

ASSET TRANSFER AGREEMENT

THIS ASSET TRANSFER AGREEMENT (the "Agreement") is made this ____ day of _____, 2014 between the CITY OF CLEVELAND ("Transferee") acting through its Director of Public Utilities under the authority of Ordinance No. 778-06, passed by the Council of the City of Cleveland on June 5, 2006, and the CITY OF NORTH ROYALTON ("Transferor") acting by authority of Ordinance/Resolution No. _____, adopted on _____, 20__.

RECITALS

1. Transferor owns and controls a water distribution system;
2. The parties entered into a Restatement of the Water Service Agreement to which this Agreement shall be attached;
3. As partial consideration for the Restatement of the Water Service Agreement, Transferor agreed to transfer ownership of its distribution system to Transferee; and
4. Transferor desires to transfer to Transferee all rights of Transferor in and to the distribution system and Transferee desires to acquire from Transferor the distribution system upon the terms and conditions set forth in this Agreement.

In consideration of the mutual promises set forth in this Agreement, the parties agree as follows:

ARTICLE I. TRANSFER OF ASSETS

1.01 Subject to the terms and conditions of this Agreement, on the Closing Date (as defined below), Transferor agrees to assign, transfer and deliver to Transferee and Transferee agrees to accept from Transferor, all of Transferor's right, title and interest in and to the following (collectively referred to as the "Assets"):

- (a) Distribution System – All water distribution mains and appurtenances, including valves, pressure regulators, city-side connections, and fire hydrants located within Transferor's territorial limits.
- (b) Real Estate Interests – Defined below.

1.02 Liabilities Not Assumed. Transferee will not assume or be liable for any liabilities or obligations of Transferor or any predecessor, whether known or unknown, relating to the ownership or use of the Assets prior to the Closing Date.

1.03 Real Estate Interests. Transferor grants to Transferee those rights in real estate necessary and/or desirable for the effective ownership, use and maintenance of the Distribution System. Transferor shall execute any additional documents that may be or become necessary to effect the purposes of this Section 1.03.

1.04 Disclosure of Assets, Liabilities, and Real Estate Interests. Transferor shall document for Transferee all assets to be transferred under this Agreement, along with a description of any corresponding liabilities and real estate interests associated with each asset. Transferor's assets, provided on Transferee's Section Sheet or GIS map depicting the location of the assets, shall satisfy the documentation required in this Section. Such documentation shall be attached as Exhibit "1" to this Agreement.

1.05 Future Capital Investments by Transferor. Should Transferor desire to undertake water main replacements within the Distribution System, the parties may execute an asset transfer agreement transferring said assets to Transferor. Upon Transferor's satisfaction of all related liens, encumbrances, obligations, and claims, the parties shall execute an asset transfer agreement transferring such assets back to Transferee.

ARTICLE II. CONSIDERATION

2.01 Consideration. In consideration of the transfer of the Assets, Transferee shall assume responsibility for cleaning, relining and other capital repairs and replacements of the Distribution System, at Transferee's expense and in accordance with the Restatement of the Water Service Agreement. Transferor shall not be entitled to any monetary compensation for transferring ownership of the Assets to Transferee.

ARTICLE III. WARRANTIES AND REPRESENTATIONS OF TRANSFEROR

Transferor warrants and represents to Transferee that as of the date of this Agreement:

3.01 Power and Authority. Transferor has full power and authority to execute and perform this Agreement and the transactions and other agreements and instruments contemplated by this Agreement. This Agreement and all other agreements and instruments to be executed and delivered by Transferor, constitutes the legal, valid and binding obligation of Transferor, enforceable in accordance with its terms. All consents, approvals, authority and other requirements prescribed by law, rule or regulation, or any contract, agreement, commitment or undertaking that must be obtained or satisfied by Transferor for the execution, delivery and performance of this Agreement and the transfer of the Assets contemplated by this Agreement have been obtained and satisfied. The person signing this Agreement and all other agreements and instruments to be executed and delivered by Transferor has been duly authorized to execute and deliver this Agreement and such other agreements and instruments on behalf of Transferor.

3.02 No Conflicts; Defaults. Neither the execution and delivery of this Agreement and the other related agreements and instruments to be executed and delivered by Transferor, nor the performance by Transferor of the transactions contemplated under this Agreement, will (a) result in the creation or imposition of any liens in favor of any third person or entity upon any of the Assets; (b) violate any law, statute, judgment, decree, order, rule or regulation of any governmental authority; (c)

constitute an event which, after notice or lapse of time or both, would result in such violation, conflict, default, acceleration, or creation or imposition of liens.

3.03 Title to the Assets. Transferor has good title to, or has the right to use and transfer the Assets to Transferee. The delivery to Transferee of the instruments of transfer of ownership contemplated by this Agreement will vest good, marketable and exclusive title to the Assets to Transferee, free and clear of all liens, encumbrances, obligations and claims of any kind or nature whatsoever. None of the Assets are subject to, or held under, any lease, mortgage, security agreement, conditional sales contract or other title retention agreement. Transferee shall not assume ownership of any Assets containing obligations as set forth in this Section until such obligations are satisfied by Transferor, at which time such Assets shall automatically transfer to Transferee.

ARTICLE IV. FURTHER ASSURANCES

4.01 Further Assurances. Transferor agrees that from time to time, Transferor will promptly execute and deliver all further instruments and documents, and take all further action that may be necessary or desirable, or that Transferee may request, in order to perfect and protect Transferee's title and/or possession in and to the Assets, including, but not limited to, any and all Assets to which Transferor obtains title or ownership following the Closing.

4.02 Remedies. Transferor acknowledges that its respective covenants contained in this Agreement constitute a material inducement for the Transferee to enter into this Agreement. Transferor further acknowledges that if Transferor breaches any covenants and agreements contained in this Agreement, the injury that will be suffered by Transferee will be irreparable and Transferee will not have an adequate remedy at law. The parties agree that in the event of such a breach, Transferee shall be entitled to relief by way of injunction from any court of proper jurisdiction (with or without bond), to enforce the agreements and covenants set forth in this Agreement, in addition to all other rights that Transferee may have at law or in equity.

4.03 Severability. All provisions of this Article IV are intended to be severable. In the event any provision or restriction contained in this Agreement is held to be invalid or unenforceable in any respect, in whole or in part, such finding shall in no way affect the legality, validity or enforceability of all other provisions of this Article IV. The parties further agree that any such unenforceable provision or restriction shall be deemed modified so that it shall be enforced to the greatest extent permissible under law, and to the extent that any court of competent jurisdiction determines any restriction to be overly broad or unenforceable, such court is empowered and authorized to limit such restriction so that it is enforceable to the fullest extent permissible under applicable law.

ARTICLE V. CLOSING

5.01 Closing. Provided that the deliveries set forth in this Article V and all other conditions are either satisfied or waived, the consummation of the transaction contemplated under this Agreement (the "Closing") shall take place on the date first stated above, which shall be the date that execution by both parties is completed, or such other date as is mutually agreed upon between the parties (the "Closing Date"). The Closing shall take place at such time and location as the parties shall mutually agree on the Closing Date. Possession of the Assets shall be deemed given to Transferee on the Closing Date. All risk and loss with respect to the Assets shall be borne by Transferor until the Closing Date.

5.02 Closing Documents. Both parties shall deliver or cause to be delivered to the other at Closing all documents and consents necessary for the parties to carry out their obligations under this Agreement.

ARTICLE VI. MISCELLANEOUS

6.01 Amendment. This Agreement may only be amended by an instrument in writing, executed by both parties.

6.02 Entire Agreement. Except as expressly set forth in this Agreement or in an instrument in writing signed by the parties, which makes reference to this Agreement, this Agreement embodies the entire agreement in relation to the subject matter, and no representations, warranties, covenants, understandings or agreements exist between the parties.

6.03 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties and their respective administrators, legal representatives, successors and assigns. 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.

6.04 Governing law. This Agreement shall in all respects be interpreted, construed, and governed by and in accordance with the laws of the State of Ohio. The parties submit to the personal jurisdiction of the state and federal courts located in Cuyahoga County, Ohio.

6.05 Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be delivered personally, sent by facsimile transmission (with immediate confirmation thereafter) or sent by certified, registered or express mail, postage prepaid, or by a nationally recognized overnight courier service, marked for overnight delivery. Any such notice shall be deemed given when so

delivered personally, or sent by facsimile transmission (with immediate confirmation thereafter) or, if mailed, five (5) business days after the date of deposit in the mails, or if sent by overnight courier marked for overnight delivery, two (2) business days after the date of delivery to the courier service, as follows:

(a) If to Transferor: [Chief Elected Official]
City of North Royalton
13834 Ridge Road
North Royalton, Ohio 44133
Facsimile (440) 237-5024

(b) If to Transferee: Director of Public Utilities
City of Cleveland
1201 Lakeside Avenue
Cleveland, Ohio 44114
Facsimile (216) 664-3330

with copies to: Commissioner
Division of Water
City of Cleveland
1201 Lakeside Avenue
Cleveland, Ohio 44114; and

Director of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114

6.06 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement.

6.07 Assignment. Neither party shall have the right to assign this Agreement to a non-affiliated third party without the prior written consent of the other party.

6.08 Further Assurances. The parties agree without expense to the other party (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

6.09 Rights of Third Parties. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and permitted assigns. Nor is anything in this Agreement intended to release or discharge the obligation or liability of any third persons to any party to this Agreement.

6.10 Severability. In the event any provision of this Agreement conflicts with the law under which this Agreement is to be construed, such provision shall be deleted from the Agreement and the Agreement shall be construed to give effect to the remaining provisions.

6.11 Survival. The representations, warranties, covenants and agreements set forth in this Agreement shall survive the Closing. This Agreement shall survive the termination of any Water Service Agreement entered into between the parties.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**CITY OF CLEVELAND
TRANSFeree**

**CITY OF NORTH ROYALTON
TRANSFEROR**

Paul Bender, Director
Department of Public Utilities

Robert A. Stefanik, Mayor

The legal form and correctness of this instrument are approved:

The legal form and correctness of this instrument are approved:

Barbara A. Langhenry
Director of Law

Thomas A. Kelly, Law Director

Kate E. Ryan
Assistant Director of Law

Date: _____

EXHIBIT 1

DISCLOSURE OF ASSETS, LIABILITIES, AND REAL ESTATE INTERESTS