

21-216

EXHIBIT
A

**SANITARY SEWER BULK RATE AGREEMENT
BETWEEN THE CITY OF BARBERTON AND THE COUNTY OF SUMMIT**

Whereas, the City of Barberton ("Barberton") owns and operates a sanitary sewer system and a waste water treatment plant for the collection, treatment and disposal of sanitary sewage and industrial waste for the benefit of and for the safety, health, and welfare of its citizens; and

WHEREAS, the County of Summit ("Summit") is desirous of constructing a sanitary sewer system for the collection and conveyance of sanitary sewage from certain areas of the Summit County Metropolitan Sewer District, substantially in the City of New Franklin, for conveyance to and treatment in the Barberton waste water treatment plant ("WWTP"); and

WHEREAS, Summit will construct necessary trunk sewer lines up to points of connection within Barberton for accepting sanitary sewage from Summit County;

Now, therefore, in consideration of the premises and of the mutual covenants hereinafter set forth, and of other good and valuable considerations, Barberton and Summit do hereby promise and agree as follows:

SECTION I - THE SERVICE AREA

An area substantially in the City of New Franklin, State of Ohio, which may be served by one of the delivery points described in Section IV of this Agreement, and as further defined in Exhibit A attached to and made part of this Agreement, shall constitute the Service Area.

Any modification or addition to the Service Area shall be made by mutual agreement in writing in an amendment or addendum to this Agreement.

SECTION II - BASIC OBLIGATIONS

Summit agrees to deliver sewage from the SERVICE AREA to points designated by Barberton and at a location mutually agreeable to both parties, and Barberton agrees to accept said sewage for conveyance to the Barberton Waste Water Treatment Plant and to treat and dispose of the waste delivered to the plant.

Summit further agrees to pay Barberton the rates established herein for the conveyance, treatment and disposal of sewage generated in the Service Area.

SECTION III - QUALITY AND QUANTITY OF SEWAGE

A. QUALITY

The sewage to be conveyed to or received by Barberton is to be domestic sewage and approved industrial waste. Barberton reserves the right to reject any industrial waste which it finds, after due investigation, will be injurious to any part of the sewage system, endanger personnel, be detrimental to the treatment processes utilized by Barberton now or in the future, or, will require special treatment to comply with all water quality criteria mandated by the U.S. or Ohio Environmental Protection Agency or other regulatory agencies. The quality and characteristic of industrial waste shall be determined by the same method and procedures used by Barberton in determining the nature and quality of industrial waste originating within Barberton and accepted by Barberton for treatment.

The characteristics of sewage to be delivered to Barberton shall not exceed the levels mandated under Barberton's ordinances for the characteristics of sewage, including but not limited to: BOD, suspended solids and pH, unless permitted by separate agreement between Summit and Barberton. Discharge permits issued by the County to industrial sewer customers in the Service Area shall contain the same limits Barberton applies to its industrial customers. Barberton shall receive and review copies of all industrial sewer permits issued by the County in the Service Area to insure compliance with this Section. Barberton shall receive copies of all industrial sampling and testing done in the Service Area by the County.

B. QUANTITY

The volume of sewage at the chosen point of delivery described in Section IV to Barberton from the Service Area shall not exceed 1.5 million gallons daily (MGD) computed on an annual average. However, it is understood that this entire capacity shall not yet be available at the time of execution of this Agreement. A volume of 0.5 MGD will be allocated to Summit flows from the Vanderhoof West Pump Station immediately upon execution of this Agreement.

Additional treatment volume will be provided to Summit upon request from Summit and with sufficient notice. The notice period shall allow for the necessary facility upgrades to treat additional volumes of wastewater at the Barberton's WWTP. Barberton will take necessary steps within a reasonable timeframe to provide the requested capacity increase (not to exceed 1.5 MGD). Quantities beyond 1.5 MGD may be discharged only after a general review is made jointly by Barberton and Summit, and upon further agreement in writing between the parties.

The facility upgrades will be funded by the Service Charges collected by Barberton under Section VII below. Though Barberton will be the responsible party for financing the upgrades, Barberton and Summit agree to jointly pursue grants, and loans to fund the facility improvements. The participation of the City of New Franklin in grants and loans will also be pursued. However, any financial participation on the part of Summit shall

require a separate agreement, and such participation is not mandated under this Agreement.

SECTION IV - DELIVERY OF SEWAGE

Summit will construct, operate, maintain and repair the sanitary sewer system in the Service Area and will construct the necessary trunk sewers and pump stations to convey the flow from the Service Area to the following points of delivery.

- A. Pump Station No. 48, Vanderhoof West Pump Station (already existing)
- B. Pump Station No. 125, Vanderhoof East Pump Station (planned)

Either or both of these conveyances may be used as delivery points; however, if both are used the total flow of both combined will not exceed 1.5 MGD based on an annual daily average, subject to the provisions in Section V(B) below.

Summit will construct, operate, maintain and repair the sewers and appurtenances necessary to convey the sewage from the Service Area to the points of delivery in Barberton. Barberton will operate, maintain and repair the sewers and appurtenances necessary to convey the sewage from the points of delivery in Barberton to the Waste Water Treatment Plant.

Barberton and Summit shall both comply with current and subsequent adopted Barberton standards as set forth by the Barberton City Engineer which will reduce infiltration and storm water inflow to the sewage system. Summit and Barberton shall keep in force the necessary legislation to prohibit foundation and downspout connections to the sanitary sewer system and prohibit all other surface drainage from entering the sanitary sewerage system.

SECTION V – MEASUREMENT OF QUANTITY

The flow of sewage from the Service Area into the Barberton sewerage system shall be measured by means of suitable measuring devices ("Meters") located at the points of delivery of sewage from the Service Area to the Barberton sewerage system. Recording, indicating and totalizing instrumentation for flow registration with an accuracy meeting industry standards shall be used.

Unit of measuring and recording purposes shall be 1,000 gallons. The accuracy of the flow measuring system shall be verified every year by having the metering system calibrated and adjusted by a service representative of the company who manufactured the equipment.

- A. Pump Station No. 125, Vanderhoof East Pump Station**

The construction and installation costs of Meter(s) measuring flow from the planned Vanderhoof East Pump Station initially shall be paid for by Summit, but constructed by Barberton.

Barberton will own the Meter and related appurtenances that will measure flow from the Pump Station No. 125, Vanderhoof East Pump Station. The Meter shall also be maintained by Barberton. Summit will receive copies of the annual calibrations performed on those Meters. Summit may perform their own calibration service on the Meters, but must pay for such calibration service, and provide any service reports to Barberton. Maintenance and replacement of the Meter and related appurtenances shall be paid for by Barberton.

Total daily, monthly and quarterly for records shall be recorded by Barberton and all detailed information on strength or characteristics of the waste as determined by the Barberton laboratory analysis of composite samples shall be available to Summit at all reasonable working hours.

B. Pump Station No. 48, Vanderhoof West Pump Station

Barberton shall construct a Meter measuring flow from the existing Vanderhoof West Pump Station in a time period agreed to in writing by both parties. Barberton and Summit shall each contribute fifty (50%) percent of the cost to construct the Meter, including any structural appurtenances. In the interim, Parties agree that flow from the Summit's Vanderhoof West Pump Station shall continue to be estimated in the manner currently utilized.

Once completed, Barberton will own the Meter and related appurtenances that will measure flow from the Pump Station No. 125, Vanderhoof West Pump Station. The Meter shall also be maintained by Barberton. Summit will receive copies of the annual calibrations performed on those Meters. Summit may perform their own calibration service on the Meters, but must pay for such calibration service, and provide any service reports to Barberton. Maintenance and replacement of the Meter and related appurtenances shall be paid for by Barberton.

Total daily, monthly and quarterly for records shall be recorded by Barberton and all detailed information on strength or characteristics of the waste as determined by the Barberton laboratory analysis of composite samples shall be available to Summit at all reasonable working hours.

Barberton may choose to construct one Meter that will measure the flow from both Vanderhoof West and East Pump Stations at its discretion.

SECTION VI – MALFUNCTION OR FAILURE OF MEASURING EQUIPMENT

In the event of malfunction or failure of the measuring equipment to record the flow, the quantity of sewage to be paid for by Summit shall be determined as follows:

- A. By correcting the error if the percentage of error is ascertainable by calibration, tests, or computation,
- B. By estimating the quantity by reference to previous flows under similar conditions and circumstances.
- C. By using other approved means of measuring the flows in the industry.

SECTION VII – SERVICE CHARGE

Summit shall be obligated and hereby agrees to pay to Barberton as follows:

The rate charged for sewage treatment will be the current COB retail bulk rate with a multiplier of 1.5. For example, the current bulk rate as of January 2017 is \$3.66/ 1,000 gallons and with a 1.5 multiplier is = \$5.49/1000 gallons. Said retail bulk rate shall remain constant for a period of 2 years from the effective date of this Agreement, after which the bulk rate shall follow Barberton ordinances. Summit may be levied an individual rate increase only upon mutual consent of both parties to this agreement in writing and with proper legislative approval. Barberton will provide Summit with a minimum of 90 days notification prior to implementation of any rate changes.

System development charges will not be charged by Barberton for new connections in the Service Area.

SECTION VIII – BILLING PROCEDURE

The Utilities Department of Barberton shall render bills for sewage treatment and disposal service monthly to Summit. Summit shall pay said bills within 30 days of receipt.

SECTION IX – TREATMENT AND DISPOSAL

At all times during the term of this Agreement, and subject to all provisions and conditions of this Agreement, Barberton will receive, treat and dispose of all sewage received from the Service Area at the points of delivery in Barberton with the same degree of care, concern and efficiency as will be done in Barberton in receiving, treating and disposing of its own sewage and in accordance with the laws and regulations of the State of Ohio, Ohio Environmental Protection Agency and any other agency that are now or may hereafter have jurisdiction of the matters provided for herein.

SECTION X – OWNERSHIP OF BY-PRODUCTS

It is expressly understood that Barberton acquires complete and sole possession and title to all sewage immediately upon its arrival at the point of delivery and it is,

therefore, vested sole title and possession in and to any recoverable gas, sludge, and any and all by-products and materials resulting from said sewage, regardless of kind or matter or whether marketable or not.

SECTION XI – GENERAL PROVISIONS

A. **Term of Agreement.** The Term of this Agreement is 25 years. This Agreement will continue following the initial term unless a party provides a written notice of termination. Any notice of termination by any party will not be effective for five years.

B. **Breach and Dispute Resolution.** Prior to termination of this Agreement for breach, the parties agree that they shall enter into non-binding negotiations in good faith to resolve any outstanding issues. If negotiations are not successful, Barberton may not terminate this Agreement for breach of any of its provisions without first giving County notice of breach of the Agreement in writing and 90 days to cure the breach. The parties agree to negotiate in good faith to resolve any controversy arising from this Agreement.

The parties recognize and understand that under this Agreement Barberton will be installing significant improvement to its Sewer System and WWTP, that such improvements will be sized, in part, to handle flow from County, and that Barberton is relying upon continued service to the County, beyond the term of this Agreement. If the County refuses to agree to extend the term of this Agreement, or refuses to enter into a new Agreement for continued service, then the County shall be liable to Barberton for the County's share of the remaining debt (calculated by percentage of capacity) on the improvements that are made to Barberton's Sewer System during the term of this Agreement in reliance on the Barberton's continued service to the County.

C. **Notices.** All notices or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to Barberton's Director of Public Service and to the Director of the Department of Sanitary Sewer Services for Summit.

D. **Extent of Covenants; No Personal Liability.** All covenants, obligations and agreements contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, official, officer, agent or employee of the Barberton or Summit in other than his/her official capacity.

E. **Liability for Violations of Law, SSOs.** Summit assumes sole liability for any violations of Ohio and federal law that may occur in the Service Area. Barberton assumes sole liability for any violations of Ohio and federal law that occurs in Barberton's sewer system. For purposes of this Section, "violations" include, but are not limited to, sanitary sewer overflows, and any rules or regulations of the Ohio Environmental Protection Agency and United States Environmental Protection Agency, as adopted, promulgated, amended or otherwise modified from time to time.

F. Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

G. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

H. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio.

(signatures on the following page)

INTENDING TO BE LEGALLY BOUND, the parties hereby execute this Agreement: Barberton, by its Mayor, and Summit, by its Executive, and shall be effective as of the later date executed.

CITY OF BARBERTON

COUNTY OF SUMMIT

By: William B. Judge
William B. Judge, Mayor

By: J. Shapira
Jene Shapiro, Executive

Date: 5-9-2012

Date: 6/8/17

Approved as to legal form:

Lisa O. Miller
Lisa O. Miller
Director of Law

Approved as to legal form:

Deborah S. Matz
Deborah S. Matz, Director
Department of Law, Insurance
and Risk Management

