

VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2014-8

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR AND
FISCAL OFFICER TO EXECUTE THE FIRST AMENDMENT TO THE WHOLESALE
WATER SERVICE AGREEMENT BETWEEN THE
VILLAGE OF SOUTH LEBANON AND THE CITY OF CINCINNATI**

WHEREAS, a prior Village Council passed Resolution Number 2009-21, on October 15, 2009, authorizing a 40 year contract with Greater Cincinnati Waterworks for the City of Cincinnati to be the exclusive provider of water on a wholesale basis to a designated Service Area in the Village of South Lebanon; and,

WHEREAS, on June 3, 2010 the contract titled Water Service Agreement between the City of Cincinnati (Cincinnati) and the Village of South Lebanon, Ohio (Village) was executed, and Cincinnati was obligated to initially begin providing a minimum of 270,000 gallons per day (Minimum Daily Consumption Requirement) on a wholesale basis to the designated Service Area in the Village by January 31, 2013, or an earlier date mutually agreed to writing; and,

WHEREAS, upon the completion of infrastructure, Cincinnati began providing wholesale water to the Village on Dec. 21, 2011, and in accordance with the terms of the June 3, 2010 Water Service Agreement, Cincinnati's City Council was permitted to unilaterally set the wholesale water rates for the Village which resulted in a rate increase of 8.5% on Jan. 1, 2012; 7.25% on Jan. 1, 2013, and 5.5% on Jan. 1, 2014; and,

WHEREAS, in accordance with the terms of the June 3, 2010 Water Service Agreement, in the event the Village failed to use the Minimum Daily Consumption Requirement, the Village would be billed annually for the difference between actual consumption and the Minimum Daily Consumption Requirement (Take-or-Pay) which resulted in a Take-or-Pay penalty of \$37,374.54 for 2012, and \$53,493.30 for 2013; and,

WHEREAS, in accordance with the term of the June 3, 2010 Water Service Agreement, it provided for an increase in the Minimum Daily Consumption Requirement as of Feb. 1, 2014, 2019, 2024, 2029, 2034, 2039 and 2044; and,

WHEREAS, the current Village Council received a Water Fund Study on January 2, 2014, prepared by Choice One Engineering, the Village Engineer, that estimated the Village may pay almost \$9 Million to Cincinnati for the Take-or-Pay Penalty under the terms of the June 3, 2010 Water Service Agreement over the 40 year term, and further concluded that on average Take-or-Pay penalty would reduce the Water Fund by \$225,000 per year, thus, necessitating further increases by the Village to its retail customer's rates, otherwise the Water Fund could go broke sometime in 2015; and,

WHEREAS, prior to the Feb. 1, 2014 increase in the Minimum Daily Consumption Requirement, the Village initiated negotiations with Cincinnati to amend the June 3, 2010 Water Service Agreement, including but not limited to amending the Minimum Daily Consumption Requirement, modifying the basis for annual wholesale rate increases to the Consumer Price Index (CPI), and waiving the 2012 and 2013 Take-or-Pay penalty; and,

WHEREAS, Cincinnati is willing to amend the June 3, 2010 Water Service Agreement by reducing the Minimum Daily Consumption Requirement each year beginning in 2013 which would reduce the estimated Take-or-Pay penalty the Village may incur over the life of the agreement to \$6 Million Dollars; to modify the basis for annual wholesale rate increases to the Consumer Price Index (CPI); and, to waive the 2012 and 2013 Take-or-Pay penalty; conditioned upon: the life of the agreement being amended to 50 years, plus the Village paying an additional \$133,340 in four equal annual payments beginning on January 1, 2015 to defray a portion of Cincinnati's initial costs associated with providing wholesale water to the Village; and,

WHEREAS, the Village and Cincinnati now desire to enter into the attached First Amendment to the Wholesale Water Service Agreement with the Village.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, Ohio, at least a majority of all members elected thereto concurring:

Section 1. That the Council approves and authorizes the Mayor and Fiscal Officer to execute the said First Amendment to the Wholesale Water Service Agreement, a copy of which is attached hereto.

Section 2. That the Council is acting in its administrative capacity in adopting this Resolution.

Section 3. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 4. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were passed in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 20th day of March, 2014.

Attest: Sharon Louallen Lionel H. Lawhorn
Sharon Louallen, Fiscal Officer/Clerk Lionel Harold Lawhorn, Mayor

Rules Suspended:	(if applicable)	Effective Date –
Vote - ___ Yeas		
___ Nays		
First Reading – <u>3/20/2014</u>		Effective Date – / / 2014
Second Reading – <u>4/13/2014</u>		
Third Reading – <u>4/17/2014</u>		
Vote - <u>6</u> Yeas		
___ Nays		

Prepared by and approved as to form:

BRUCE A. MCGARY
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: Bruce A. McGary
Date: 4/17/14

CERTIFICATE OF POSTING
I, Sharon Louallen, Fiscal Officer of the Village of South Lebanon, Ohio do hereby certify I posted a true and accurate copy of this ordinance or resolution, summary of ordinance or resolution, or statement, order, proclamation, notice or report at five public places within the Village as authorized by Section 731.25 of the Ohio Revised Code and Ordinance 98-08 of Village of South Lebanon, Ohio.
4-18-14 Sharon Louallen
Date Sharon Louallen
Fiscal Officer
Village of South Lebanon,
Ohio

**FIRST AMENDMENT TO THE VILLAGE OF SOUTH LEBANON
WHOLESALE WATER SERVICE AGREEMENT**

THIS FIRST AMENDMENT to the Village of South Lebanon Wholesale Water Service Agreement (“First Amended Water Agreement”) is made and entered into this _____ day of _____ 2014, by and between the City of Cincinnati, Ohio, herein referred to as “Cincinnati” and the Village of South Lebanon, Ohio, herein referred to as “South Lebanon”, or jointly referred to as “the Parties.”

WITNESSETH

WHEREAS, Cincinnati owns and operates the Greater Cincinnati Water Works (GCWW), a public water supply system and entered into a Water Service Agreement with South Lebanon on June 3, 2010; and

WHEREAS, Cincinnati and South Lebanon entered into a Letter of Understanding (LOU) on November 22, 2011 to provide water service on December 21, 2011, approximately 13 months prior to the start of the water service delivery date of January 31, 2013 stipulated in the June 3, 2010 Water Service Agreement; and

WHEREAS, due to economic circumstances beyond its control, South Lebanon has not achieved the residential and commercial growth that was anticipated when the Water Agreement was negotiated, and South Lebanon has requested modifications to the Water Agreement; and

WHEREAS, due to the early provision of wholesale water service to the Village of South Lebanon, Cincinnati was able to realize additional revenue compared to the initial estimates which formed the basis of the original Agreement; and

WHEREAS, Cincinnati and South Lebanon have determined that modifications to the June 3, 2010 Water Service Agreement related to the term, minimum daily consumption requirements, the structure of future water rate increases, and annual cost defrayment payments to Cincinnati will be beneficial to both Cincinnati and South Lebanon; and

WHEREAS, since Cincinnati was able to realize additional revenue upon early commencement of wholesale water service to South Lebanon, and the Parties have agreed to (a) extend the Agreement for an additional ten (10) years, (b) revise the minimum consumption requirement schedule as provided herein, and (c) schedule additional annual payments as described in Section 11.C below, Cincinnati is able to waive the minimum daily and annual consumption requirements for the years 2012 and 2013; and

NOW THEREFORE, Cincinnati and South Lebanon mutually agree for the original consideration and as recited herein to amend the Water Service Agreement in the

following respects only, all other terms and conditions of the Water Agreement remaining in full force and effect.

- 1) Section 2, Agreement Duration, Termination and Default paragraph A is deleted and the following inserted into the Water Agreement:

Section 2.A. This Water Service Agreement shall be in full force through June 3, 2058. Thereafter, this Agreement may be renewed for successive ten (10) year periods, by South Lebanon providing Cincinnati with no less than eighteen (18) months written notice of its intent to extend the term of the Water Service Agreement.

- 2) Section 6. Cincinnati Responsibilities.

Section 6.B. Water sold by Cincinnati to South Lebanon, at the point of the discharge side of the master meter located at the intersection of Mason-Morrow-Millgrove Road and Turtlecreek Road (point of metering), shall meet all applicable regulatory standards of the United States Environmental Protection Agency (USEPA), the Ohio Environmental Protection Agency (OEPA), and the Safe Drinking Water Act, including any amendments or new legislation enacted after the execution of this First Amendment, as well as the water sold as of the effective date of this First Amended Water Agreement shall be softened water as provided by GCWW to all of its customers.

- 3) Section 11, Rates, Billing and Payments paragraphs A, B and C are deleted and the following inserted into the Water Agreement:

Section 11.A. South Lebanon shall pay for wholesale water furnished based on monthly billings for hundreds of cubic feet (ccf's). The rate per ccf effective December 31, 2013 of \$1.80 shall be increased each July 1st beginning July 1, 2014 and each subsequent year by the increase in accordance with the percentage change, if any, in the "CPI Index" experienced between January 1st and December 31st of the immediately preceding calendar year. For the purposes of this Agreement, the term "CPI Index" shall refer to the Consumer Price Index, all Urban Consumers (CPI-U), Cincinnati-Hamilton, OH-KY-IND (1982-84 = 100) published by the U.S. Department of Labor, Bureau of Labor Statistics. In the event that the CPI Index is no longer published, the parties shall agree on another comparable index by means of a written memorandum of understanding between the Executive Director of the Greater Cincinnati Water Works/Metropolitan Sewer District of Greater Cincinnati and the Village Administrator of the Village of South Lebanon with the consent of the Village Council.

Section 11.B. Should South Lebanon consume less water for any of the twelve month periods outlined on the "Minimum Daily Consumption Requirements Schedule" (Exhibit B – REVISED). South Lebanon will be billed the difference between the actual consumption for the twelve month period and the required per

year consumption for the twelve month period. The required per year consumption for the twelve month period shall be based on Exhibit B – REVISED. South Lebanon will be billed for the difference in consumption at the rate in effect as of July 1st for that twelve (12) month period with said rate based on the provisions outlined in Section 11.A of this First Amendment. The charge for the difference in consumption will be included on the bill for the services and consumption for the month of January (billing statement mailed in February).

The Parties stipulate that South Lebanon was responsible to pay Cincinnati for the difference between the actual consumption for the twelve month period and the required per year consumption for the twelve month period in 2012 totaling \$37,374.54 and in 2013 totaling \$53,493.30, which Cincinnati waives and agrees South Lebanon is hereby released therefrom, provided this Amendment is completed and approved by May 1, 2014.

Section 11.C. South Lebanon agreed to make five (5) annual payments of \$33,333 beginning in 2010 and ending in 2014, and hereby agrees to make four additional (4) annual payments of \$33,335 for a total payment of \$300,005 to assist with defraying a portion of Cincinnati's initial cost associated with the June 3, 2010 Water Service Agreement and this First Amended Water Agreement. Cincinnati acknowledges receipt of timely payments of \$33,333 each from South Lebanon that were due January 1, 2010; January 1, 2011; January 1, 2012; January 1, 2013; and, January 1, 2014 in the total sum of \$166,665. The remaining payments of \$33,335 each are to be paid no later than January 1, 2015; January 1, 2016; January 1, 2017; and January 1, 2018 for a remaining total balance of \$133,340.

IN WITNESS WHEREOF, The City of Cincinnati, acting by and through its City Manager duly authorized by Ordinance No. _____ and the Village of South Lebanon, acting by and through its Mayor and Fiscal Officer duly authorized by Resolution No. 2014-_____ have executed this FIRST AMENDMENT on this day _____ of _____ 2014.

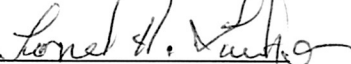
RECOMMENDED:


CITY OF CINCINNATI:

James A. Parrott
Executive Director
GCWW/MSDGC

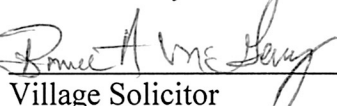
Scott C. Stiles
Acting City Manager

VILLAGE OF SOUTH LEBANON

SIGNATURE: 
NAME: Lionel H. Lawhorn
TITLE: Mayor
DATE: 4-17-14

SIGNATURE: 
NAME: Sharon Louallen
TITLE: Fiscal Officer
DATE: 4-17-14

APPROVED AS TO FORM :

City of Cincinnati
Assistant City Solicitor

Village Solicitor
Village of South Lebanon, Ohio

CERTIFICATION OF FUNDS

Date: _____

Coding: _____

Amount: _____

City of Cincinnati Finance Director

**VILLAGE OF SOUTH LEBANON WHOLESALE WATER SERVICE AGREEMENT
MINIMUM DAILY CONSUMPTION REQUIREMENTS SCHEDULE - EXHIBIT B - REVISED**

<u>Period</u>	<u>Required Gallons Per Day</u>	<u>Required Gallons Per Year</u>	<u>Required CCF Per Day</u>	<u>Required CCF Per Year</u>
January 1, 2013 to December 31, 2013	200,000	73,000,000	267	97,594
January 1, 2014 to December 31, 2016	210,000	76,650,000	281	102,473
January 1, 2017 to December 31, 2019	230,000	83,950,000	307	112,233
January 1, 2020 to December 31, 2022	250,000	91,250,000	334	121,992
January 1, 2023 to December 31, 2025	270,000	98,550,000	361	131,751
January 1, 2026 to December 31, 2028	290,000	105,850,000	388	141,511
January 1, 2029 to December 31, 2031	310,000	113,150,000	414	151,270
January 1, 2032 to December 31, 2034	330,000	120,450,000	441	161,029
January 1, 2035 to December 31, 2037	350,000	127,750,000	468	170,789
January 1, 2038 to December 31, 2040	370,000	135,050,000	495	180,548
January 1, 2041 to December 31, 2043	390,000	142,350,000	521	190,307
January 1, 2044 to December 31, 2046	410,000	149,650,000	548	200,067
January 1, 2047 to June 3, 2058	430,000	156,950,000	575	209,826

Year	Existing Contract Take or Pay	Proposed Revised Take or Pay	Difference	Existing Contract Take or Pay Volume (MG/yr)	Proposed Contract Take or Pay Volume (MG/yr)
2008	0.000	0.000			
2009	0.000	0.000			
2010	0.000	0.000			
2011	0.000	0.000			
2012	0.000	0.230		0	83,950,000
2013	0.270	0.200	-26%	98,550,000	73,000,000
2014	0.310	0.210	-32%	113,150,000	76,650,000
2015	0.310	0.210	-32%	113,150,000	76,650,000
2016	0.310	0.210	-32%	113,150,000	76,650,000
2017	0.310	0.230	-26%	113,150,000	83,950,000
2018	0.310	0.230	-26%	113,150,000	83,950,000
2019	0.330	0.230	-30%	120,450,000	83,950,000
2020	0.330	0.250	-24%	120,450,000	91,250,000
2021	0.330	0.250	-24%	120,450,000	91,250,000
2022	0.330	0.250	-24%	120,450,000	91,250,000
2023	0.330	0.270	-18%	120,450,000	98,550,000
2024	0.360	0.270	-25%	131,400,000	98,550,000
2025	0.360	0.270	-25%	131,400,000	98,550,000
2026	0.360	0.290	-19%	131,400,000	105,850,000
2027	0.360	0.290	-19%	131,400,000	105,850,000
2028	0.360	0.290	-19%	131,400,000	105,850,000
2029	0.380	0.310	-18%	138,700,000	113,150,000
2030	0.380	0.310	-18%	138,700,000	113,150,000
2031	0.380	0.310	-18%	138,700,000	113,150,000
2032	0.380	0.330	-13%	138,700,000	120,450,000
2033	0.380	0.330	-13%	138,700,000	120,450,000
2034	0.400	0.330	-18%	146,000,000	120,450,000
2035	0.400	0.350	-13%	146,000,000	127,750,000
2036	0.400	0.350	-13%	146,000,000	127,750,000
2037	0.400	0.350	-13%	146,000,000	127,750,000
2038	0.400	0.370	-8%	146,000,000	135,050,000
2039	0.420	0.370	-12%	153,300,000	135,050,000
2040	0.420	0.370	-12%	153,300,000	135,050,000
2041	0.420	0.390	-7%	153,300,000	142,350,000
2042	0.420	0.390	-7%	153,300,000	142,350,000
2043	0.420	0.390	-7%	153,300,000	142,350,000
2044	0.440	0.410	-7%	160,600,000	149,650,000
2045	0.440	0.410	-7%	160,600,000	149,650,000
2046	0.440	0.410	-7%	160,600,000	149,650,000
2047	0.440	0.430	-2%	160,600,000	156,950,000
2048	0.440	0.430	-2%	160,600,000	156,950,000
Subtotal				4,916,550,000	4,204,800,000
Contract Extension					
2049	0.000	0.430			156,950,000
2050	0.000	0.430			156,950,000
2051	0.000	0.430			156,950,000
2052	0.000	0.430			156,950,000
2053	0.000	0.430			156,950,000
2054	0.000	0.430			156,950,000
2055	0.000	0.430			156,950,000
2056	0.000	0.430			156,950,000
2057	0.000	0.430			156,950,000
2058	0.000	0.430			156,950,000
Total				4,916,550,000	5,774,300,000

Cash payments	Current	Proposed
2009	\$0	\$0
2010	\$33,333	\$33,333
2011	\$33,333	\$33,333
2012	\$33,333	\$33,333
2013	\$33,333	\$33,333
2014	\$33,333	\$33,333
2015	\$33,335	\$33,335
2016	\$0	\$33,335
2017	\$0	\$33,335
2018	\$0	\$33,335