

ORDINANCE NO. 02, 2018

AUTHORIZING THE MAYOR AND SERVICE DIRECTOR TO ENTER INTO AN AGREEMENT WITH THE CITY OF CINCINNATI DIVISION OF WATER FOR THE COLLECTION OF FEES RELATED TO RESIDENTIAL REFUSE COLLECTION IN THE VILLAGE OF ST. BERNARD

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ST. BERNARD, STATE OF OHIO:

Section 1. That the Mayor and Service Director are hereby authorized to enter into an agreement with the City of Cincinnati, on behalf of the Greater Cincinnati Water Works, for the collection of fees related to residential refuse collection in the Village of St. Bernard, with a copy of the agreement in substantially similar form attached as Exhibit "A".

Section 2. That the Mayor and the Service Director are hereby authorized to execute said agreement and to take such action, and to execute such other documents and amendments thereto as may be necessary as are approved by the Law Director.

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 the Council and any of its committees that resulted in such a formal action were in meetings open to the public in compliance with all legal requirements.

St. Arbach

President of Council

ATTEST:

M. Sue Kathman

Clerk of Council

Approved this 1st day of March, 2018.

John R. Estep

Mayor

I, M. SUE KATHMAN, CLERK OF COUNCIL, VILLAGE OF ST. BERNARD, STATE OF OHIO, DO HEREBY testify that the publication of Ordinance No. 02, 2018, was made by posting true copies of the same in the most public places designated by Council: St. Bernard Square Bus Stop; Vine Street and Washington Avenue; Bertus Street Park; Greenlee Avenue and Johnson Alley; Park on Heger Drive; each for a period of fifteen (15) days or more commencing 3-1, 2018.

ATTEST: *M. Sue Kathman* DATE 3-1-18

Clerk of Council

Approved as to form *Michael W. R...* Date 3-1-18

Director of Law

ORIGINAL

**WASTE COLLECTION BILLING AGREEMENT
BETWEEN
THE CITY OF CINCINNATI AND THE VILLAGE OF ST. BERNARD, OHIO**

THIS AGREEMENT is made and entered into effective on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, Ohio, herein sometimes referred to as "Cincinnati", on behalf of its Greater Cincinnati Water Works located at 4747 Spring Grove Avenue, Cincinnati, Ohio 45232, and the Village of St. Bernard, Ohio, herein sometimes referred to as "St. Bernard", located at 110 Washington Ave, St. Bernard, Ohio 45217.

RECITALS

A. Cincinnati owns and operates Greater Cincinnati Water Works (GCWW), a public water supply system, and supplies retail water service to the Village of St. Bernard under an agreement between the parties dated September 9, 2010.

B. In addition to supplying retail water services, Cincinnati currently supplies billing services for water and sanitary sewer to Village of St. Bernard residences and businesses.

C. St. Bernard desires to enter into an agreement with Cincinnati for GCWW to provide waste collection billing services for St. Bernard.

D. Cincinnati has expertise in billing waste collection charges to residents and businesses within the City of Cincinnati, Cheviot, Greenhills, Forest Park and Lincoln Heights, Ohio, and others, and can provide this billing service to St. Bernard without extensive or costly modification to Cincinnati's current billing system and therefore can provide a cost-effective service to the Village of St. Bernard.

E. Cincinnati is authorized to provide billing services to other political subdivisions pursuant to Section 401-90(a) of the Cincinnati Municipal Code.

NOW, THEREFORE, in consideration of the promises, covenants, terms and conditions contained herein, the parties hereby agree as follows:

Section 1. Purpose of Agreement

The purpose of this Agreement is to establish the terms and conditions under which Cincinnati will provide residential and commercial waste collection billing, collection and customer services to St. Bernard.

Section 2. Cincinnati Responsibilities

- a) Cincinnati shall provide waste collection billing services to St. Bernard. St. Bernard directs Cincinnati to bill at the rates and in the manner specified in St. Bernard Ordinance No. _____ as attached hereto as Exhibit A, as same may be amended from time to time.
- b) Cincinnati shall produce for St. Bernard the following reports:
 - a) Monthly waste collection revenues report to St. Bernard with remittance.
 - b) A semi-annual report of all water service accounts that do not have a waste collection service.

- c) Cincinnati agrees to bill St. Bernard waste collection fees for all current and future accounts located in St. Bernard on a quarterly or monthly basis depending upon the normal water-billing schedule. All charges shall be pro-rated over 365 days.
- d) When notified by customers in St. Bernard of a property ownership change or change in authorization of agent to receive the utility billings, Cincinnati shall continue to apply the previous waste collection rate to the property unless given specific direction otherwise in writing (e-mail may be used) from the St. Bernard Village Mayor or designee.
- e) Cincinnati may make debit and credit adjustments to waste collection charges that may result as a consequence of normal and customary billing charges, including, but not limited to, return check charges, credit card convenience charges, shut-off of service charges, posting charges and late fees. Cincinnati may not remove from collection any St. Bernard waste collection fees due to bankruptcies, or for any other reason St. Bernard deems accounts not collectable, without written authorization from the St. Bernard Village Mayor or designee.
- f) Cincinnati shall attempt to answer all St. Bernard customer questions regarding billing amounts, late charges and due dates for waste collection bill collection services. Questions concerning development of fee structures, authorization for the establishment of rates or how funds will specifically be used will be referred to St. Bernard.
- g) Unless specifically referenced otherwise in this Agreement, Cincinnati shall follow the same billing procedures and practices regarding the billing of St. Bernard waste collection fees as it practices and applies to City of Cincinnati customers.
- h) Cincinnati will continue to bill waste collection charges when water is turned off to a property unless specifically directed in writing (e-mail may be used) by St. Bernard to suspend billing.
- i) Cincinnati shall charge the same late fee for waste collection payments as is applied to all Cincinnati consumers' water and sanitary sewer charges. The current late fees for these charges are approximately 10% per year. Should the late fees applied to all Cincinnati retail water and sanitary sewer charges be increased by Cincinnati City Council to its consumers, the same rate increase shall be applied to St. Bernard waste collection fees without amendment to this agreement.
- j) Cincinnati shall apply partial payments to the utility accounts (water, sanitary sewer, waste collection, etc.) as follows: Partial payments are applied to charges with the oldest due date first. If there are multiple charges with the same oldest due date, payments are applied by percentage over all charges, including late or miscellaneous charges. Payments will not apply against charges with later due dates until the previous charges have been satisfied.
- k) Cincinnati agrees to make available on-bill messaging services to St. Bernard. Cincinnati requests that desired messages be provided sixty (60) days in advance of the requested message initiation date to allow time for setup and testing. Cincinnati shall provide a cost estimate to St. Bernard within two (2) business days of a messaging request. Cincinnati retains a right of refusal for messaging determined to be inappropriate or inconsistent with Cincinnati standards.
- l) Cincinnati shall normally remit to St. Bernard the funds collected for waste collection on a monthly basis. Cincinnati shall make every effort to remit these funds within ten working days at the end of each month. Circumstances that may delay remission include but are not limited to:

bank holidays, City of Cincinnati employee holidays, problems with transaction reports caused by computer system malfunctions and problems with bank or courier pick-ups.

Section 3. St. Bernard Responsibilities

- a) St. Bernard shall provide a class name and definition for each unique category of properties for billing purposes. Categories may be identified as residential, commercial or other as required by ordinance.
- b) St. Bernard shall provide Cincinnati annually an update of any changes in the charges assigned to each category of properties.
- c) St. Bernard shall provide in writing the appropriate waste collection rate and the date from which Cincinnati shall begin collecting waste collection fees for all new residential and non-residential developed and undeveloped property accounts. E-mail may be used, however in this case, and for all other provisions concerning the use of e-mail in this Agreement, Cincinnati shall not be responsible for the failure of e-mail to be delivered, nor for the untimely delivery of e-mail.
- d) St. Bernard shall notify Cincinnati of credits or revocation of credits to waste collection billing by written notice from the St. Bernard Village Mayor or designee.
- e) St. Bernard shall pay Cincinnati a fee for collection of its waste collection assessments at a rate of five (5) percent of the total waste collection revenues billed. This fee shall be deducted from the monthly remittance to St. Bernard as specified above in Section 2 (1).
- f) St. Bernard shall notify Cincinnati in writing at least sixty (60) days prior to the date it wishes to:
 - i) implement a rate change for the waste collection services; ii) execute any billing methodology change, or iii) commence billing any additional services. Cincinnati will review and respond to St. Bernard's request for a methodology change within thirty (30) days. St. Bernard understands that a change in methodology of billing is contingent upon Cincinnati's then current billing system being capable of implementing the change and/or St. Bernard's assuming the costs associated with the modification to Cincinnati's billing system to implement the methodology change by St. Bernard.
- g) The written communication from St. Bernard to Cincinnati concerning corrections, credits or debits to waste collection charges may be completed by the appropriately authorized St. Bernard representative electronically mailing this information to: GCWWBilling@gcww.cincinnati-oh.gov. Cincinnati shall notify the St. Bernard Mayor in writing (e-mail may be used) if there is a change in the designation of the e-mail address.

Section 4. Term

- 1) The term of this Agreement shall be for five (5) years commencing on the Effective Date. The term shall renew automatically for an additional one-year renewal term at the end of the then current term on the terms and conditions described herein
- 2) This Agreement may be terminated with sixty (60) days written notice by either party. However, if St. Bernard wishes to terminate this Agreement any time prior to the expiration of the initial five year term, in order for Cincinnati to cover its initial costs for implementing the waste collection billing service, St. Bernard shall pay Cincinnati an additional \$100.00 for every month

that the waste collection billing service is not in effect within this initial five year term. The payment due Cincinnati shall be pro-rated on a per diem basis if the waste collection billing service termination date does not coincide with the end of a particular month within the initial sixty (60) month period.

Section 5. Notices

All notices required under this Agreement shall be in writing and delivered to the address listed below by: 1) personal service, 2) U.S. mail, postage prepaid, or 3) e-mail.

To Cincinnati:

City of Cincinnati
Greater Cincinnati Water Works
Attention: _____
4747 Spring Grove Ave
Cincinnati, Ohio 45232
Email: GCWWBilling@gcww.cincinnati-oh.gov

To St. Bernard:

Office of the Mayor,
Village of St. Bernard
110 Washington Avenue
St. Bernard, Ohio 45217
Email: _____

If St. Bernard sends a notice to Cincinnati alleging that Cincinnati is in default under this Agreement, it shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, and Cincinnati, OH 45202.

Section 6. Waiver

This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 7. Governing Law; Forum Selection

This Agreement is entered into and is to be performed in the State of Ohio. The parties agree that the laws of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement without regard to choice of law and conflicts of law principles. The state courts of record sitting in Hamilton County, Ohio, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment or attachment thereto, including any duty owed by Contractor to the City in connection therewith.

Section 8. Integration; Amendment

This Agreement and the Exhibits attached hereto contain the entire contract between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect. This Agreement may be modified or amended only by a writing duly executed by the parties hereto.

Section 9. Severability.

This Agreement shall be severable, so if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 10. Signatures

This Agreement may be executed in counterparts, and a facsimile or PDF signature shall be deemed to be, and shall have the same force and effect as, an original signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates reflected below, effective as of the later of such dates ("**Effective Date**").

VILLAGE OF ST. BERNARD

By: _____
John Estep, Mayor

Date: 9/2/18, 2017



St. Bernard Law Director

[CINCINNATI SIGNATURE PAGE FOLLOWS]

City of Cincinnati

By: _____
Harry Black, City Manager

Date: _____, 2017

RECOMMENDED BY:

Cathy B. Bailey, Director
Greater Cincinnati Water Works

APPROVED BY:

Markiea Carter, Director
Department of Economic Inclusion

CITY PURCHASING APPROVAL:

Patrick Duhaney, Chief Procurement Officer

CERTIFICATION OF FUNDS:

Date: _____
Funding: _____
Amount: _____

Reginald Zeno, Finance Director

APPROVED FOR LEGAL SUFFICIENCY:

Assistant City Solicitor