

## Contract for Purchase of Waste Water Treatment Services

This agreement is made at Defiance County, Ohio, between the City of Defiance, Ohio, a municipal corporation, hereinafter referred to as the "City", and the Ayersville Water and Sewer District, a Regional Water and Sewer District organized pursuant to the authority of Chapter 6119 of the Ohio Revised Code, hereinafter referred to as the "District".

### General Representations

1. The District is a regional water and sewer district organized in conformity with and possessing all powers conferred by Chapter 6119 of the Revised Code of Ohio;
2. The City is a municipal corporation Chartered and operated pursuant to the Constitution and laws of the State of Ohio;
3. The District proposes to construct waste water facilities as defined by Revised Code Section 6119.011(L) for the collection of sewage (as defined by ORC 6119.011(I)) within the territorial jurisdiction of the District and requires access to a Wastewater Treatment Plant to which an NPDES Permit has been issued in order to lawfully dispose of the collected sewage;
4. The City owns and operates waste water facilities that include facilities for treating, conditioning and disposing of wastewater and residual solids located at State Route 281 East, Defiance, Ohio, hereinafter referred to as the "Water Pollution Control Plant";
5. The Water Pollution Control Plant is capable of receiving sewage and certain industrial waste waters and cleansing the same to the extent presently required by law and environmental regulations for lawful discharge to the Maumee River in accordance with standards established by an NPDES permit issued to the City by the Ohio Environmental Protection Agency;
6. The District desires to dispose of the sewage to be collected within the territorial jurisdiction of the District by transmission of the collected waters to the City owned and operated Water Pollution Control Plant for treatment and eventual discharge to the Maumee River;
7. This agreement is made pursuant to the authority of Revised Code Section 6119.09 to:
  - A. assure the District that adequate facilities will be available for the treatment and disposal of waste waters collected by it for as long as the District remains obligated to pay interest and principal on notes, bonds and other indebtedness incurred by the District to finance the construction of the proposed sewage collection and transmission system;
  - B. assure the City that the District will utilize the City's Water Pollution Control Plant as the District's exclusive point of disposal for all sewage collected by the District that is suitable for treatment by the Water Pollution Control Plant for a period of time sufficient to amortize capital costs to be incurred by the City to expand the capacities of the Water Pollution Control Plant according to designs adopted in reliance upon anticipated flows to be collected by the District for transmission to the Water Pollution Control Plant;
  - C. provide for an equitable apportionment between the parties of the known and unknown costs to be incurred in the operation, expansion and

modernization of the City's Water Pollution Control Plant during the term of this agreement;

D. assure that the District will be solely responsible for the costs of construction, maintenance, improvement and operation of the District's collection and transmission facilities; and,

E. assure that the City will be solely responsible for the costs of construction, maintenance, improvement and operation of the City's collection and transmission facilities except to the extent that improvements to municipal collection and transmission facilities may be fairly assumed to have an effect on operation of the Water Pollution Control Plant that is beneficial to the District;

F. provide for reasonable regulation of all discharges to the collection systems operated by the District and the City to assure efficient and effective operation of the Water Pollution Control Plant and compliance with Federal and State regulations applicable to Publicly Owned Treatment Works.

Now Therefore, in consideration of the Premises and the mutual promises and undertakings hereinafter stated, the parties are agreed:

#### Article I: Provision of Services

For a period of 40 years following commencement of service pursuant to this agreement, the City shall receive, treat and properly dispose of all sewage collected by the District at its Water Pollution Control Plant located on State Route 281 East, Defiance, Ohio, subject to the following terms, conditions and limitations:

1. The City shall not be required to accept effluent in quantities exceeding a monthly average of Three Hundred Thousand (300,000) gallons per day nor at a rate exceeding 500 gallons per minute;
2. The City shall not be required to accept waste waters collected outside the political boundaries of the District;<sup>1</sup>
3. The City shall not be required to accept waste waters collected in territories annexed to the District after the date of execution of this Agreement unless the assent of the City to the annexation of said territory, expressed by a duly enacted Resolution of the Council of the City of Defiance, is obtained prior to the annexation of the additional territory. The City shall not refuse consent to the annexation of any territory to the District that lies within the area bounded and described as:

Beginning at the point of intersection of the center line of the right-of-way line of the Defiance-Putnam County Line Road with the center line of the right-of-way line of the Defiance Paulding County Line Road; thence Easterly on and along the center line of the Defiance-Putnam County Line Road to the point of intersection of said line with the center line of the right-of-way of the Defiance-Henry County Line Road; thence North on and along the center line of the Defiance-Henry County Line Road to the point of intersection of said center line with the Southerly right-of-way line of the CSX Railroad; thence Northwesterly on and along the Southerly right-of-way line of the CSX Railroad to the point of intersection of said line with the center line of the right-of-way of Hire Road; thence South on and along the center line of Hire Road to the point of intersection of said line with the center line of the right-of-way of Standley Road; thence West on and along

<sup>1</sup> A Map depicting the political boundaries of the District as they exist on the date of execution of this Contract is attached hereto Marked "Exhibit A" and incorporated herein for all purposes.

the center line of Standley Road to the point of intersection of said line with the existing corporation limit of the City of Defiance; thence meandering on and along the existing municipal corporation limit of the City of Defiance to a point on Carter Road 1,000 feet west of the existing westerly right-of-way line of State Route 66; thence South on a line parallel to and 1,000 feet west of the existing westerly right-of-way line of State Route 66 to the point of intersection of said line with the center line of the right-of-way of Blanchard Road; thence East on and along the centerline of Blanchard Road to the point of intersection of said centerline with the center line of the right-of-way of the Defiance-Paulding County Line Road; thence South on and along the centerline of the Defiance-Paulding County Line Road to the point of beginning<sup>2</sup>

unless the lands proposed to be annexed to the District are, at the time of such proposed annexation:

- a) located within the political jurisdiction of the City; or
- b) are served by extra-territorial water distribution or sewage collection mains owned and operated by the City.

4. The City shall not be required to accept any industrial waste (as defined by Revised Code Section 6119.011(J)) discharged into the District's collection system by an "industrial user" or "industrial discharger" (as defined by Section 1042.02(13) of the Codified Ordinances of the City of Defiance) unless the assent of the City to the acceptance of such industrial wastes, expressed by a duly enacted Resolution of the Council of the City of Defiance, is obtained prior to the connection of said facility to the District's collection system;<sup>3</sup>

5. The City shall not be required to accept waters discharged by the District to the City's Water Pollution Control Plant that violate limits established by Chapter 1042 of the Codified Ordinances of the City of Defiance, as they now exist or may hereafter be amended, pertaining to the septicity, organic loading, metallic content and odor characteristics of waste waters that may be lawfully discharged into the City's collection system for transmission to the Water Pollution Control Plant for treatment and disposal.

### **Article 2: Exclusive Use of Municipal Facility**

Except as otherwise expressly provided by this Article, the District shall discharge all waste waters collected by it to the Water Pollution Control Plant for treatment and disposal for a period of 40 years following the commencement of service pursuant to this agreement. The District may utilize wastewater treatment facilities other than the Water Pollution Control Plant for the disposal of collected waste waters when all of the following conditions are met:

1. The City is not required by Article 1 of this agreement to accept the waste waters for treatment and disposal;
2. The District has made a request of the City to accept the waters for treatment and disposal; and,
3. The City has refused to accept the waters for treatment and disposal on terms acceptable to the District.

<sup>2</sup> A Map depicting the territory within which the City's capacity to object to territorial expansion by the District is limited by this Contract is attached hereto marked "Exhibit A" and incorporated herein for all purposes.

<sup>3</sup> See Appendix "A"

### Article 3: Collection and Transmission Facilities

All facilities for the collection and transmission of waste waters within the territorial boundaries of the District shall be constructed, maintained and operated by the District at the District's sole expense. Nothing contained in this agreement shall be construed to imply that the City owns or has a possessory interest in such facilities. The District shall save and hold the City absolutely harmless against all costs and expenses incurred incident to the construction, ownership, maintenance and operation of said facilities.

### Article 4: Delivery Facilities

1. All waste waters collected by the District for treatment and disposal by the Water Pollution Control Plant shall be delivered to the Water Pollution Control Plant via a dedicated force main terminating at, or immediately adjacent to, the existing junction of the General Motors and Kingsbury transmission lines located on the premises of the Water Pollution Control Plant. The force main and appurtenant structures shall be owned exclusively by the District and shall be designed, constructed, maintained and operated at the District's sole expense. Nothing contained in this agreement shall be construed to imply that the City owns or has a possessory interest in the force main or any structures or facilities appurtenant thereto and the District shall save and hold the City absolutely harmless against all costs and expenses incurred incident to the construction, ownership, maintenance and operation of said facility.

2. The force main shall be designed and routed by the District subject to the following general limitations:

A. The City shall have the right to specify the location and depth of the line on the premises of the Water Pollution Control Plant;

B. The force main shall be appropriately sized and equipped with variable speed pumps or other devices approved by the City Engineer of the City of Defiance to prevent surges exceeding the acceptance capacity of the Water Pollution Control Plant;

C. The main shall be equipped with appropriate devices approved by the City Engineer to measure the quantity of flow passing through the main to the Water Pollution Control Plant and appropriate accesses to permit samples of the effluent to be taken for laboratory testing. All metering systems designed or selected for installation by the District shall be approved by the City Engineer prior to installation.

3. Nothing contained in this agreement shall be construed as a waiver of any right conferred upon the City by the Constitution or Statutory Law of Ohio or by Municipal Ordinances to grant or deny access to or otherwise control and regulate the use of public rights-of-way within the municipality. In the event portions of the force main are proposed to be located within public rights-of-way within the jurisdiction of the City, the District shall comply with all laws, ordinances and regulations generally applicable to the use of such rights-of-way by public utilities and private entities. Necessary permits and approvals shall be granted or denied by the City in accordance with the standards generally applicable thereto and without reference to this Contract.

### Article 5: Regulation of Effluent Quality<sup>4</sup>

1. Prior to the transmission of any waste waters to the Water Pollution Control Plant for treatment and disposal, the District, pursuant to the authority of Revised Code Section 6119.08(D), shall adopt appropriate Rules and Regulations to prevent the introduction of pollutants into the District's collection facilities that may:

<sup>4</sup> See Appendix "A"

A. interfere with the operation or performance of the Water Pollution Control Plant;

B. result in contamination of the sludge resulting from the treatment processes employed by the Water Pollution Control Plant; or,

C. pass through the systems of the Water Pollution Control Plant to the receiving waters of the Maumee River or to the atmosphere without adequate treatment.

2. The Rules and Regulations required by this Article shall be consistent with the general laws of the United States and State of Ohio; all rules, regulations and requirements of the Environmental Protection Agencies of the United States and State of Ohio; and Chapter 1042 of the Codified Ordinances of the City of Defiance. Said Rules and Regulations shall not permit the discharge of any substance to the District's collection system that may not lawfully be discharged to the City's collection system under standards established by Sections 1042.05(a) and 1042.05(b)(3)(B) of the Codified Ordinances of the City of Defiance as presently enacted or hereafter amended. Upon the adoption of any amendment to a statute, rule, regulation or municipal Ordinance that renders the District Rules and Regulations inconsistent with the statute, rule, regulation or Ordinance as amended, the District shall promptly amend its Rules and Regulations as necessary to maintain consistency in the regulation of waste discharges.

3. The District shall, during the continuance of this Agreement, enforce all Rules and Regulations adopted by it in compliance with this Article.

#### Article 6: Costs of Treatment and Disposal

In consideration of the treatment and disposal of sewage delivered to the Water Pollution Control Plant by the District, the District shall pay the City a monthly service fee composed of a readiness to serve charge and a commodity charge computed in accordance with this Article.

1. The readiness-to-serve charge shall be \$400.00 per month commencing the month during which effluent collected by the District is first received by the Water Pollution Control Plant for treatment and continuing each month thereafter during the continuance of this contract.

2. The initial commodity charge shall be \$2.145 per 100 cubic feet of measured flow delivered to the Water Pollution Control Plant during the previous month. The initial commodity charge shall be adjusted in proportion to increases or decreases in the combined readiness to serve and commodity charges levied by the City for sewerage furnished municipal residents supplied with municipally refined water in quantities exceeding 400 cubic feet per month. If, at any time after the date of execution of this Contract, Section 1042.10 of the Codified Ordinances of the City of Defiance is amended to effect an increase or decrease in the commodity charge or readiness to serve charge imposed on City residents supplied with potable water from taps 3/4" or smaller, the commodity charge then in effect for the District shall, subject to the limitations of paragraph 3, be increased or decreased by an amount equal in percentage to the net change in the municipal sewerage charges levied upon a municipal resident consuming 4,500 gallons of potable water per month effected by such amendment.

3. The District Board of Trustees shall be accorded notice, consistent with all requirements of Ohio's Open Meeting Laws, of all meetings of Council, including meetings of Committees of Council, at which prearrangements have been made for discussion or other consideration of the amendment of Section 1042.10 of the Codified Ordinances of the City of Defiance. Such notice shall be directed to the Clerk of the District Board and addressed to the District's principal office. The District, by its designated representatives, and all residents of the District potentially affected by such amendment, shall be accorded the same opportunity as is afforded municipal residents to be heard on the question at meetings of Council.



4. No adjustment shall be made in the commodity charge pursuant to subparagraph 2 to finance the repayment of debt incurred by the City as a consequence of the issuance of revenue bonds or general obligation bonds to finance improvements to municipal sewage collection and transmission facilities. Increases in the commodity charges established by Codified Ordinance 1042.10 shall be presumed to be for purposes other than financing the repayment of such debt unless the rate increase effected by Amendment of Codified Ordinance 1042.10 is effective within 6 months of the City's issuance of bonds in a principal amount equal to or greater than \$1,000,000.00 for the purpose of financing construction of such improvements.

#### Article 7: Billing and Payment Procedures

All metering equipment shall be read in cubic feet. A testing program approved by each party shall be established for the meter. Appropriate officials of the District shall be afforded access to the meter at reasonable times to verify readings. The City shall, not later than the last working day of each month, furnish the District with an itemized statement reflecting the amount of waste water delivered to the Water Pollution Control Plant for treatment and disposal through the meter since the closing date of the last billing cycle and the commodity charge due thereon together with the readiness to serve charge for the current month. All billings shall be subject to the same net and gross billing terms and penalties as are applied to all other wastewater utility customers of the City. The billing time and date of imposition of the gross charge shall be the same as for all other monthly wastewater utility customers of the City.

#### Article 8: General Provisions

1. Applicable Law: This contract shall be construed and enforced in accordance with the general laws of the State of Ohio and is subject to such federal and state administrative rules and regulations as may be applicable to similar agreements in the State of Ohio. The parties will collaborate in obtaining all permits, certificates or similar authorizations as may be necessary or appropriate to effect the purposes of this agreement in a manner consistent with such regulations.

2. Definitions: Unless the context clearly indicates a contrary intent, all words used herein shall be accorded their ordinary and customary meaning except such terms as are accorded a specific statutory definition by Chapter 6119 of the Ohio Revised Code. Words accorded such statutory definition shall be interpreted and construed as defined by statute.

3. Regulatory Approval: Construction of the proposed sewerage by the District is being financed by a loan made or insured by and/or a grant from the United States of America, Department of Agriculture. All undertakings of the District provided herein are conditioned upon receipt of all necessary financial commitments from Federal authorities and regulatory approvals from the United States and/or Ohio Environmental Protection Agency.

4. Transferability of Contractual Rights: In the event of any occurrence rendering the District incapable of performing under this Contract, any successor to the District, whether the result of legal process, assignment or otherwise, shall succeed to the rights of the District hereunder.

5. Amendment of Contract: All amendments to this Agreement shall be made in writing signed by appropriate officers of the City of Defiance and Ayersville Water & Sewer District. No amendment shall be effective unless approved by an Ordinance of the Council of the City and a Resolution of the Board of Trustees of the District duly adopted in conformity with law nor until such time as all necessary regulatory approvals are obtained. For so long as the Ayersville Water and Sewer District remains indebted to the United States of America for repayment of principal or interest on indebtedness incurred by the District to finance construction of the collection system anticipated by this agreement, no Amendment shall be made

without prior written consent of the State Director of Rural Development or such other officer as may be designated by the United States Department of Agriculture.

In Witness Whereof, the parties have executed this Agreement in triplicate at Defiance County, Ohio the 20th day of March, 1997.

Ayersville Water and Sewer District

City of Defiance, Ohio

Paul Klima

By Paul Klima, President

Rita A. Kissner

Rita A. Kissner, Mayor

Certification:

The undersigned hereby certifies that Execution of the foregoing Contract by Paul Klima, President of the Board of Trustees of the Ayersville Water and Sewer District was duly authorized by Resolution No. 97-03-004, adopted by the Board of Trustees in open meeting March 20, 1997.

[seal]

Patricia A. Siedersack  
Clerk

The undersigned hereby certifies that Execution of the foregoing Contract by Rita A. Kissner, Mayor, was duly authorized by Ordinance No. 5816 adopted by Council of the City of Defiance in open meeting February 7, 1997.

[seal]

Michelle Stoffach  
Clerk of Council