

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Aqua)	
Ohio, Inc. for Issuance of a Certificate of)	Case No. 17-1717-WS-ACE
Public Convenience and Necessity)	
In the Matter of the Application of Aqua)	
Ohio, Inc. for Approval to Amend Tariff)	Case No. 17-1718-WS-ATA
Pages.)	

APPLICATION

In accordance with R.C. 4933.25 and Ohio Adm. Code 4901:1-15-05, Aqua Ohio, Inc. (Aqua or the Company) respectfully files this application with the Commission seeking issuance of a certificate of public convenience and necessity to authorize the provision of water and sewage-disposal service to the areas currently served by the Firestone Trace Homeowners' Association (the Association). In support of this application, Aqua states:

1. Aqua is a "public utility" and a "waterworks company" as defined in R.C. 4905.02(A) and 4905.03(G). As such, Aqua is subject to the Commission's jurisdiction in accordance with R.C. 4905.04, 4905.05, and 4905.06.
2. Aqua is currently authorized to provide water and sewage-disposal service to customers in various counties in Ohio in accordance with several existing certificates of public convenience and necessity. Many of these customers are served under the terms and conditions of Aqua's P.U.C.O. Tariff No. 2 (the Tariff).
3. Aqua is in the process of completing the acquisition of the water and sewage-disposal assets currently owned by and used to provide service to the Firestone Trace development, located in Bath, Ohio, northwest of Akron in Summit County. To effect this transaction, Aqua and the Association have entered into a Water and Wastewater System

Transfer Agreement (the Agreement), which is attached to this application as Exhibit 1. In substance, the Agreement provides that Aqua will purchase the assets used to provide water and wastewater service to Firestone Trace under specified terms and conditions. The Agreement also provides that Aqua will purchase certain parcels of and interests in real estate to provide necessary easements for sanitary control and operational purposes. After closing, Aqua will own and operate the water-works and sewage-disposal systems and provide service to the homeowners represented by the Association.

4. The object and purpose of the transaction is to ensure the provision of just and reasonable service to the customers residing in Firestone Trace. Aqua and its predecessors have operated water and sewage-disposal systems in Ohio for decades. Aqua has the financial, managerial, and technical capability to provide safe, adequate, and reliable water-works and sewage-disposal service in the areas currently served by the Association. Aqua will provide for the orderly transfer of management with no interruption of service during the transition process. For these reasons, the transaction will result in the provision of necessary and adequate service.

5. The application does not include any request for the issuance of any securities, financing fees, or goodwill.

6. To enable the timely closing of these transactions, Aqua respectfully requests that the Commission issue an order approving this application by August 31, 2017, or as soon as practicable thereafter.

7. Aqua will provide any notices deemed necessary by the Commission to advise the Association's customers of the filing or approval of this application.

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

8. In accordance with Ohio Adm. Code 4901:1-15-05(A), Aqua is a corporation desiring to obtain a certificate of public convenience and necessity authorizing it to operate a waterworks system and a sewage disposal system.

9. Ohio Adm. Code 4901:1-15-05(D) requires applicants to provide a number of exhibits to an application. Aqua requests a waiver of the exhibits required by Ohio Adm. Code sections 4901:1-15-05(D)(1)–(4) and (7)–(17). Good cause exists for the following reasons. Aqua is already providing waterworks and sewage disposal service to tens of thousands of Ohio customers under existing certificates. Aqua’s management practices, operations, financial condition, and tariffs were recently subject to thorough review in Case No. 16-0907-WW-AIR, and the proposed expansion of service is proportionally small (increasing Aqua’s customer base by less than one percent). The rules in question thus require information that either does not apply in these circumstances or is already known to or in the possession of the Commission. Granting a waiver will also minimize the cost and expense to Aqua and its customers of preparing and processing this application and will not hinder the Commission’s review of the application, as Aqua will provide on request any documentation that the Commission or its staff requires to evaluate this application. Similar waiver requests have been approved in Case Nos. 14-1840-WW-ATR, *see* Entry (Nov. 11, 2014), and Case No. 11-4674-WW-AAC, *see* Entry (Aug. 24, 2011).

10. As required by Ohio Adm. Code 4901:1-15-05(D)(5), Aqua will provide service to the Firestone Trace system under the terms and conditions of the existing Tariff, subject to several minor revisions that are attached to this application as Exhibit 3, as discussed further below.

11. As required by Ohio Adm. Code 4901:1-15-05(D)(6), Aqua is filing with this application a map and metes-and-bounds description of the area in which service is to be rendered pursuant to the authority sought. These items are attached as Exhibit 2.

12. As required by Ohio Adm. Code 4901:1-15-05(D)(18), Aqua states that there is a present and continuing need by the public in the area encompassed by the application for facilities and services of the type that Aqua proposes to provide.

13. As required by Ohio Adm. Code 4901:1-15-05(D)(19), Aqua states that no existing agency, publicly or privately owned or operated, would or could economically and efficiently provide the facilities and services needed by the public in the area which is the subject of the application.

14. As required by Ohio Adm. Code 4901:1-15-05(D)(20), this application provides a description of the convenience and location to be served under the Certificate.

15. With respect to Ohio Adm. Code 4901:1-15-05(D)(21), as discussed below, Aqua is requesting a waiver of the requirement to publish legal notice of this proceeding.

16. With respect to Ohio Adm. Code 4901:1-15-05(D)(22), Aqua requests that the Commission accept the appended verifications in lieu of the affidavits required by this provision.

APPROVAL OF TARIFF AMENDMENTS

17. Aqua also requests that the Commission approve certain minor revisions to Aqua's Tariff to incorporate the provision of service to the Association, including the following revisions: to add Firestone Trace to the tariff cover sheet; to include rate schedules applicable to Firestone Trace; to include a map of the Firestone Trace service area; and to update the subject index. Revisions to the tariff are shown in Exhibit 3.

18. Regarding rates, Aqua will provide service to the Association's customers under the rates agreed upon between the parties in the Agreement. Aqua is accordingly providing a rate

schedule consistent with the rates agreed upon with the Association. Because these rates constitute “first-filed” rates, Commission approval is not necessary and an application for an increase in rates is not required. *See, e.g., Cleveland v. Pub. Util. Comm.*, 67 Ohio St.2d 446, 448 (1981) (“[I]f there is a first filing involved, it is a ‘new service’” and hence “an application *not* involving a rate increase”) (emphasis added); *Cinnamon Lake Util. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 259, 262 (1975) (first-filing rule applies when new rates filed in conjunction with application for certificate of public convenience and necessity). That these rates are just and reasonable is evidenced by the fact that Aqua and the Association have mutually agreed to them. In accordance with R.C. 4909.18, Aqua requests that the Commission “permit the filing of the schedule proposed in the application and fix the time when such schedule shall take effect.”

19. The agreed-upon water rates will remain in effect until such time as new water rates are approved that incorporate the assets and costs related to the provision of service to Firestone Trace. Likewise, the agreed-upon sewage-disposal rates will remain in effect until such time as new sewage-disposal rates are approved that incorporate the assets and costs related to the provision of service to Firestone Trace.

REQUEST FOR WAIVER OF NOTICE AND HEARING

20. Aqua requests that the Commission approve the application without requiring the provision of public notice and without requiring any hearing that may be authorized under any applicable statute or Commission rule.

21. Only a small number of customers will be directly affected by the application, and these affected customers are members of the counterparty to the transaction who already have received notice through the Association of the pending provision of service by Aqua, including at an “open house” event sponsored by the Association. The application requests neither an increase in rate nor a change in rate to any existing customers, and the approval of the

application will not have any detrimental impact on the quality or reliability of service to customers. Because the application will not affect customers outside of the Association, the costs of notice by publication would provide no apparent benefit and are unwarranted.

22. Granting the requested waiver will minimize the cost and expense of preparing and processing this application and will not hinder the Commission's review of the application. In similar circumstances, the Commission has waived the requirement of publishing notice, *see* Case No. 11-5102-WS-ATR, Order at 11 (Feb. 14, 2012), and the requirement of holding a hearing, *see id* & Case No. 05-347-WW-UNC, Order (Apr. 27, 2005).

23. In lieu of published legal notice, Aqua proposes that following the closing of the transaction, it provide written notice to the newly acquired Firestone Trace customers.

EXHIBIT LIST

24. In support of the application, Aqua submits the following exhibits:

Exhibit 1: Water and Wastewater System Transfer Agreement

Exhibit 2: Metes and bounds description and map of service area

Exhibit 3: Proposed tariff pages.

WHEREFORE, Aqua respectfully requests that the Commission issue a Final Order on or before August 31, 2017, approving this application as submitted and granting all other necessary and proper relief.

Dated: August 1, 2017

Respectfully submitted,

/s/ Andrew J. Campbell

Mark A. Whitt (0067996)

Andrew J. Campbell (0081485)

Rebekah J. Glover (0088798)

WHITT STURTEVANT LLP

The KeyBank Building, Suite 1590

88 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3946

Facsimile: (614) 224-3960

whitt@whitt-sturtevant.com

campbell@whitt-sturtevant.com

glover@whitt-sturtevant.com


(All counsel are willing to accept service by email)

ATTORNEYS FOR AQUA OHIO, INC.

VERIFICATION

STATE OF OHIO)
) SS
COUNTY OF MAHONING)

Before me, a Notary Public for the State of Ohio, personally appeared Edmund P. Kolodziej, Jr., who first having been sworn, deposed and said that he is the President of Aqua Ohio, Inc., that he has read the foregoing application, and that the statements set forth therein are true and accurate to the best of his knowledge and belief.

By: 
Edmund P. Kolodziej, Jr.
President

Subscribed and sworn before me, a notary public, this 1 day of Aug. 2017.

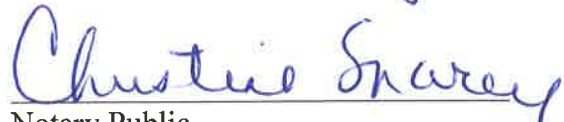

Notary Public



EXHIBIT 1

WATER AND WASTEWATER SYSTEM TRANSFER AGREEMENT

THIS WATER AND WASTEWATER SYSTEM TRANSFER AGREEMENT ("TRANSFER AGREEMENT"), made this 14th day of July 2017 by and between AQUA OHIO, INC., ("*Aqua*") (f/k/a "Consumers Ohio Water Company") and AQUA OHIO WASTEWATER, INC. ("*Aqua OW*") on one hand, and FIRESTONE TRACE HOMEOWNER'S ASSOCIATION ("*Association*") on the other (collectively *Aqua*, *Aqua OW* and the *ASSOCIATION* are referred to as the "Parties"), is intended to effect the transfer of that certain Water System ("Water Facilities") and Wastewater System ("Wastewater Facilities") (collectively the "Facilities") to *Aqua* pursuant to that certain Agreement between the *Aqua*, the *Association* and NORTH FORK DEVELOPMENT COMPANY, LTD, ("NFDC") dated July 19, 1999 ("Original Agreement") and that certain Addendum thereto dated November 16, 1999. ("Addendum") (A Copy of the Original Agreement and Addendum are attached hereto and incorporated herein as Schedule "A").

W I T N E S S E T H:

WHEREAS, pursuant to the terms of the Original Agreement and Addendum, NFDC caused the construction of the Facilities to serve the Firestone Trace development ("Subdivision") located in Bath Township, Summit County, Ohio;

WHEREAS, the Facilities constructed by or on behalf of NFDC, pursuant to the Original Agreement and Addendum, are owned by the *Association*;

WHEREAS, *Aqua* has the right to assume ownership of all Facilities upon sixty days prior written notice to NFDC and the *Association*, and *Aqua* had the obligation to assume ownership of the Facilities upon the happening of certain conditions specified in the Original Agreement and Addendum;

WHEREAS, *Aqua OW* is a wholly owned subsidiary of *Aqua* conducting regulated wastewater operations in Ohio. Pursuant to the Original Agreement and Addendum, both the Water Facilities and Wastewater Facilities are to be transferred to *Aqua*. Pursuant to the terms of this Agreement, the transfer of the Facilities will be split so that the Water Facilities shall be transferred to *Aqua* and the Wastewater Facilities shall be transferred to *Aqua OW*.

WHEREAS, the Parties wish to have the *Association* transfer ownership of the Facilities to *Aqua* and *Aqua OW* as applicable pursuant to the terms of the Original Agreement and Addendum and the additional terms as set forth herein;

NOW, THEREFORE, for and in consideration of the promises and of the rights, powers and duties herein set forth the Parties mutually agree as follows:

1. **Effective Date and Consideration.**

- a. The Effective date of this Agreement is July 14, 2017. The date for Transfer of the Facilities to *Aqua* or *Aqua OW* as applicable shall occur on the later of: 1) on or prior to August 31, 2017, or 2) within thirty (30) days of the date of any final (including the expiration of any appeal period) order or decision by: (i) the Public Utility Commission of Ohio ("PUCO") in approving the transfer herein; and, (ii),

any regulatory agency with jurisdiction over the Agreement, the Facilities or any part hereto as applicable, including but not limited to the Public Utility Commission of Ohio ("PUCO") and the Bath Township Sewer and Water Board. The date the Facilities transfer to *Aqua* or *Aqua OW* as applicable is referred to alternatively as the "Transfer Date" in this Agreement.

b. Consideration

- i. The total purchase price ("Purchase Price") for the Assets is \$185,610.00. (The allocation for the Purchase Price Total is as follows: for the Water Facilities - \$124,200.00; and, for the Wastewater Facilities - \$61,410.00). The Purchase Prices shall be payable by or on behalf of *Aqua* and *Aqua OW* on the date of Transfer.
- ii. *Aqua's* and *Aqua OW's* assumption and purchase of the Association's account receivables outstanding as of the date of Transfer of the Facilities for 100% of the total of such receivables. *Aqua* and *Aqua OW* shall pay the Association for the account receivables on the date of Transfer. *Aqua* and Seller agree that final bills shall be issued by Association prior to the Closing, pro-rated through the date of Closing. Within 30 days of Closing, *Aqua* shall prepare a reconciliation of the Account Receivables and pay such amount to Association. *Aqua* shall thereafter assume ownership of the Accounts Receivables.

2. **Water System Assets.**

- a. **Included Assets.** The Water System Assets to be transferred to *Aqua* hereunder consist of those facilities as depicted on the "As Built Drawings" and "Asset Listing" each attached hereto and incorporated herein as Schedule 2.a., and include:
 - i. a grant of easement in land in which the *Association* has an interest necessary or useful to operate the Water System, including but not limited to, such land on which any production facilities or wells are located as described and such land required for sanitary well radius control as well as any easements necessary for ingress and egress, attached hereto as Schedule 2.a.i.;
 - ii. a Transfer and Assignment of any easement held by the *Association* or granted by a third party necessary or useful to operate the Water System as described in Schedule 2.a.iii.;
 - iii. all the buildings, pipes, pipelines, wells, pumping stations, lift stations, storage tanks, standpipes, fire hydrants, plants, structures, improvements, fixtures, rights-of-way licenses, leases, and easements owned by the *Association*, as well as all meters and reading equipment wherever located

within the Subdivision, including individual sublots, and used as part of the Water System for the production or distribution of water, and all hereditaments, tenements, and appurtenances belonging or appertaining thereto, which interests are by their form and nature transferable;

- iv. all machinery, equipment, tools, vehicles, furniture, furnishings, leasehold improvements, goods, and other tangible personal property owned by the *Association*, or in which they have an interest, and used as part of the Water System for the production or distribution of water;
- v. all supplies and inventories relating to Water System for the production or distribution of water;
- vi. all rights and choses in action of the *Association*, or in which they have an interest, related to the Water System and relating to the contracts to be assumed, excluding accounts receivables, or related to any prescriptive rights arising out of the adverse possession of real property rights in connection with the operation of the System; and,
- vii. all information, files, records, data, plans, contracts, and recorded knowledge, including customer and supplier lists and property records, related to the foregoing.

b. **Excluded Assets.** Notwithstanding the foregoing, the assets of the Water System do not include any of the following:

- i. any and all customer water service lines that run from outside the curb box (or if no curb box from the edge of the street) to each individual Subdivision residence, commercial, or industrial structure served by the Assets;
- ii. all piping and fixtures internal to each individual customer's structure (excluding meters, and reading equipment);
- iii. cash related to the Water System outstanding as of the date of Transfer; and
- iv. any assets listed in Schedule 2.b.iv., which is attached hereto and incorporated herein by reference.

3. **Wastewater System Assets.**

- a. **Included Assets.** The Wastewater System Assets to be transferred to *Aqua OW* hereunder consist of those facilities as depicted on the "As Built Drawings" and "Asset Listing" each attached hereto and incorporated herein as Schedule 3.a., and including:

- i. a grant of easement in land in which the *Association* has an interest necessary or useful to operate the Wastewater System including, but not limited to, such land on which treatment or disposal facilities (including the land on which the effluent retention pond, spray disposal, and drip disposal and reserve areas for such are located), and any easements necessary for ingress and egress, attached hereto as Schedule 3.a.i.;
 - ii. a Transfer and Assignment of any easement held by the *Association* or granted by a third party necessary or useful to operate the Wastewater System as described in Schedule 3.a.iii.;
 - iii. all the buildings, pipes, mains, lift stations, storage tanks, plants, structures, improvements, fixtures, rights-of-way, rights, uses, licenses, and easements owned by the *Association* and used as part of the Wastewater System for the treatment or conveyance of wastewater and all hereditaments, tenements, and appurtenances belonging or appertaining thereto, which interests are by their form and nature transferable;
 - iv. all machinery, equipment, tools, vehicles, furniture, furnishings, leasehold improvements, goods, and other tangible personal property owned by the *Association*, or in which they have an interest, and used as part of the Wastewater System for the treatment or conveyance of wastewater;
 - v. all supplies and inventories relating to Wastewater System for the treatment or conveyance of wastewater;
 - vi. all rights and choses in action of the *Association*, or in which they have an interest, related to the Wastewater System and relating to the contracts to be assumed, excluding accounts receivables, or related to any prescriptive rights arising out of the adverse possession of real property rights in connection with the operation of the System; and,
 - vii. all information, files, records, data, plans, contracts, and recorded knowledge, including customer and supplier lists and property records, related to the foregoing.
- b. **Excluded Assets.** Notwithstanding the foregoing, the assets of the Wastewater System does not include any of the following:
- i. any and all customer wastewater service lines that run from each individual Subdivision residence, commercial, or industrial structure served by the Assets to the connection to the main sewer line that is part of the Wastewater System;
 - ii. all piping and fixtures internal to each individual customer's structure and any grinder pumps or septic tanks located on individual parcels;

- iii. cash related to the Wastewater System outstanding as of the date of Transfer; and,
- iv. any assets listed in Schedule 2.b.iv, which is attached hereto and incorporated herein by reference.

4. Operation of the Facilities Pending Transfer.

- a. The *Association* will continue to own and operate the Systems through Transfer Date:
 - i. The *Association* shall operate the Systems in the normal course and in compliance with all laws and regulations applicable to the Systems;
 - ii. The *Association* will notify *Aqua* or *Aqua OW* as applicable as applicable in writing of all regulatory violations at the same time that the Ohio Environmental Protection Agency is notified;
 - iii. The *Association* will address and take all measures to achieve compliance with any open items identified by the Ohio Environmental Protection Agency ("Ohio EPA") in their compliance inspections or any notice of violation such that there shall be no open compliance violations in regard to the Wastewater System.
 - iv. The *Association* will cause the lagoon to be at or below a level of 6.5 feet as of the Transfer Date.
- b. At any time prior to the Transfer Date, *Aqua* or *Aqua OW* as applicable has the right to perform as many field inspections as it deems necessary as to the Wastewater System's and the *Association*'s compliance with Section 4.a.
- c. At any time prior to the Transfer Date, and as an express condition of *Aqua* or *Aqua OW* as applicable accepting Transfer, *Aqua* or *Aqua OW* as applicable has the further right in regard to the Facilities:
 - i. To have performed a title search

confirming that any Easement Real Estate (defined as the real estate described in Schedules 2.a.ii. and 3.a.ii.) granted to *Aqua* or *Aqua OW* as applicable is vested in the *Association* and that such has the right to convey the easement rights therein unencumbered by any prior liens or other easement rights in interest.

- ii. To conduct any testing or review of the Facilities to confirm compliance of the Facilities and the component assets thereof to be transferred with this Section 4, with the representations contained in Section 9 or any other conditions or representations herein.

- d. If *Aqua* or *Aqua OW* as applicable determines that any of the Section 4 requirements, the representations contained in Section 9, or any other conditions or representations herein, are not met or correct, including, but not limited to, any regulatory violations, then *Aqua* or *Aqua OW* as applicable may notify the *Association* of any such failure of condition. The *Association* will work with *Aqua* or *Aqua OW* as applicable to correct such failure of condition prior to Transfer and *Aqua* or *Aqua OW* as applicable has no obligation to accept Transfer until such condition is cured.
 - i. If *Aqua* or *Aqua OW* as applicable and the *Association* cannot agree on whether or not a failure of condition herein has been cured, or the appropriate remedy, such that it will not have a material effect on the Facilities, the Facilities' component assets, or their transfer to *Aqua* or *Aqua OW*, either party may request the matter be mediated.
 - ii. For determination of materiality, any matter or matters whether individually or in the aggregate, that exceed a monetary cost of \$10,000.00 to cure is considered material.
 - e. Nothing herein will be deemed of waiver of any other remedy *Aqua* or *Aqua OW* as applicable may have whether at law or equity. Neither the failure of *Aqua* or *Aqua OW* as applicable to perform any action contained herein, or to notify the Parties thereto relieves any other Party of any other obligation hereunder prior to the Transfer Date.
5. **Design Documents.** *Association* has previously provided *Aqua* with all available documents, including engineering drawings, permits, plans, and costs of construction, pertaining to the Facilities in the *Association's* possession. In addition, *Aqua* and *Aqua OW* have access to and the right to keep and maintain any and all documents concerning or pertaining to the Facilities that are stored or located in or about the Facilities. If *Aqua* or *Aqua OW* need or require any additional documents pertaining to the Facilities in any respect, *Association* will endeavor to assist *Aqua* or *Aqua OW*, within reason, to secure such documents from North Fork Development, which constructed the Facilities, or such other source *Aqua* or *Aqua OW* may specify.
6. **Transfer and Transfer Documents.**
- a. On the Transfer Date, the Facilities will be transferred to *Aqua* or *Aqua OW* as applicable.
 - b. The Assets transferred hereunder will be free and clear of all liens and encumbrances.
 - c. Prior to the Transfer Date and as an express condition of *Aqua* or *Aqua OW* as applicable accepting Transfer, the following documents will be duly executed and delivered to *Aqua* or *Aqua OW* as applicable, each to be effective as of the Transfer Date:

- i. A Bill of Sale for the Water System Assets as attached hereto in Schedule 6.c.i.
- ii. A Bill of Sale for the Wastewater System Assets as attached hereto in Schedule 6.c.ii.
- iii. A Grant of Easement for each easement to be conveyed with the Water System Assets pursuant to Section 2.a.ii., as attached hereto in Schedule 6.c.v.
- iv. A Grant of Easement for each easement to be conveyed with the Wastewater System Assets pursuant to Section 3.a.ii., as attached hereto in Schedule 6.c.vi.
- v. An Assignment and Transfer of Easement for each easement to be assigned and transferred with the Water System Assets pursuant to Section 2.a.iii., as attached hereto in Schedule 6.c.vii.
- vi. An Assignment and Transfer of Easement for each easement to be assigned and transferred with the Wastewater System Assets pursuant to Section 3.a.iii., as attached hereto in Schedule 6.c.viii.
- vii. The Design Documents required by Section 5.
- viii. A complete list of customers of the Facilities, including the names, street addresses and lot numbers for each lot in the Subdivision that will be served by the Facilities.
- ix. A list of utility providers for the Facilities.

7. Taxes and Other Costs.

- a. The *Association* and *Aqua* or *Aqua OW* as applicable will, if applicable, each pay 50% of the realty transfer tax on all real property conveyed as part of the Facilities transfer.
- b. For any taxes assessed or levied on the Facilities, whether for real property or personal property that are not paid or not yet due and owing as of the time of Transfer, the *Association* shall pay to *Aqua* or *Aqua OW* as applicable the amount of such taxes whether to be paid or due and owing and *Aqua* or *Aqua OW* as applicable shall be responsible for satisfying any such taxes up to the amount paid to *Aqua* or *Aqua OW* as applicable by the *Association*.
- c. For any taxes attributable to the Facilities, but not yet assessed or due and owing, the *Association* is responsible for such amounts attributable to the Facilities prior to Transfer and *Aqua* or *Aqua OW* as applicable is responsible for such amounts attributable to the Facilities subsequent to Transfer. the *Association* shall pay to

Aqua or *Aqua OW* as applicable any such estimated amounts attributable to NFDC for the time prior to the Transfer Date and *Aqua* or *Aqua OW* as applicable is responsible for satisfying any such taxes up to the amount paid to *Aqua* or *Aqua OW* as applicable by the *Association*.

8. Additional Rights and Responsibilities.

- a. The *Association* hereby further conveys and confirms to *Aqua* or *Aqua OW* as applicable an easement and right-of-way over any private streets served by the Facilities until their acceptance by the appropriate governing body, for the purpose of installing, maintaining, repairing, extending, replacing, and removing said mains and appurtenances.
- b. The *Association* hereby grants to *Aqua* or *Aqua OW* as applicable an easement and right-of-way for ingress and egress on, over, and through any Subdivision common areas, including, but not limited to, any streets, alleys, or throughways, of the *Association* or the Subdivision for access to the Facilities.
- c. *Aqua* or *Aqua OW* as applicable will not be considered a member of the *Association* nor will it be subject to any fees, dues, or assessments of the *Association* by virtue of any easement granted to *Aqua* or *Aqua OW* as applicable in any real estate or property within the bounds of the Subdivision. The *Association* will indemnify *Aqua* or *Aqua OW* as applicable for any such costs for which *Aqua* or *Aqua OW* as applicable may be found liable, including the reasonable costs and fees of *Aqua* or *Aqua OW* as applicable in contesting any claim or action to collect or otherwise enforce as to *Aqua* or *Aqua OW* as applicable any such fees or assessments.
- d. *Aqua* or *Aqua OW* as applicable has the right to extend any mains or pipes continuously or laterally, or both, in the public way or in proper easements in or to other lands, streets, or avenues.
- e. Each Party, from time to time after the Transfer, at the other Party's request, and without compensation, will execute, acknowledge, and deliver to the other Party such other instruments of sale, conveyance, assignment, and transfer and will take such other reasonable actions and execute and deliver such other documents, certifications, and further assurances as may reasonably be required to complete the transaction contemplated herein in accordance with the terms hereof. Each of the parties hereto, without compensation, will cooperate with the other and execute and deliver to the other such other instruments and documents and take such other actions as may be reasonably requested from time to time by any other party hereto as necessary to carry out, evidence, and confirm the purposes of this Agreement.

9. Representations of the Association. The *Association*, as well as the individual signatories hereto represent and warrant as follows:

- a. Ownership. The *Association* is the owner of the Facilities and vested with good

and marketable title thereto, free and clear of any liens or encumbrances;

- b. Standing. The *Association* is in good standing under the laws of the State of Ohio;
- c. Authority. The *Association* has full power and authority to sell, convey, assign, transfer and deliver and has good and marketable title to the Facilities, free and clear of all liens and encumbrances;
- d. Compliance. Except as stated in Schedule 9.d. There are no known violations or noncompliance with the laws and regulations applicable to the Water Utility System or groundwater, nor of any environmental problems or concerns relating to the Wastewater Utility System;
- e. Pending Litigation. There are no pending claims or actions, or to the best of the *Association's* knowledge there are no, investigations or legal or administrative proceedings regarding the Assets or the *Association's* ability to transfer the Assets;
- f. Threatened Litigation. To the best of the *Association's* knowledge, there are no threatened claims, actions, investigations, or legal or administrative proceedings regarding the Assets or the *Association's* ability to transfer the Assets, nor does the *Association* know of any basis for any such claim, action, or proceeding;
- g. No Material Adverse Conditions. To the best of the *Association's* knowledge there are no conditions or developments existing, or, to the knowledge of the *Association*, threatened that would have a material adverse effect on the Assets;
- h. Compliance with Law. Except as stated in Schedule 9.h., within the last 12 months, the *Association* has not received any notice of and to the best of the *Association's* knowledge, the Facilities are not in material violation of any law, ordinance, or governmental rule or regulation to which the Facilities are subject and to the best of the *Association's* knowledge, *Association* has not failed to obtain, or to adhere to the requirements of, any certificate, license, permit, or other governmental authorization necessary to the ownership of its assets and properties or to the conduct of its business;
- i. Adequacy of Permits. To the best of the *Association's* knowledge, the *Association* has obtained and continues to possess all permits, licenses, approvals, or other authorizations that are required under the Environmental Laws, and the *Association* has filed such timely and complete renewal applications as may be required prior to the Transfer Date, and also have complied with all reporting and record keeping requirements under the Environmental Law;
- j. Environmental Conditions. To the best of the *Association's* knowledge, there are no past or present events, conditions, circumstances, activities, practices,

incidents, actions or plans pertaining or relating to the Assets that may impede or prevent continued compliance with the Environmental Laws or which may give rise to any civil or criminal liability under the Environmental Laws;

- k. Compliance with Decrees. Except as stated in Schedule 9.k., within the last 12 months, the *Association* has not received any written notice or to the *Association's* knowledge any other notice that the *Association* has violated any applicable orders, decrees, judgments and notices issued against the Systems under or in connection with the Environmental Laws;
- l. Zoning. All zoning and municipal or other local approvals for construction and location and operation of the Facilities have been obtained; and,
- m. As used in this Agreement, the following terms have the following meaning:
 - i. The term "Environmental Laws" includes all federal, state and, local environmental laws and regulations, including, without limitation, the Clean Water Act ("CWA"), also known as the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. §§ 136 et. seq., the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §§ 300 (f) et seq., the Surface Mining Control and Reclamation Act ("SMCRA"), 30 U.S.C. §§ 1201 et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Superfund Amendment and Reauthorization Act of 1986 ("SARA"), Public Law 99-499, 100 Stat., 1613, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, the Atomic Energy Act ("AEA"), Act of August 30, 1954, Ch. 1073, 68 Stat. 919 (codified as amended in scattered sections of 5 U.S.C. and 42 U.S.C.). Any reference to a legislative act or regulation is deemed to include all amendments thereto and all regulations, orders, decrees, judgments, opinions, directives, or notices issued thereunder.
 - ii. The term "Environmental Condition" means any condition or circumstance related to the Assets, whether created by Seller or any other Party, which (1) required or requires abatement or correction under an Environmental Law, or (2) has given or may give rise to any civil or criminal liability under an Environmental Law, or (3) has created or may create a public or private nuisance, including the presence of asbestos, PCB's, hazardous substances, petroleum products, radioactive waste, or radon, on, in, or about the Assets.

10. General Provisions.

- a. Rates. Upon transfer applicable rates for the System shall be as follows:

Proposed Water Rates

Fixed Charge: \$10.05

Volumetric Charge: \$6.50/1000 gallons

Proposed Sewer Rates

Fixed Charge: \$6.50

Volumetric Charge: \$10.67/1000 gallons

Future rates will be subject to any law or regulation governing rates.

- b. Representations Regarding Fire Service. The Parties acknowledge that *Aqua*'s sole obligation after Transfer is to provide water utility service to lots in accordance with *Aqua*'s applicable 's tariffs, charges and rules and regulations as approved by the PUCO (or local municipality, as applicable), within the Subdivision and that *Aqua* does not provide, nor is the Water System designed to provide, fire service.
- c. Binding upon Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties and their successors and assigns. the *Association* may not assign this Agreement without the express written consent of *Aqua* or *Aqua OW* as applicable . *Aqua* or *Aqua OW* as applicable may not assign this Agreement without the *Association*'s written consent.
- d. No Third Party Beneficiary Rights. Nothing expressed or implied in this Agreement will be construed as providing any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement to any third party.
- e. Counterparts. This Agreement may be executed in one or more counterpart signature pages (including facsimile and electronically scanned signature pages), each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.
- f. Headings. The headings within this Agreement are inserted for convenience only and will not be construed as a limitation or expansion of any term or provision of this Agreement.
- g. Waiver. The failure of a Party to immediately assert its rights or an obligation of the other Party hereunder will not be deemed as a waiver of such right or obligation. No single waiver of any term, condition, or provision of this Agreement will be deemed to be, or construed as, a further or continuing waiver of any such term, condition, or provision unless agreed to by written instrument.
- h. Modifications in Writing. This Agreement may not be modified, amended or changed in any respect except in writing, duly signed by the Parties hereto.
- i. Governing Law. This Agreement is governed by the laws of the State of Ohio, without regard to such state's conflict of law or choice of law rules.
- j. Authority to Sign Agreement. All persons signing this Agreement warrant they

are fully authorized to sign this Agreement on behalf of the respective Parties, to bind their respective Party to the terms and conditions of this Agreement and that no further approvals or authorizations are needed to bind their respective Parties to its terms.

- k. Drafted by All Parties. This Agreement is deemed to have been drafted by all Parties and in the event of any ambiguity, the wording of the agreement will not be construed against any particular Party as the drafter via the doctrine of contra proferentem.
- l. Original Agreement. Except as modified herein, all terms of the Original Agreement and Addendum remain in force and effect.
- m. Notices. All notices and other communications required or permitted hereunder will be in writing and sent either (i) personally by hand delivery, (ii) by registered or certified United States first-class mail, postage prepaid, return receipt requested, (iii) by nationally recognized overnight courier, or (iv) by facsimile addressed to the address or facsimile number indicated below (or at such other address or facsimile number as such Party or permitted assignee has furnished to the other Parties hereto in writing). All such notices and other written communications are effective on the date of delivery.

If to *Association*, such notice will be addressed to:

Address: Continental Management
20545 Center Ridge Road, Suite LL20
Rocky River, Ohio 44116
Attn: Jenny Archer
Telephone: 216-664-1919
Facsimile: 216-664-1980

With a copy to:

Address: Kaman & Cusimano, LLC
50 Public Square, Suite 2000
Cleveland, Ohio 44113
Attn: Joseph J. Cusimano, Esq.
Telephone: 216-696-0650
Facsimile: 216-771-8478

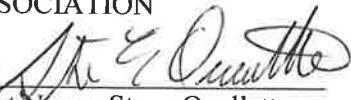
If to *Aqua* or *Aqua OW*, such notice will be addressed to:

Aqua Ohio, Inc.
6650 South Avenue
Boardman, OH 44512

Attn: President
Telephone: 330 397-0770
Facsimile:

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on this
date and year first noted above.

FIRESTONE TRACE HOMEOWNERS
ASSOCIATION

By: 
Print Name: Steve Ouellette
Title: President

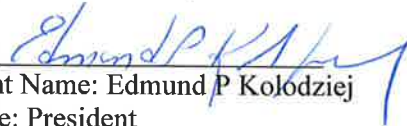
Dated: 7/31/2017

AQUA OHIO WASTEWATER, INC.

By: 
Print Name: Edmund P Kolodziej
Title: President

Dated: 7-31-17

AQUA OHIO, INC.

By: 
Print Name: Edmund P Kolodziej
Title: President

Dated: 7-31-17

EXHIBIT 2

AQUA Ohio, Inc.
STARK DIVISION
DESCRIPTION OF SERVICE AREA
TO FIRESTONE TRACE

Beginning at a point, said point being the intersection of the corners of O.L. 16, 17, 24, and 25 with the centerline of Ira Road, in Bath Township, Summit County, Ohio;

Thence continue southwesterly along said centerline of Ira Road for a distance of 2,686.15 feet to a point;

Thence north for a distance of 2,215.79 feet along the westernmost lot lines of parcels along Rock Creek Street to a point;

Thence in an easterly direction a distance of 1,480.71 feet to a point;

Thence in a northerly direction for a distance of 247.62 feet to a point, said point being the northwest corner of Lot 15 on Firestone Trace;

Thence in a southwesterly direction for a distance of approximately 2,364.89 feet along the southernmost lot lines of the parcels along Bridle Trail to a point;

Thence in a southerly direction from said point a distance of 441.21 feet to a point;

Thence in a westerly direction along the southernmost lot lines of parcels along High Ridge Trail a distance of 1,780.81 feet to a point intersecting with the centerline of Hametown Road (C.H. 253);

Thence in a northeasterly direction along said centerline of Hametown Road (C.H. 253) a distance of 1,281.02 feet to a point;

Thence in an easterly direction along the southern lot lines of the parcels owned by the Revere School Board and Bath Township a distance of 2,547.48 feet to a point;

Thence north for an approximate distance of 450.47 feet to a point;

Thence west a distance of 407.35 feet to a point;

Thence continue in a northeasterly direction for a distance of 767.17 feet to a point, said point is 326.97 feet south of the centerline of Everett Road;

Thence east a distance of 199.89 feet to a point;

Thence south a distance of 108.58 feet to a point;

Thence in an easterly direction a distance of 300.08 feet to a point;

Thence in a northeasterly direction a distance of 437.09 feet to a point intersecting with the centerline of Everett Road;

Thence continue in an easterly direction along said centerline of Everett Road a distance of 845.93 feet to a point;

Thence in a southwesterly direction a distance of 1,795.55 feet to a point;

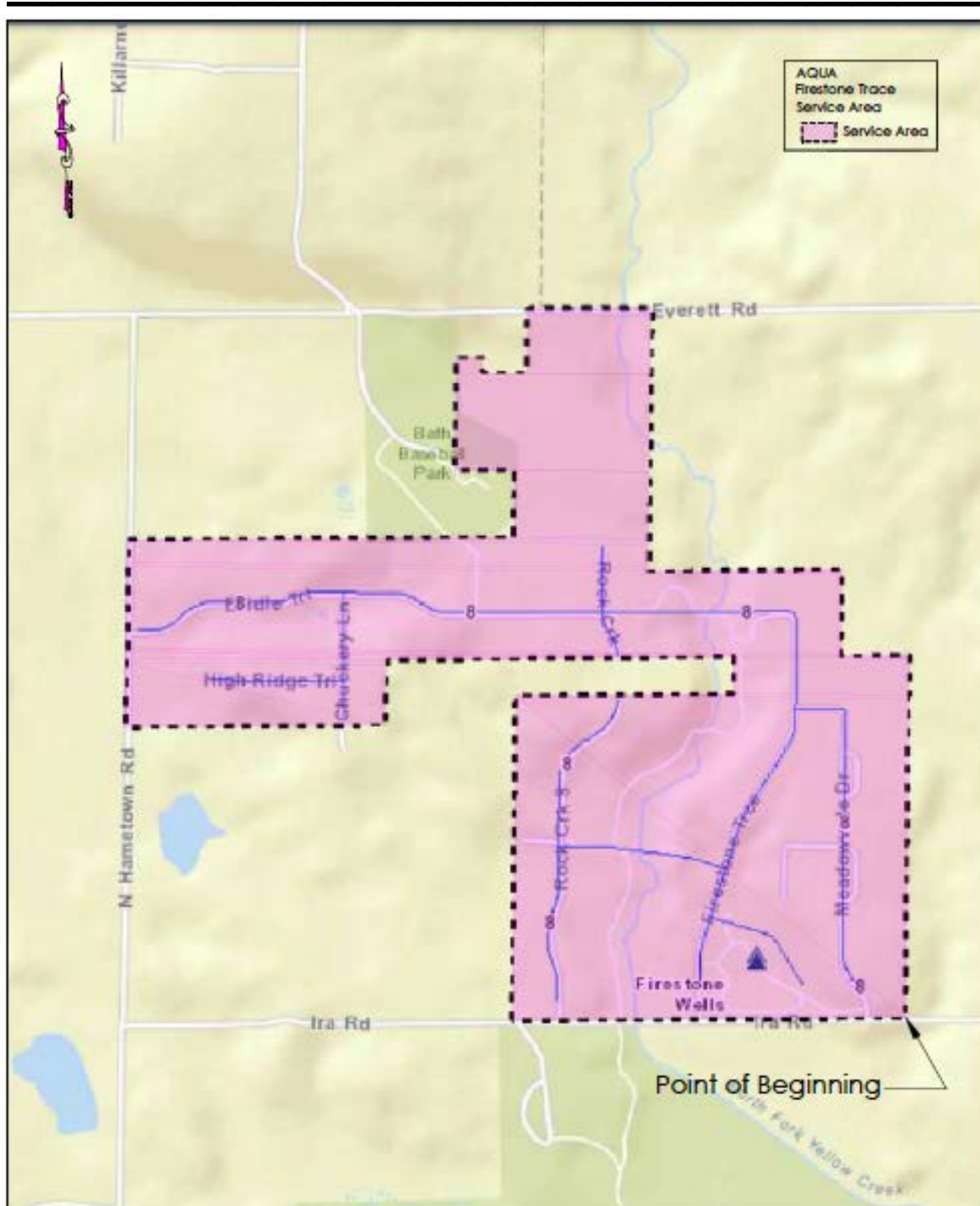
Thence in an easterly direction 1,328.06 feet to a point; said point being the northeast corners of Lot 19 and 20 on Firestone Trace;

Thence southwest a distance of 590.18 feet along the easternmost lot lines of Lots 20, 21, and 22 on Firestone Trace to a point, said point being the intersection of the corners of Lots 22 and 23;

Thence easterly a distance of 465.66 feet to a point, said point being the intersection of the corners of O.L. 16 and 17;

Thence continue in a southwesterly direction a distance of 2,745 feet to a point, said point being the intersection of the corners of O.L. 16, 17, 24, and 25 with the centerline of Ira Road, being the point of beginning.

P.U.C.O Tariff No. 2



Issued: _____

Effective: _____

Issued by Edmund Kolodziej, Jr., President and COO, Aqua Ohio, Inc.
In accordance with the Public Utilities Commission of Ohio
Order dated _____ for Case No. 17-XXXX-WS-ATA

EXHIBIT 3

AQUA OHIO, INC.

P.U.C.O. TARIFF NO. 2

89-7028-WW-TRF
89-7025-WW-TRF

Covers the following Service Areas:

- Lake Erie Division
- Masury Division
- Area formerly served by Tomahawk Utilities, Inc.
- Area formerly served by Mohawk Utilities, Inc.
- Area formerly served by Ohio American Water Company
- [Area formerly served by Firestone Trace](#)

Aqua Ohio, Inc.
6650 South Avenue
Boardman, OH 44512

Section 2
Third Revised Sheet No. 1
Replaces Second Sheet No. 1
P.U.C.O. Tariff No. 2

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SUBJECT INDEX

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A			
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Issued: _____ Effective: _____

Issued by Edmund Kolodziej, Jr., President and COO, Aqua Ohio, Inc.
In accordance with the Public Utilities Commission of Ohio
Order Dated _____ for Case No. 17-XXXX-WS-ATA

Aqua Ohio, Inc.
6650 South Avenue
Boardman, OH 44512

Section 2
Third Revised Sheet No. 2
Replaces Second Sheet No. 2

P.U.C.O. Tariff No. 2

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D			
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Issued by Edmund Kolodziej, Jr., President and COO, Aqua Ohio, Inc.
In accordance with the Public Utilities Commission of Ohio
Order Dated _____ for Case No. 17-XXXX-WS-ATA

Aqua Ohio, Inc.
6650 South Avenue
Boardman, OH 44512

Section 2
Fourth Revised Sheet No. 3
Replaces Third Sheet No. 3

P.U.C.O. Tariff No. 2

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Issued: _____ Effective: _____

Issued by Edmund Kolodziej, Jr., President and COO, Aqua Ohio, Inc.
In accordance with the Public Utilities Commission of Ohio
Order Dated _____ for Case No. 17-XXXX-WS-ATA

Aqua Ohio, Inc.
6650 South Avenue
Boardman, OH 44512

Section 2
Third Revised Sheet No. 4
Replaces Second Sheet No. 4

P.U.C.O. Tariff No. 2

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T			
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Issued: _____ Effective: _____

Issued by Edmund Kolodziej, Jr., President and COO, Aqua Ohio, Inc.
In accordance with the Public Utilities Commission of Ohio
Order Dated _____ for Case No. 17-XXXX-WS-ATA

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Aqua Ohio, Inc.
6650 South Avenue
Boardman, OH 44512

Section 2
First Revised Sheet No. 5
Replaces Original Sheet No. 5

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P.U.C.O. Tariff No. 2

V

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Issued: _____ Effective: _____

Issued by Edmund Kolodziej, Jr., President and COO, Aqua Ohio, Inc.
In accordance with the Public Utilities Commission of Ohio
Order Dated _____ for Case No. 17-XXXX-WS-ATA

P.U.C.O Tariff No. 2

**Rates for water customers in the former Firestone Trace
Located in Bath Township, Ohio**

WATER CUSTOMER CHARGE PER MONTH

	<u>Per Month</u>
<u>Customer Charge</u>	<u>\$10.05</u>

WATER VOLUMETRIC RATES

	<u>Per 100 gallon</u>
<u>For all consumption gallons per month</u>	<u>\$0.6500</u>

LATE PAYMENT FEE

The late payment fee of 5% is based on current charges only and is not compounded on future delinquencies. The customer receives a six (6) day grace period (after due date) before late fees are applied. The six-day grace period allows for any mail or processing delays.

DISHONORED PAYMENTS

When a payment for service is returned by the financial institution unpaid, a charge of twenty dollars (\$20.00) will be assessed to cover the cost of processing this transaction, provided the payment is properly processed by the Company. The charge for the dishonored payment may be reflected at the Company's option, when the Company returns the dishonored payment or may be included on the customer's next billing.

RECONNECTION FEE

Reconnection fees as defined by this tariff, Section 3-2, Original Sheet No. 9, Item 16, are:

<u>Reconnection Fee during regular business hours</u>	<u>\$55.00</u>
<u>Reconnection Fee other than during regular business hours</u>	<u>\$170.00</u>

ACCOUNT ACTIVATION CHARGE

An account activation charge of thirty-five dollars (\$35.00) will be charged for a service connection during the Company's regular business hours.

Issued: _____

Effective: _____

Issued by Edmund Kolodziej, Jr., President and COO, Aqua Ohio, Inc.
In accordance with the Public Utilities Commission of Ohio
Order dated _____ for Case No. 17-XXXX-WS-ATA

Aqua Ohio, Inc.
6650 South Avenue
Boardman, OH 44512

Section 4
Original Sheet No. 35

P.U.C.O Tariff No. 2

Rates for water customers in the former Firestone Trace (cont.)

SYSTEM IMPROVEMENT SURCHARGE (SIC)

None.

Issued: _____

Effective: _____

Issued by Edmund Kolodziej, Jr., President and COO, Aqua Ohio, Inc.
In accordance with the Public Utilities Commission of Ohio
Order dated _____ for Case No. 17-XXXX-WS-ATA

P.U.C.O Tariff No. 2

**Rates for sewer customers in the former Firestone Trace
Located in Bath Township, Ohio**

SEWER CUSTOMER CHARGE PER MONTH

	Per Month
Customer Charge.....	\$6.50

SEWER VOLUMETRIC RATES

	Per 100 gallon
For all consumption gallons per month	\$1.0670

LATE PAYMENT FEE

The late payment fee of 5% is based on current charges only and is not compounded on future delinquencies. The customer receives a six (6) day grace period (after due date) before late fees are applied. The six-day grace period allows for any mail or processing delays.

DISHONORED PAYMENTS

When a payment for service is returned by the financial institution unpaid, a charge of twenty dollars (\$20.00) will be assessed to cover the cost of processing this transaction, provided the payment is properly processed by the Company. The charge for the dishonored payment may be reflected at the Company's option, when the Company returns the dishonored payment or may be included on the customer's next billing.

Issued: _____

Effective: _____

Issued by Edmund Kolodziej, Jr., President and COO, Aqua Ohio, Inc.
In accordance with the Public Utilities Commission of Ohio
Order dated _____ for Case No. 17-XXXX-WS-ATA

Aqua Ohio, Inc.
6650 South Avenue
Boardman, OH 44512

Section 4
Original Sheet No. 37

P.U.C.O Tariff No. 2

Rates for sewer customers in the former Firestone Trace (cont.)

SYSTEM IMPROVEMENT SURCHARGE (SIC)

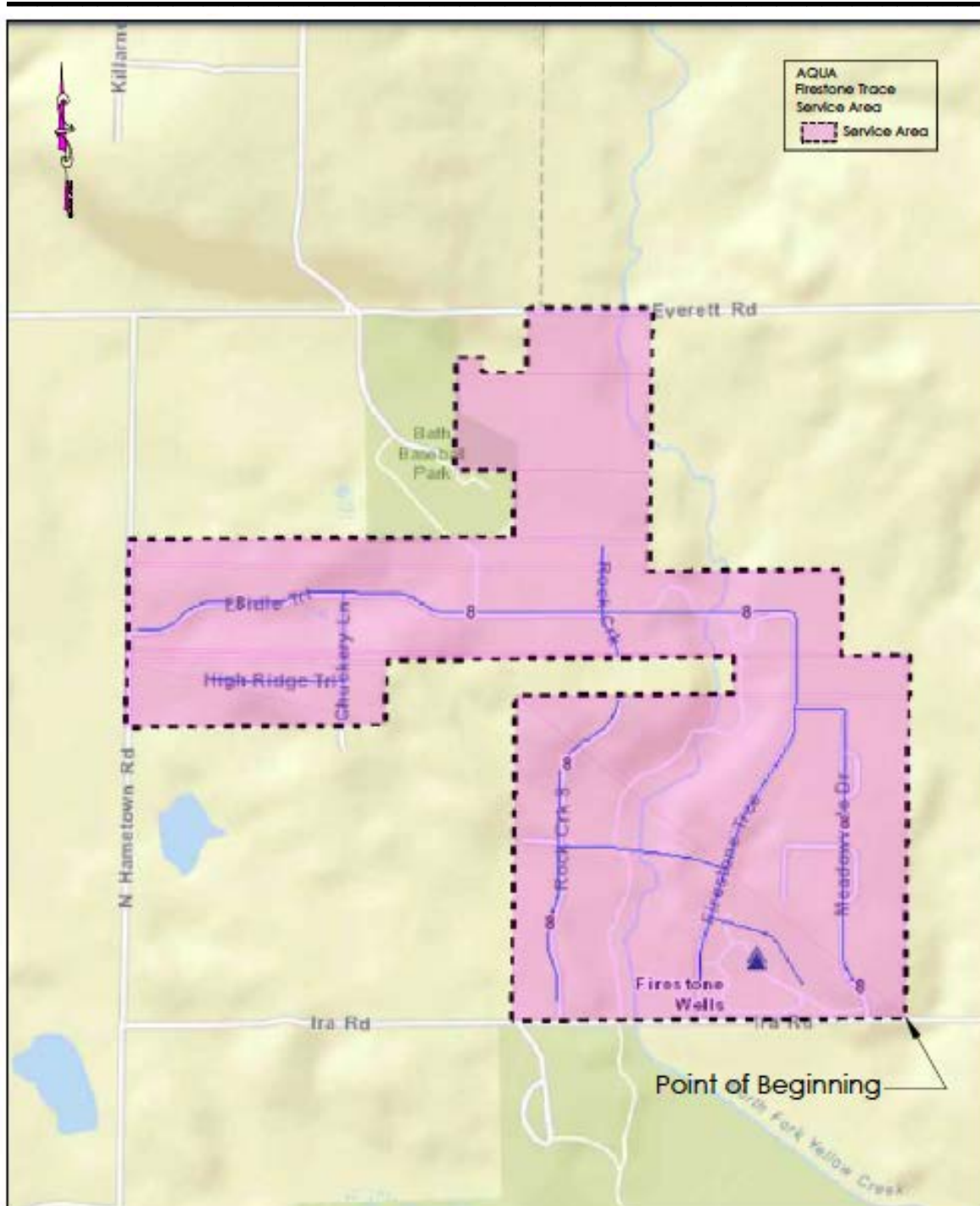
None.

Issued: _____

Effective: _____

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P.U.C.O Tariff No. 2



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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 17-1717-WS-ACE, 17-1718-WS-ATA

Summary: Application electronically filed by Mr. Andrew J Campbell on behalf of Aqua Ohio, Inc.