

CITY OF OBERLIN, OHIO

ORDINANCE No. 20-15 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 AS AN EMERGENCY MEASURE

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, and State of Ohio:

SECTION 1. That the Agreement 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 implement the terms and conditions of the Agreement without delay due to the expiration of the prior agreement between the City of Oberlin, Ohio, and the Oberlin Golf Club Company for the purchase and sale of bulk raw water,”* and shall take effect immediately upon passage; and provided that it is elevated to emergency status by the affirmative vote of at least five members of Council and receives the affirmative vote of at least five members of Council upon final passage, it shall go into full force and effect from and immediately after its passage; otherwise, it shall take effect at the earliest period allowed by law.

PASSED: 1st Reading: April 6, 2020

2nd Reading: April 20, 2020

3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



LINDA SLOCUM
PRESIDENT OF COUNCIL

POSTED: 04/20/2020

EFFECTIVE DATE: 05/20/2020

AGREEMENT

This agreement is made and entered into at Oberlin, Ohio, on this 4th day of March, 2020, 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 or after January 1, 2020 and terminating on December 31, 2029, 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 2020 shall be the 2019 rate of \$0.7045 per one hundred (100) cubic feet, adjusted annually beginning on December 31, 2019, to reflect the appropriate annual Bureau of Labor and Statistics Consumer Price Index for the geographic region 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 seventy cents (\$.70) 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 or otherwise arising from Club's exercise of its rights pursuant to this agreement.
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 APRIL 20, 2020, by Ordinance No. 20-15 AC CMS, and the Oberlin Golf Company, Inc., by duly authorized corporation resolution passed on _____, 2020 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 2ND day of JUNE, 2020.

My/Bauer
Witness

Brian Reynolds
Witness

Ken
Witness

[Signature]
Witness

The City of Oberlin, Ohio

By: [Signature]
Oberlin City Manager, Rob Hillard

Oberlin Golf Club Company, Inc.

By: [Signature]
Its: PRESIDENT

Approved as to form:

[Signature]

Jon D. Clark, Law Director