonstrated to a court of competent jurisdiction, the non-defaulting party may institute civil proceedings and pursue injunctive or other relief prior to expiration of the 180-day

notice period to preserve the public health, safety and welfare or to otherwise avoid irreparable harm.

At the time of termination of this Agreement (whether at its scheduled termination or upon prior termination), Cincinnati shall submit to Mason a schedule of the Capital Improvements to the Mason Water Utility paid for by Cincinnati (whether with the proceeds of debt obligations or cash on hand) and the unamortized cost thereof. The payment to Cincinnati of the aggregate unamortized costs of such Capital Improvements shall be the continuing responsibility of Mason, payable from the revenues of the Mason Water Utility. The period of time over which Mason may discharge that obligation for each Capital Improvement shall be the remaining period of scheduled principal retirement of any debt obligations that Cincinnati issued to fund such Capital Improvement, or, in the case of a Capital Improvement funded by Cincinnati with cash on hand, the remaining useful life of such Capital Improvement, based on GAAP. Upon the full discharge of that obligation with respect to a Capital Improvement, Cincinnati shall cause title to the portion of the Mason Water Utility improved by that Capital Improvement to revert to Mason under Section 2(B) hereof.

Cincinnati agrees that if fails to cure any default within the 180-day right-to-cure period and therefore is found in default of this Agreement, it will provide to Mason: then current records and reports as specified in Section 3 Q of this agreement, Mason Retail Water Area customer information and billing records and Mason Water Utility system information as delineated in Section 4 F of this Agreement. Additionally, if permitted to do so by contract with the billing system vendor or by applicable contract law, Cincinnati agrees to supply or assign to Mason its then-current customer billing system software. Mason agrees to pay any initial or on-going fees associated with the assignment of the billing system software.

Section 12. Confidentiality, Public Records

Any disclosure of public records by Mason or Cincinnati shall be in strict accordance with state and federal public records laws and regulation. To the fullest extent permitted by law, the parties shall protect the confidentiality of records and information which if made public would be detrimental to the public health, safety and welfare.

Section 13. Mason Debt Issues

(A) Mason represents that:

(1) As of the date of this Agreement, \$[] aggregate principal amount of Mason Mortgage Revenue Bonds are outstanding that are payable from, and secured by a pledge of, revenues derived from the Mason Water Utility (the "Outstanding Mason Obligations").

(2) No other Mason debt obligations (other than the 1997 Agreement, to the extent the provisions thereof constitute such a debt obligation of Mason to Cincinnati) are outstanding that are payable from or secured by a pledge of the revenues from the Mason Water Utility.

(3) Exhibit G hereto accurately sets forth details regarding the dates of issuance and series designations, outstanding principal amounts, principal retirement schedules, and redemption provisions of the Outstanding Mason Obligations.

(4) On the date of this Agreement, the deposit in escrow with [_____], as Trustee (the "Mason Bond Trustee"), of \$[_____] (the "Defeasance Amount") and the purchase with that money of the securities identified on Exhibit H hereto (the "Escrow Securities"), will cause all the Outstanding Mason Obligations to be deemed paid and discharged for purposes of the Trust Agreement, dated as of [_____] (the "Mason Trust Agreement"), between Mason and the Mason Bond Trustee, under which they were issued, and thereupon the Mason Trust Agreement will be defeased under Article [__] thereof.

(B) The Defeasance Amount will be funded on the date of this Agreement through:

(1) Mason's deposit in an escrow fund (the "Escrow Fund") held by the Mason Bond Trustee, as Escrow Trustee (the "Escrow Trustee"), of \$[_____] the ("Mason Contribution") from legally available moneys, including all unincumbered moneys in any Mason water revenue funds; and

(2) Cincinnati's deposit in the Escrow Fund of \$[_____] (the "Cincinnati Contribution") from legally available moneys, provided that the Cincinnati Contribution shall not exceed \$[_____].

(C) Mason, Cincinnati and the Escrow Trustee shall enter into an Escrow Agreement, dated the same date as this Agreement (the "Escrow Agreement"), under which the Escrow Trustee shall be directed, and shall agree, to apply the Mason Contribution and the Cincinnati Contribution solely for the purpose of paying the principal of and the interest and any redemption premium on the Outstanding Mason Obligations on the dates specified in the Escrow Agreement. The Escrow Agreement shall further direct the Escrow Trustee to invest moneys in the Escrow Fund in the Escrow Securities and, thereupon, to be entitled to receive an expert's verification that the cash and investments in the Escrow Fund will suffice to cause the all the Outstanding Mason Obligations to be deemed paid and discharged for purposes of the Mason Trust Agreement and to cause the Mason Trust Agreement to be defeased. Thereupon, the Escrow Trustee shall be required to furnish Mason and Cincinnati with a certificate to the effect that the Mason Trust Agreement has been defeased.

(D) Simultaneously with Cincinnati's payment of the Cincinnati Contribution to the Escrow Trustee and as part of the consideration for the Cincinnati Contribution, Mason shall enter into a mortgage and security agreement with Cincinnati substantially in the form attached hereto as Appendix I pursuant to which Mason shall grant to Cincinnati a first mortgage security interest in the Mason Water Utility facilities described on Exhibit J to secure Mason's obligations under this Agreement for its duration. If this Agreement is not terminated prior to its scheduled Termination Date, Cincinnati shall (subject to Section 2(B) of this Agreement) release such mortgage and security interest upon its termination and shall execute and deliver to Mason an instrument evidencing such reversion. If this Agreement is terminated prior to its scheduled Termination Date, Cincinnati shall (subject to Section 2(B) of this Agreement) release such mortgage and security interest upon Mason's paying Cincinnati the Cincinnati Contribution, and Cincinnati shall execute and deliver to Mason an instrument evidencing such reversion.

(E) To the extent that Mason continues to receive revenues for the operation of its Water Utility after the Effective Date, Mason shall transfer to Cincinnati beginning one month after the Effective Date and on the first of each month, revenues it receives from its collection of water