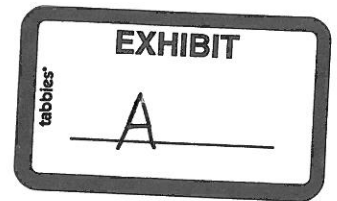


15-073



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "Memorandum") is entered into this ____ day of _____, 2015 among the City of Norton, Ohio (the "Norton"), the City of Barberton, Ohio ("Barberton") and the County of Summit, Ohio (the "County") under the circumstances summarized in the following recitals (capitalized words not otherwise defined herein shall have the meaning given to them in Section 1):

A. Norton is currently included within the Summit County Metropolitan Sewer District and receives sewage treatment service from a combination of the County and Barberton.

B. Norton and the County both own certain sewer assets within Norton that comprise the Norton Sewer System (as defined herein).

C. Norton desires to transfer the Norton Portion of the Norton Sewer System to Barberton and the County desires to sell the County Portion of the Norton Sewer System to Barberton for the Purchase Price.

D. Upon the transfer of both portions of the Norton Sewer System to Barberton, Norton, Barberton and the County intend to take such further actions as shall be necessary to transfer the geographic territory of Norton from the County Sewer District to the Barberton Sewer District.

E. Barberton and Norton intend that upon Norton's inclusion in the Barberton Sewer District, then Barberton will assume responsibility for the Director's Final Findings and Orders dated November 13, 2013 (as amended from time to time, the "Findings and Orders") relating to the Nash Heights area in Norton and Barberton will hold the County harmless from the same.

F. Norton, acting under the authority of Ordinance No. _____ passed by the Norton City Council on _____, 2015, Barberton, acting under the authority of Ordinance No. _____ passed by the Barberton City Council on _____, 2015 and the County, acting under the authority of Resolution No. _____ passed by the County Council on _____, 2015, desire to enter into this Memorandum to outline the terms of the transactions described above.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Norton, Barberton and the County hereby agree as follows:

1. Definitions. Unless otherwise defined herein, capitalized words and terms used in this Memorandum shall have the following meanings:

"Appurtenant Rights" means, with respect to the Norton Sewer System, (i) all land, agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or

pertaining to such land and the Norton Sewer System, including, without limitation, the right to use any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to such land and the Norton Sewer System and (ii) all permits, licenses and rights, whether or not of record, appurtenant to such land and the Norton Sewer System.

“Barberton Sewer District” means the Barberton Sanitary Sewer System.

“Closing Date” means June 30, 2015 or such earlier or later date as shall be mutually agreed upon by the Parties in accordance with Section 2 of this Memorandum.

“County Portion” means, with respect to the Norton Sewer System, collectively, any Sanitary Sewer Lines, Wastewater Pump Stations, the Wastewater Treatment Plants, Sanitary Manholes, Valves, Sanitary Force Mains, Master Meters, Environmental Permits, Customer Lists, Plans and As-built drawings, Lateral Connection Permits owned by the County, the County’s rights and obligations in the Private Development Agreements and the Appurtenant Rights that service and benefit the Service Area, and the right to plan and build sanitary sewer infrastructure within the corporate boundaries of Norton.

“County Sewer District” means the Summit County Metropolitan Sewer District.

“Customer Lists” means a detailed listing of customer information, including, but not limited to, customer name, service address, billing address, customer class, number of customer benefits and any other pertinent information for all connections to the County Portion of the Norton Sewer System needed by Barberton to operate the Norton Sewer System. Said customer lists shall be provided by County to Barberton in an electronic format.

“Environmental Permits” means, collectively, the current NPDES Permits, all prior NPDES Permits, all Permits to Install and each other permit issued by the U.S. Environmental Protection Agency, the OEPA or other permitting agency as necessary for Barberton to own and operate the Norton Sewer System, which, at a minimum, include those permits identified on Exhibit B.

“Future Planning Area” means the Future Planning Area identified on Exhibit A attached hereto.

“Lateral Connection Permits” means the permits issued by the County or Norton to customers of the Norton Sewer System authorizing the connection of sanitary sewer laterals serving a customer’s property to the Norton Sewer System.

“Master Meters” means the Master Meter Pits in the areas identified on Exhibit A attached to this Memorandum.

“Norton Portion” means with respect to the Norton Sewer System, collectively, any Sanitary Sewer Lines, Wastewater Pump Stations, the Wastewater Treatment Plants, Sanitary Manholes, Valves, Sanitary Force Mains, Master Meters, Environmental Permits, Customer Lists, Plans and As-built drawings, Lateral Connection Permits owned by Norton, and the Appurtenant Rights that service and benefit the Service Area, and the right to plan and build sanitary sewer infrastructure within the corporate boundaries of Norton..

“Norton Sewer System” means, collectively, the Norton Portion and the County Portion, excluding any sanitary sewer lines currently owned by Barberton in the City.

“NPDES” means the National Pollutant Discharge Elimination System.

“NPDES Permits” means the NPDES Permits identified on Exhibit B attached to this Memorandum.

“OEPA” means the Ohio Environmental Protection Agency.

“Parties” means, collectively, Norton, Barberton and the County.

“Planned Improvements” means the Planned Improvements generally described on Exhibit C attached to this Memorandum.

“Plans and As-built Drawings” means (i) all plans, maps, as-built drawings and other similar documents relating to the Norton Sewer System, (ii) any flow records for the Norton Sewer System and (iii) all maintenance records for the Norton Sewer System.

“Private Development Agreements” means those agreements entered into by and between the County and certain private developers whereby the developers installed certain elements of the Norton Sewer System and subsequently transferred the same to the County.

“Purchase Agreement” means a purchase to be negotiated between Barberton and the County in accordance with Section 2(a) of this Memorandum.

“Purchase Price” means the aggregate amount of \$1,750,000.

“Sanitary Force Mains” means the sanitary force mains in the areas identified on Exhibit A, attached to this Memorandum.

“Sanitary Manholes” means the sanitary manholes in the areas identified on Exhibit A attached to this Memorandum.

“Sanitary Sewer Lines” means the sanitary sewer lines in the areas identified on Exhibit A attached to this Memorandum.

“Service Area” means all of the area within the municipal corporate boundaries of Norton in which Barberton will have the exclusive right to provide sanitary sewer service, including the construction, operation and maintenance thereof and including any modifications thereto as mutually agreed to by the Parties in the Sewer Agreement.

“Sewer Agreement” means a sanitary sewer agreement to be negotiated between Norton and Barberton under which Barberton will have the exclusive right to provide sanitary sewer service in Norton in accordance with Section 3 of this Memorandum.

“Valves” means the valves in the areas identified on Exhibit A attached to this Memorandum.

“Wastewater Pump Stations” means the wastewater pump stations in the areas identified on Exhibit A attached to this Memorandum.

“Wastewater Treatment Plants” means the wastewater treatment plants within the areas identified on Exhibit A attached to this Memorandum.

2. Purchase, Sale and Transfer of the Norton Sewer System.

(a) Purchase Agreement for County Portion; Closing Date. The purchase and sale of the County Portion of the Norton Sewer System shall be subject to the negotiation and execution by the County and Barberton of a Purchase Agreement consistent with the terms of this Memorandum. The County and Barberton shall negotiate the terms of the Purchase Agreement in good faith. The County and Barberton currently intend to execute the Purchase Agreement on or before the Closing Date; provided, the Parties may mutually agree in a writing signed by County and Barberton to an earlier or later Closing Date.

(b) Payment of Purchase Price for County Portion of the Norton Sewer System. As shall be set forth in the Purchase Agreement, Barberton shall pay to the County the Purchase Price for the County Portion of the Norton Sewer System. The Purchase Price shall be paid by Barberton in ten annual installments of \$175,000. The first annual payment shall be paid on the Closing Date and annually thereafter. No interest shall accrue on the Purchase Price. The agreement shall provide for remedies available to the County in the event of a default in payment by Barberton. Barberton may elect to make the payment of the ten installments in less than ten years.

(c) Transfer of Norton Portion. Norton shall transfer the Norton Portion of the Norton Sewer System to Barberton subject to the negotiation and execution of a Sewer Agreement consistent with the terms of this Memorandum. Norton and Barberton shall negotiate the terms of the Sewer Agreement in good faith and consistent with the terms set forth in Section 3 herein. Norton and Barberton currently intend to execute the Sewer Agreement concurrently with the Purchase Agreement.

(d) Due Diligence. From the date of this Memorandum until the Closing Date, Barberton, Norton and the County each agree to cooperate in good faith with each other to conduct due diligence for the transfer of the Norton Sewer System, including, but not limited to: (i) the identification of the physical assets of the Norton Sewer System, including, but not limited to the Sanitary Sewer Lines, the Wastewater Pump Stations, the Wastewater Treatment Plants, the Sanitary Manholes, the Sanitary Force Mains and the Valves comprising the Norton Sewer System, (ii) the identification and/or creation of the Customer Lists, (iii) the identification of the Plans and As-built Drawings, (iv) the identification of all existing Environmental Permits and Lateral Connection Permits, (v) the identification of the existing Appurtenant Rights and any records of documents evidencing such Appurtenant Rights, (vi) the identification of all Private Development Agreements and (vii) the identification by the County or Norton of any environmental enforcement actions or legal or administrative actions known to be existing or pending against the Norton Sewer System.

(e) Deeds and Assignments. The transfer of the Norton Sewer System to Barberton may require Norton and the County to execute certain deeds, assignments or other documents evidencing such transfer, including, but not limited to any deeds or assignments necessary to transfer the Appurtenant Rights. Barberton may, at its sole cost and expense, request the Title Company to identify the assets of the Norton Sewer System, including the Appurtenant Rights, and prepare any deeds, assignments or other documents necessary to transfer the Norton Sewer System to Barberton. Norton and the County agree to cooperate with Barberton and the Title Company in the identification of such assets and the preparation of such documents.

(f) Environmental Permits; Evidence of Sewer Authority. In connection with the transfer of any Environmental Permits from the County and Norton to Barberton, the County and Norton each agrees to cooperate with Barberton in the preparation of any applications or other documents necessary to transfer such Environmental Permits. Norton, Barberton and the County shall also cooperate in the preparation of any applications or other documents as shall be necessary to evidence Barberton's authority to provide sewer service within the Service Area, as requested or required by a Federal or State agency.

(g) Private Development Agreements. The County has entered into a number of Private Development Agreements that provide certain rights and obligations to the County, including the charging of certain customers that connect to certain parts of the Norton Sewer System that were built and paid for by private developers, and remitting charge to the developer to assist the developer in recovering its costs of constructing the same. Said Private Development Agreements also convey ownership of all assets constructed under the agreements to the County. Upon closing, these rights and obligations, and all other rights and obligations thereunder, shall transfer from the County to Barberton as provided in the Purchase Agreement. Barberton's liability to pay payback fees to developers under the Private Development Agreements shall be limited solely to the Private Development Agreements identified in the Purchase Agreement. Barberton shall have no right to seek contribution from the County for any payback fees to developers, and shall hold the County harmless from the same.

3. Sewer Agreement. Norton and Barberton intend to execute and deliver a Sewer Agreement on the Closing Date, which Sewer Agreement shall contain provisions addressing each of the following:

(a) Service Area. Norton and Barberton presently intend that the Service Area to be served by Barberton will be all of the area within the municipal corporate boundaries of the City (as the corporate boundaries exist on the Closing Date). As part of the Sewer Agreement, Barberton and Norton may negotiate to establish: (i) any alterations to the size and shape of the Service Area and (ii) any matters concerning potential future changes in the Service Area, including, but not limited to the Future Planning Area.

(b) Findings and Orders. Upon execution of the Sewer Agreement, Barberton intends to assume Norton's obligations under the Findings and Orders. Barberton and Norton shall work cooperatively with the OEPA to assign the Findings and Orders to Barberton. Barberton and Norton shall jointly (i) hold the County harmless from any the Findings and Orders, (ii) release the County from liability for the Findings and Orders, (iii) waive all right to join the County to the Findings and Orders, or (iv) seek contribution from the County for the Findings and Orders.

(c) Rates for Norton Sewer System Customers.

- 1) The Sewer Agreement will provide that there will be four rate categories for Norton residents serviced by Barberton: (A) a flat rate for existing customers (the "Flat Rate"), (B) a metered rate for existing customers (the "Metered Rate"), (C) a flat rate for DOES customers moving to the Barberton system (the "Modified Flat Rate") and (D) a metered rate for DOES customers moving to the Barberton system (the "Modified Metered Rate"). The Modified Flat Rate will initially be set at a rate equal to 8% less than the flat rate charged by Summit County. The Modified Metered Rate will initially be set at a rate equal to 8% less than the metered rate charged by DOES. Thereafter, the Modified Flat Rate and the Modified Metered Rate will be increased at the same rate and at the same time as the Flat Rate and the Metered Rate, respectfully. Barberton will agree that any increases to the Flat Rate or the Metered Rate charged to Norton customers will be done in lockstep with rate increases on Barberton customers.
- 2) Barberton will amend its ordinances to provide that a 50% surcharge will be charged to Norton customers. Norton will repeal its surcharge ordinance. Surcharge revenues will be dedicated exclusively to the benefit of sanitary sewer capital improvement Projects in Norton.
- 3) 50% of the user fee revenues from new Norton customers, in an amount not to exceed \$700,000, will be dedicated to the exclusive benefit of the Planned Improvements.

(d) System Development Charges for New Connections. New connections for the Norton Sewer System will be charged at the rate of the Barberton base system development charge plus an additional \$1,400. The Barberton base system development charge rate charged to Norton customers cannot exceed the rate charged to Barberton customers. The additional \$1,400 portion of the system development charge will be dedicated exclusively to the benefit of sanitary sewer capital improvement projects in Norton.

(e) Accounting of Norton Sewer System Revenues. Barberton will provide a periodic accounting of Norton Sewer System revenues to Norton in the manner determined by Barberton and Norton in the Sewer Agreement. This accounting will include total surcharges, system development charges and 50% of the user fee revenues from new Norton customers described in Section 3(c)(1) above (collectively, the "Norton Capital Revenues"). If requested by Norton in the Sewer Agreement, Barberton will agree that all Norton Capital Revenues will be held in a segregated account in Barberton's Sewer Fund.

(f) Planned Improvements. Norton and Barberton currently intend for the Planned Improvements to be completed in Norton. The Planned Improvements are generally described on Exhibit C attached hereto. Norton and Barberton have jointly developed a proposed methodology for funding the Planned Improvements. Norton and Barberton will cooperate to apply for loans and grant funding for the Planned Improvements.

(g) Barber Road Trunk. Norton currently has a debt obligation to pay the costs of the construction of the Barber Road Trunk Sewer. Barberton will agree to pay Norton \$75,000/year through 2020 to pay debt service on the Barber Road Trunk Sewer.

(h) Modifications to JEDZ Agreement. Barberton and Norton will jointly review the JEDZ Agreement and may determine that certain portions of the JEDZ Agreement relating to sanitary sewer service will be superseded by the proposed Sewer Agreement (i.e. daily flow limits etc...).

(i) Assessments for Future Projects. A procedure for assessments of future Norton Projects will be outlined in the Sewer Agreement. This may include a formal assessment policy adopted by the Norton Council.

(j) Joint Planning for Improvements to Norton Sewer System. Norton and Barberton will agree to cooperate to plan future capital improvements in Norton. Norton and Barberton will also cooperate to seek loan and grant funding for future projects. Based upon the accounting of the Norton Sewer System revenues described above, Norton will have the ability to direct available surcharge and system development charges to Norton preferred sanitary sewer capital improvements. However, improvements directed by the OEPA shall become the highest priority projects. Barberton will agree to provide to Norton all sanitary sewer related notices and correspondences received from the OEPA or the Summit County Health District related to property located in Norton.

(k) Vacuum Sewer. Norton will acknowledge that an annual operation and maintenance charge may be charged to Norton residents receiving sanitary sewer service from a vacuum sewer system. This additional operation and maintenance charge will be reviewed annually by Barberton and subject to adjustment to reflect the actual expenses incurred for maintaining the vacuum system during the previous year. Barberton will provide Norton with an annual accounting providing evidence of Barberton's actual operation and maintenance expenses.

(l) Provision for Future Planning Area. Norton and Barberton will determine a mutually agreeable plan to provide for the potential development of sewer in the Future Planning Area. The plan may include the inclusion of other sewer providers in that service area.

(m) Modifications to the County Sewer District and the Barberton Sewer District. The Parties shall enter into an agreement to modify the County Sewer District and the Barberton Sewer District (the "District Modification Agreement") whereby the parties agree to remove the Service Area from the County Sewer District and add the Service Area to the Barberton Sewer District. The District Modification Agreement shall further provide that Barberton and Norton shall jointly (i) hold the County harmless from any future environmental, pollution, nuisance remediation and/or abatement, orders, findings or enforcement actions by the United States Environmental Protection Agency, the OEPA, the Summit County Combined General Health District or any other regulatory agency pertaining to the Service Area ("Future Enforcement Action"), (ii) release the County from liability for any Future Enforcement Action, (iii) waive all right to join the County to any Future Enforcement Action, or (iv) seek contribution from the County for any Future Enforcement Action. The District Modification Agreement shall require

the Councils of Norton, Barberton and the County to take necessary legislative action to remove the Service Area from the County Sewer District and add the Service Area to the Barberton Sewer District, and to designate Barberton as the sanitary sewer provider in Norton.

4. Miscellaneous.

(a) Term of Memorandum. This Memorandum terminates on the earlier of the Closing Date or the date the County and Barberton execute the Purchase Agreement and Norton and Barberton execute the Sewer Agreement; provided, the County, Norton and Barberton may earlier terminate or extend the term of this Memorandum in a writing signed by the Parties.

(b) 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 the City Administrator of Norton, Mayor of Barberton or the County Executive of the County, as applicable.

(c) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements contained in this Memorandum 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 Norton, Barberton or the County in other than his official capacity.

(d) No Remedy. In the event the parties fail to enter into a Purchase Agreement or a Sewer Agreement, no party shall be entitled to any remedy against the other, including, but not limited to, monetary damages or specific performance of this Memorandum against the other.

(e) Binding Effect; Further Action Required. The Parties agree that the terms of this Memorandum are non-binding and that each party shall obtain necessary legislative approval for each of the agreements contemplated herein prior to the Closing Date.

(f) Amendments and Supplements. This Memorandum may not be effectively amended, changed, modified, altered or terminated except in a writing signed by Norton, Barberton and the County.

(g) Execution Counterparts. This Memorandum 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.

(h) Severability. If any provision of this Memorandum, 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.

(i) Governing Law. This Memorandum 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 following page]

IN WITNESS WHEREOF, the County, Norton and Barberton have caused this Memorandum to be duly executed in their respective names, all as of the date first hereinbefore written.

COUNTY OF SUMMIT, OHIO

Approved as to form
and correctness:

By: _____
Russell M. Pry, County Executive

Director, Department of Law, Insurance
And Risk Management
Summit County, Ohio

CITY OF NORTON, OHIO

Approved as to form
and correctness:

By: _____
Michael Zita, Mayor

City Solicitor
City of Norton, Ohio

CITY OF BARBERTON, OHIO

Approved as to form
and correctness:

By: _____
William Judge, Mayor

Law Director
City of Barberton, Ohio

EXHIBIT A
NORTON SEWER SYSTEM

[INSERT "CITY OF NORTON MAP"]

EXHIBIT B

NPDES PERMITS

The NPDES Permits will include the following National Pollutant Discharge Elimination System permits issued by the OEPA:

Ohio EPA Permit No.	Date Issued	Facility Name
3PH00006*HD	May 17, 2010	Brentwood Estates WWTP #24
3PG00116*GD	May 6, 2011	Interstate Industrial Park WWTP #44
3PG00118*GD	January 4, 2011	Frasure Park Estates WWTP #46
3PH00008*HD	November 3, 2008	Norton Acres WWTP #13
		WWTP #44 - Interstate Industrial Park

EXHIBIT C

PLANNED IMPROVEMENTS

1. Nash Heights East Sanitary Sewers
2. Nash Heights West Sanitary Sewers
3. Greenwich Pump Station
4. Frashure Wasterwater Treatment Plant Abandonment
5. Norton Acres Wastewater Treatment Plant Abandonment
6. Brentwood Estates Wastewater Treatment Plant Abandonment