

REQUESTED BY: CITY MANAGER, SCOTT BAUER

DATE OF FIRST READING: 9-6-22 WAIVE RULES? YES NO
FINAL ACTION DATE: 9-20-22 VOTE: YES NO

SUSPENSION OF TWO
READING RULE:

YES	NO
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>0</u>	<u>5</u>

DENISE LINGO
ROBERT PARSONS
JOE ROETTING
KISHA DOSA
CORDEL GEORGE
DANIEL MUELLER II
PAUL R. YOUNG III
TOTALS

ADOPTION OF
ORDINANCE:

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>6</u>	<u>0</u>

ORDINANCE NO. 22-1993

ORDINANCE ASSESSING COSTS FOR THE REPLACEMENT OF PRIVATE LEAD SERVICE LINES AND DECLARING AN EMERGENCY

WHEREAS, the Greater Cincinnati Water Works ("GCWW") provides private residential water service to all residences and to commercial establishments in the City of Mt. Healthy;

WHEREAS, GCWW and the City of Mt. Healthy are desirous of eliminating lead service lines used for providing residential and commercial water service within the City;

WHEREAS, GCWW has adopted a program for eliminating lead service lines under the care and control of GCWW;

WHEREAS, GCWW has started a "lead service lines replacement program;"

WHEREAS, as part of the GCWW line replacement program, the private lead service lines servicing residences and/or commercial establishments in the City of Mt. Healthy and under the control of the property owners may be replaced as part of the program;

WHEREAS, GCWW, as part of its line replacement program, is willing to share in a portion of the cost of replacing the private lead service lines with the City of Mt. Healthy, sharing said cost with the appropriate property owner;

WHEREAS, the City of Mt. Healthy has entered into an "Assessment Agreement" on August 15, 2018 providing for the replacement, in certain areas of the City, of GCWW lead service lines and providing for the cost-sharing of the private lead service lines of property owners seeking to replace their private lines (Exhibit A, attached);

WHEREAS, the Assessment Agreement provides the property owner with the option of paying for the property owner's share of the private lead service line replacement by virtue of an assessment against the real property in question over a period of up to 10 years;

WHEREAS, a number of real property locations within the City have chosen to have their private lead service lines replaced and to have the property owner's share of the cost for replacing said private lead service lines assessed against the real property over a period of up to 10 years;

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Mt. Healthy, State of Ohio, two-thirds of the members elected thereto concurring:

Section 1. The "Assessment Agreement" attached hereto as Exhibit A is hereby adopted, approved, and ratified by the City of Mt. Healthy so as to bind the City of Mt. Healthy by its terms as they apply to the City;

Section 2. The amounts which have been charged to the properties are listed on Exhibit "B" attached hereto and represent the assessed amounts which constitute the obligations of the corresponding property owners, who have all elected the replacement and assessment process, for their share of the cost of the private lead service line replacement on their properties. .

Section 3. The amounts listed on Exhibit "B" shall be certified to the County Auditor for collection as other taxes and assessments are collected.

Section 4. The clerk is hereby authorized to certify a copy of this ordinance to the Hamilton County Auditor.

Section 5. This Ordinance is declared an emergency measure for the immediate preservation of the public peace, health and safety. The reason for the emergency is that immediate passage is necessary to meet the county's filing deadline for placing the amounts on the tax rolls for next year. This Ordinance shall take effect and be in force immediately upon its passage by Council and approval by the Mayor.

Passed this 20th day of SEPTEMBER, 2022.




President of Council

Attest: 

Clerk of Council

Approved this 20th day of SEPTEMBER, 2022.



Mayor

Approved as to form:



Scott A. Sollmann (0081476)
5300 Socialville Foster Rd., Suite 200
Mason, OH 45040
(513) 707-4249
City of Mt. Healthy Law Director

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 CITY OF MT. HEALTHY, OHIO ("Mt. Healthy"), an Ohio municipal corporation, the address of which is 7700 Perry Street, Mt. Healthy, Ohio 45231.

Recitals

- A. GCWW and Mt. Healthy, 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 Mt. Healthy on the terms and conditions therein and subject to the ordinances, laws, standards, specifications, rules and regulations governing GCWW.
- B. 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.
- C. To eliminate the risk of lead service lines to public health, GCWW is implementing a Lead Service Line Replacement Program that 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").
- D. GCWW and Mt. Healthy wish to provide GCWW customers that are Mt. Healthy residents the option to spread payment of the Owner's Share over up to 10 years through Mt. Healthy'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.
- E. The Parties wish to enter into this Agreement to set forth the rights and responsibilities of the Parties with respect to Mt. Healthy's certification of the assessments to the Hamilton County Auditor, Mt. Healthy transfer of paid assessments received from the

Hamilton County Treasurer to GCWW, and GCWW credit of the 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 Mt. Healthy 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 Mt. Healthy legislative authority.** The clerk of the Mt. Healthy legislative authority ("Legislative Clerk") shall designate GCWW to serve the notice required by ORC section 729.06.
4. **Notice.** As Mt. Healthy's designee, GCWW shall serve notice to owners of property with a private lead service line in Mt. Healthy in accordance with the Program.
5. **Assessment List.** From time to time, GCWW will provide Mt. Healthy 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 the City of Mt. Healthy.
6. **Assessment Ordinance.** No later than 30 days after GCWW has provided an Assessment List to Mt. Healthy, Mt. Healthy shall complete the following:
 - a. Submit for adoption by the legislative authority of Mt. Healthy an ordinance levying the amounts upon the property as enumerated in the Assessment List. The Mt. Healthy ordinance shall not amend or alter the Assessment List provided by GCWW.
 - b. The Legislative 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 Mt. Healthy in accordance with Ohio Revised Code §§ 729.06, 727.30, 727.301, 727.33, and 727.331.

7. **Assignment of Assessment Payments; Cooperation.** Mt. Healthy 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. Mt. Healthy 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. Mt. Healthy 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 Mt. Healthy, 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.
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 Mt. Healthy:

City of Mt. Healthy

7700 Perry Street
Mt. Healthy, Ohio 45231
ATTN: City Manager

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 at City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, and Cincinnati, OH 45202.

To City of Mt. Healthy, 7700 Perry Street, Mt. Healthy, OH 45231, ATTN: Law Director


- 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.
- 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 follows]

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


By: 
Patrick Duhaney, Acting City Manager

RECOMMENDED BY:


Bobbi Hageman, Interim Chief Procurement Officer

Date: 9/7/ 2018

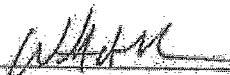
RECOMMENDED BY:


Cathy Bernardino Bailey, Director
Greater Cincinnati Water Works

APPROVED AS TO FORM:



Assistant City Solicitor

CITY OF MT. HEALTHY

By: 
Printed name: William A Kocher
Title: City Manager

Date: 8-15 2018

APPROVED AS TO FORM:


City Solicitor

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF HAMILTON) **ss:**

Re: Certification of Lead Service Line Replacement costs (CMC 401-133 and -135 and ORC 729.06)

Now comes Leslie Moening and after being duly cautioned and sworn, states that the following is true and based upon her own knowledge and belief:

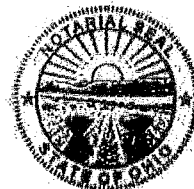
1. I am employed by the City of Cincinnati and serve in the position of Lead Program Manager of the Greater Cincinnati Water Works (GCWW) of the City of Cincinnati.
2. Pursuant to the *Agreement* between Cincinnati and the City of Cheviot ("Cheviot") dated December 28, 2010 and the *Assessment Agreement* between Cheviot and Cincinnati effective February 11, 2020 (collectively, the "Agreements"), and Cincinnati Municipal Code (CMC) sections 401-133 and -135, Cincinnati, through GCWW, has the authority to notify property owners in Cheviot in writing of the requirement to replace the private lead service line.
3. Exhibit A, attached hereto and incorporated herein by reference, contains a list of properties and their owners who were either served with notices to replace their private Lead Service Line or who waived such notice and who executed agreements with GCWW to replace the private lead service line on the property and for the owner to pay its share of costs incurred by GCWW.
4. Pursuant to the Agreements and CMC 401-135, GCWW has completed the lead service line replacement work on the properties listed in Exhibit A (the "List") and billed the property owner for their share of the replacement costs. The due date on the bills for each of the listed properties has passed.
5. The Agreements provide that Cheviot shall certify any unpaid amounts on the List to the Hamilton County Auditor to be placed as a charge on the tax list and duplicate for the listed property.
6. I hereby certify the amounts and information listed on Exhibit A and request that Cheviot certify the listed assessments to the Hamilton County Auditor for placement upon the tax list and duplicate.

FURTHER, AFFIANT SAITH NAUGHT.

Leslie Moening
LESLIE MOENING,

Sworn to before me and in my presence this 18 day of August, 2022.

Abigail Aguilera
Notary Public – State of Ohio



Abigail Aguilera
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

EXHIBIT B

PROJECT NAME						
Mt. Healthy 2022 assessment						
PARCEL		OWNER			RES/ORD#	
593-0007-0144-00		ALM INVESTMENT LLC			22-1993	
1533 KINNEY		10 Yrs - Semi-Annual Charge				
Principal	Full Year	Half Year	Future Amount	Year		
1,608.60	160.86	80.43	1,447.74	2023	1	
	160.86	80.43	1,286.88	2024	2	
	160.86	80.43	1,126.02	2025	3	
	160.86	80.43	965.16	2026	4	
	160.86	80.43	804.30	2027	5	
	160.86	80.43	643.44	2028	6	
	160.86	80.43	482.58	2029	7	
	160.86	80.43	321.72	2030	8	
	160.86	80.43	160.86	2031	9	
	160.86	80.43	(0.00)	2032	10	

PROJECT NAME						
Mt. Healthy 2022 assessment						
PARCEL		OWNER			RES/ORD#	
593-0003-0109-00		FRANCISCO GREGORY & SUZANNE			22-1993	
7854 HARRISON AVENUE		10 Yrs - Semi-Annual Charge				
Principal	Full Year	Half Year	Future Amount	Year		
4,498.00	449.80	224.90	4,048.20	2023	1	
	449.80	224.90	3,598.40	2024	2	
	449.80	224.90	3,148.60	2025	3	
	449.80	224.90	2,698.80	2026	4	
	449.80	224.90	2,249.00	2027	5	
	449.80	224.90	1,799.20	2028	6	
	449.80	224.90	1,349.40	2029	7	
	449.80	224.90	899.60	2030	8	
	449.80	224.90	449.80	2031	9	
	449.80	224.90	(0.00)	2032	10	