

CITY OF CHEVIOT
STATE OF OHIO

ORDINANCE NO. 20-02

TO AUTHORIZE THE SAFETY-SERVICE DIRECTOR TO ENTER INTO AN ASSESSMENT AGREEMENT WITH THE CITY OF CINCINNATI, ON BEHALF OF GREATER CINCINNATI WATER WORKS, FOR A LEAD SERVICE LINE REPLACEMENT PROGRAM; TO APPOINT GREATER CINCINNATI WATER WORKS AS CHEVIOT'S DESIGNEE UNDER OHIO REVISED CODE SECTION 729.06; AND TO DECLARE AN EMERGENCY.

WHEREAS, on December 28, 2010, the City of Cheviot entered into an agreement with the City of Cincinnati, whereby the City of Cheviot accepted the July 1, 1987 County Water Contract (hereinafter referred to as "County Water Contract") and agreed to be bound by the terms therein; and

WHEREAS, pursuant to Section 17 of the County Water Contract, the City of Cincinnati is authorized to enforce the City of Cincinnati's ordinances, laws, standards, specifications, rules and regulations in the County Water Area, which includes the City of Cheviot; and

WHEREAS, the City of Cincinnati, by Ordinance 185-2017, enacted Cincinnati Municipal Code Chapter 401, Division M, which established the Lead Service Line Replacement Program to be administered by Greater Cincinnati Water Works (hereinafter referred to as "GCWW") and sets forth the respective responsibilities of the City of Cincinnati / GCWW and the property owner in replacement of lead service lines; and

WHEREAS, as determined by GCWW, lead service lines pose a significant risk to public health, including but not limited to, the danger posed by drinking water delivered through lead service lines; and

WHEREAS, a property owner's ability or cost to replace lead service lines can be burdensome or prohibitive; and

WHEREAS, the above-described Lead Service Line Replacement Program provides a credit against the cost of replacing the privately-owned lead service lines and a mechanism for a private property owner to pay the remaining cost over time and without interest, via an assessment on the real property; and

WHEREAS, this Council wishes to participate in the Lead Service Line Replacement Program, as described more fully in the Assessment Agreement, attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the Council wishes to appoint GCWW as the designee to serve notice pursuant to Ohio Revised Code Section 729.06, which allows assessment for the cost for replacement of sewer or water connections.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHEVIOT, STATE OF OHIO, TWO-THIRDS OF ALL MEMBERS THEREOF CONCURRING, THAT:

Section 1. The Safety-Service Director is hereby authorized and directed to execute the Assessment Agreement, which is attached hereto as Exhibit "A" and incorporated herein.

Section 2. The Clerk of Council is hereby directed to designate GCWW to serve notice required by Ohio Revised Code Section 729.06.


Section 3. Nothing in this Ordinance shall prohibit a property owner from retaining a private contractor to perform the lead service line replacement and/or paying for some or all of the work by means other than those set forth in the Assessment Agreement.

Section 4. This ordinance shall be an emergency measure for the health, safety, and welfare of the citizens of Cheviot and shall take effect immediately. The emergency is necessary in order to allow the citizens of Cheviot to immediately take advantage of the Lead Service Line Replacement Program.



Mark G. Waters
President of Council

JAN 21 2020
Date passed




Samuel D. Keller
Mayor

JAN 21 2020
Date approved

Attest:

Approved as to form:



Jenny M. Eilermann
Clerk of Council



Kimberlee Erdman Rohr
Law Director

CERTIFICATE OF PUBLICATION

I, Jenny M. Eilermann, Clerk of the Council of the City of Cheviot, Ohio, hereby certify that the foregoing ordinance, or a succinct summary, was published in the *Western Hills Press*, a newspaper of general circulation in the City of Cheviot, Ohio, in accordance with Section 731.21 of the Ohio Revised Code, on the following dates:

- 1) _____ 1-29 _____, 2020, and
- 2) _____ 2-5 _____, 2020.



Jenny M. Eilermann
Clerk of Council

ASSESSMENT AGREEMENT

This *ASSESSMENT AGREEMENT* (this "**Agreement**") is entered into effective as of the Effective Date, as defined on the signature page hereof, by and between the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of its Greater Cincinnati Water Works ("**GCWW**"), the address of which, for the purposes of this Agreement is c/o Greater Cincinnati Water Works 4747 Spring Grove Avenue, Cincinnati, Ohio 45232, and the City of Cheviot ("**Cheviot**"), an Ohio municipal corporation, the address of which is 3814 Harrison Avenue, Cheviot, Ohio 45211.

Recitals

A. GCWW and Cheviot, pursuant to their authority under Sections 4 and 6 of Article XVIII of the Ohio Constitution, are parties to a certain *Agreement* dated December 28, 2010 ("**Water Service Agreement**") for GCWW to supply surplus water and water service to customers within the municipal limits of Cheviot on the terms and conditions therein and subject to the ordinances, laws, standards, specifications, rules and regulations governing GCWW.

B. Research and recommendations of the American Academy of Pediatrics, the federal advisory committee to USEPA on safe drinking water, and other scientific organizations have documented the risks of lead exposure to public health, especially to young children, and the recommended replacement of the full lead service line, including the public and privately-owned portions.

C. To eliminate the risk of lead service lines to public health, GCWW has implemented a Lead Service Line Replacement Program that aims to replace all public and private lead service lines within 15 years (as described in Cincinnati Municipal Code Chapter 401, Division M, the "**Program**"). The Program allows property owners with private lead service lines to enter into a contract ("**Owner Contract**") for GCWW to perform the private lead service line replacement work (the "**Work**"), with GCWW advancing the Work costs and the owner agreeing to repay GCWW for owner's share of the Work costs ("**Owner's Share**").

D. GCWW and Cheviot wish to provide GCWW customers that are Cheviot residents the option to spread payment of the Owner's Share over up to 10 years through Cheviot's certification of any unpaid portion of the Owner's Share to the Hamilton County Auditor as an assessment to real property in accordance with the executed Owner Contracts.

E. The Parties wish to enter into this Agreement to set forth the rights and responsibilities of the Parties with respect to Cheviot's certification of the assessments to the Hamilton County Auditor, Cheviot transfer of paid assessments received from the Hamilton County Treasurer to GCWW, and GCWW credit of the paid assessments towards Owner's Share.

F. The legislative authority of Cheviot has approved execution of this Agreement pursuant to Ordinance No. _____ dated _____, attached hereto as Exhibit A.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Term.** The term of this Agreement shall commence on the Effective Date and expire on the date of the expiration or termination of the Water Service Agreement, unless terminated earlier pursuant to this Agreement.
2. **Lead Service Line Replacement Program.** GCWW will administer the Program as described in Chapter 401 of the Cincinnati Municipal Code, within the jurisdiction of Cheviot in the same way that it administers the Program within the City of Cincinnati, except as expressly provided herein.
3. **Designation of GCWW by clerk of the Cheviot legislative authority.** The clerk of the Cheviot legislative authority ("**Legislative Clerk**") shall designate GCWW to serve the notice required by ORC section 729.06.
4. **Notice.** As Cheviot's designee, GCWW shall serve notice to owners of property with a private lead service line in Cheviot in accordance with the Program.
5. **Assessment List.** From time to time, GCWW will provide Cheviot a list of the properties and corresponding unpaid amounts to be assessed in conformance with the assessment guidelines of the Hamilton County Auditor ("**Assessment List**"). The Assessment List shall only include properties with amounts that remain unpaid following the due date on the final bill for Work performed pursuant to an Owner Contract for Work for a property in the City of Cheviot.
6. **Assessment Ordinance.** No later than 30 days after GCWW has provided an Assessment List to Cheviot, Cheviot shall complete the following:
 - a. Submit for adoption by the legislative authority of Cheviot an ordinance levying upon the property the amounts as enumerated in the Assessment List. The Cheviot ordinance shall not amend or alter the Assessment List provided by GCWW.
 - b. The Legislative Clerk shall certify the costs on the Assessment List ("**Assessed Amounts**") to the Hamilton County Auditor to be placed as a charge on the tax list and duplicate of the listed property.

The costs shall be a lien upon such real estate from and after the date the costs were incurred and collected as other taxes and returned to Cheviot in accordance with Ohio Revised Code §§ 729.06, 727.30, 727.301, 727.33, and 727.331.

7. **Assignment of Assessment Payments; Cooperation.** Cheviot hereby assigns to GCWW all of its right, title and interest in and to the Assessed Amounts, and agrees to remit the collected Assessment Amounts along with remittance detail from the County Auditor to GCWW no

later than 21 days following receipt of payment from the County. Cheviot agrees to cooperate with GCWW to obtain and collect any Assessed Amounts, including delinquent amounts, and to obtain and provide any related data, including from the Hamilton County Auditor or Treasurer, in order to credit the Assessed Amounts to the balance due for the relevant property. Cheviot shall coordinate remittance of data and Assessed Amounts with GCWW's Chief Financial Officer, or such other contact as GCWW may designate from time to time.

8. **Credit to Owner.** Following GCWW's receipt of the collected Assessment Amounts from Cheviot, GCWW shall credit the paid assessment amount to the owner's unpaid balance.
9. **Costs.** Each Party shall be responsible for its own costs for performance of its obligations hereunder.
10. **Termination.** Either Party may terminate this Agreement on 90 days advance written notice.
11. **Survival.**
 - a. Sections 7, 8, and 9 shall survive the expiration or termination of this Agreement.
 - b. If GCWW has commenced Work pursuant to an Owner Contract prior to expiration or termination of this Agreement, Sections 5 and 6 shall also survive the expiration or termination of this Agreement with respect to assessment of the Owner's Share for such Work.

12. Notices

All notices required under this Agreement shall be personally served or sent by first class U.S. mail, postage prepaid, addressed to the parties as follows, or to such other addresses as a party may designate in writing for such purpose:

To GCWW: City of Cincinnati
 Greater Cincinnati Water Works
 Attention: Director
 4747 Spring Grove Ave
 Cincinnati, Ohio 45232

To Cheviot: City of Cheviot
 3814 Harrison Avenue
 Cheviot, Ohio 45211
 Attn: Safety-Service Director

However, if either party sends a notice to the other to terminate or allege default under this Agreement, it shall simultaneously send a copy of such notice by U.S. certified mail to the party's legal counsel at the following addresses:

To GCWW at City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, and Cincinnati, OH 45202.

To City of Cheviot, ATTN: Kimberlee Erdman Rohr, Law Director, 3814 Harrison Avenue, Cheviot, OH 45211.

- 13. Interpretation.** Any terms used herein, but not defined herein, shall be defined to have the same meaning as in the Cincinnati Municipal Code, Chapter 401, the GCWW Rules and Regulations, and, if applicable, the Owner Contract.
- 14. Choice of Law; Forum.** This Agreement is entered into and is to be performed in the State of Ohio. The City and Contractor agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties under and related to this Agreement and shall govern the interpretation of this Agreement without regard to choice of law and conflicts of law principles. This Agreement has been jointly prepared by the parties hereto and shall not be construed more strictly against either party. The Parties agree that all state courts of record sitting in Hamilton County, Ohio, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment or attachment thereto. However, in the event that any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the parties agree that the exclusive venue for such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Ohio.
- 15. Waiver.** This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.
- 16. Assignment.** None of the Parties shall assign any rights or duties under this Agreement.
- 17. Third party rights.** Except as expressly provided in connection with property owners who have entered into Owner Contracts with GCWW, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Parties.
- 18. Amendment.** The Parties may mutually agree to amend this Agreement. However, no such amendment shall be effective unless it is reduced to a writing which references this Agreement and which is executed by a duly authorized representative of each of the Parties and, if applicable or required, approved by the legislative authority of any of the Parties.
- 19. Entirety.** This Agreement and the Exhibits attached hereto and any documents, laws, codes, regulations or written policies specifically identified herein and in the Exhibits (which are all hereby incorporated by reference) contain the entire contract between the parties as to the

matters contained herein and supersede any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof. Any oral representations or modifications concerning this Agreement shall be of no force and effect. In the event of a conflict between a provision of this Agreement and one of its Exhibits, the Exhibit shall govern with respect to such conflict.

20. Severability. This Agreement shall be severable, so if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

21. Counterpart and PDF Signatures. This Agreement may be executed in counterparts, and a facsimile or PDF signature shall be deemed to be, and shall have the same force and effect as, an original signature.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the later of the dates indicated below their signatures ("Effective Date").

CITY OF CINCINNATI

RECOMMENDED BY:

By: _____
Patrick Duhaney, City Manager

Bobbi Hageman, Chief Procurement Officer

Date: _____ 2020

RECOMMENDED BY:

APPROVED AS TO FORM:

Cathy Bernardino Bailey, Director
Greater Cincinnati Water Works

Assistant City Solicitor

CITY OF CHEVIOT

By: _____
Printed name: _____
Title: _____

Date: _____ 2020

APPROVED AS TO FORM:

Kimberlee Erdman Rohr
Law Director