

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO TRANSFER OWNERSHIP OF THE WATER FACILITIES WITHIN CANTERBURY ON THE LAKES, PHASE 4, TO THE CITY OF AKRON; AND DECLARING AN EMERGENCY.

WHEREAS, several years ago, the City of Hudson accepted dedication by a developer of waterlines in the Canterbury on the Lakes, Phase 4, development along a portion of Paderbourne Drive and Wessington Drive and along Burr Oak Way and Bramfield Way; and

WHEREAS, the City of Hudson's water supply to the waterlines in Phase 4 of Canterbury on the Lakes is approximately one mile away and the cost to extend those lines is a considerable expense; and

WHEREAS, staff recommends transferring ownership of the water facilities within Canterbury on the Lakes, Phase 4, to the City of Akron whose water supply facilities are adjacent to Phase 4; and

WHEREAS, homeowners within Phase 4 of Canterbury on the Lakes have been served by their own water wells for several years and many homeowners have requested central water services from the adjacent Akron facilities which will include operative fire hydrants for fire suppression services; and

WHEREAS, it is the desire of this Council to provide connection of Canterbury on the Lakes, Phase 4, residents to said waterlines and to transfer ownership of those lines to the City of Akron.

NOW, THEREFORE, BE IT RESOLVED by the Council of Hudson, Summit County, State of Ohio, that:

Section 1: The City Manager is authorized to enter into a water transfer agreement with the City of Akron for Canterbury on the Lakes, Phase 4, in substantially the form set forth in "Exhibit A", attached hereto and incorporated herein by reference.

Section 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare of the citizens of the City,

and for the further reason that it is immediately necessary to provide area residents with central water service and fire suppression facilities; wherefore, this Resolution shall be in full force and effect immediately upon its passage, provided it receives the affirmative vote of five members of Council elected thereto or six affirmative votes if all members of Council are present at the meeting at which it is passed; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED:

David A. Basil, Mayor

ATTEST:

Elizabeth Slagle, Clerk of Council

I certify that the foregoing Resolution was duly passed by the Council of said Municipality on _____, 2017.

Elizabeth Slagle, Clerk of Council

EXHIBIT A

WATER LINE TRANSFER AGREEMENT BETWEEN THE CITY OF HUDSON AND THE CITY OF AKRON (Canterbury on the Lakes, Phase 4)

This Water Line Transfer Agreement (hereinafter the "Agreement") is made and entered into by and between the CITY OF HUDSON, OHIO, a municipal corporation, with its main offices located at 115 Executive Parkway, Suite 400, Hudson, Ohio 44236 (hereinafter referred to as "Hudson") and the CITY OF AKRON, OHIO, a municipal corporation, with its main offices located at 166 South High Street, Room 200, Akron, Ohio 44308 (hereinafter referred to as "Akron"), and is dated as of _____, 2017.

WHEREAS, Canterbury on the Lakes, Phase 4, is a residential subdivision located in the City of Hudson, Summit County, Ohio (hereinafter the "Subdivision");

WHEREAS, the water lines and related appurtenance were installed by the developer of the Subdivision several years ago, were offered to Hudson for dedication to public use and were accepted for dedication by Hudson as the owner thereof for public purposes; however, central water services supplied by Hudson were not available, and continue to be unavailable, to the Subdivision and, therefore, water wells were permitted to be drilled and used by homeowners in the Subdivision;

WHEREAS, the water lines and related appurtenances, which are all located in the public rights-of-way, are accurately depicted on the drawing attached hereto and incorporated herein by reference as Exhibit A (hereinafter the "Water Facilities");

WHEREAS, Akron has central water service readily available to the Subdivision;

WHEREAS, Hudson wishes to transfer ownership of the Water Facilities to Akron and Akron wishes to accept the transfer of ownership of the Water Facilities for service of potable water to the public;

WHEREAS, Hudson and Akron desire to enter into this Agreement and to set forth the terms and conditions upon which Hudson will transfer the Water Facilities to Akron.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements set forth herein, the parties agree as follows:

1. Definitions. As used in this Agreement:

- (a) "Appurtenant Rights" means, with respect to the Water Facilities: (i) certain non-exclusive public utility easements (as described on the face page of the plat for the Subdivision attached hereto as Exhibit B and fully incorporated herein by reference), agreements, current locations of all water lines and appurtenances in public rights of way, or the use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and

benefits belonging or pertaining to such locations and the Water Facilities, including, the right to use any public streets, with the only limitation being that the foregoing right to use is limited to the current locations of all Water Facilities but said Water Facilities may be relocated, rebuilt, reinstalled, and expanded outside of their current locations pursuant to Hudson's ordinances, regulations and permitting procedures; and (ii) all permits, licenses and rights, whether or not of record, appurtenant to such lands and the Water Facilities.

- (b) "Closing Date" means the date, mutually agreeable to the parties in writing, on which Hudson shall execute and record with the Summit County Fiscal Officer a quit claim deed for the Water Facilities and Appurtenant Rights that will affect the transfer of the Water Facilities and Appurtenant Rights by Hudson to Akron.
- (c) "Water Facilities" means the existing water lines and related appurtenances serving the development known as Phase 4 of the Canterbury on the Lakes subdivision and depicted in Exhibit A attached hereto.

2. Transfer of the Water Facilities to Akron.

- (a) Hudson agrees to transfer its ownership of the Water Facilities and Appurtenant Rights to Akron by quit claim deed in accordance with the terms and conditions of this Agreement, provided that the provisions of this Agreement shall survive the conveyance of the Water Facilities and Appurtenant Rights to Akron and shall not merge with the deed.
- (b) On the Closing Date, Hudson shall execute the quit claim deed to Akron necessary to transfer and convey the Water Facilities and Appurtenant Rights to Akron.

3. Transfer of Records. On or before the Closing Date, Hudson shall deliver to Akron all plans and as-built drawings of the Water Facilities, if any. The Parties acknowledge that Hudson shall make its best efforts to gather and deliver to Akron the foregoing documents and information by the Closing Date and the Parties agree to share information and documents related to the Water Facilities after the Closing Date, as deemed reasonably necessary by either Party.

4. Service of Customers and Maintenance of Facilities Following Transfer.

- (a) As of the Effective Date, Akron shall assume the obligation to operate, maintain, and service the Water Facilities and to service only those property owners in the Subdivision ("Property Owners") who request service and who comply with Akron's rules and regulations for water service. Nothing in this Agreement shall be deemed to create a continuing obligation to sell surplus water or to provide water service to any Property Owners in the Subdivision.

- (b) Property Owners in the Subdivision shall not be required to tap into the Water Facilities and may continue to service their properties by individual water wells on their properties.
 - (c) Subject to the limitation in paragraph 4 (a) above, at any time in the future, a Property Owner in the Subdivision, upon application to Akron, may tap into the Water Facilities.
 - (d) Even after a Property Owner in the Subdivision has tapped into the Water Facilities, the Property Owner may continue to use well water for watering of landscaping or for outdoor cleaning purposes.
 - (e) Nothing in this Agreement shall govern the water rates or charges for water service to any customers in Hudson who may request water service under this Agreement.
5. No Warranties. Except as set forth in paragraph 7 below, Akron acknowledges that it is accepting the Water Facilities “as is” with no warranties as to the condition of the Water Facilities.
6. Assumption of Obligations. Commencing on and after the Closing Date, Akron shall be responsible for complying with all environmental laws and regulations applicable to the Water Facilities. Akron is not assuming, and has not assumed, any liability for violation of environmental laws or regulations that first occurred prior to the Closing Date.
7. Representations of Hudson and Akron.
- (a) Hudson represents and warrants to Akron as follows:
 - 1. Hudson has full power and authority to execute, deliver and perform this Agreement and to enter into and carry out the transaction contemplated hereby. Such execution, delivery and performance do not, and will not, violate any provision of law applicable to Hudson or Hudson’s charter and do not, and will not, conflict with or result in a default under any agreement or instrument to which Hudson is a party or by which Hudson or any property or assets of Hudson are or may be bound. This Agreement has, by proper action of the Council of Hudson, been duly authorized, executed and delivered and all necessary actions have been taken to constitute this Agreement and the transfer and conveyance of the Water Facilities to Akron to be the legal, valid and binding obligations of Hudson.
 - 2. Hudson has good and marketable title to the Water Facilities and the Appurtenant Rights.
 - 3. There are no actions, suits or other legal proceedings pending or, to

the best of the Hudson's knowledge, threatened which may affect the Water Facilities, the transfer and the conveyance thereof to Akron or the ability of Hudson to perform any of Hudson's obligations under this Agreement.

(b) Akron represents and warrants to Hudson as follows:

1. Akron has full power and authority to execute, deliver and perform this Agreement and to enter into and carry out the transaction contemplated hereby. Such execution, delivery and performance do not, and will not, violate any provision of law applicable to Akron or its charter and do not, and will not, conflict with or result in a default under any agreement or instrument to which Akron is a party or by which Akron or any property or assets of Akron is or may be bound. This Agreement has been duly authorized, executed and delivered and all necessary actions have been taken to constitute this Agreement and the transfer and conveyance of the Water Facilities to Akron to be the legal, valid and binding obligations of Akron.

8. General Provisions.

- (a) This Agreement constitutes the entire Agreement between Hudson and Akron with regard to the Water Facilities and Appurtenant Rights, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement.
- (b) This Agreement shall inure to the benefit of, and shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that neither party hereto may assign this Agreement or any right arising hereunder without the prior written consent of the other party.
- (c) If any provision of this Agreement is invalid or unenforceable for any reason, this Agreement shall be divisible as to such provision and the remainder of this Agreement shall be and remain valid and binding as though such provision was not included herein.
- (d) This Agreement may be modified in writing upon the mutual agreement of Hudson and Akron.
- (e) The individuals signing on behalf of the parties to this Agreement are authorized to execute this Agreement on behalf of Hudson and Akron.
- (f) This Agreement shall be governed by and construed under the laws of the State of Ohio.

The parties have caused this Agreement to be executed on the date first mentioned above.

CITY OF HUDSON, OHIO

By: _____
Jane Howington, City Manager

CITY OF AKRON, OHIO

By: _____
Dan Horrigan, Mayor

Approved as to form and correctness:

SOLICITOR – CITY OF HUDSON

By: _____
R. Todd Hunt

Date: _____

Approved as to form and correctness:

DIRECTOR OF LAW – CITY OF AKRON

By: _____
Eve V. Belfance

Date: _____

