

## ORDINANCE NO. 09-88 AC CMS

### AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF OBERLIN AND THE OBERLIN GOLF CLUB COMPANY FOR THE PURCHASE AND SALE OF BULK RAW WATER AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the proposed contract between the City of Oberlin, Ohio, and the Oberlin Golf Club Company for the purchase and sale of bulk raw water, a copy being attached hereto as **Exhibit A** and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute said agreement on behalf of the City.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of 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. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit:

*"to authorize a new bulk water sales contract with the Oberlin Golf Club prior to the expiration date of the current contract",*

and shall take effect immediately upon passage.

PASSED: 1<sup>st</sup> Reading – December 7, 2009(E)  
2<sup>nd</sup> Reading -  
3<sup>rd</sup> Reading -

ATTEST:

  
Belinda B. Anderson  
CLERK OF COUNCIL

  
David E. Sonner  
PRESIDENT OF COUNCIL

POSTED: 12/08/2009

EFFECTIVE DATE: 12/07/2009

## AGREEMENT

This agreement is made and entered into at Oberlin, Ohio, on this 9<sup>th</sup> day of DECEMBER, 2009, by and between the City of Oberlin, Ohio hereinafter referred to as "City", and the Oberlin Golf Club Company, Inc., hereinafter referred to as "Club".

### WITNESSETH TO

Whereas, City is the owner of a Reservoir, commonly referred to and known as the "Pyle Road Reservoir", and most recently designated as the "Bill Long Nature Preserve", and hereinafter referred to as "Reservoir", and

Whereas, Club owns and operates a private golf course immediately adjacent to said Reservoir and desires to purchase raw water from said Reservoir for the golf course sprinkling needs of Club; and,

Whereas, City is willing to sell raw water from said Reservoir to Club under certain terms and conditions.

Now, therefore, in consideration of the foregoing representations and the provisions set forth hereinafter, City and Club agree as follows:

1. City agrees to sell to Club and Club agrees to purchase from City bulk raw water from said Reservoir for a period of ten (10) years, commencing on December 29, 2009 and terminating on December 31, 2019, subject to successive ten (10) year renewals as set forth below.
2. The rate to be paid to City by Club for said raw water for 2010 shall be the 2004 rate of \$0.5583 per one hundred (100) cubic feet, adjusted by the annual average Cleveland-Akron, Ohio Consumer Price Index for All Urban Consumers (CPI-U) for the previous five (5) year period (2005-2009) in accordance with the amended Agreement between the City and the Club dated June 24, 1999. Thereafter, the rate will be adjusted annually on or about December 31<sup>st</sup> of each year, to reflect the annual average Cleveland-Akron, Ohio Consumer Price Index for All Urban Consumers (CPI-U) for the previous one (1) year period so long as this agreement is in effect. In no event shall the rate ever be less than sixty cents (\$.60) per one hundred (100) cubic feet.
3. The supply of raw water by City to Club pursuant to this agreement is subject to the level of the water in the reservoir. That is, the water level in the reservoir shall at no time be more than ten (10) feet or less than four (4) feet from the perimeter top of the Reservoir. The City shall retain final and absolute authority as to when and under what circumstances the Club may add or delete water from the reservoir, it being the intent of the City to insure the viability of the Bill Long Nature Preserve and the health of all the aquatic and plant life within its boundaries. Further, the Club will do nothing to endanger the wildlife inhabiting the Preserve.
4. At any time that the water level reaches eight (8) feet from the perimeter top of the Reservoir, representatives from the Club and the City shall meet to discuss appropriate conservation measures intended to protect the interests of both parties.
5. Delivery of the bulk raw water shall be at the City-owned Reservoir Pumphouse located on the southeast corner of the Reservoir. The City shall endeavor to keep the pump and pumphouse in good operating condition at all times. However, the City shall have the sole discretion as to determining all repairs and maintenance of the Pumphouse and pumps, and all costs shall be shared equally between City and Club.
6. The Club will pay for all electricity used by the pumps or pumphouse.
7. In order to minimize the necessity of raising and lowering the water level of the Reservoir, the City, subject to engineering review, will allow the Club, at the Club's expense, to tap into the intake pipe which crosses Club property short of the City's Pumphouse. From this tap-in, the Club will take water directly to its pond from which it takes water for sprinkling. Such will not be done if, at the City's determination, it would jeopardize the viability of the reservoir and will only occur when there is sufficient flow of water through the pipe to make it feasible to do so.

8. Twenty-four (24) months prior to completion of each ten (10) year period of this agreement, the parties will meet to determine whether continuation of the agreement serves the needs of the parties. In the event either party intends to terminate the agreement, it shall give the other party notice as required under #11 below if requested by the other party. In any event, an agreement shall be reached regarding the terms of such termination before tolling of the aforementioned application of #11 as hereinbefore identified.
9. In the event of catastrophic event or occurrence which renders performance impracticable or economically unfeasible (as determined by City), or in the event that other causes beyond the control of the City render performance impracticable, the parties will meet to determine the course of action to be taken in consideration of the best interests of the parties, with final determination to be made by the City.
10. The Club does hereby release City from any and all liability for damage to greens, fairways and property of Club or economic losses of any kind as a result of City having the right to control the water level in the Reservoir, as set forth in Paragraph 3, or Paragraph 9, hereinbefore. Further, Club agrees to hold City harmless and indemnify City from any claims or damage resulting from any diversion of water flow from Plum Creek to the Reservoir as a result of this water contract.
11. This agreement may also be terminated by either City or Club upon twenty-four (24) months advance written notice to the other party.
12. This agreement was approved by Oberlin City Council at a duly held meeting on December 7, 2009, by Ordinance No. 09-88 AC CMS, and the Oberlin Golf Company, Inc., by duly authorized corporation resolution passed on December 8, 2009 and when so approved by both parties will replace and supersede any and all prior agreements.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement by their duly authorized agents on this 8th day of December, 2009.

Shari Staurzy  
 Witness  
My 1 Bonner  
 Witness

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 Witness  
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 Witness

The City of Oberlin, Ohio  
 By: Eric Nopenberg  
 Oberlin City Manager, Eric Nopenberg

Oberlin Golf Club Company, Inc.  
 By: Dennis M. Flood  
 Its: Board President