

ORDINANCE NO. 2019 - 6

AN ORDINANCE SUPPORTING THE INSTALLATION OF WATER CONNECTIONS TO REPLACE LEAD SERVICE LINES, PROVIDING FOR THE ASSESSMENT OF THE COST THEREOF, AND AUTHORIZING THE VILLAGE ADMINISTRATOR TO ENTER INTO AN ASSESSMENT AGREEMENT WITH GREATER CINCINNATI WATER WORKS AND THE CITY OF CINCINNATI FOR SUCH ASSESSMENTS

WHEREAS, Greater Cincinnati Water Works ("GCWW") and the Village of Golf Manor ("Golf Manor"), pursuant to their authority under Sections 4 and 6 of Article XVIII of the Ohio Constitution, are parties to a Water Service Agreement dated December 5, 2006 for GCWW to supply surplus water and water service to customers within the municipal limits of Golf Manor on the terms and conditions therein, and subject to the Ordinances, laws, standards, specifications, rules and regulations governing GCWW; and

WHEREAS, according to GCWW records, a number of privately owned service lines within the GCWW service area, including Golf Manor, may contain lead pipes especially within order subdivisions such as Golf Manor; and

WHEREAS, research from the American Academy of Pediatrics has documented the risks of lead exposure to public health especially to young children, and has recommended a replacement of lead service lines, including publicly and privately owned portions of such lines; and

WHEREAS, to eliminate the risk of lead service lines to public health, GCWW has implemented a Lead Service Line Replacement Program ("Program") which aims to replace all public and private lead service lines within fifteen (15) years; and

WHEREAS, within the Program, GCWW allows property owners with private lead service lines to enter into a contract through GCWW to replace private lead service lines, which Program then allows the cost of such replacement to be assessed pursuant to Chapter 729 against the property which has been serviced by such improvement; and

WHEREAS, pursuant to R.C. Chapter 729, a municipality such as Golf Manor may require the installation of sewer and water connections upon private property and to assess the cost thereof, and Golf Manor in cooperation with GCWW desires to extend this Program to Village Residents; and

WHEREAS, GCWW, the City of Cincinnati and Golf Manor do desire to enter into the attached Assessment Agreement to enable Golf Manor residents to participate in such Program and to secure the cooperation of Golf Manor to assess such costs under the authority granted to Golf Manor by Chapter 729 of the Ohio Revised Code to mitigate the impact of such costs by allowing property owners to defer the payment of such replacement costs over an extended period of time; and

WHEREAS, it is in the best interest of Golf Manor, and it would promote the health, safety and general welfare of the Village of Golf Manor and its residents, to require the replacement privately owned lead service lines in the manner outlined within the Assessment Agreement and to facilitate financial assistance for doing so as permitted within the Assessment Agreement.

NOW THEREFORE, Be It Ordained by the Council of the Village of Golf Manor, Hamilton County, Ohio, that:

SECTION I. The Village Administrator is hereby authorized and directed to execute the Assessment Agreement in substantially the same form attached hereto as Exhibit A, subject to such revisions of an editorial or non-material nature as the Village Administrator, working with the Solicitor, deems appropriate. Thereafter, the Village Administrator shall implement the Replacement and Assessment Program in cooperation with the City of Cincinnati and the Greater Cincinnati Water Works as set forth within the Assessment Agreement.

SECTION II. The Village Administrator is authorized to work in cooperation with the City of Cincinnati and GCWW to secure participation in the Program and the appropriate authority to assess the net cost of the lead service line replacement for the property at 2521 Bremont Avenue, Golf Manor, Ohio, which property owner has requested permission to participate in such Program and has commenced appropriate construction to replace such lead service lines to mitigate any health risk.

SECTION III. Consistent with the terms of the Assessment Agreement, Golf Manor hereby assigns to GCWW all its right, title and interest in and to the amounts assessed against the impacted properties within the Village of Golf Manor, and Golf Manor agrees to remit the collected assessment amounts along with remittance detailed from the County Auditor to GCWW in a timely manner.

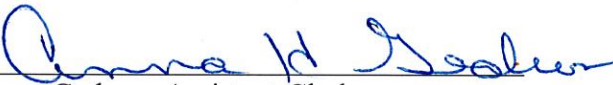
SECTION IV. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED this 08th day of April, 2019.



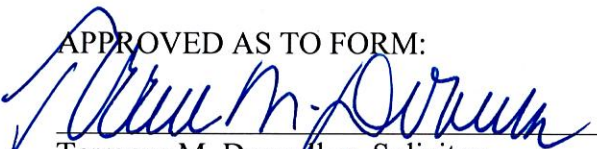
Mayor Greg Schwartzberg

ATTEST:



Anna Gedeon, Assistant Clerk

APPROVED AS TO FORM:



Terrence M. Donnellon, Solicitor

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 Village of Golf Manor, Ohio ("**Golf Manor**"), an Ohio municipal corporation, the address of which is 6450 Wiehe Road, Golf Manor, Ohio 45237.

Recitals

A. GCWW and Golf Manor, pursuant to their authority under Sections 4 and 6 of Article XVIII of the Ohio Constitution, are parties to a certain *Agreement* dated December 5, 2006 ("**Water Service Agreement**") for GCWW to supply surplus water and water service to customers within the municipal limits of Golf Manor on the terms and conditions therein and subject to the ordinances, laws, standards, specifications, rules and regulations governing GCWW.

B. According to GCWW records, some of the privately-owned service lines within the GCWW service area may contain lead pipes, especially within older subdivisions.

C. 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.

D. To eliminate the risk of lead service lines to public health, GCWW has implemented a Lead Service Line Replacement Program which 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**").

E. To provide a safe water system throughout the region, GCWW and Golf Manor intend by this Agreement to allow residents within Golf Manor to participate in the Program.

F. GCWW and Golf Manor wish to provide GCWW customers that are Golf Manor residents the option to participate in the Program and to spread payment of the Owner's Share over up to 10 years through Golf Manor'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.

G. Golf Manor intends to exercise its authority under Chapters 727 and 729 of the Ohio Revised Code to levy assessments upon property within Golf Manor, in cooperation with GCWW, for those residents electing to participate in the Program for any portion of the Owner's Share which is not satisfied by any grant from GCWW.

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

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 Golf Manor 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 Golf Manor Legislative Authority.** The Clerk of the Golf Manor legislative authority ("**Village Clerk**") hereby designates GCWW to serve the notice required by Chapters 727 and 729 of the Ohio Revised Code.
4. **Notice.** As Golf Manor's designee, GCWW shall serve notice to owners of property with a private lead service line in Golf Manor in accordance with the Program.
5. **Assessment List.** From time to time, GCWW will provide Golf Manor 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 Golf Manor.
6. **Assessment Ordinance.** No later than 30 days after GCWW has provided an Assessment List to Golf Manor, Golf Manor shall complete the following:

- a. Submit for adoption by the Council of the Village of Golf Manor legislation levying the amounts upon the property as enumerated in the Assessment List. The Golf Manor legislation shall not amend or alter the Assessment List provided by GCWW.
- b. The Village 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 Golf Manor in accordance with Ohio Revised Code §§ 729.06, 727.30, 727.301, 727.33, and 727.331.

7. **Assignment of Assessment Payments; Cooperation.** Golf Manor 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. Golf Manor 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. Golf Manor 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 Golf Manor, 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. This Agreement shall not impose any liability upon Golf Manor for any unpaid assessments, which unpaid assessments solely shall be a lien upon the real estate assessed and the responsibility of the owner of record of the assessed real estate to pay consistent with the terms of the assessment.
10. **Termination.** Either Party may terminate this Agreement on 90 days advance written notice.
11. **Survival.**
 - a. Sections 7, 8, 9 and 10 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: Commercial Superintendent
4747 Spring Grove Ave
Cincinnati, Ohio 45232

To Village of Golf Manor:

Village of Golf Manor
Attention: Ron Hirth, Village Administrator
6450 Wiehe Road
Golf Manor, Ohio 45237

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: City Solicitor
 City of Cincinnati
 801 Plum Street, Room 214
 Cincinnati, OH 45202

To Golf Manor: Terrence M. Donnellon, Esquire
 Solicitor, Village of Golf Manor
 Donnellon, Donnellon & Miller, LPA
 9079 Montgomery Road
 Cincinnati, OH 45242

- 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. Except as expressly stated herein, this Agreement shall not be interpreted to alter the

responsibilities of property owners within Golf Manor to comply with the GCWW Rules and Regulations as set forth in the Water Service Agreement.

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 TO FOLLOW]

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,
Its: City Manager

Bobbi Hageman,
Its: Interim Chief Procurement Officer

Date: _____ 2019

RECOMMENDED BY:

APPROVED AS TO FORM:

Cathy Bernardino Bailey,
Director, Greater Cincinnati Water Works

Assistant City Solicitor

VILLAGE OF GOLF MANOR, OHIO

By: Ron Hirth
Ron Hirth
Its: Administrator

Date: 4/9 2019

APPROVED AS TO FORM:

William M. Donak
Village Solicitor