

ORIGINAL

ECONOMIC DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF CLEVELAND

AND

PORTAGE COUNTY

This Economic Development Agreement (“Agreement”) is entered into this 16th day of August, 2006, between the City of Cleveland, under the authority of Ordinance No. 607-06, passed by the Council of the City of Cleveland on May 8, 2006, and Portage County, under the authority of Resolution No. 06-0697 adopted August 10, 2006.

RECITALS

- 1) Sections 4 and 6 of Article XVIII of the Ohio Constitution authorize Cleveland to extend its water service outside the City’s corporate limits and to determine the terms and conditions under which such service will be extended; and
- 2) Portage County desires to obtain Cleveland water service to supply its customers (including the City of Aurora), also known as the “Service Area,” through a Competitive Response Master Meter Water Service Agreement (the “WSA”); and
- 3) The provision of Cleveland water to the Service Area will facilitate economic development, create and preserve jobs, improve property values, and advance the economic welfare of the inhabitants and businesses within Portage County; and
- 4) The provision of Cleveland water to the Service Area may have negative economic impacts for Cleveland through the loss of economic development that may otherwise have occurred within Cleveland; and

5) In consideration of such extension of water service by the Cleveland Division of Water, Portage County has agreed to enter into this Agreement to compensate Cleveland for the impacts to economic development within Cleveland, caused by the extension of water service to Portage County.

ECONOMIC DEVELOPMENT AGREEMENT

Article I. Compensation to Cleveland

A) Amount. In consideration of Cleveland's agreement to extend water service, Portage County agrees to pay to Cleveland's General Fund an annual economic loss mitigation fee (the "Fee"), due upon the signing of this Agreement and on the anniversary date each following year, to compensate for current and future economic losses suffered by Cleveland that may be caused by extension of water service to the Service Area, as follows:

- 1) The annual Impact Fee shall initially be \$37,500 until the 16" express main, described in the WSA, is operational.
- 2) Once the main is available, the annual Impact Fee shall increase to \$100,000, and will escalate at the Consumer Price Index (CPI) up to 5% per year, until such time that 2.5 million gallons per day average annual flow is drawn from Cleveland.
- 3) Once Portage County demands more than 2.5 million gallons per day annual flow from Cleveland, the Fee shall increase by an additional \$100,000, and shall escalate as described in the paragraph above.
- 4) The Fee shall be prorated for any year in which the Fee increases to reflect the additional amount.
- 5) The parties agree that for purposes of this Article I, a year shall begin on the date on which Portage County's first payment of \$37,500 is due, and ends on the day before the

first anniversary of that date.

B) Nature of Compensation. The parties expressly recognize that the payments made by Portage County to Cleveland are intended to be compensation to Cleveland for impacts to economic development within Cleveland due to its extension of water service, and shall not be considered tax receipts or revenues of the City's water system. Cleveland shall deposit the fees into a fund designated to offset impacts of economic development outside Cleveland, to promote economic development within Cleveland and/or to promote joint economic development activities between Cleveland and Portage County.

C) Cleveland Businesses. Portage County shall not take any action to promote, encourage, offer economic incentives to, or otherwise solicit Cleveland businesses to relocate to the Service Area. Portage County will include a similar provision in future agreements with other communities in the service area.

Article II. Term

The term of this Agreement shall begin on the date of its execution and shall run concurrently with the term of the WSA, including any renewals or extensions.

ARTICLE III. Water Service Agreement

A) Water service to the Service Area. Cleveland's obligation to provide water service to the Service Area is contingent upon the receipt of the fee described in Article I (A) of this Agreement.

B) Termination. In the event that this Agreement is deemed to be unenforceable under any local, state, or federal law, or if for any reason Portage County ceases to make the payments to Cleveland required by Article I (A), Cleveland shall have the right, upon six months' written notice to Portage County, to terminate the WSA and discontinue water service to Portage County. Prior to Cleveland's exercising such right, however, the parties will use best efforts to enter into a new Agreement and WSA under terms and conditions that will cure the defect(s) that rendered this Agreement unenforceable.

Article V. Default and Remedies

A failure to comply with the terms of this Agreement shall constitute a default. In the event of a default, the parties shall follow the Dispute Resolution process set forth in the WSA.

Article VI. Miscellaneous

- A) Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of Ohio.
- B) Captions and Headings. The captions and headings used in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any contract provision.
- C) Binding On Successors. This agreement shall be binding upon successor governmental authorities of the parties to the extent permitted by law.
- D) Amendments to Be In Writing. This agreement shall not be amended, modified, discharged or extended except by written instrument executed by the parties, under their respective ordinances and charters, and the laws of Ohio.

Article VII. Form of Notices

Any notice or demand to be given by or to any of the parties shall be made in writing and shall be deemed to have been given or delivered, as the case may be, two (2) days after deposit in the U.S. Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows (or as to each party, to such other address as the party may designate by a notice given in accordance with the provisions of this Section):

Notice to Cleveland shall be addressed to:

Director of Finance
City of Cleveland
Department of Finance
601 Lakeside Avenue
Cleveland, Ohio 44114

With a copy to:

Director of Public Utilities
City of Cleveland
Department of Public Utilities
1201 Lakeside Avenue
Cleveland, Ohio 44114

Notice to Portage County shall be addressed to:

Board of Portage County Commissioners
449 South Meridian Street
Ravenna, Ohio 44266-1217

The parties have executed this Agreement as of the date and year first above written.

CITY OF CLEVELAND

By: Sharon Dumas
Director of Finance

The legal form and
correctness of this Agreement are approved:

ROBERT J. TRIOZZI

Director of Law

By: Katie Novak
Assistant Director of Law

Date: 8/15/06

**PORTAGE COUNTY
BOARD OF COMMISSIONERS**

Christopher Smeiles

Charles W. Keiper, II

Maureen T. Frederick

8-10-06
Date

8-10-06
Date

8-10-06
Date

Approved:

ASSISTANT PORTAGE COUNTY PROSECUTOR

By: _____

Date: 8-10-06

Certificate of Auditor

I HEREBY CERTIFY that the amount of **\$ 37,500.00** required to meet the foregoing contract, agreement, or obligation has been lawfully appropriated, or authorized or directed for such purposes, and is in the County treasury to the credit of Fund 54001004 400000 free from any outstanding obligation.

8-10-06
Date

Janet Esposito (signed)
Portage County Auditor

