AMENDED AGENDA
SPECIAL COUNCIL MEETING
WEDNESDAY, AUGUST 8, 2012
6:30 PM

At the call of Council President Holzheimer Gail, Councilwoman Scarniench and Councilman Langman, a Special Council Meeting will be held on **Wednesday, August 8, 2012 at 6:30 PM** in the Euclid Municipal Center Council Chamber for the purpose of considering the following subjects: to-wit:

PLEDGE OF ALLEGIANCE

ROLL CALL OF MEMBERS

COMMUNICATIONS: Liquor Permits

COUNCIL MINUTES: June 18, 2012; Special Council Minutes June 27, 2012

REPORTS & COMMITTEE MINUTES: Monthly Finance Report thru June 30, 2012
Police Report - June 2012
Executive & Finance Min: 6/20/12; 6/25/12
Sustainability Com. Min.: 6/13/12
Board of Control Min.: 6/25/12; 7/2/12; 7/9/12; 7/16/12; 7/23/12

C**OMMITTEE OF THE WHOLE FOR LEGISLATIVE MATTERS ONLY**

LEGISLATION

1. An emergency ordinance authorizing the Mayor or his designee to enter into a Memorandum of Understanding (MOU) with the Cleveland Clinic Police Department ("CCPD") to authorize the CCPD to exercise their police powers within the Euclid Hospital grounds and in certain areas surrounding the hospital and to develop protocols for the proper exercise of those police powers. (Sponsored by Councilperson Jones by request of Police Chief) — Ord. (136-12)

2. A Resolution objecting to the renewal of liquor permit number 4199271 owned by JCJ&B, L.L.C., dba One 2 Lounge, 509 E. 185th Street, Euclid, OH 44119 and encouraging the Ohio Department of Commerce, Division of Liquor Control, to deny said renewal of the liquor permit. (Sponsored by Councilperson Jones by request of Police Chief) — Res. (137-12)

3. A Resolution objecting to the renewal of liquor permit number 4978427 owned by Lakeland Boulevard, Inc. and operating in the BP Station at 24310 Lakeland Boulevard, Euclid, OH 44132 and encouraging the Ohio Department of Commerce, Division of Liquor Control, to deny said renewal of the liquor permit. (Sponsored by Councilperson Jones by request of Police Chief) — Res. (139-12)

4. An emergency ordinance authorizing the sale of Permanent Parcel 646-28-002, 1450 East 204th Street, from the Euclid Land Bank to Linda L. Koeth and Harvey J. Hutter for an amount of Five Hundred Dollars ($500.00), as authorized by Ordinance Nos. 98-2010 and 101-2011. (Sponsored by Planning & Zoning Commission) — Ord. (140-12)

5. An emergency ordinance authorizing the Mayor, as Ex-Officio Director of Public Safety of the City of Euclid, to enter into contracts for the towing of junk, abandoned and impounded vehicles or vehicles that must otherwise be removed at the direction of the Euclid Police Department for the period through December 31, 2013. (Sponsored by Mayor Cervenik and Councilperson Jones and Van Ho) — Ord. (126-12)

6. An emergency ordinance authorizing the Director of Public Service to enter into a contract with GameTime, PO Box 3315, Alliance, Ohio, for the purchase and installation of splash park equipment at the Indian Hills pool in an amount not to exceed Two Hundred Seventy Thousand Dollars ($270,000). (Sponsored by Councilpersons Lynch and Caviness) — Ord. (143-12)

7. An emergency ordinance amending Ordinance 175-2011 to update the Council Committee Assignments by inserting Stephana C. Caviness for the seats/chair held by David Gilliham for the remainder of the December 1, 2011 through December 31, 2013 term of the Council of the City of Euclid. (Sponsored by Council President Holzheimer Gail) — Ord. (132-12)

8. An ordinance amending Ordinance 108-2011 and authorizing the Director of Public Service for the City of Euclid to enter into a contract modification with Osborn Engineering to include additional design and administration work for waterline replacement on Glenbrook Boulevard, in an amount not to exceed $19,750. (Sponsored by Mayor Cervenik) — Ord. (130-12)

9. An emergency ordinance authorizing the Director of Public Service of the City of Euclid, to enter into a contract with Terrace Construction Company, Inc., 3965 Pearl Road, Cleveland, Ohio 44109, for an amount not to exceed One Million Three Hundred Twenty Two Thousand Sixty Nine and 25/100 Dollars ($1,322,069.25) for the Waterline Replacement work on East 201st, East 202nd, East 260th, and Glenbrook Boulevard. (Sponsored by Councilperson McLaughlin by request of Service Director) — Ord. (131-12)

10. An emergency ordinance authorizing the Mayor of the City of Euclid to enter into a purchase agreement and to execute all other documents necessary to acquire property from 36097 Westminister Road, LLC, located at 22305 Lakeshore Boulevard, Euclid, Ohio, Permanent Parcel No. 642-10-047, at a cost of Nine Hundred Thousand Dollars ($900,000.00) for the public purpose of expansion and renovation of the municipal Wastewater Treatment Plant as part of the Consent Decree required by the US EPA and Ohio EPA to meet the treatment standards established through the Clean Water Act. (Sponsored by Mayor Cervenik) — Ord. (142-12)

11. A resolution authorizing the Mayor to prepare and file a loan application and enter into a cooperative loan agreement with the Ohio Water Development Authority necessary for land acquisition for wastewater facilities projects and declaring an emergency. (Sponsored by Mayor Cervenik) — Res. (144-12)

ADJOURNMENT

(136-12)

Ordinance No.

By – Councilperson Jones (by request)

An emergency ordinance authorizing the Mayor or his designee to enter into a Memorandum of Understanding (MOU) with the Cleveland Clinic Police Department ("CCPD") to authorize the CCPD to exercise their police powers within the Euclid Hospital grounds and in certain areas surrounding the hospital and to develop protocols for the proper exercise of those police powers.

WHEREAS, the CCPD is an independent police agency authorized and organized under the laws of the State of Ohio and is the law enforcement and investigative branch of the Cleveland Clinic Foundation, Cleveland Clinic Health System, and which also specifically encompasses leased buildings, grounds, lots and streets and alleys of the Euclid Hospital located in the City of Euclid; and,

WHEREAS, both the CCPD and the Euclid Police Department ("EPD") have a mutual concern for the preservation of peace, protection of persons and property, and for the enforcement of state and municipal laws on and near the Euclid Hospital; and,

WHEREAS, the MOU establishes the policy by which this MOU is authorized by law; protocols for the exercise of the police powers by the CCPD within the City of Euclid; and, includes terms including but not limited to matters concerning costs, indemnification, and respective responsibilities of both the CCPD and EPD; and

WHEREAS, it is in the best interests of the City of Euclid to enter into a Memorandum of Understanding with the CCPD to provide for a mutually beneficial relationship between the EPD and CCPD to enforce the laws of the state and city; and,

WHEREAS, the subject matter of this ordinance constitutes an emergency in that the same provides for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and for the daily operation of a municipal department and to allow the CCPD to exercise their police powers in an expeditious manner in the City of Euclid under the protocols outlined in the MOU.

NOW, THEREFORE, be it resolved by the Council of the City of Euclid, State of Ohio:

Section 1: That the Mayor or his designee is authorized to enter into a Memorandum of Understanding (MOU) with the Cleveland Clinic Police Department to authorize the Cleveland Clinic Police Department to exercise their police powers within the Euclid Hospital and in certain areas surrounding the hospital and to develop protocols for the proper exercise of those police powers, which may be from time to time amended by agreement of the parties, a copy of which is on file with the Clerk of Council and as approved by the Director of Law.

Section 2: That the Clerk of Council is hereby authorized and directed to cause a copy of this ordinance to be served upon Chief David Easthon, Cleveland Clinic Police Department, 9500 Euclid Avenue, Cleveland, Ohio 44195.

Section 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and 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 4: That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and provided it receives the two-thirds vote of all members of Council elected thereto, shall be in full force and effect from and after the earliest period allowed by law.

Attest:

_____
Clerk of Council

Passed:

_____
President of Council

Approved:

_____
Mayor

AGREEMENT BETWEEN

THE CITY OF EUCLID

And

THE CLEVELAND CLINIC FOUNDATION

Purpose

To authorize Cleveland Clinic Police Officers to exercise their police powers within Euclid Hospital and in certain areas outside of Euclid Hospital within the City of Euclid and to develop protocols for the operation of those powers.

Policy

The Cleveland Clinic Foundation established the Cleveland Clinic Police Department ("CCPD") as its own proprietary police department. Each member of the CCPD is appointed under O.R.C. §4973.17(D). Euclid Police Department ("EPD") recognizes the authority of the CCPD and has granted approval for officers of CCPD be vested, while directly in the discharge of their duties as Cleveland Clinic Police Officers, with the same powers and authority vested in a municipal police officer or county sheriff, and exercise concurrent jurisdiction over those properties owned and operated by the Cleveland Clinic Foundation ("CCF") and/or the Cleveland Clinic Health System ("CCHS"). This authority, in no way, usurps the authority vested in any municipal law enforcement agency wherein that property is situated.

The EPD and CCPD believe it is in their mutual interest to provide concurrently, through their separate police departments, police services that will enhance the safety of Euclid Hospital, its patients, employees and property. It is the desire of the Parties to provide for mutual assistance by the interchange and use of their police department personnel and equipment in areas inside and outside of CCF and/or CCHS property in the City of Euclid to the benefit of both in improved safety and vitality in the City of Euclid.

I. Exercise of Police Powers

In accordance with the terms and limitations specified in this Agreement, police officers appointed by CCPD, under the authority of O.R.C. §4973.17, shall have full authority to exercise their police powers granted under O.R.C. §4973.17 in areas inside Euclid Hospital and areas outside Euclid Hospital, within the City of Euclid to the extent provided for and limited by Ohio law, all City of Euclid' General Police Orders (GPOs), the attached protocols (Attachment A), and the provisions of this Agreement.

1) Limitations on the authority granted under the provisions of this Agreement include, but are not limited, to the following:

a) When CCPD Officers are within the property expressly owned, leased or otherwise held through contract by CCF and/or CCHS, CCPD Officer authority granted under this Agreement is limited to CCF Property which shall also include all streets and alleys that transverse the listed properties in Attachment B and all adjoining streets and areas of the property lines of the listed properties in Attachment B.

b) CCPD Officers may exercise their police powers outside the limited areas described in "a)" of this Section I when they are within the City's jurisdiction and en route to or from CCF and/or CCHS property, and exigent circumstances exist, which may include any of the following:

i) CCPD Officers are in hot pursuit of a fleeing suspect under O.R.C. §2935.03.

ii) A police officer of member of the public is in imminent peril of bodily harm if action is not taken immediately;

iii) The escape of a known criminal or suspect has occurred and action must be taken immediately; or

iv) When a CCPD Officer witnesses the commission of a crime while such crime is in progress. (This does not include misdemeanor drug activity or routine traffic matters.)

c) CCPD Officers may exercise their police powers outside the limited area described in the above parts "a)" and "b)" of this Section I when they are participating in a cooperative enforcement effort that has been approved in advance by the Chief of Police for CCPD and the Chief of Police for EPD. Either party may appoint a designee as their representative for approval.

2) CCPD Officers, enroute to and/or enroute from CCF and/or CCHS property, and while within the jurisdiction of the City, when acting under the terms of this Agreement, shall be acting within the scope of their employment for CCPD.

3) CCPD Officers may operate emergency police vehicles on City of Euclid streets while responding to an emergency call within the scope and terms of their employment.

4) Any authority granted by this Agreement to CCPD Officers is limited to and shall only apply during periods when CCPD Officers are on duty. This Section is not intended to expand or alter the investigation, transportation, booking, reporting, or other responsibilities of CCPD Officers beyond those described in the attached Protocols (Attachment A) and in EPD GPOs regarding procedures governing the EPD and CCPD police departments.

5) CCF agrees that for CCPD prisoners that need medical treatment or require hospitalization before booking or while confined by CCPD at jail or holding areas other than EPD jails or holding areas, CCPD Officers shall arrange for the prisoners' medical care or hospitalization and CCPD shall be responsible for transporting its prisoners and guarding its prisoners while medical care is given and during the hospitalization and for the cost of, if any, the medical care or hospitalization. CCPD prisoners confined at City jails after booking that need outside medial care of hospitalization shall be transported by EPD and guarded during the initial EPD tour of duty. After the initial tour of duty, the responsibility for guarding such prisoners shall lie with the CCPD and remain with CCPD until the prisoner is returned to the City jails. CCF agrees to be responsible for the cost, if any, of any medical care or hospitalization of CCPD prisoners during confinement at the City's jails.

6) Concurrent with signing this Agreement, CCPD shall provide to the EPD and to the City of Euclid Prosecutor, a list of the names and badge numbers of all CCPD Officers covered under this Agreement. This list shall be updated in writing as needed and copies of the updated list shall be promptly delivered to the EPD and the City of Euclid Prosecutor.

II. Police Powers to be Exercised in Accordance with Written Protocols Agreed to by CCPD and EPD

The operational procedures governing the exercise of authority by CCPD Officers under this Agreement and governing the exercise of the City's authority within the jurisdiction of City of Euclid shall be set forth in Protocols agreed to, in writing, between CCF and the City of Euclid. A copy of the current Protocols are attached to this Agreement as Attachment A and are incorporated as if fully re-written herein. Protocols may be amended in writing by the Chief of CCPD and the Chief of EPD, as the Parties deem necessary.

III. Charges

No charges shall be made my either CCF or the City of Euclid for services rendered by one to the other under the provisions of this Agreement. Each Party shall assume the expense of loss or damage to its own equipment that may occur
while in the other Party's territorial limits or while rendering assistance to the other Party.

IV. Indemnity

Neither CCF nor the City of Euclid intends, under this Agreement, to indemnify or; hold harmless the other for any damages awarded by a court of competent jurisdiction in any civil action arising from any action or omission of any officer acting under this Agreement. Neither Party shall be or be deemed to be acting as agent for the other. Nothing in this Agreement is intended to and shall not be construed to constitute a waiver of either Party's defenses, including immunity.

V. Insurance

1) To the extent permitted by law, personnel to which this Agreement applies, and while acting under this Agreement, may participate in any pension or indemnity fund established by their employer to the same extent as while acting within their employing entity. Those personnel members shall be entitled to all the rights and benefits of Section 9.86, 2744.02, 2950.12 and Chapter 4123 of the Ohio Revised Code, and to all rights and benefits of their employer's applicable insurance policies, including but not limited to its police liability insurance coverage, to the same extent as while performing services outside the Agreement within the entity they are employed by. To the extent applicable, Section 9.86 and Chapter 2744 of the Ohio Revised Code, as well as the terms and condition of each party's applicable insurance policies, insofar as it applies to the operation of police departments, shall apply to the parties to this Agreement.
2) CCPD confirms that it has insurance coverage for all CCPD personnel covered under this Agreement and that such insurance applies while CCPD personnel are acting under this Agreement.
3) City acknowledges it is self-insured.

VI. Term

This Agreement shall be in effect after its execution under the laws of the State of Ohio and shall expire on December 31, 2017. Either Party may withdraw from this Agreement upon giving the other Party at least (30) days prior written notice of intent to withdraw.

VII. Meetings

During the Term of this Agreement, either Party may notify the other Party of its desire to meet, at a mutually convenient time and place, to discuss any dispute, problem, or proposed termination.

VIII. Amendments

This Agreement may be amended from time to time by mutual agreement of the Parties in writing. Any such Amendment shall be signed by the Parties and attached to the Agreement as addenda.

IX. Notices

All notices that may be proper or necessary shall be sent by regular U.S. Mail, postage pre-paid, to the following addresses or to such other address as either Party may designate for such purpose.

City of Euclid:
Euclid Law Department
585 E. 222nd Street
Euclid, OH 44123

The Cleveland Clinic Foundation:
The Cleveland Clinic Police Department
9500 Euclid Avenue (Mail Code U12)
Cleveland, OH 44195

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the _____ day of _____ 2012.

CITY OF EUCLID

By: _____
Bill Cervenik, Mayor

By: _____
Thomas Brickman, Chief of Police

THE CLEVELAND CLINIC FOUNDATION

By: _____
David Easthon, Chief of Police

Approved as to Form

By: _____
L. Christopher Frey, Director of Law
City of Euclid

Date: _____

By: _____
Attorney for CCF

_____
Print Name and Title

Date: _____

ATTACHMENT A

PROTOCOLS BETWEEN

CLEVELAND CLINIC POLICE DEPARTMENT

And

CITY OF EUCLID POLICE DEPARTMENT

The City of Euclid Police Department ("EPD") is the law enforcement and investigative branch for the City of Euclid. The Cleveland Clinic Police Department ("CCPD") is the proprietary police department of The Cleveland Clinic Foundation ("CCF") and The Cleveland Clinic Health System ("CCHS").

The land comprising the property of Euclid Hospital is located in the City of Euclid and consists of the buildings, grounds, and lots that comprise the Euclid Hospital campus as described in Attachment B. ("CCF Property"). CCF Property shall also include all streets and alleys that transverse the listed properties in Attachment B and all adjoining streets and areas of the property lines of the listed properties in Attachment B.

CCF Property shall include all other property that may be acquired by CCF and/or CCHS at a future date that is located within the boundaries of the City of Euclid. CCPD shall promptly notify, in writing, both the EPD and the City of Euclid Prosecutor of any changes to CCF Property described in Attachment B.

A mutual concern of the CCPD and EPD is the preservation of peace, protection of persons and property, and the enforcement of state and municipal laws and regulations on and around CCF Property. To provide an open line of communication and cooperation with one another, and to assure the effective accomplishments of mutual responsibilities, the following operational Protocols shall be adopted. These protocols are not intended to, and are neither to be construed to, limit the lawful police power of the EPD nor to confer any additional police powers on CCPD not already held by CCPD Officers except to permit CCPD Officers to enforce the laws inside and outside the property of Euclid Hospital within the parameters set forth in CCF's Agreement with the City of Euclid and these protocols attached to and incorporated into the Agreement. CCPD Officers will act only within and to the extent permitted by law and CCPD is solely responsible for insuring compliance by its Police Officers with this requirement. CCPD Officers will fully cooperate with EPD.

1) Euclid Police Department will:

a) EPD will have investigative responsibility for the following incidents that occur on CCF and/or CCHS Property:

i) Incidents involving Aggravated Murder, Murder, Attempted Murder and any Felony of the First Degree;

ii) Incidents involving explosive or incendiary devices;

iii) Hostage situations;

iv) Deaths other than "Probably Natural"

v) Use of deadly force

vi) Incidents of Ethnic Intimidation and/or Hate Crimes

vii) Felony Sexual Assaults - CCPD shall provide a monthly status report on misdemeanor sexual assault investigations to the EPD Officer In Charge ("OIC") of the Detective Bureau;

viii)Any incident that EPD desires to preempt the investigative function; Nothing in these Protocols shall prohibit the EPD from investigating other felony or misdemeanor complaints occurring on CCF or CCHS Property deemed to be of investigative interest to EPD.

b) In the discretion of the EPD, receive and serve all warrants that have been generated as a result of CCPD Officers' enforcement efforts that are delivered to the EPD, via the Euclid Clerk of Court's Office.

c) Provide all crime statistics necessary for the CCPD to prepare the federally mandated annual report on campus crime statistics and security.

d) In the sole discretion of the EPD, assist the CCPD with investigations or other matters of mutual concern when called on by CCPD to do so.

2) Cleveland Clinic Police Department will:

a) Use its best efforts, consistent with the availability of personnel and other resources, to respond to any criminal complaint reported as occurring on CCF Property, whether a misdemeanor or felony, unless notified by EPD, or otherwise aware, that a CCPD response has been preempted by EPD.
b) Investigate all felonies and misdemeanors that occur on CCF and/or CCHS Property with the exception of incidents listed in Section I above for which the EPD has investigative responsibility. In the case of incidents of domestic violence, the CCPD shall comply with EPD policies and procedures under applicable EPD General Police Orders ("GPOs").
c) Provide the EPD with copies of all felony crime reports, misdemeanor crime reports in which suspects have been arrested, other crime reports, and filed reports, including in those that have been investigated by the CCPD under these Protocols, by fax (216) 289-8543 or electronic mail to officerinchargepolice@cityofeuclid.com within 24 hours of their completion.
d) CCPD shall be responsible for consulting with the City of Euclid Prosecutor whenever necessary for the issuance of charges concerning any arrest under these Protocols.
e) When called upon, assist the EPD with investigations, or other matters of mutual concern, for which the ultimate investigative responsibility rests with the EPD.
f) Establish a relationship with the Clerk of the Euclid Municipal Court to acquire, process, and return misdemeanor citations.
g) CCPD supervisors shall be responsible for monitoring the activity of CCPD Officers. The CCPD shall be responsible for ensuring that all CCPD Officers are trained in arrest procedures, the proper exercise of arrest powers, and other applicable training. EPD is not responsible for the supervision, training, or actions or failure to act, of any CCPD Officer.
h) Handle and process juvenile arrests under these Protocols, using EPD's holding facility until disposition to the detention home or released to a parent or guardian.
i) Handle the towing of vehicles connected to an arrest under these Protocols using its own contract towing agencies, unless directed otherwise by the on-scene EPD sector supervisor.
j) Promptly notify the EPD Traffic Unit in writing of all tows that occur off of CCF Property.
k) Promptly inform the EPD Detective Bureau of all felony arrests and all instances of serious physical injury to any person involved, including CCPD officers under these Protocols.
l) CCPD agrees to adopt the EPD "hot pursuit" policy or a hot pursuit policy that is more restrictive than that policy.
m) CCPD agrees that for CCPD prisoners that need medical treatment or require hospitalization before booking at City jails, CCPD Officers shall arrange for the prisoners' medical care or hospitalization and CCPD shall be responsible for transporting its prisoners and guarding its prisoners while medical care is given and during the hospitalization, and for the cost of, if any, the medical care of hospitalization. CCPD shall comply with EPD procedures including but not limited to "Guarding Prisoners at Hospitals."
n) CCPD prisoners confined at City jails after booking that need outside medical care or hospitalization shall be transported by EPD and guarded during the initial tour of duty. After the initial tour of duty, the responsibility for guarding such prisoners shall lie with the CCPD and remain with that Department until the prisoners are returned to the City jail. CCF agrees to be responsible for the cost, if any, of any medical care or hospitalization of CCPD prisoners during confinement at the City's jail.
o) CCPD is responsible for testing and storage of any evidence material and its custody for presentation at trial.

3) Amendment of Protocols: Changes to these protocols shall be in writing approved by signatures of the EPD Chief of Police and the CCPD Chief of Police, or their designated representatives.

Attachment B

The area covered by this agreement shall include all properties owned or operated by the Cleveland Clinic Foundation within the territorial limits of the City of Euclid and adjacent public roadways to such properties to include roadways north of Lakeshore Boulevard limited to East 185th Street, East 189th Street, East 190th Street, East 191st Street and East 192nd Street and to include Lakeshore Boulevard between East 185th Street and East 194th Street.

(137-12)

Resolution No.

By Councilperson Jones (by request)

A Resolution objecting to the renewal of liquor permit number 4199271 owned by JCJ&B, L.L.C., dba One 2 Lounge, 509 E. 185th Street, Euclid, OH 44119 and encouraging the Ohio Department of Commerce, Division of Liquor Control, to deny said renewal of the liquor permit.

WHEREAS, the Euclid Police Department has responded to the One 2 Lounge on multiple occasions for criminal and nuisance complaints such as drug possession, disorderly conduct, theft, fights and shots fired; and,

WHEREAS, recent criminal and nuisance complaints at the One 2 Lounge are as follows: On 6/19/11, EPD documented a report of attempted murder due to shots fired at two individuals; on 12/5/11, a report of shots fired was not confirmed, but an investigation into the matter resulted in a drug abuse arrest of an involved party; on 2/26/12, a patron of the One 2 Lounge reported that her purse was stolen at the bar; on 3/2/12, 5/6/12, 5/13/12,7/8/12 and 7/29/2012, EPD documented reports of fights amongst the bar patrons and various criminal citations were issued to the parties engaged in the fights; on 7/1/12, an individual was arrested for disorderly conduct as he became verbally aggressive towards EPD as he was leaving the One 2 Lounge; and,

WHEREAS, The City of Euclid does not, and will not, tolerate these criminal and nuisance activities; and,

WHEREAS, Euclid City Council believes it is of utmost importance to provide their residents and visitors with a safe environment; and,

WHEREAS, The One 2 Lounge has operated in blatant disregard for the laws and ordinances of the State of Ohio and City of Euclid; and,

WHEREAS, The One 2 Lounge should not be permitted to renew their liquor license and the Ohio Department of Commerce, Division of Liquor Control should deny the One 2 Lounge the renewal of their liquor license.

NOW, THEREFORE, be it resolved by the Council of the City of Euclid, State of Ohio:

Section 1: The Euclid City Council objects to the renewal of liquor permit number 4199271 owned by JCJ&B, L.L.C., dba One 2 Lounge, 509 E. 185th Street, Euclid, OH 44119 and encourages the Ohio Department of Commerce, Division of Liquor Control, to deny said renewal of the liquor permit.

Section 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and 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 resolution shall take immediate effect.

Section 4: That a copy of this resolution is forwarded to the Ohio Department of Commerce, Division of Liquor Control, Licensing Office, 6606 Tussing Road, P.O. Box 4005, Reynoldsburg, OH 43068-9005.

Attest:

_____
Clerk of Council

_____
President of Council

Passed:

Approved:

_____
Mayor

(139-12)

Resolution No.

By- Councilperson Jones (by request)

A Resolution objecting to the renewal of liquor permit number 4978427 owned by Lakeland Boulevard, Inc. and operating in the BP Station at 24310 Lakeland Boulevard, Euclid, OH 44132 and encouraging the Ohio Department of Commerce, Division of Liquor Control, to deny said renewal of the liquor permit.

WHEREAS, The City of Euclid received complaints that the owners of the BP Station were trafficking in synthetic marijuana, known as "JWH-018," "K2" or "Spice," which is illegal in Ohio and a number of other states. They were also trafficking in Schedule I hallucinogenic drugs known as "bath salts;" and,

WHEREAS, After an investigation, the Euclid Police Department Narcotics and Vice Unit obtained a search warrant for the premises which was executed on 1/20/12. Evidence of the drug trafficking was confiscated and the drugs were sent to the State of Ohio lab, BCI&I-Richfield, for analysis. The laboratory report confirms the drugs trafficked at the BP Station were synthetic marijuana and hallucinogenic drugs; and,

WHEREAS, A short time later, the EPD was advised that the owner/employees of the BP Station were continuing to engage in drug trafficking of synthetic marijuana and hallucinogenic drugs. The EPD conducted further investigation and obtained another search warrant for the premises which was executed on 2/17/12. Evidence of the drug trafficking was confiscated and the drugs were sent to the State of Ohio lab for analysis. The laboratory report confirms the drugs trafficked at the BP Station were synthetic marijuana; and,

WHEREAS, On 5/23/12, the owner of the liquor permit, Lakeland Boulevard Inc. and Sata Sammur, along with employees Abdalia Elayyan and Riyad Ladadwa were indicted in the Cuyahoga County Court of Common Pleas, Case No. CR-12-562063, on multiple counts of drug possession and drug trafficking. Their cases are still pending; and,

WHEREAS, The City of Euclid does not, and will not, tolerate these criminal and nuisance activities; and,

WHEREAS, Euclid City Council believes it is of utmost importance to provide their residents and visitors with a safe environment; and,

WHEREAS, The owners and operators of this BP Station have operated in blatant disregard for the laws and ordinances of the State of Ohio and City of Euclid; and,

WHEREAS, Lakeland Boulevard, Inc., operating in the BP Station, should not be permitted to renew their liquor license and the Ohio Department of Commerce, Division of Liquor Control should deny the Lakeland Boulevard, Inc. the renewal of their liquor license.

NOW, THEREFORE, be it resolved by the Council of the City of Euclid, State of Ohio:

Section 1: The Euclid City Council objects to the renewal of the liquor permit liquor permit number 4978427 owned by Lakeland Boulevard, Inc. and operating in the BP Station at 24310 Lakeland Boulevard, Euclid, OH 44132 and encourages the Ohio Department of Commerce, Division of Liquor Control, to deny said renewal of the liquor permit.

Section 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and 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 resolution shall take immediate effect.

Section 4: That a copy of this resolution is forwarded to the Ohio Department of Commerce, Division of Liquor Control, Licensing Office, 6606 Tussing Road, P.O. Box 4005, Reynoldsburg, OH 43068-9005.

Attest:

_____
Clerk of Council

_____
President of Council

Passed:

Approved:

_____
Mayor

(140-12)

Ordinance No.

By – Planning and Zoning Commission

An emergency ordinance authorizing the sale of Permanent Parcel 646-28-002, 1450 East 204th Street, from the Euclid Land Bank to Linda L. Koeth and Harvey J. Hutter for an amount of Five Hundred Dollars ($500.00), as authorized by Ordinance Nos. 98-2010 and 101-2011.

WHEREAS, Ordinance 98-2010, passed by Council on June 21, 2010 and amended by Ordinance 101-2011 on June 20, 2011, authorizes the sale of properties in the Euclid Land Bank to be sold for private use; and

WHEREAS, Linda L. Koeth and Harvey J. Hutter own the adjacent property, 1446 East 204th Street (Permanent Parcel 646-28-001), and desires to purchase the1450 East 204th Street parcel for yard expansion; and

WHEREAS, the purchased parcel is to be consolidated within six (6) months of transfer into the purchasers' parcel with final approval subject to review and approval of the City Engineer; and

WHEREAS, at its meeting on February 14, 2012 the Planning and Zoning Commission recommended approval of the sale of the 1450 East 204th Street (Permanent Parcel No. 646-28-002) to Linda L. Koeth and Harvey J. Hutter for an amount of Five Hundred Dollars ($500.00); and

WHEREAS, in accordance with the Euclid Land Bank Disposition Policies, in approving the sales price the Planning and Zoning Commission concurred with the pricing policies adopted in Ordinance 101-2011, which warrant a price below the Cuyahoga County Auditor's market value; and

WHEREAS, the subject matter of this ordinance constitutes an emergency in that the same provides for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and to allow the sale to be finalized in a timely manner.

NOW, THEREFORE, be it ordained by the Council of the City of Euclid, State of Ohio:

Section 1: That the sale of Permanent Parcel, 646-28-002 from the Euclid Land Bank to Linda L. Koeth and Harvey J. Hutter in the amount of Five Hundred Dollars ($500.00), as authorized by Ordinance No. 98-2010 and amended by Ordinance 101-2011 is hereby approved with condition.

Section 2: That City Council approves the consolidation of Parcel No. 646-28-002 with the Purchasers' Parcel No. 646-28-001 with condition said consolidation to be completed within six (6) months of transfer, with final approval, subject to review and approval of the City Engineer.

Section 3: That City Council approves the sales price adjustment below the Cuyahoga County Auditor's market value due to area market conditions and based on pricing policies adopted in Ordinance 98-2010 and amended by Ordinance 101-2011.

Section 4: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and 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 5: That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and provided it receives the two-thirds vote of all members of Council elected thereto, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Attest:

_____
Clerk of Council

_____
President of Council

Passed:

Approved:

_____
Mayor

(126-12)

Ordinance No.

By – Mayor Cervenik and Councilpersons Jones and Van Ho

An emergency ordinance authorizing the Mayor, as Ex-Officio Director of Public Safety of the City of Euclid, to enter into contracts for the towing of junk, abandoned and impounded vehicles or vehicles that must otherwise be removed at the direction of the Euclid Police Department for the period through December 31, 2013.

WHEREAS, a committee comprised of members of Council and Police Administration evaluated proposals from interested vendors; and

WHEREAS, the committee has determined through its evaluation and scoring process that the proposals from O'Connor Towing and United Towing are superior to the other proposals.

Now, therefore, be it resolved by the Council of the City of Euclid, State of Ohio:

Section 1: That the Mayor, as Ex-Officio Director of Public Safety of the City of Euclid, is authorized to enter into contracts with O'Connor Towing and United Towing further, with each vendor assigned an equal numbers of assignments for the towing of junk, abandoned and impounded vehicles or vehicles that must otherwise be removed at the direction of the Euclid Police Department. Said contracts to be for the period ending December 31, 2013.

Section 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and 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 preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and provided it receives the two-thirds vote of all members of Council elected thereto, shall be in full force and effect from after it passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Attest:

_____
Clerk of Council

_____
President of Council

Passed:

Approved:

_____
Mayor

CITY OF EUCLID TOW CONTRACT MATRIX SPREADSHEET

CATEGORY			POINTS			
1.) LOCATION OF STORAGE YARD						
LESS THAN 1 MILE FROM STATION			3			
MORE THAN 1 MILE AND LESS THAN 5 MILES			2	United	Fine Line	Oconners
MORE THAN 5 MILES			1	Excalibur	Vitalone	
2.) POLICE OFFICER PREFERENCE			1	United		
3.) DISPATCHER PREFERENCE			1	Oconners		
4.) COST OF STRAIGHT TOW						
LOWEST			5	Oconners		
SECOND LOWEST			4	Fine Line		
THIRD LOWEST			3	United		
FOURTH LOWEST			2	Excalibur		
FIFTH LOWEST			1	Vitalone		
ALL OTHERS			0			
5.) COST OF FLAT-BED TOW						
LOWEST			5	Oconners		
SECOND LOWEST			4	Fine Line		
THIRD LOWEST			3	United	Vitalone	
FOURTH LOWEST			2	Excalibur		
FIFTH LOWEST			1			
ALL OTHERS			0			
6.) COST OF MOTORCYCLE TOW						
LOWEST			5	Oconners		
SECOND LOWEST			4	Fine Line		
THIRD LOWEST			3	Vitalone		
FOURTH LOWEST			2	United	Excalibur	
FIFTH LOWEST			1			
ALL OTHERS			0			
7.) COST OF SEMI-TRACTOR TOW						
LOWEST			5	Oconners	Fine Line	
SECOND LOWEST			4	United	Vitalone	Excalibur
THIRD LOWEST			3			
FOURTH LOWEST			2			
FIFTH LOWEST			1			
ALL OTHERS			0			

CITY OF EUCLID TOW CONTRACT MATRIX SPREADSHEET

8.) HOURS OF OPERATION FOR RELEASES					
LONGEST	5	Vitalone			
SECOND LONGEST	4	Oconner			
THIRD LONGEST	3	United	Excalibur		
FOURTH LONGEST	2	Fine Line			
FIFTH LONGEST	1				
ALL OTHERS	0				
9.) COST OF DAILY STORAGE FEE					
LOWEST	5	Oconners			
SECOND LOWEST	4	Fine Line			
THIRD LOWEST	3	Vitalone			
FOURTH LOWEST	2	United	Excalibur		
FIFTH LOWEST	1				
ALL OTHERS	0				
10.) AUTO JUNK PRICES BACK TO CITY					
HIGHEST	5	Fine Line			
SECOND HIGHEST	4	Excalibur	Oconners	United	
THIRD HIGHEST	3	Vitalone			
FOURTH HIGHEST	2				
FIFTH HIGHEST	1				
ALL OTHERS	0				
11.) NEAT AND CLEAN EQUIPMENT AND TRUCKS	1	Vitalone	Excalibur		
12.) IMPOUND LOT MEETS SPECS	1	United	Excalibur	Oconners	
13.) TOW TRUCKS MEET SPECS (22)					
0-3 VIOLATIONS	3	All but Fine Line			
4-6 VIOLATIONS	2				
7-10 VIOLATIONS	1				
MORE THAN TEN VIOLATIONS	0	Fine Line			
14.) MEETS CITY ADVANTAGED OWNER GROUP	1	Excalibur			
MINORITY AND FEMALE OWNED					
		TOTAL AVAILABLE POINTS: 46			

		United	Oconners	Vitalone	Excalibur	Fine Line
Category 1		2	2	1	1	2
Category 2		1	0	0	0	0
Category 3		0	1	0	0	0
Category 4		3	5	1	2	4
Category 5		3	5	3	2	4
Category 6		2	5	3	2	4
Category 7		4	5	4	4	5
Category 8		3	4	5	3	2
Category 9		2	5	3	2	4
Category 10		4	4	3	4	5
Category 11		0	0	1	1	0
Category 12		1	1	0	1	0
Category 13		3	3	3	3	0
Category 14		0	0	0	1	0
		28	40	27	26	30

(143-12)

Ordinance No.

By – Councilmember Lynch and Councilmember Caviness

An emergency ordinance authorizing the Director of Public Service to enter into a contract with GameTime, PO Box 3315, Alliance, Ohio, for the purchase and installation of splash park equipment at the Indian Hills pool in an amount not to exceed Two Hundred Seventy Thousand Dollars ($270,000).

WHEREAS, the Council for the City Euclid, upon recommendation from the Mayor, determined that the Indian Hills Pool should be replaced with a splash park; and

WHEREAS, after review, the Director of Public Service recommends the purchase of splash park equipment and installation through GameTime; and

WHEREAS, funding for the project was included in the 2012 Capital Budget; and

WHEREAS, the purchase price is established at state cooperative purchasing schedules and labor paid at State prevailing wage rates.

NOW, THEREFORE, be it ordained by the Council of the City of Euclid, State of Ohio:

Section 1: That the Director of Public Service is hereby authorized to enter into an agreement with GameTime for the purchase and installation of splash park equipment at the Indian Hills Pool with labor and equipment not to exceed Two Hundred Seventy Thousand Dollars ($270,000).

Section 2: The price for the equipment is set at state cooperative purchasing schedules and the Council waives competitive bidding for this project.

Section 3: That State prevailing rates will be used for installation labor and set forth in the agreement as shall be approved by the Director of Law.

Section 4: That funding for this project will come from the General Permanent Improvement Fund.

Section 5: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, ant that all deliberations of this Council and 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 6: That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and provided it receives the two-thirds vote of all members of Council elected thereto, shall be in full force and effect from and after the earliest period allowed by law.

Attest:

_____ _____

Clerk of Council President of Council

Passed: Approved:

_____

Mayor

(132-12)

Ordinance No.

By – Council President Holzheimer Gail

An emergency ordinance amending Ordinance 175-2011 to update the Council Committee Assignments by inserting Stephana C. Caviness for the seats/chair held by David Gilliham for the remainder of the December 1, 2011 through December 31, 2013 term of the Council of the City of Euclid.

WHEREAS, the subject matter of this ordinance constitutes an emergency in that the same provides for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and for the daily operation of a municipal department.

NOW, THEREFORE, be it ordained by the Council of the City of Euclid, State of Ohio:

Section 1: That the Committees of the Council of the City of Euclid are hereby established to read as follows:

Executive & Finance Committee: Holzheimer Gail (Chair)
All Members of Council

Public Safety Committee: Jones (Chair)
Members: Caviness, Holzheimer Gail, Langman, Scarnienchh

Housing and Building Standards Committee: O'Hare (Chair)
Members: Jones, Langman, Scarnienchh, Van Ho

Community Programs (Parks, Rec, Youth, Seniors, Health) Committee: Lynch (Chair)
Members: Caviness, Jones, McLaughlin, Scarnienchh

Public Service Committee: McLaughlin (Chair)
Members: Caviness, Langman, O'Hare, Van Ho

Business and Commercial Development/ Growth and Planning Committee: Caviness (Chair)
Members: Jones, Langman, O'Hare, Van Ho

Community Assets Committee: Scarnienchh (Chair)
Members: Lynch, McLaughlin, Holzheimer Gail, Van Ho

Sustainability Committee: Langman (Chair)
Members: Holzheimer Gail, Jones, Lynch, O'Hare

Regionalism/ Intra-Governmental Collaboration Committee: Van Ho (Chair)
Members: Caviness, Holzheimer Gail, Lynch, McLaughlin

Section 2: That all previous ordinances regarding committee assignments are repealed.

Section 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and 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 4: That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and provided it receives the two-thirds vote of all members of Council elected thereto, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Attest:

_____
Clerk of Council

_____
President of Council

Passed:

Approved:

_____
Acting Mayor

(130-12)

Ordinance No.

By – Mayor Cervenik

An ordinance amending Ordinance 108-2011 and authorizing the Director of Public Service for the City of Euclid to enter into a contract modification with Osborn Engineering to include additional design and administration work for waterline replacement on Glenbrook Boulevard, in an amount not to exceed $19,750.

WHEREAS, the City entered into an agreement with Osborn Engineering to design and administer various waterline replacement projects pursuant to Ordinance 108-2011; and

WHEREAS, during the project review, the Director of Public Service has determined that additional work is necessary on Glenbrook Boulevard, adding an additional 1000 feet to the waterline replacement project.

NOW, THEREFORE, be it ordained by the Council of the City of Euclid, State of Ohio:

Section 1: That the appropriation authorized in Ordinance 108-2011 is hereby amended to include an additional $19,750 and the Director of Public Service is authorized to enter into an amended agreement with Osborn Engineering for the additional design and administration work for Glenbrook Boulevard. The amended agreement is a not to exceed amount of $126,220.

Section 2: Funds to pay for this expenditure are to be derived from the Waterline Fund pending reimbursement from the Cleveland Water Department.

Section 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and 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 4: That this ordinance shall be in full force and effect from and after the earliest period allowed by law.

Attest:

_____
Clerk of Council

_____
President of Council

Passed:

Approved:

Effective:

_____
Mayor

OSBORN
ENGINEERING

P20110486 – Add #1

September 15, 2011

Mr. Lee Bock
Public Service Department
City of Euclid
585 E. 222nd St.
Euclid, OH 44123

email: lbock@cityofeuclid.com

RE: Fee Proposal for Additional Professional Services – Glenbrook from E. 240th to the Ravine E. 201st, E. 202nd, E. 260th and Glenbrook Watermain Project Euclid, Ohio

Dear Lee:

Osborn Engineering is pleased to offer this proposal for additional professional design services for the above referenced project. As you are aware, Osborn is currently under contract with the City of Euclid for the E. 201st, E. 202nd, E. 260th and Glenbrook Watermain Project. This additional services proposal is for the next section of Glenbrook Blvd. from E. 240th to the ravine, a length of approximately 1,000 feet.

This project will be funded through the City's Suburban Watermains Program with the Cleveland Water Department (CWD). The City of Euclid holds the contract directly with Osborn for the design and construction of the watermains and will be reimbursed through the program. Based on our meeting with the former service director Randy Smith and the CWD on May 25, 2011, CWD makes the reimbursement after the bids are received and a contractor is selected. CWD will reimburse for the design services up to 8% of the construction cost and will reimburse for construction administration services up to 5% of the construction cost based on an estimated cost of construction range of $120 to $180 per linear foot.

The scope of the proposed improvements is as follows:

1. Replacement of the existing waterline within the project area(s), including hydrants, valves and service connections.
2. Patching of the street pavement, curb, drive aprons, sidewalk and tree lawns within the limits of the watermain trench and service connections trenches only.

Our scope of services will be as follows:

1. Provide centerline survey control for the project and reference existing centerline monuments.
2. Perform a location survey within the rights-of-way of the four streets and 50' beyond the rights-of-way on both sides, including existing improvements, to be used for the design and preparation of the construction documents. The Cuyahoga County Topographical Maps will be used as a base reference.
3. Review the City's existing records to determine approximate location of existing waterlines and sewers.
4. Perform test borings spaced at 500' intervals drilled and sampled to a depth of 10', including the existing pavement cores, within the project area, and provide a geotechnical report of the finding with a recommendation for trenching and pavement repair. Our subconsultant will perform 3 additional borings for this section of Glenbrook Blvd.
5. Provide construction plans and specifications for the proposed work.
6. Submit plans for City, CWD and EPA approval.
7. Prepare a final construction cost estimate to be used as the Engineer's Estimate for the project bidding.
8. Provide professional services for the bidding and construction phases of the project, including construction observation. Our fees assume that the four watermains will be constructed simultaneously.

The surveying and base mapping work for this project will be subcontracted by Osborn to Kalstrom Surveying. The pavement/soil borings and testing will be subcontracted to PSI. The cost of their work is included in our fees for the project.

Construction plans and specifications will be prepared in accordance with the City of Euclid, CWD and Cuyahoga County standards. Construction details will conform to Euclid, CWD, ODOT and Cuyahoga County standard details. General notes, technical specifications and the bid form will be prepared by Osborn. The front-end general requirements and form of contract will be provided by the City of Euclid.

Services that are not a part of our scope of work include the following:

1. Environmental investigations or testing.
2. Geotechnical investigations or testing beyond the test borings.
3. Construction materials testing.
4. An as-built field survey. This service can be provided for an additional fee if deemed necessary.

Our current lump sum fee and **additional lump sum fee** for the stated scope of services, broken down by street and phase, are shown below. The fees include or subconsultants services and all normal reimbursable expenses. Printing costs for the bid packages, as well as any application/permitting fees are to be paid by the City of Euclid. We will invoice monthly based on the percent of work completed to date.

Street	Project Limits	Length	Est. Const. Cost	Design Fee	Const Admin Fee
E. 201st	Lakeshore to Lake Erie	1,500'	$225,000	$18,000	$11,250
E. 202nd	Lakeshore to Lake Erie	1,000'	$150,000	$12,000	$ 7,500
E. 260th	N. to S. Lakeland	800'	$144,000	$11,520	$ 7,200
Glenbrook	School to E. 240th	2,000'	$300,000	$24,000	$15,000
Glenbrook	**E. 240th to the ravine**	**1,000'**	**$150,000**	**$12,000**	**$ 7,500**

Our current contract #4919 for $106,470.^{00} will be increased by **$19,750.^{00}** for a new total of $126,220.^{00}.

Surveying and soil borings are currently underway. We anticipate the total design phase will take approximately three months to complete from the Notice to Proceed given on August 15, 2011. Based on this, bidding would probably commence in the Fall of this year pending regulatory agencies approvals. Construction would likely start in the Winter or early Spring of 2012.

Please feel free to call me if you have any question. Again, we appreciate this opportunity and are prepared to start work upon your authorization of these additional services.

Respectfully Submitted,
OSBORN ENGINEERING

/s/Scott A. Vura

Scott A. Vura, P.E., LEED AP
Vice President
Principal, Infrastructure Group

cc: C. L. Fairfield
J. T. Goerndt
W. H. Kovach
File

(131-12)

Ordinance No.

By – Councilperson McLaughlin (by request of the Public Service Director)

An emergency ordinance authorizing the Director of Public Service of the City of Euclid, to enter into a contract with Terrace Construction Company, Inc., 3965 Pearl Road, Cleveland, Ohio 44109, for an amount not to exceed One Million Three Hundred Twenty Two Thousand Sixty Nine and 25/100 Dollars ($1,322,069.25) for the Waterline Replacement work on East 201st, East 202nd, East 260th, and Glenbrook Boulevard.

WHEREAS, solicitation for bids were completed and Terrace Construction Company, Inc. was the lowest and best bidder,

WHEREAS, the subject matter of this ordinance constitutes an emergency in that the same provides for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and for the daily operation of a municipal department.

NOW, THEREFORE, be it ordained by the Council of the City of Euclid, State of Ohio:

Section 1: That the Director of Public Service be, and he is hereby authorized, empowered and directed to enter into a contract with Terrace Construction Company, Inc., 3965 Pearl Road, Cleveland, Ohio 44109, for an amount not to exceed One Million Three Hundred Twenty Two Thousand Sixty Nine and 25/100 Dollars ($1,322,069.25) for the Waterline Replacement work on East 201st, East 202nd, East 260th, and Glenbrook Boulevard, to be in accordance with specifications on file in the office of the Director of Public Service. Said contract was awarded by the Board of Control to the lowest and best bidder. The specifications on file in the office of the Director of Public Service are hereby approved. The contract shall be in form approved by the Director of Law and shall be in conformance with such specifications. It shall be executed by the Director of Public Service. The Board of Control is hereby authorized to waive any minor or technical irregularities that may occur during the bid process.

Section 2: Funds to pay for this expenditure are to be derived from the Waterline Fund pending reimbursement from the Cleveland Water department.

Section 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and 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 4: That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and provided it receives the two-thirds vote of all members of Council elected thereto, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Attest:

_____
Clerk of Council

_____
President of Council

Passed:

Approved:

_____
Mayor

(142-12)

Ordinance No.

By- Mayor Cervenik

An emergency ordinance authorizing the Mayor of the City of Euclid to enter into a purchase agreement and to execute all other documents necessary to acquire property from 36097 Westminister Road, LLC, located at 22305 Lakeshore Boulevard, Euclid, Ohio, Permanent Parcel No. 642-10-047, at a cost of Nine Hundred Thousand Dollars ($900,000.00) for the public purpose of expansion and renovation of the municipal Wastewater Treatment Plant as part of the Consent Decree required by the US EPA and Ohio EPA to meet the treatment standards established through the Clean Water Act.

WHEREAS, the acquisition of property located at 22305 Lakeshore Boulevard will enable the City to construct underground headwater building and a 15 million gallon equalization tank, both part of the Wastewater Treatment Plant upgrade; and

WHERAS, the City commissioned a commercial appraisal of said property and has determined that the property, taking into account the income stream planned for said parcel, has a value of Nine Hundred Thousand Dollars ($900,000); and

WHEREAS, the City has received confirmation from US EPA of its agreement in principle to the plant and system improvements that will allow the City to begin design and construction of identified improvements which are required to be completed before December 31, 2025; and

WHEREAS, City Council hereby finds the price to be fair and just; and

WHEREAS, the subject matter of this ordinance constitutes an emergency in that the same provides for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid.

NOW, THEREFORE, be it ordained by the Council of the City of Euclid, State of Ohio:

Section 1: That the Mayor of the City of Euclid is hereby authorized and directed to enter into a purchase agreement and to execute all other documents necessary to acquire property from 36097 Westminister Road, LLC, located at 22305 Lakeshore Boulevard, Euclid, Ohio, Permanent Parcel No. 642-10-047, at a cost of Nine Hundred Thousand Dollars ($900,000.00) for the public purpose of expansion and renovation of the municipal Wastewater Treatment Plant as part of the Consent Decree required by the US EPA and Ohio EPA to meet the treatment standards established through the Clean Water Act.

Section 2: That said purchase agreement shall be substantially in the form on file with the Clerk of Council and together with such other documents necessary to acquire the property shall be as approved by the Director of Law.

Section 3: That Council has determined the negotiated purchase price to represent a fair and just offer.

Section 4: That funding for this purchase to be derived from the Wastewater Treatment Funds and the Waterline Fund on a temporary basis pending a loan from the Ohio Water Development Authority.

Section 5: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting 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 6: That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, safety and welfare of the citizens of the City of Euclid, and provided it receives the two-thirds vote of all members of Council elected thereto, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Attest:

_____
Clerk of Council

_____
President of Council

Passed:

Approved:

_____
Mayor

(144-12)

RESOLUTION NO.

By – Mayor Cervenik

A RESOLUTION AUTHORIZING THE MAYOR TO PREPARE AND FILE A LOAN APPLICATION AND ENTER INTO A COOPERATIVE LOAN AGREEMENT WITH THE OHIO WATER DEVELOPMENT AUTHORITY NECESSARY FOR LAND ACQUISITION FOR WASTEWATER FACILITIES PROJECTS AND DECLARING AN EMERGENCY.

WHEREAS, the City of Euclid (hereinafter referred to as the "LGA") desires to obtain a loan from the Ohio Water Development Authority (hereinafter referred to as the "OWDA") to finance the cost of land acquisition for wastewater facilities projects, said projects owned by the LGA, on the terms set forth in the Cooperative Agreement (defined below); and

WHEREAS, the LGA has previously determined that the real property to be acquired is needed for the construction of improvements to city owned wastewater facilities; and

WHEREAS, the LGA intends to apply for a loan from the Ohio Water Development Authority for the land acquisition for wastewater facilities projects; and

WHEREAS, the LGA has agreed on a time schedule with the U.S. Environmental Protection Agency, U.S. Department of Justice and the Ohio EPA for the construction of various wastewater facilities improvements; and

WHEREAS, the LGA needs the subject parcel for purposes of locating improvements to the LGA'S wastewater facilities; and

WHEREAS, the LGA and the owner of the subject parcel have arrived at a mutually agreed upon purchase price for the subject parcel, said agreement memorialized in a separate agreement for said purchase; and

WHEREAS, the OWDA has indicated its willingness to make a loan for that purpose and on those terms; and

WHEREAS, the cooperative loan agreement for the purchase of the subject parcel is necessary for the preservation of the public peace, health, safety, and welfare of the inhabitants of the City of Euclid

NOW, THEREFOR, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EUCLID, THE COUNTY OF CUYAHOGA, STATE OF OHIO:

SECTION 1. That the Mayor is hereby authorized to prepare and file a loan application with the Ohio Water Development Authority for the purpose of funding approximately $ 1,000,000.00 in long term obligations, said funding necessary to finance the cost of land acquisition for wastewater facilities projects located in the City of Euclid.

SECTION 2. That, if approved, the Mayor is hereby authorized to execute any and all documentation that may be required by the OWDA to secure and administer a Cooperative Agreement for a loan for the purpose stated therein.

SECTION 3. That the LGA hereby approves the issuance of the aforesaid long term obligations in cooperation with the OWDA under the provisions, terms and conditions set forth in the "Cooperative Agreement" as substantially set forth in Exhibit A (the "Cooperative Agreement")

and hereby authorizes the Mayor of the LGA to execute the Cooperative Agreement with the OWDA substantially in the form set forth in Exhibit A.

SECTION 4. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were conducted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were conducted in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 5. That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the inhabitants of the community; and for the further reason to comply with the Ohio Water Development Authority time constraints which must be met in order to receive such a loan; and provided that it receives the affirmative vote of two-thirds of the members elected to Council, it shall be in full force and take effect immediately upon its adoption by Council and approval by the Mayor; otherwise, it shall be in full force and take effect from and after the earliest period allowed by law.

Attest: _____
Clerk of Council

_____
President of Council

Passed: _____ __, 2012

Approved:

_____
Mayor

H:\2011\11216\PHASE\6709 Euclid Implementation\Land Acquisition\OWDA Loan Application\Legislation\Draft Legislation - OWDA Application And Agreement.Doc

OWDA NO SW-1
(02/11)

COOPERATIVE AGREEMENT FOR CONSTRUCTION, MAINTENANCE AND OPERATION OF STATE WATER PROJECT OR WASTEWATER PROJECT

THIS AGREEMENT made and entered into as of the date specified on Schedule I hereto (the "Term Sheet," which is fully incorporated herein and made a part hereof) as the "Agreement Date," by and between the OHIO WATER DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the provisions of Chapter 6121 of the Revised Code of Ohio (hereinafter referred to as the "OWDA") and the governmental body specified as the "LGA" on the Term Sheet (hereinafter referred to as the "LGA"), a governmental body organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or a resolution passed by the legislative authority thereof on the date specified on the Term Sheet as the Resolution Date;

WITNESSETH:

WHEREAS, the OWDA has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize and manage the water resources of the state, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the state for the protection and preservation of the comfort, health, safety, convenience, and welfare, and the improvement of the economic and general welfare and employment opportunities of and the creation of jobs for the people of the state, and to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Revised Code; and

WHEREAS, the water system or wastewater system (hereinafter more fully defined and referred to as the "System") of the LGA will require the supply of services (the "Services") for the treatment and/or transmission of drinking water (in the case of a water project) or for the treatment or disposal of wastewater (in the case of a wastewater project) from the construction, operation and maintenance of new or additional facilities (which facilities are hereafter referred to as the "Project Facilities"); and

WHEREAS, the LGA is desirous of obtaining the Services for the System in cooperation with the OWDA; and

WHEREAS, the OWDA is willing to cooperate with the LGA in obtaining such Services, and the LGA has given the OWDA reasonable assurances that the LGA will make the payments hereinafter provided for and will fulfill its other obligations hereunder; and

WHEREAS, the OWDA and LGA have determined to enter into this Agreement to set forth their respective obligations with respect to the financing, construction, operation and ownership of the Project Facilities;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto do hereby agree as follows:

ARTICLE I - DEFINITIONS

Except where the context clearly indicates otherwise, the following terms as used in this Agreement shall have the meaning ascribed to them in this Article:

DEFINITIONS RELATING TO PHYSICAL FACILITIES

(a) "Approved Application" means the application of the LGA dated as of the dated specified on the Term Sheet as the "LGA Application Date," submitted to the OWDA, together with all attachments, supporting documentation, amendments and supplements thereto as approved by the OWDA on the date specified on the Term Sheet as the "OWDA Application Approval Date," together with any amendments thereto approved by the LGA and the OWDA after the date of this Agreement.

(b) "Project Facilities" means the facilities to be constructed pursuant to this Agreement as described generally in Exhibit A attached hereto and made a part hereof and more particularly described in the Approved Application together with any changes therein made pursuant to Article III hereof.

(c) "Project Site" means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the construction and operation of the Project Facilities.

(d) "System" means the facilities of the LGA specified as the "System" on the Term Sheet.

DEFINITIONS RELATING TO COSTS

(e) "Eligible Project Costs" shall include, whether incurred before or after the date of this Agreement (but if incurred prior to the date hereof, subject to the restrictions set forth in the first proviso below), the following costs of the Project Facilities and the Project Site: the purchase price of the Project Site when acquired by purchase, or the value thereof when appropriated as found by the jury, together with the costs of the proceedings and the damages assessed in favor of any owner of the adjoining lands and interests therein, subject to the second proviso set forth below; the cost of demolishing or removing any buildings or structures on the Project Site, including the cost of acquiring any lands to which such buildings or structures may be removed, subject to the second proviso set forth below; the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of easements therefor, subject to the second proviso set forth below; the costs of construction of the Project Facilities including, but not limited to, the cost of all machinery, furnishings and equipment included therein; interest on all funds disbursed by the OWDA (other than funds paid over to the OWDA by the LGA for disbursement by the OWDA) at the Contract Interest Rate from the date of disbursement by the OWDA of each portion thereof pursuant to Section 3.8 hereof to the first day of the January or the July next preceding the commencement of the Contract Period of Years based on the then existing cost allocations; engineering expenses for the Project Facilities including, but not limited to, the cost of preliminary and other surveys, the cost of preparing plans, estimates and specifications, the cost of all necessary soil and other investigations and laboratory testing, and resident engineering and inspection fees; the cost of printing and

publishing the notices and legislation required; legal expenses; administrative expenses of the OWDA in the amount of 0.35% of all Eligible Project Costs other than such administrative expenses, or $400, whichever is the greater; any obligation for the repayment of borrowed money incurred by the LGA to the OWDA under any Cooperative Agreement for State Planning Project between the LGA and OWDA with respect to the Project Facilities, and any other necessary miscellaneous expenditures; provided, however, that Eligible Project Costs shall include costs incurred prior to the date hereof only if and to the extent that, in the opinion of nationally recognized bond counsel satisfactory to the OWDA, the payment of such costs by the OWDA would not cause the interest on any debt obligations of the OWDA to cease to be excluded from gross income for purposes of federal income taxation; and provided further, however, that Eligible Project Costs shall include costs for the acquisition of real property or interests therein (other than easements) only if the OWDA shall have received from the LGA reasonably sufficient assurances as to environmental matters related to such real property. Notwithstanding anything contained herein to the contrary, Eligible Project Costs shall not include any commissions, fees and/or expenses which may be owed by the LGA to a broker or finder as a result of or in connection with the OWDA's agreement to pay the Eligible Project Costs to the LGA as provided herein.

DEFINITIONS RELATING TO PARTICIPATION IN COSTS

(f) "Original Loan Amount" means those Eligible Project Costs that are paid with moneys disbursed out of funds of the OWDA, which costs shall in no event exceed the amount specified on the Term Sheet as the "Maximum Original Loan Amount."

(g) "Semiannual Payment Obligation" means the amount payable semiannually by the LGA to amortize the Original Loan Amount over the Contract Period of Years with interest on the outstanding balance of the Original Loan Amount at the Contract Interest Rate. An estimate of the Semiannual Payment Obligation based on the Maximum Original Loan Amount and the Contract Interest Rate is specified on the Term Sheet beneath the Maximum Original Loan Amount.

If the Contract Period of Years commences prior to the final determination of the Original Loan Amount, the Semiannual Payment Obligation shall be based upon the best figures available at the time the computation of each semiannual payment is required to be made. When such final costs are known, the Semiannual Payment Obligation shall be recomputed and the next following semiannual payment shall be either increased or decreased by a factor sufficient to correct for any overpayment or underpayment through the date of such recomputation so that the total amount received by OWDA over the Contract Period of Years will be the same amount as would have been received had the final Original Loan Amount been used in computing the Semiannual Payment Obligation at the commencement of the Contract Period of Years. The interest during construction computed at the Contract Interest Rate shall, however, be computed based on the then existing cost allocations at the time of such computation and shall not be recomputed.

(h) "Contract Interest Rate" means the rate specified as such on the Term Sheet.

(i) "Contract Period of Years" means the period of the Contract Term specified in the Term Sheet, commencing on the date six months prior to the First Payment Date specified in the Term Sheet.

(j) "Default Rate" means a rate equal to the Contract Interest Rate plus three percentage points.

(k) "Pledged Revenues" means the revenues derived by the LGA from the ownership and operation of the System (including, without limitation, any Special Assessment Funds), net of the costs of operating and maintaining the System and paying all amounts required to be paid under any Mortgage, Indenture of Mortgage, Trust Agreement or other instrument heretofore or hereafter entered into by the LGA to secure debt obligations heretofore or hereafter issued or incurred by the LGA for the System.

(l) "Special Assessment Funds" means the proceeds from the special assessments to be hereafter levied, if any, by the LGA to pay all or a portion of the cost of the Project.

ARTICLE II - PROPERTY INTERESTS IN PROJECT SITE AND PROJECT FACILITIES AND RIGHTS OF ACCESS THERETO

Section 2.1. All real estate and interests in real estate and all personal property constituting the Project Facilities and the Project Site shall be acquired by and shall be the property of the LGA.

Section 2.2. The LGA agrees that the OWDA and its duly authorized agents shall have the right at all reasonable times to enter upon the Project Site and Project Facilities and to examine and inspect the same. The LGA further agrees that the OWDA and its duly authorized agents shall have such rights of access to the Project Site and Project Facilities as may be reasonably necessary to enable the OWDA to exercise its rights pursuant to Section 5.8 hereof.

ARTICLE III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITIES AND PAYMENT OF COSTS THEREOF

Section 3.1. Subject to the terms and conditions of this Agreement, the LGA shall do all things necessary to construct the Project Facilities on the Project Site (which the LGA hereby represents has been acquired by the LGA) by means of the construction contract(s) specified on Exhibit B hereto. The LGA shall use its best efforts to cause the Project Facilities to be fully operational by the date specified on the Term Sheet as the "Operational Date."

In connection with the construction of the Project Facilities, the LGA agrees that:

(a) The construction contract(s) will provide that the representatives of the OWDA will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection.

(b) The construction of the Project Facilities on the Project Site will be performed in compliance with all applicable federal, state and local environmental laws and regulations in effect as of the date hereof.

(c) All laborers and mechanics employed on the Project Facilities shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project Facilities, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

(d) Prior to the commencement of construction, the LGA will arrange and conduct a preconstruction conference to include representatives of the OWDA, the LGA and the consulting or resident engineers of the LGA and each contractor.

(e) Each construction contract and contractor's estimate form will be prepared so that materials and equipment furnished to the LGA may be readily itemized.

(f) All requests submitted by the LGA for the payment or reimbursement of incurred Eligible Project Costs shall include evidence of the costs incurred and will be prepared so that such costs may be readily itemized.

(g) Any change or changes in a construction contract that would increase the contract price by an amount in excess of one percent (1%) or any change or changes regardless of cost that substantially modify the processes contemplated to be performed by the Project Facilities will be submitted to the OWDA for prior approval.

(h) Notification of all change orders not requiring prior approval of the OWDA will be submitted to the OWDA within one (1) month of the time at which they are ordered by the resident or consulting engineer of the LGA.

(i) The construction of the Project Facilities, including the letting of contracts in connection therewith, will conform to applicable requirements of federal, state and local laws, ordinances, rules and regulations.

(j) The LGA will proceed expeditiously with, and complete, the Project Facilities in accordance with the Approved Application and any surveys, plans, profiles, cross sections and specifications or amendments thereto approved by the Director of Environmental Protection of Ohio.

(k) Notwithstanding anything contained herein to the contrary, the obligation of the OWDA to pay Eligible Project Costs pursuant to the terms and conditions of this Agreement shall expire three (3) years from the date hereof. Upon the expiration of the aforesaid period of years, the OWDA shall not be obligated to pay any additional Eligible Project Costs to the LGA hereunder. In the event that the OWDA, in its sole discretion, decides to pay additional Eligible Project Costs after the expiration of its obligation to do so hereunder, it shall so notify the LGA. No such decision by the OWDA to pay any additional Eligible Project Costs hereunder shall be deemed to constitute an extension of its obligation to pay Eligible Project Costs hereunder.

Except as otherwise provided in this Agreement, the LGA shall have the sole and exclusive charge of all details of the construction of the Project Facilities.

Section 3.2. The LGA shall keep accurate records of the Eligible Project Costs. The LGA shall permit the OWDA, acting by and through the Executive Director of the OWDA or his authorized representatives, to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of audit and examination, and the LGA shall submit to the OWDA such documents and information as they may reasonably require in connection therewith.

Section 3.3. The LGA shall require that each construction contractor shall furnish a performance and payment bond in an amount at least equal to one hundred percent (100%) of the contractor's contract price as security for the faithful performance of the contractor's contract.

Section 3.4. The LGA shall require that each of its contractors and all subcontractors maintain during the life of their contracts Workers' Compensation Insurance, Public Liability, Property Damage, and Vehicle Liability Insurance, in amounts and on terms that comply with all applicable legal requirements and that are commercially reasonable. Until the Project Facilities are completed and accepted by the LGA, the LGA or (at the option of the LGA) the contractor shall maintain Builders Risk Insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project Facilities for the benefit of the OWDA, the LGA, the prime contractor, and all subcontractors, as their respective interests may appear.

Section 3.5. The LGA shall provide and maintain competent and adequate resident engineering services satisfactory to the OWDA covering the supervision and inspection of the development and construction of the Project Facilities and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the OWDA and the LGA at the completion of construction that construction is in accordance with the approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

Section 3.6. Subject to the terms and conditions of this Agreement, the Eligible Project Costs shall be paid by the OWDA. In the event this Agreement is terminated by the OWDA pursuant to, and not in breach of, the provisions of this Agreement, or by subsequent agreement of the parties, or in the event this Agreement is terminated by the LGA, whether or not in breach of the Agreement, the Eligible Project Costs incurred prior to the date of the commencement of the construction of the Project Facilities or the date of such termination, whichever is earlier, shall be paid by the LGA. If such termination takes place following the date of the commencement of the construction of the Project Facilities, all Eligible Project Costs incurred following such commencement date and prior to the date of termination, with the exception of all costs attributable to the acquisition of the Project Site, shall be borne by: (l) the LGA if this Agreement is terminated at such time by the LGA; or (2) by the OWDA if this Agreement is terminated at such time by the OWDA, but in any event, all costs attributable to the acquisition of the Project Site shall be borne by the LGA. Any moneys paid by either party hereto pursuant to this Agreement which become the obligation of the other party under the

provisions of this Section shall be repaid in not more than three (3) years after termination with interest on the outstanding balances at the Contract Interest Rate.

Section 3.7. The OWDA may decline to deliver any further certificates of availability of funds pursuant to Section 3.8 hereof from and after any determination by the OWDA that any information furnished to the OWDA, in writing or otherwise, in connection with the LGA's application for the transactions contemplated by this Agreement was false or misleading in any material respect or that such information omitted any other information needed to make the information furnished not false or misleading in any material respect.

Section 3.8. Subject to Section 3.7 hereof, the OWDA shall deliver to the LGA a certificate, certifying that moneys in the amount necessary to pay the Eligible Project Costs obligated or to be obligated up to the Maximum Original Loan Amount are available or are in the process of collection and have been encumbered by the Authority. When such Eligible Project Costs have been incurred and payment requested from the OWDA by the LGA in form and detail satisfactory to the OWDA, the OWDA shall cause to be delivered checks in payment of the invoices, demands for payment, approved contractors' estimates or other evidence of cost incurrence to the persons or entities entitled to payment in conformity with the encumbrance of funds set forth to pay such obligated Eligible Project Costs. The "LGA" represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the OWDA."

Section 3.9. Upon completion of the Project Facilities, the LGA shall make a full and complete accounting to the OWDA of the final Eligible Project Costs.

ARTICLE IV - PAYMENTS BY LGA

Section 4.1. Subject to the further provisions hereinafter set forth, the LGA agrees to and shall pay semiannually on January 1 and July 1 of each year of the Contract Period of Years, commencing on the First Payment Date (each such date a "Due Date"), to the OWDA, but solely from the Pledged Revenues, the Semiannual Payment Obligation. In the event that the LGA pays less than the full amount due hereunder on any Due Date, then the amount so paid shall be applied first to interest payable hereunder, then to any late charges payable hereunder, and then to the Original Loan Amount payable hereunder. The LGA acknowledges and agrees that the OWDA afforded the LGA the opportunity to choose between a schedule of payments based on equal principal payments and one based on equal debt service payments and that the estimated Semiannual Payment Obligation shown on the Term Sheet reflect the choice of the LGA.

The obligation of the LGA to pay the charges set forth shall not be assignable, and the LGA shall not be discharged therefrom, without the prior written consent of the OWDA. In the event that services supplied by the Project Facilities or any other portion of the System shall cease or be suspended for any reason, the LGA shall continue to be obligated to pay the charges pursuant to this Section 4.1, but solely from the Pledged Revenues. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 5th day after the Due Date, the amount of such default shall bear interest at the Default Rate from the Due Date until the date of

the payment thereof. Interest at the Default Rate shall be calculated for the actual number of days of default from the Due Date until payment on the basis of a 360 day year. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 30th day after the Due Date, in addition to the interest calculated at the Default Rate, a "late charge" of one percent (1%) on the amount of each default shall also be paid to the OWDA by the LGA from the Pledged Revenues for failure to make the payment as provided herein. Thereafter, for each additional thirty (30) days during which the charges remain unpaid, the LGA shall continue to pay from the Pledged Revenues an additional late charge of one percent (1%) on the amount of such default until such charges are paid. In no event shall the OWDA collect interest or late charges in excess of the maximum amount permitted by law. In addition to the foregoing, in the event of a default as aforesaid, all of the costs incurred by the OWDA in curing such default including, but not limited to, court costs and attorney fees, shall (to the extent not previously repaid to the OWDA and to the fullest extent permitted by law) be paid as part of the Eligible Project Costs hereunder and be repaid by the LGA to the OWDA as part of the Original Loan Amount. The Borrower [in other agreements, the "LGA"] represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the OWDA."

Anything in this Agreement to the contrary notwithstanding, neither the general resources of the LGA shall be required to be used, nor shall the general credit of the LGA be pledged for the performance of any duty under this Agreement, but any payment to be made under this Agreement shall be required to be made only from the Pledged Revenues, which are hereby pledged to such payment; provided, however, that, if otherwise lawful, nothing herein shall be deemed to prohibit the LGA from using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this Agreement.

Section 4.2. It is agreed that, no later than June 15 and December 15 of each year of the Contract Period of Years, the OWDA shall invoice the LGA for the sum payable by the LGA pursuant to Section 4.1 and that payment of each such invoice shall be made by the LGA to the OWDA not later than the first day of the following month. No failure by the OWDA to send any such invoice and no failure by the LGA to receive any such invoice shall relieve the LGA from its obligation to pay the amount due hereunder on the applicable Due Date.

Section 4.3. The LGA hereby agrees that: (a) from and after the completion and placement into operation of the Project Facilities, it will at all times prescribe and charge such rates for the services of the System as shall result in Pledged Revenues at least adequate to provide for the payments required by Section 4.1 hereof and shall from time to time at the request of the Authority cause a study of the sufficiency of the LGA's rates for that purpose to be done by an independent expert acceptable to the OWDA; (b) the LGA will furnish to the OWDA annually reports of the operation and income of the System and also an annual report of the accounts and operations of the System and such other documents as the OWDA may reasonably request in order to respond to requests for documentation from rating agencies or providers or potential providers of credit enhancement for debt obligations of the OWDA, and the LGA will permit the authorized agent of the OWDA to inspect all records, accounts and data of the System at all reasonable times; and (c) that the LGA will segregate the revenues, funds and properties of the System from all other funds and properties of the LGA. All of the obligations under this Section are hereby established as duties specifically enjoined by law and resulting from an

office, trust or station upon the LGA within the meaning of Section 2731.01 of the Ohio Revised Code.

Section 4.4. If the LGA pays all or any portion of the Semiannual Payment Obligation from Special Assessment Funds and if any payor of the Special Assessment Funds elects to pay the special assessments in a one-time, lump-sum payment in lieu of having the special assessments certified to the appropriate county auditor for periodic collection, then the LGA may elect to apply the amount of such payment to a reduction of the Original Loan Amount by including that amount with its next payment of the Semiannual Payment Obligation pursuant to Section 4.1 hereof, accompanied by a written notice to the Authority identifying the amount so included and directing the Authority so to apply that amount. Upon the receipt of such payment and notice, the Authority shall recompute the remaining payments of the Semiannual Payment Obligation based on the reduced Original Loan Amount and shall notify the LGA in writing of the reduced amount of the remaining payments.

Section 4.5. In order to enable the OWDA to comply with the requirements of federal securities laws (including, without limitation, Rule 10b-5 and Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended), the LGA agrees to prepare and file with the OWDA or, at the direction of the OWDA, to file with the Municipal Securities Rulemaking Board ("MSRB"), any one or more nationally recognized municipal securities information repositories ("NRMSIRs") or state information depository ("SID"), any annual financial information or material events disclosures that the OWDA may determine it requires to achieve such compliance. The LGA consents to the OWDA's incorporation by reference into OWDA official statements or other OWDA filings with the MSRB, any NRMSIR, or any SID of any official statements or portions thereof, financial statements, or other documents that the LGA may have filed or may file with the MSRB, any NRMSIR, or any SID. In the event the LGA fails to prepare any financial statement or other financial information that this Section requires the LGA to prepare and file with or at the direction of the OWDA, then the OWDA shall have the right (in addition to any other rights it may have to enforce the obligations of the LGA hereunder) to inspect all records, accounts and data of the System and cause the preparation of the required financial statement or information and to employ such professionals as it may reasonably require for that purpose, and to be reimbursed from any available Pledged Revenues for the costs of its doing so. This Section shall not be construed to limit the generality of Section 4.3 hereof.

ARTICLE V - MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION

Section 5.1. The LGA agrees that during the Contract Period of Years that: (a) it will, subject to its right to contest in good faith the issue of non-compliance, operate the Project Facilities and the System, or cause them to be operated, in compliance with all applicable federal, state and local environmental laws and regulations in effect during such period, and (b) it will, subject to its right to discontinue use or operation of the Project Facilities or the System or any part thereof in accordance with this Agreement, keep the Project Facilities and the System, including all appurtenances thereto and the equipment and machinery therein, or cause them to

be kept, in good repair and good operating condition so that the completed Project Facilities and System will continue to operate with substantially the same efficiency as when first constructed.

The LGA shall have the privilege of making additions, modifications and improvements to, making deletions from and discontinuing the use or operation of all or any part of, the Project Site, the Project Facilities, and the System from time to time; provided, that the cost of any additions, modifications and improvements shall be paid by the LGA, and the same shall be the property of the LGA and be included under the terms of this Agreement as part of the Project Site or the Project Facilities, as the case may be, and the System; and provided further that the LGA shall make no modification to, make any deletion from or discontinue the use or operation of all or any part of, the Project Site, the Project Facilities, or the System, the result of which would be a material decrease in the Pledged Revenues without first obtaining the written consent of the OWDA thereto.

Section 5.2. The LGA agrees that it will commence, or will cause to be commenced, operation of the Project Facilities immediately upon the completion of the construction thereof and the receipt of any governmental approvals required for the commencement of their operation, and will not discontinue operation of the Project Facilities or any other part of the System without meeting all conditions to and requirements for such discontinuance imposed by law and this Agreement. The LGA agrees that it will provide adequate operation and maintenance of the Project Facilities and the System to comply with all applicable water quality standards established for the river basin served by the Project Facilities and with all applicable rules and regulations of the Director of Environmental Protection of Ohio. The LGA agrees that sufficient qualified operating personnel will be retained by the LGA to operate the Project Facilities and the System, or will be required to be obtained by any independent contractor engaged by the LGA to operate the Project Facilities and the System or any portion thereof, and that all operational tests and measurements necessary to determine compliance with the preceding sentence will be performed to insure proper and efficient operation and maintenance of the Project Facilities and each other part of the System until the end of the Contract Period of Years or the discontinuance of the operation of the Project Facilities or of such other part of the System in accordance with Section 5.1 and this Section 5.2.

The LGA will permit the OWDA and its agents to have access to the records of the LGA pertaining to the operation and maintenance of the Project Facilities and the System at any reasonable time.

Section 5.3. The LGA agrees to insure, or cause to be insured, the Project Facilities and the System in such amounts as similar properties are usually insured by political subdivisions similarly situated, against loss or damage of the kinds usually insured against by political subdivisions similarly situated, by means of policies issued by reputable insurance companies duly qualified to do such business in the State of Ohio.

Section 5.4. Any insurance policy issued pursuant to Section 5.3 hereof shall be so written or endorsed as to make losses, if any, payable to the OWDA and the LGA as their respective interests may appear. Each insurance policy provided for in Sections 5.3 and 5.6 hereof shall contain a provision to the effect that the insurance company shall not cancel the

same without first giving written notice thereof to the OWDA and the LGA at least ten (10) days in advance of such cancellation.

Section 5.5. The net proceeds of the insurance carried pursuant to the provisions of Sections 5.3 and 5.6 hereof shall be applied as follows: (i) the net proceeds of the insurance required in Section 5.3 hereof shall be applied as provided in Section 5.9 hereof, and (ii) the net proceeds of the insurance required in Section 5.6 hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 5.6. The LGA agrees that it will carry, or will cause to be carried, public liability insurance with reference to the Project Facilities with one or more reputable insurance companies duly qualified to do business in the State of Ohio, in minimum amounts of $500,000 for the death of or personal injury to one person and $1,000,000 for personal injury or death for each occurrence in connection with the Project Facilities and $500,000 for property damage for any occurrence in connection with the Project Facilities. The OWDA shall be made an additional insured under such policies.

Section 5.7. Throughout the Contract Period of Years, the LGA shall maintain Workers' Compensation Coverage or cause the same to be maintained in accordance with state law.

Section 5.8. In the event the LGA shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement or shall fail to keep, or cause to be kept, the Project Facilities in good repair and operating condition, or shall fail to operate, or cause to be operated, the Project Facilities in accordance with Section 5.2 hereof, the OWDA may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary or may hire the necessary operating personnel to insure compliance with Section 5.2 and provide for payment thereof; and all amounts so advanced therefor by the OWDA shall become an additional obligation of the LGA to the OWDA which amounts, together with interest thereon at the Contract Interest Rate or at the rate of eight per centum (8%) per annum, whichever is greater, from the date thereof, the LGA agrees to pay.

Section 5.9. If prior to the completion of the Contract Period of Years the Project Facilities shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and the LGA will (i) promptly repair, rebuild or restore the property damaged or destroyed, and (ii) apply for such purpose so much as may be necessary of any net proceeds of insurance policies resulting from claims for such losses as well as any additional moneys of the LGA necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the LGA.

Section 5.10. In the event that title to or the temporary use of the Project Site the Project Facilities, or the System, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and any net proceeds received from any

award made in such eminent domain proceedings shall be paid to and held by the LGA in a separate condemnation award account and shall be applied by the LGA in either or both the following ways as shall be determined by the LGA:

(a) The restoration of the facilities of the System to substantially the same condition as they existed prior to the exercise of said power of eminent domain, or

(b) The acquisition of additional real estate, if necessary, and facilities, by construction or otherwise, equivalent that, when added to the remaining real estate and facilities of the System, will cause the System to be substantially the equivalent of the System as it existed prior to the exercise of said power of eminent domain, which real estate and facilities shall be deemed a part of the Project Site or the Project Facilities, as the case may be, and the System, without the payment of any amounts other than herein provided, to the same extent as if such real estate and facilities were specifically described herein.

Any balance of the net proceeds of the award in such eminent domain proceedings shall be paid to the LGA upon delivery to the OWDA of a certificate signed by an authorized officer of the LGA that the LGA has complied with either paragraph (a) or (b), or both, of this Section. The OWDA shall cooperate fully with the LGA in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System, or any part thereof. In no event will the LGA voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System or any part thereof without the written consent of the OWDA.

ARTICLE VI - REPRESENTATIONS AND AGREEMENTS OF THE LGA IN REGARD TO ENVIRONMENTAL MATTERS; EVENTS OF DEFAULT AND REMEDIES THEREFOR; INDEMNIFICATION

Section 6.1. The LGA hereby represents that:

(a) It is, and the LGA hereby covenants that it shall remain, in compliance with all applicable federal, state and local environmental laws and regulations applicable to the System during the Contract Period of Years, subject to its right to contest in good faith the issue of non-compliance;

(b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the LGA, alleging a violation of any federal, state or local environmental law or regulation applicable to the System except as set forth in the attached;

(c) No judgment or consent order has been rendered against it, nor is it a party to any agreement, which consent order, judgment or agreement imposes, will impose or has imposed any fines or monetary penalties for the violation of any federal, state or local environmental law or regulation applicable to the System that have not been paid in full except as set forth in the attached; and

Section 6.2. The LGA agrees that each of the following shall be an event of default ("Event of Default") under this Agreement:

(a) The LGA shall fail to make any payment to the OWDA required pursuant to this Agreement when the same is due and payable, including, without limitation, any amount due and payable pursuant to Article IV hereof; or

(b) The LGA shall fail to observe and perform any other obligations, agreements or provisions herein, which failure shall continue for thirty (30) days after receipt of written notice thereof from the OWDA; provided, however, that such failure shall not constitute an Event of Default hereunder if the cure of such failure cannot be effected within thirty (30) days and if the LGA is taking all reasonably necessary actions to cure such failure with all deliberate speed.

(c) Any representations made by the LGA in Section 6.1. shall at any time during the Contract Period of Years prove to be false.

Section 6.3. Whenever an Event of Default shall have happened and be subsisting, the OWDA may exercise any and all rights and remedies for the enforcement of the obligations of the LGA hereunder. In addition to any other rights or remedies provided herein, by law or otherwise, the OWDA may:

(a) declare the full amount of the then unpaid Original Loan Amount to be immediately due and payable;

(b) to the extent permitted under any judgment, consent order or agreement affecting the LGA, require the LGA to agree to subordinate the payment of any fines or penalties imposed for the violation of any federal, state or local environmental law or regulation applicable to the System to the payment of the Original Loan Amount and the interest and any late charges due thereon, and the LGA hereby agrees to use its best efforts to effect such subordination.

Section 6.4. No right or remedy conferred upon the OWDA under Section 6.3 hereof is intended to be exclusive of any other right or remedy given herein, by law or otherwise. Each right or remedy shall be cumulative and shall be in addition to every other remedy given herein, by law or otherwise.

Section 6.5. The LGA releases the OWDA from, agrees that the OWDA shall not be liable for, and agrees, to the fullest extent permitted by law, to hold the OWDA, its officers, employees and agents harmless against, any loss or damage to property, or any loss or injury to or death of any person, or any other loss or damage, that may be occasioned by any cause whatsoever pertaining to the System, the Project Facilities, or the use thereof; provided that such indemnity under this Section shall not be effective for damages that result from negligent or intentional acts of the OWDA, its officers, employees and agents. The LGA further agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWDA and its officers, employees and agents against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of the LGA in the performance of any covenant or agreement on the part of the LGA to be performed pursuant to the terms of this Agreement, arising from the acquisition, construction, installation, or improvement of the Project

Facilities or arising from any act or negligence of or failure to act by the LGA, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm, or corporation resulting from the Project Facilities or the System (other than any accident, injury, or damage that results from negligent or intentional acts of the OWDA, its officers, employees and agents), and from and against all cost, liability and expenses incurred in or in connection with any such claim or action, arbitration or proceeding brought thereon.

In case any action or proceeding be brought against the OWDA by reason of any claim described in this Section, the OWDA agrees to cause written notice of such action or proceeding to be given to the LGA, and the LGA upon notice from the OWDA covenants to resist or defend such action or proceedings at the LGA's expense including all legal and other expenses (including reasonable attorneys' fees).

Section 6.6 Each party agrees that the venue of any suit, action or proceedings relating to this Agreement will be the courts of the County of Franklin, Ohio or the Ohio Supreme Court, and each party irrevocably waives any objection that it may have to that venue and waives any right to trial by jury for any such suit, action or proceedings.

ARTICLE VII - PRIVATE BUSINESS USE RESTRICTIONS

Section 7.1. With respect to the financing of Project Facilities by the OWDA as provided herein, the LGA agrees as follows:

(a) At no time will ten percent (10%) or more of any Project Facility or Project Site to be financed with funds borrowed from the OWDA ("OWDA Funds") be used for any private business use (as hereinafter defined) while at the same time the payment of the principal of, or the interest on, the OWDA Funds is directly or indirectly (i) secured by any interest in (A) property used or to be used for a private business use or (B) payments made with respect to such property or (ii) derived from (A) payments with respect to such property (whether or not made to the OWDA) or (B) borrowed money used or to be used for private business use.

(b) No portion of the OWDA Funds will be used to make or finance loans to persons other than other governmental units.

Section 7.2. For purposes of this Agreement, "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit (as hereinafter defined). Use of any Project Facility or Project Site as a member of the general public will not be considered a private business use. Any activity carried on by a person other than a natural person shall be treated as a trade or business. Use by an organization which qualifies under Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, shall be considered a private business use.

Section 7.3. For purposes of this Agreement, "governmental unit" means a political subdivision within the United States, including any political subdivision within the State of Ohio, but does not mean the United States or any of its governmental branches, departments or agencies.

Section 7.4. If there is any question about the application of the foregoing restrictions relating to private business uses or loans, the LGA agrees to immediately write the OWDA requesting assistance prior to entering into any agreement which may be prohibited as provided hereinabove.

ARTICLE VIII - MISCELLANEOUS PROVISIONS

Section 8.1. Any invoice, accounting, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by regular, registered or certified mail, postage prepaid, or delivered personally, and

(i) in the case of the OWDA, is addressed to or delivered personally to the OWDA at:

The Ohio Water Development Authority
480 South High Street
Columbus, OH 43215

and

(ii) in the case of the LGA, is addressed to or delivered personally to the LGA at the address listed on the Term Sheet as the "LGA Notice Address," or at such other addresses with respect to either such party as that party may from time to time, designate in writing and forward to the other as provided in this Section.

Section 8.2. Any approval of the OWDA required by this Agreement shall not be unreasonably withheld and shall be deemed to have been given on the thirtieth day following the submission of the matter requiring approval to the Executive Director of the OWDA unless disapproved in writing prior to such thirtieth day. Any provision of the Agreement requiring the approval of the OWDA or the satisfaction or evidence of satisfaction of the OWDA, shall be interpreted as requiring action by the Executive Director of the OWDA granting, authorizing or expressing such approval or satisfaction, as the case may be, unless such provision expressly provides otherwise.

Section 8.3. Upon request of the OWDA, the LGA agrees to execute the information report required by Section 149 of the Internal Revenue Code of 1986, as it may be amended from time to time, with respect to this Agreement, such form to be completed by the OWDA on the basis of information provided by the LGA. The LGA hereby agrees that the OWDA may file such information report for and on behalf of the LGA with the Internal Revenue Service.

Section 8.4. This Agreement is made subject to, and conditional upon, the approval of this Agreement as to form by the General Counsel of the OWDA and upon the certification of availability of funds as provided in Section 3.8 hereof.

Section 8.5. This Agreement shall become effective as of the date first set forth hereinabove and shall continue in full force and effect until all obligations of the LGA under Section 4.1 hereof have been fully satisfied.

Section 8.6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of either of the parties hereto. This Agreement shall not he assigned by the LGA without the prior written consent of the OWDA. The OWDA, at its option, may assign this Agreement without the consent of the LGA. All references to the Environmental Protection Agency of the United States of America or to the Director of Environmental Protection of the State of Ohio or to any offices or divisions of either shall include any successors thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first hereinabove written.

APPROVED AS TO FORM

_____
OWDA General Counsel

OHIO WATER DEVELOPMENT AUTHORITY

By:_____
OWDA Executive Director

APPROVED AS TO FORM

_____
LGA Legal Officer or Counsel
Chris Frey, Law Director

LGA: City of Euclid

By:_____
Bill Cervenik, Mayor

By:_____

Exhibit A

PROJECT FACILITIES DESCRIPTION

CITY OF EUCLID
LAND ACQUISITION FOR WASTEWATER FACILITIES PROJECTS

The project will consist of the purchase of real property for purposes of locating improvements to the City of Euclid Wastewater Facilities, including, but not limited to, the Headworks Facilities, Edgecliff Sanitary Relief Sewer for the elimination of SSO #28, #33 and #37 and a wet weather equalization tank at the WWTP, said facilities to be located in property adjacent to the south side of the existing WWTP facilities north of Lake Shore Boulevard, as described in the attached property parcel description.

Project funds shall include, but not be limited to the real property purchase price for the described parcel as outlined in the purchase agreement for said parcel; legal costs associated with the acquisition; appraisal costs; costs of the survey for the parcel; loan application costs; filing fees for the parcel; loan fee and interest costs; and any other costs that may be identified in the purchase of the parcel.