

ORDINANCE 25-11

**An Ordinance repealing ordinance 14-02 and adopting a new wastewater agreement with the City of Canal Winchester attached and incorporated by reference;**

**Whereas**, Council desires to renew the wastewater agreement with the City of Canal Winchester, and

**Whereas**, Council finds that the attached and incorporated Wastewater Agreement satisfies this goal, and

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LITHOPOLIS, FAIRFIELD COUNTY, STATE OF OHIO;**

**Section 1.** The Wastewater Agreement, attached and incorporated herein, is hereby adopted and approved.

**Section 2.** This Ordinance shall become effective at the soonest date provided by law.

DATE PASSED: November 8, 2011

ATTEST:

Jacinto Segreaves

SIGNED:

[Signature]

DATE:

11/8/11

DATE:

11/8/11

Approved as to form:

[Signature]

Jon Browning, Village Solicitor

**WASTEWATER SERVICE AGREEMENT BETWEEN  
THE VILLAGE OF LITHOPOLIS AND  
THE CITY OF CANAL WINCHESTER**

THIS AGREEMENT, made pursuant to Ordinance 25-11 passed by the Council of the Village of Lithopolis on the 8th day of November, 2011, authorizing and directing the Mayor of the Village of Lithopolis to enter into this Agreement, and pursuant to Ordinance 62-11 passed by the Council of the City of Canal Winchester on the 17th day of October, 2011, authorizing and directing the Mayor of the City of Canal Winchester to enter into this Agreement, is hereby made and entered into by and between the said Village of Lithopolis, a municipal corporation organized and existing under the laws of the State of Ohio, and the City of Canal Winchester, a municipal corporation organized and existing under the laws of the State of Ohio, on this 27<sup>th</sup> day of December, 2011.

WITNESSETH:

WHEREAS, Lithopolis and Canal Winchester entered into an agreement on December 9, 2002 whereby Canal Winchester agreed to accept and treat wastewater from Lithopolis in consideration for Lithopolis' agreement to purchase said services for fair and valuable consideration for a period of ten (10) years; and,

WHEREAS, Lithopolis desires to increase the volume of wastewater flow that it may discharge into Canal Winchester's sewerage collection system ("System"); and,

WHEREAS, Lithopolis and Canal Winchester desire to extend said contract and increase the volume of wastewater flow that Lithopolis may discharge into Canal Winchester's sewerage collection system ("System"); and

WHEREAS, Canal Winchester is willing to accept and treat the additional flow from Lithopolis in consideration for Lithopolis' agreement to purchase said services; and,

WHEREAS, Canal Winchester and Lithopolis are fully authorized to enter into this agreement pursuant to Article XVIII of the Ohio Constitution and Ohio Revised Code Chapter 735; and

WHEREAS, Canal Winchester and Lithopolis have determined to enter into this Agreement to set forth their respective obligations with respect to the services to be supplied by Canal Winchester and the charges to be paid by Lithopolis therefore.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants hereinafter set forth, and of other good and valuable consideration, Lithopolis and Canal Winchester do hereby promise and agree as follows:

**Section 1**

- A. Canal Winchester promises and agrees, subject to the covenants and conditions hereinafter contained, to accept and receive, at a point or points of connection agreed to by Canal Winchester and Lithopolis, wastewater originating from the Lithopolis/Canal Winchester Service Area, as herein after defined, up to an actual volume not to exceed 500,000 gallons per day, based on a consecutive 30 day average, at the Canal Winchester Water Reclamation Facility, herein after referred to as "Facility", and to treat and dispose of such wastewater in the same manner as Canal Winchester treats and disposes of similar wastewater collected from the Canal Winchester Service Area.

- B. Lithopolis promises and agrees to operate and maintain, at no cost to Canal Winchester, a sewer collection system for transporting wastewater from Lithopolis to the point or points of connection to the Canal Winchester sewerage collection system. Lithopolis shall maintain the system according to the specifications and standards by which it was designed and constructed. Canal Winchester may upon written notice to Lithopolis perform an inspection of the Lithopolis sewerage collection system and its operation to verify that it is operating within the designed standards.
- C. Lithopolis and Canal Winchester shall agree on a designated Lithopolis/Canal Winchester service area, as defined in Exhibit A, and all wastewater generated within this service area shall be treated by Canal Winchester. Lithopolis agrees that it shall not annex and/or provide sewer service to properties outside of the Lithopolis/Canal Winchester service area other than in designated areas.
- D. Canal Winchester may, with the written consent of Lithopolis, extend the Canal Winchester collection system within the Lithopolis/Canal Winchester service area to avoid duplication of services. Where Canal Winchester extends the Canal Winchester collection system into the Lithopolis/Canal Winchester service area, the area serviced shall comply with Canal Winchester Rules and Regulations and shall be treated in all respects as a customer of the Canal Winchester system.
- E. All future flow determinations will be calculated per the terms and conditions from the AGREED JOURNAL ENTRY OF DISMISSAL WITH PREJUDICE, specifically item #6, between Canal Winchester and Lithopolis as filed 6-18-2008 with the Municipal Court of Franklin County, Ohio Environmental Division, a copy of which is attached hereto as Exhibit B and incorporated by reference herein.

## **Section 2**

Subject further to the covenants and conditions contained herein, Canal Winchester promises and agrees to provide the necessary personnel, facilities and equipment to operate, maintain and service the Facility, System and existing metering equipment in use and installed by Canal Winchester. Canal Winchester shall have responsibility for, and shall pay all costs for operating and maintaining said personnel, facilities and equipment, including all administrative costs related thereto.

Subject further to the covenants and conditions herein contained, Lithopolis promises and agrees to provide the necessary personnel, facilities and equipment to operate, maintain and service the sewer collection system necessary to transport flow from Lithopolis to the point or points of connection at the Canal Winchester sewerage collection system. Lithopolis shall have the responsibility for, and shall pay all costs for operating and maintaining said pressure sewer system, including all administrative costs related thereto.

## **Section 3**

The sewerage rates to be charged to Lithopolis shall be calculated at 70% of the cost of Canal Winchester city residential customers. Canal Winchester shall bill Lithopolis for the operation and maintenance costs according to the foregoing at a frequency that Canal Winchester bills its' current customers. Lithopolis shall be responsible for dividing these costs among its customers and collecting same in order that Lithopolis may make payments to Canal Winchester. Payments and late fees shall be governed by the Canal Winchester Utility Operating Rules and Regulations, specifically Rule 4.

Canal Winchester reserves the right to review and adjust the rates for service as required to allow Canal Winchester to accrue sufficient monies to satisfy operation and maintenance costs.

The rates for sanitary sewer service prescribed by each party hereto to its respective users shall be

established by the respective authority having jurisdiction in the premises through sewer use ordinance and user charge system and shall not be subject to the approval of the other party hereto.

In the event that Lithopolis should exceed the contracted capacity of 500,000 gallons per day, Lithopolis shall be charged two times the normal Lithopolis sewerage rates by Canal Winchester for all flows in excess of the contracted capacity, in addition to all other remedies provided by this agreement and/or by Ohio law.

The meter(s) measuring Lithopolis' flows shall be calibrated by a fully qualified meter calibration technician on a frequency as determined by Lithopolis, at a minimum of at least once per year. It is understood and agreed that authorized representatives of each party hereto shall have reasonable access to examine and read the meter(s). At any time, Lithopolis or Canal Winchester may have the meter(s) recalibrated by paying the entire cost of such calibration. In the event the meter is found to be in error by more than five percent either way, adjustments in billing shall be made back to the previous billing cycle only and the costs of said recalibration shall be shared equally by both parties.

#### **Section 4**

Canal Winchester and Lithopolis further agree:

- A. That the costs of operating the Facility shall be included with operations and maintenance costs pursuant to Section 3.
- B. That the costs of any further Facility capital improvements shall be included with fees paid pursuant to Section 6.

#### **Section 5**

Canal Winchester and Lithopolis further agree:

- A. That Lithopolis and Canal Winchester agree to establish such charges against industrial users that require such pretreatment of industrial waste and to execute such contracts with industrial users as may be required to comply with federal, state and Canal Winchester pretreatment requirements.
- B. That the sanitary sewerage discharged by Lithopolis into Canal Winchester system shall be limited to sanitary sewage and liquid waste and such wastewaters as permitted under Canal Winchester's rules and regulations in effect from time to time and as permitted by the Ohio Environmental Protection Agency. Lithopolis shall adopt and maintain for the entire term of this agreement an ordinance that is at least as stringent as Canal Winchester's Sewer Use Ordinance as it presently exists or is subsequently amended.
- C. That any industry desiring to discharge into the Lithopolis sanitary sewer collection system shall apply in writing to Canal Winchester for permission to connect to the sanitary sewers of Lithopolis. No discharge of any such industrial waste into the Lithopolis sanitary sewer collection system shall be permitted unless authorized by Canal Winchester in writing. Any such industrial discharge shall comply with Canal Winchester's Sewer Use Ordinance and all applicable federal and state regulation.
- D. That Canal Winchester shall provide such approval if the industrial discharge is in compliance with federal, state and Canal Winchester regulations and it will not damage or interfere with proper operation of the Facility, as supported by a mutually acceptable independent engineering investigation paid for by the applicant.

- E. That the maximum flows from the Lithopolis/Canal Winchester Service Area shall not be changed except by supplemental written agreement of the parties hereto and Lithopolis shall not construct any sewers to convey any sanitary waste to anyplace of treatment other than the Canal Winchester Facility unless as designated in Exhibit A.
- F. That Lithopolis shall establish its own service area and shall not construct any sewers other than what will flow into and be treated by Canal Winchester without prior approval.
- G. That any additional connection points shall be constructed at Lithopolis' sole expense with approval of Canal Winchester. Additional meters shall be treated the same as the current meter(s) and in accordance with this agreement.
- H. Each party hereto shall have the right, upon reasonable notice, to review and audit the records of the other party per Ohio law.

#### **Section 6**

Lithopolis, within 30 days, shall pay to Canal Winchester upon each new service connection within the Lithopolis/Canal Winchester Service Area, a sum equal to 100% of Canal Winchester's sewer service connection charge. These payments are to be applied to any ongoing or future capital costs to include maintenance, repair, upgrades and/or debt service to the Canal Winchester Wastewater Treatment Facility. Lithopolis shall pay such sewer connection charges to Canal Winchester regardless of whether the landowner has prepaid sewer connection fees to Lithopolis. Canal Winchester shall have reasonable access to Lithopolis' records for purposes of auditing new service connections.

#### **Section 7**

Each party hereto shall have the right to request renegotiation of any of the terms of this agreement and, upon 90 days written notice to the other party; the parties shall meet for the purpose of undertaking such renegotiation.

#### **Section 8**

Failure on the part of either party to this agreement to faithfully discharge its obligations and responsibilities hereunder, either in whole or in material part, shall vest in the other party to the agreement the right to terminate the same, effective ninety (90) days after written notice of such failure and the intent to terminate is filed by such party with the offending party; provided that the offending party shall have the right to correct the said failure to faithfully discharge its obligation and responsibility and, upon demonstration thereof, such notice of cancellation shall not be effective and this agreement shall remain in full force and effect without prejudice to the rights of the parties, including but not limited to the rights of Canal Winchester to collect amounts due and owing to it under the terms of this agreement prior to termination. If the failure to perform obligations or responsibilities is other than the payment of money and is of such nature that it can be corrected but not within ninety (90) days, then notice of cancellation shall not be effective and this agreement shall remain in full force and effect without prejudice to the rights of the parties if corrective action is instituted within thirty (30) days and diligently pursued to its completion.

Additionally, the agreement may be terminated by either party under the following circumstances;

Canal Winchester is unable to provide services due to governmental rules, decisions, regulations or orders, including orders or judgments of any administrative body, arbitration panel, tribunal, or court of law; or conditions beyond the control of Canal Winchester. It is further agreed that Canal Winchester shall

have the right upon written reasonable notice to temporarily shut off the sanitary wastewater discharged from the Lithopolis sanitary sewer collection system into the Canal Winchester sanitary sewer collection system whenever alterations, additions or maintenance operations make it necessary up to a total of 24 hours only.

#### **Section 9**

This Agreement shall take effect on the date hereof and shall remain in effect for ten (10) years. Negotiations regarding extension of the contract term shall automatically begin at the beginning of the seventh (7th) year or when average daily flow, based on 30 consecutive day average, from Lithopolis exceeds 375,000 gallons per day and shall be for the benefit of and shall be binding upon the successors and assigns of the parties hereto.

#### **Section 10**

If any court of competent jurisdiction determines that any portion of this agreement is invalid or unconstitutional, the same shall not be held to invalidate or impair the validity, force or effect of any other portions of this agreement unless it clearly appears that such other portion is wholly or necessarily dependent for its operation upon the portion so held invalid or unconstitutional.

Canal Winchester and Lithopolis each bind themselves and their partners, successors, executors, administrators and assigns to the other party of this agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this agreement. Except as above, neither Canal Winchester nor Lithopolis shall resign, sublet, or transfer its interest in this agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the party of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than Canal Winchester and Lithopolis.

#### **Section 11**

Canal Winchester shall be obligated to treat the effluent provided by Lithopolis under the terms of this Agreement unless Canal Winchester is unable to provide such due to mechanical malfunctions not due to their own negligence, strikes, war, riot, weather conditions, and acts of God, governmental rules, regulations or orders, including orders, or judgments of a court or tribunal, administrative agency, or conditions beyond the control of Canal Winchester. In any of these events, Canal Winchester shall use its best efforts to promptly provide or reestablish such treatment services.

#### **Section 12**

Should Canal Winchester become unable to treat the effluent provided by Lithopolis due to negligence, operator error or over capacity usage of the treatment facility by Canal Winchester customers, then Lithopolis shall have the right to recover any and all costs involved to secure treatment and to recover actual damages incurred.

#### **Section 13**

This agreement includes the exhibits attached hereto, all of which shall be deemed to be fully a part of this agreement as if herein set forth in writing. This Agreement terminates the agreement entered into between Canal Winchester and Lithopolis on December 9, 2002 and this agreement contains the entire agreement of the parties. It may not be modified orally, but only by agreement in writing signed by both parties.

If any apparent irrevocable controversy or difference shall arise between the parties to this agreement, at any time during the continuance of said agreement or thereafter, and before the termination of said agreement between the parties regarding nay construction of this agreement, their interpretation and effect of this agreement, including any limitations contained therein, or their respective rights, obligations or liabilities hereunder, or the rights or powers of the parties involved or any other matter or thing connected with said agreement, then each and every such controversy and difference may at the request of either party be submitted to the decision of three (3) disinterested arbitrators, one to be chosen by each of the parties hereto, and the third to be chosen by the two so chosen, and the answer of the majority of said arbitrators shall be final and judgment may be entered upon it in any court having jurisdiction thereof. This agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

**IN WITNESS WHEREOF**, Canal Winchester and Lithopolis have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

WITNESSETH:

Janet Armentrout  
E Louise North

CITY OF CANAL WINCHESTER, OHIO

By:

Michael L. Ebert  
Michael L. Ebert, Mayor

Nanisa Osborn  
Nanisa Osborn, Finance Director

WITNESSETH:

Judi Weigh  
[Signature]

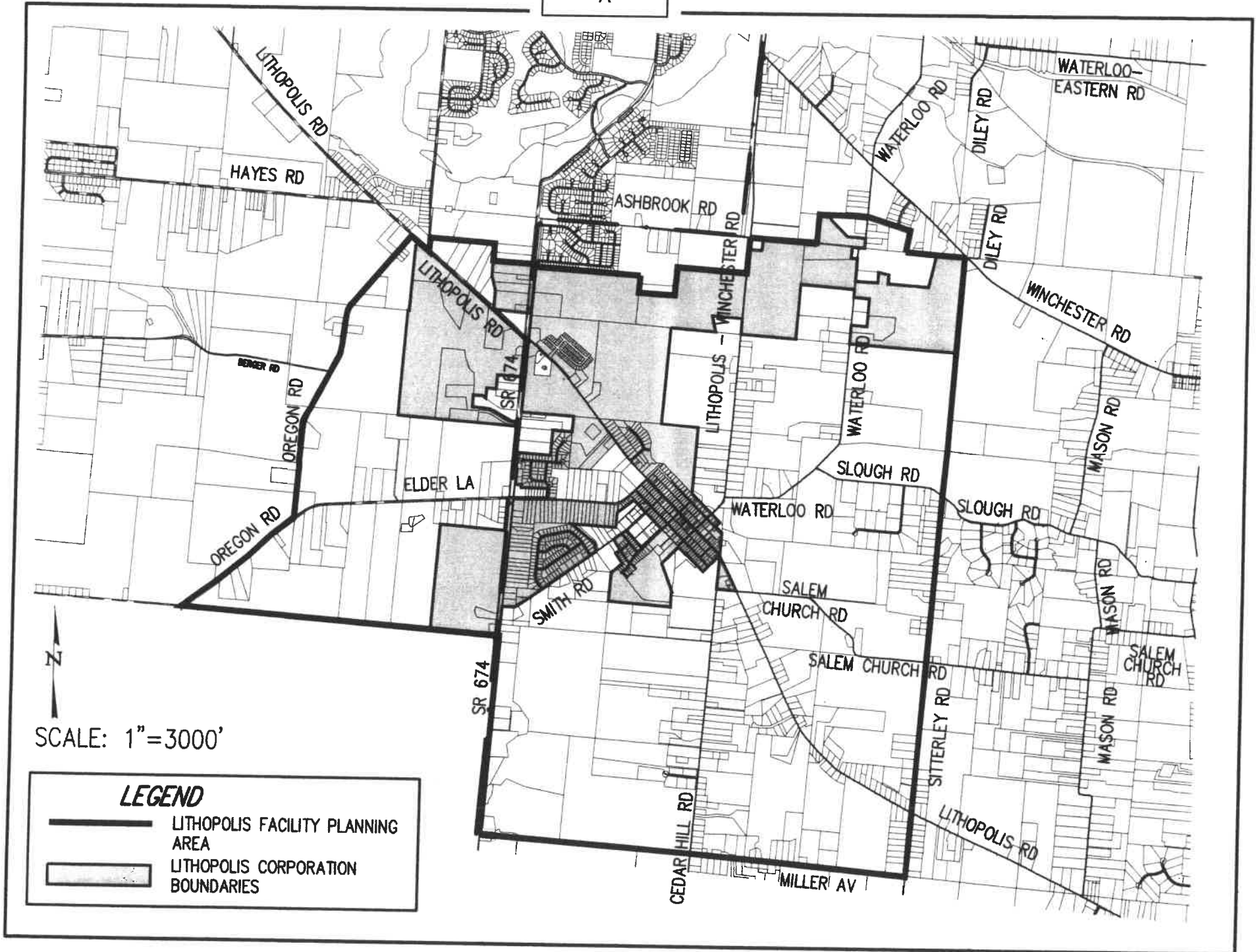
VILLAGE OF LITHOPOLIS, OHIO

By:

Eric P. Sandine  
Eric P. Sandine, Mayor



Jacinta Seagraves  
Jacinta Seagraves, Clerk-Treasurer





SCALE: 1"=3000'

**LEGEND**

-  LITHOPOLIS FACILITY PLANNING AREA
-  LITHOPOLIS CORPORATION BOUNDARIES



IN THE MUNICIPAL COURT OF FRANKLIN COUNTY, OHIO  
ENVIRONMENTAL DIVISION

2008 JUN 18 A 9:45.5

VILLAGE OF LITHOPOLIS,

Plaintiff,

v.

VILLAGE OF CANAL WINCHESTER, *et al.*,

Defendants.

CASE NO. 2007 EVH 60315

JUDGE HALE

**AGREED JOURNAL ENTRY OF DISMISSAL  
WITH PREJUDICE**

The Parties and their Counsel came before the Court on March 20, 2008 to attend a status/settlement conference. Also present were several representatives from the Ohio Environmental Protection Agency. After much thought and careful consideration, and without admitting any liability or wrongdoing, the Parties agreed to negotiate a compromise and settlement of this dispute. Following the lengthy negotiations, the Parties read the terms of their agreement into the record. As memorialized in the record, the Parties agreed to the following:

1. The Village of Canal Winchester will reinstate its Letter of Support for the Bishop's Run Permit to Install by March 21, 2008 at 2 p.m.
2. The Village of Lithopolis will withdraw the Verified Complaint it filed with the Ohio EPA regarding the Village of Canal Winchester.
3. Except in emergency situations, no sewer, wastewater, or other effluent from the Village of Lithopolis is allowed to be discharged into and flow through the Ashbrook Village Lift Station other than what is being

generated in the currently platted Wagnall's Run Subdivision. All such flow, other than that from the Wagnall's Run Subdivision, shall flow through the Village of Lithopolis's existing 6" force main.

4. The Village of Canal Winchester shall be responsible for upgrading the Ashbrook Village Lift Station, and paying for such upgrades, when and if necessary.
5. The Village of Lithopolis's Engineer Floyd Browne will inspect and review the Village of Lithopolis's entire sewer system, including the 6" force main that connects to the Village of Canal Winchester's sewage collection system.
6. All future flow determinations for Permits to Install Letters of Approval between the Villages of Canal Winchester and Lithopolis shall be calculated in the same manner as those originally calculated between the Villages and more specifically set forth in Matthew C. Peoples's June 7, 2007 letter to Mayor Eric Sandine.
7. The Villages of Canal Winchester and Lithopolis will issue a joint press release regarding the settlement.
8. The Parties will be responsible for their own costs, expenses, and attorney fees incurred in this litigation.

The Court, being informed the Parties have executed the terms identified and listed in Nos. 1 and 2 above, hereby **DISMISSES** plaintiff Village of Lithopolis's Amended Verified Complaint **WITH PREJUDICE**. The Court will retain jurisdiction over this matter for the

sole purpose of enforcing the settlement agreement. Plaintiff Village of Lithopolis shall pay Court costs.

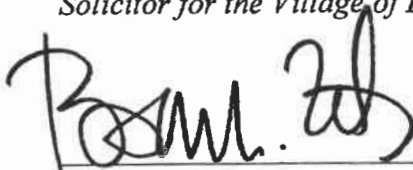
6/6/08  
Date

  
Judge Harlan Hale

AGREED TO BY:

/s/J. Jeffrey McNealey [Per 5/29/08 authorization]  
J. Jeffrey McNealey (0023087)  
Elizabeth L. Moyo (0081051)  
PORTER, WRIGHT, MORRIS & ARTHUR  
41 South High Street  
Columbus, Ohio 43215  
Phone: (614) 227-2000  
Fax: (614) 227-2100  
*Attorneys for Plaintiff Village of Lithopolis*

/s/Jon M. Browning [Per 5/29/08 authorization]  
Jon M. Browning (0033748)  
243 N. Fifth Street, Suite 420  
Columbus, Ohio 43215  
Phone: (614) 221-8988  
Fax: (614) 221-0003  
*Solicitor for the Village of Lithopolis*



Eugene L. Hollins (0040355)  
Brian M. Zets (0066544)  
J. Corey Colombo (0072398)  
300 Spruce Street, Floor One  
Phone: (614) 221-5216  
Fax: (614) 221-5692  
*Village Solicitor and Attorneys for  
Defendant Village of Canal Winchester*