

**AGREEMENT BETWEEN THE VILLAGE OF THORNVILLE AND THE PERRY COUNTY  
COMMISSIONERS FOR THE SALE OF TREATED WATER FROM THE VILLAGE OF THORNVILLE  
WATER SYSTEM**

**AGREEMENT**

THIS AGREEMENT, made and entered into on the date last executed below ("Effective Date"), by and between the County of Perry, Ohio (hereinafter referred to as the "COUNTY"), duly authorized by a resolution adopted by its Board of County Commissioners on the 23<sup>rd</sup> day of December, 2020, and the Village of Thornville, Ohio (hereinafter referred to as the "VILLAGE"), by its Village Administrator and Fiscal Officer, duly authorized in its behalf by Ordinance No. 20-12, passed by its Council on the 14<sup>th</sup> day of December, 2020.

**WITNESSETH:**

WHEREAS, the VILLAGE operates and maintains a water system to furnish treated potable water from the well system of the VILLAGE; and

WHEREAS, the COUNTY is desirous of obtaining potable water from the VILLAGE until the COUNTY develops a permanent potable water system of its own.

NOW, THEREFORE, the VILLAGE and the COUNTY do hereby mutually agree to the following terms, stipulations, conditions, and covenants:

**ARTICLE 1**

A. The method of treatment and analysis of the water delivered by the VILLAGE to the COUNTY shall at all times conform to the specifications and standards as may be from time to time established by the Ohio Environmental Protection Agency for potable water.

B. During each monthly period for which this Agreement is in effect, the VILLAGE shall make available for delivery to the COUNTY a monthly maximum quantity of 5,270,000 gallons of potable water equivalent to an average of 170,000 gallons per day of potable water per day (Maximum Daily Flow). The VILLAGE reserves the right to delay, restrict and/ or terminate flows to the COUNTY in the event of equipment failure, shortage of raw water, unusual demand elsewhere in the VILLAGE system, fire catastrophe, strike or labor trouble, civil commotion, acts of GOD, or such other exceptional circumstances that prevents the normal flow of water to the COUNTY. If the VILLAGE'S performance of any of its obligation hereunder is delayed, restricted, or made impossible for any of the reasons stated hereinabove, the VILLAGE shall not be liable or responsible for any damage, cost, and/or expense that may result to the COUNTY or its residents or customers. The COUNTY shall provide the VILLAGE with the contact information of at least three (3) individuals for the VILLAGE to contact in the event that the VILLAGE's obligations are delayed, restricted or made impossible for the reasons stated hereinabove. The VILLAGE shall undertake reasonable efforts, to the extent possible, to remedy the service disruption described in this paragraph, as soon as practicable.

C. The COUNTY shall furnish and maintain, at its sole cost and expense, a master meter at the junction of State Route 204 and State Route 13 at the north VILLAGE corporation line on County Road 30. The COUNTY shall construct and retain ownership of master meter pits and associated piping to accommodate the master meter.

D. Such master meters shall be read each month by the VILLAGE. Within fifteen (15) days after the last day of each said calendar month, the VILLAGE shall notify the COUNTY of the amount of the total gallonage used by the COUNTY in the proceeding period and shall render a statement of the balance due to the VILLAGE. The rate for water sold by the VILLAGE to the COUNTY under this Agreement shall be as follows:

In years one and two: \$3.00 per 1,000 gallons

In years three and four: \$3.50 per 1,000 gallons

In year five: \$4.00 per 1,000 gallons

The COUNTY agrees to pay the VILLAGE on or before the 25<sup>th</sup> day of each month following the master meter reading the full amount owed to the VILLAGE. The COUNTY shall pay a late fee of ten percent (10%) of the total amount due and owing the VILLAGE for any balance that remains delinquent beyond fifteen (15) days from the date payment is due.

E. If the COUNTY'S usage exceeds an average daily usage of 170,000 gallons for thirty-one (31) consecutive days or the actual flow exceeds 170,000 gallons per day for fifteen (15) consecutive days, the VILLAGE shall have the absolute right to restrict the installation of new taps onto the COUNTY distribution system, unless the exceedance is attributable to a one-time isolated event, not expected to repeat, such as but not limited to a water line break or fire.

F. No later than 45 days after the Effective Date, the COUNTY shall calibrate at its sole cost and expense, the master meter which measures the water delivered to the COUNTY. Also, going forward, the VILLAGE may require, no more frequently than every twelve months and in its sole discretion, that the COUNTY calibrate the master meter at the COUNTY's sole cost and expense. A meter deemed to be measuring flow more than two percentage points outside the accuracy limits specified in the most current edition of American Waterworks Association Manual M6, at the manufacturer's specified "intermediate flow rate," shall be deemed inaccurate. If the meter is deemed inaccurate, the COUNTY will repair or replace the master meter at the COUNTY's sole cost and expense. Additionally, the VILLAGE shall review previous water statements for the six months prior to the determination of inaccuracy and adjust them up or down, based upon the now known calibration issue, with a credit against the next month's water bill in favor of the County if it is determined that the meter is over-reporting flows, and additional payment due the VILLAGE if it is determined that the meter is under-reporting flows. The COUNTY shall pay all adjusted statements in accordance with Section D above.

G. Water sold and water service provided by the VILLAGE are subject to the provisions of applicable rules which are set forth in the Ohio Revised Code or Ohio Administrative Code, as may be modified from time to time.

## ARTICLE 2

A. The COUNTY agrees to design, construct, operate, maintain and regulate its own water storage and distribution system in accordance with applicable state and federal laws and regulations, and to make such lawful extensions as are deemed necessary by the COUNTY without cost or liability to the VILLAGE. The COUNTY agrees to maintain its water storage and distribution facilities in good condition in order to provide the prudent storage capacity consistent with industry standard practices at all times and minimize water loss.

B. The COUNTY agrees to inform the VILLAGE immediately of any known changes in the COUNTY's normal daily water supply requirements. The COUNTY further agrees to cooperate with the VILLAGE in regulating flows to meet changing needs within the two water systems.

C. The COUNTY shall establish the rates and service charges for water supplied to its consumers from the distribution system of the COUNTY and assume full responsibility for the collection thereof.

## ARTICLE 3

Any water restrictions imposed by the VILLAGE on its residents shall also be applicable and enforceable as to all nonresident users as well, including those being serviced by the COUNTY.

#### ARTICLE 4

If the VILLAGE incurs any unforeseen, but necessary, additional operational and/or maintenance costs, which are solely attributable to producing water because of either a negotiated increase in the Maximum Daily Flow or changes in local, state or federal law, rules or regulations ("Unforeseen Operational/Maintenance Costs"), the COUNTY shall pay its proportional share of the Unforeseen Operational/Maintenance Costs. The County's proportional share shall be calculated as a percentage of how much water the VILLAGE has provided to the COUNTY compared to the VILLAGE's total water production over the twelve preceding months. As outlined below, the VILLAGE shall recover the Unforeseen Operational/Maintenance Costs through an adjustment in the rate schedule set forth in paragraph 1D. If the COUNTY terminates this Agreement or decides to not renew this Agreement before the VILLAGE recovers all of the Unforeseen Operational/Maintenance Costs owed by the COUNTY, the COUNTY's proportionate share of the Unforeseen Operational/Maintenance Costs shall become due and owing immediately.

Notwithstanding any of the foregoing, before undertaking any improvement and/or operational change to increase the Maximum Daily Flow, the VILLAGE and the COUNTY must agree in writing to the improvement and/or operational change and the associated rate increase. If there is no agreement, the Village will not construct the improvement, make the operational change, and/or increase the Maximum Daily Flow. If the Unforeseen Operational/Maintenance Costs are required because of a change in local, state or federal law, rules or regulations, the VILLAGE can make the necessary improvement, repair, and/or operational change at its sole discretion and recover the cost through an adjustment in the rate scheduled set forth in paragraph 1.D.

#### ARTICLE 5

If a dispute arises under this Agreement, (including a disagreement over a rate increase arising out of Article 4, immediately above), the Parties shall first attempt to resolve the dispute through mediation. Each Party shall bear its own costs of mediation, including its proportionate share of the compensation and administrative expenses required by the mediator. The mediator shall be selected by the agreement of the Parties. If, after thirty (30) days, the Parties cannot agree to a mediator, they will submit their dispute to mediation under the auspices of the American Arbitration Association. Only after such mediation may either party commence a lawsuit seeking in a court of competent jurisdiction seeking specific performance of this Agreement, civil damages, and any other such remedies available in law or equity.

#### ARTICLE 6

This Agreement shall take effect on January 1, 2021 and shall have a term of five (5) years.

#### ARTICLE 7

All the terms and conditions of this Agreement for the COUNTY shall be administrated by the Perry County Commissioners. The principal place of business of the Perry County Commissioners is 212 S. Main St, Lower Level, New Lexington, Ohio 43764. The designated agent of the VILLAGE for administration of the terms and conditions of this Agreement shall be the Administrator for the VILLAGE, whose place of business is 3 South Main Street, Thornville, Ohio 43076. Unless specified otherwise in this Agreement, all notices, requests, demands and other communications to be given under this Agreement shall be in writing and deemed to have been given, served, or made by: hand delivery; email delivery with confirmation of receipt; facsimile with confirmation of receipt; or certified mail with return receipt requested and address hereinabove.

**ARTICLE 8**

This Agreement shall be binding upon and inure to the benefit of any successor or assignee of the parties hereto and upon any commission, council, board or officer which hereafter by operation of law succeeds to the powers and duties of any of the councils, commissions, boards or officers herein mentioned.

**ARTICLE 9**

This Agreement shall be governed by the laws of the State of Ohio.

**ARTICLE 10**

If any of this provision Agreement is held by any court or any act, regulation, rule or decision of any other governmental body or authority or regulatory or self-regulatory organization to be invalid, illegal or unenforceable for any reason, it shall be invalid, illegal or unenforceable only to the extent so held and shall not affect the validity, legality or enforceability of the other provisions of this Agreement and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**ARTICLE 11**

This Agreement is not assignable or transferable without the express written consent of both parties.

**ARTICLE 12**

The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other duty provision of this Agreement.

**ARTICLE 13**

This Agreement contains the entire agreement of the parties with respect to this subject matter and contains all of the covenants, promises, representations, and agreements between the parties with respect to such subject matter and replaces, and supersedes previous agreements and discussions pertaining to the subject matters, no amendment, of the Agreement shall be valid unless in writing and signed by both of the parties.

**ARTICLE 14**

This Agreement may be executed by facsimile or email and in multiple counterparts by the Parties, and the counterparts shall collectively constitute a single, original, document, notwithstanding the fact that the signatures may not appear on the same page.

IN WITNESS WHEREOF, and pursuant to and authorization by the vote of the Council of the Village of Thornville, the Administrator of the Village of Thornville and Fiscal Officer has hereunto subscribed his or her hands as contracting party by and on December 14, 2020.

IN WITNESS WHEREOF, and pursuant to an authorization by the vote of the Board of Perry County Commissioners, recorded on Page 235-237 of the Commissioners Journal # 85 the President and Clerk of Commissioners have hereunto subscribed their hands as contracting parties and on behalf of the Board of the Perry County Commissioners, this 23rd day of December, 2020.

Traci Sturgill

Traci Sturgill, Administrator

Village of Thornville

Date: 12-14-2020

Ben Carpenter

Ben Carpenter, President

Perry County Commissioners

Date: 12-23-2020

Melissa Tremblay

Melissa Tremblay, Fiscal Officer

Village of Thornville

Date: 12-14-2020

James O'Brien

James O'Brien

Perry County Commissioners

Date: 12-23-2020

Approved as to Form this

14<sup>th</sup> day of December 2020

Scott Owen

Scott Owen

Perry County Commissioners

Date: 12-23-2020

Brian M. Zets

Brian M. Zets, Esq., Solicitor

Village of Thornville

Approved as to form this

18<sup>th</sup> day of Dec 2020

Carl L. Zierlein, A.P.A.

4051 Perry County Prosecuting Attorney

Carol Mudding

Perry County Commissioners Clerk