

ORDINANCE NO. 06-17 AC CMS

**AN ORDINANCE APPROVING AN AGREEMENT WITH OBERLIN
COLLEGE RELATING TO THE SETTLEMENT OF A DISPUTED UTILITY
BILL AND DECLARING AN EMERGENCY**

BE IT ORDAINED by he Council of the City of Oberlin, County of Lorain,
State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the proposed agreement between the City of Oberlin and Oberlin College relating to the settlement of an outstanding utility billing, a copy of the agreement being attached hereto and incorporated herein by reference, is approved, and the City Manager is authorized and directed to execute same on behalf of the City.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit:

"to approve an agreement settling a long-standing dispute relating to an outstanding utility billing at the earliest possible date in order to allow the settlement monies to be available to needy Oberlin utility consumers during the winter months",

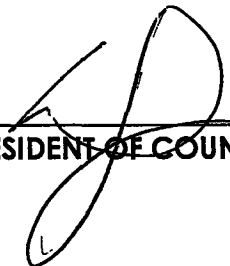
and shall take effect immediately upon passage.

PASSED: 1st Reading – February 21, 2006 (E)
 2nd Reading –
 3rd Reading –

ATTEST:



CLERK OF COUNCIL



PRESIDENT OF COUNCIL

POSTED: February 21, 2006

EFFECTIVE DATE: February 21, 2006

AGREEMENT

This Agreement, dated as of February 22, 2006, is between the City of Oberlin, an Ohio municipal corporation (the "City") and Oberlin College, an Ohio not-for-profit corporation (the "College").

WHEREAS, the College is the owner of certain premises known as The Oberlin College Williams Ice Rink located at Woodland and Union Streets, Oberlin, Ohio (the "Premises");

WHEREAS, the City has provided utility services to the Premises since at least July 7, 1994;

WHEREAS, the College entered into a lease agreement with Lorain County Hockey Association, Inc., (the "Hockey Association") dated July 7, 1994;

WHEREAS, the lease agreement with the Hockey Association was terminated in September, 2001;

WHEREAS, the City, pursuant to Section 909.02 of its Codified Ordinances, claims that the College is liable for the payment of utility services provided to the Premises during the period that the lease with the Hockey Association was in effect;

WHEREAS, the College denies liability for the payment of utility services provided to the Premises during the period that the lease with the Hockey Association was in effect and contends that the Hockey Association contracted for the services and is the sole entity responsible for payment of the services to the City;

WHEREAS, in a spirit of positive negotiations, the City has continued to provide utility services to the Premises following the termination of the lease with the Hockey

Association; and the College has made timely payments to the City for that utility service;

WHEREAS, the parties now desire to settle and resolve all claims relating to utility services for the Premises prior to the date of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth below, and intending to be legally bound, the Parties agree as follows:

1. The parties acknowledge that the amount due for utility services for the time period prior to October 1, 2001 is \$73,935.52, exclusive of interest and penalties. The parties acknowledge that the amount due for utility services for the time period from October 1, 2001, through the date of this Agreement is \$6,305.49, exclusive of interest and penalties.

2. Within 30 days of the execution of this Agreement, The College shall pay to the City's utility "Caring Fund" \$36,967.76. On July 1, 2006, The College shall pay to the City's utility "Caring Fund" \$36,967.76.

3. Within 30 days of the execution of this Agreement, The College shall pay to the City \$6,305.49. The City shall post that amount to utility account 41.00152.1.

4. The City releases The College from any and all liability for any amounts due for utility services provided to the Premises prior to the date of this Agreement, including, without limitation all amounts referenced in paragraph 1 of this Agreement, plus all interest and penalties. The City covenants to take no action to try to collect any amounts allegedly due to the City related in any way to the utility services provided to the Premises prior to the date of this Agreement, other than to collect the amounts due under this Agreement.

5. Following execution of this Agreement, the City shall provide and continue to provide utility services for the Premises in accordance with its regular operating and service practices. The City shall invoice The College for utility services provided at the Premises in a manner consistent with the manner in which the City invoices other customers for utility services.

6. The College's agreement to make a payment to the City's Utility Caring Fund in this Agreement is part of an agreement to settle a disputed claim.

7. This Agreement shall be binding upon the Parties and their respective successors and assigns.

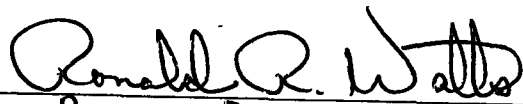
8. Every provision of this Agreement is severable. If any term or provision of this Agreement is illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the validity, legality or enforceability of the remainder of the Agreement.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

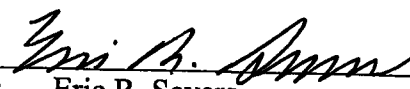
CITY OF OBERLIN


By: Robert DiSpirito
Its: City Manager

OBERLIN COLLEGE


By: RONALD R. WATTS
Its: Vice President for Finance

Approved as to form:


By: Eric R. Severs
Its: Law Director