

II. JURISDICTION AND VENUE.

4. This Court has subject matter jurisdiction pursuant to Article IV, Section 4(B) of the Ohio Constitution and Ohio Revised Code Chapters 2305 and 2721.

5. This action presents an actual, justiciable controversy between the parties concerning their rights, status, and legal relations under written contracts and amendments governing water service between the parties, and declaratory relief is appropriate pursuant to R.C. Chapter 2721.

6. Venue is proper in Hamilton County, Ohio pursuant to Civ.R. 3(B) because Defendant resides in Hamilton County, the contracts at issue were performed in Hamilton County, and the controversy concerns services and infrastructure located in Hamilton County.

III. ALLEGATIONS COMMON TO ALL CLAIMS.

A. The Governing Agreements and the Parties' Contractual Rights.

7. Madeira and Indian Hill entered into a written agreement dated April 30, 2012 for water service to Madeira and its residents (the "2012 Water Service Contract" or "Contract"). The Contract is attached hereto as Exhibit A.

8. In 2023, Madeira and Indian Hill entered into a First Amendment to the Contract (the "2023 Amendment"). The 2023 Amendment is attached hereto as Exhibit B.

9. Section 11 of the Contract provides that it "shall continue for a period of 20 years," but that "either party may cancel this Agreement for reasonable cause upon two years written notice to the other party."

10. The 2023 Amendment repeats the same termination provision, again confirming that either party may cancel for reasonable cause upon two years written notice.

11. Section 12 of the 2023 Amendment additionally imposes a specific cooperative obligation: “Madeira and Indian Hill agree to meet on a regular basis and to negotiate in good faith the transfer of water mains owned by Madeira to Indian Hill.”

12. The Contract and 2023 Amendment establish detailed mechanisms governing rates, operational responsibilities, and infrastructure improvement funding during the term of the agreement, including the Madeira Capital Fund structure and expenditure approvals, but contain no provisions imposing any “exit fee,” “separation cost” reimbursement obligation, consultant fee reimbursement obligations, or apportioning to Indian Hill any entitlement to “lost profits” or a “profit delta” upon termination by notice. *See, generally*, Contract at ¶¶ 1–11 (Exhibit A); 2023 Amendment at ¶¶ 5–13 (Exhibit B).

13. The Contract and 2023 Amendment further reflect that the parties understood the possibility of termination and transition and negotiated a two-year runway for an orderly changeover. *See* Contract at ¶ 11 (Exhibit A); 2023 Amendment at ¶ 11 (Exhibit B).

14. Madeira has evaluated, and continues to evaluate, a transition of its water service provider such that Madeira would be served solely by the Greater Cincinnati Water Works (“GCWW”), rather than continuing to receive water service through Indian Hill.

15. Consistent with its constitutional sovereignty and municipal home rule authority, Madeira City Council passed Ordinance No. 25-02 on April 28, 2025, authorizing Madeira to provide notice of termination of the Contract and 2023 Amendment between Madeira and Indian Hill and directing Madeira to negotiate the terms of a formal contract with GCWW for the provision of water service to Madeira. Ordinance No. 25-02 is attached hereto as Exhibit C; Meeting Minutes for the City Council Meeting on April 28, 2025 are also attached hereto as Exhibit

D. Ordinance 25-02 began the formal process of Madeira’s transitioning water service from Indian Hill to GCWW.

16. On October 27, 2025, Madeira City Council passed Ordinance No. 25-12 authorizing Madeira to execute and enter into the Retail Water Service Agreement between Madeira and GCWW and reauthorizing Madeira to provide notice of termination of the Contract and 2023 Amendment between Madeira and Indian Hill. Ordinance No. 25-12 is attached hereto as Exhibit E; Meeting Minutes for the City Council Meeting on October 27, 2025 are also attached hereto as Exhibit F.

17. Indian Hill has asserted, contrary to the express termination provisions in both the Contract and the 2023 Amendment, that Madeira’s contemplated termination constitutes a “breach” giving rise to an obligation to pay Indian Hill’s claimed separation infrastructure costs, Indian Hill’s professional and consultant costs, and a purported “lost profit” component.

18. These extra-contractual demands have been made notwithstanding the express termination-by-notice mechanism stated in both the Contract and the 2023 Amendment (Contract at ¶ 11 (Exhibit A)) and the 2023 Amendment’s express requirement to negotiate in good faith and meet regularly regarding transfer of Madeira-owned mains (2023 Amendment at ¶ 12 (Exhibit B)).

B. Indian Hill’s Demand Letter and the Manufactured “Damages” Narrative.

19. Indian Hill, through its solicitor and/or counsel, has issued written correspondence demanding that Madeira pay alleged “damages” relating to fire flow and distribution system impacts allegedly associated with Madeira’s contemplated transition. Indian Hill Law Director Scott D. Phillips’ (“Phillips”) December 17, 2025 Demand Letter to Madeira City Manager Michael Norton-Smith is attached hereto as Exhibit G.

20. Indian Hill’s demand letter asserted that Burgess & Niple (“B&N”) concluded that remediating alleged fire flow impacts would cost “at least \$13,000,000,” and further asserted that “there is no dispute” that such costs are “solely” attributable to Madeira. *See Exhibit G.*

21. Indian Hill’s demands cite to two B&N reports: (i) a January 9, 2025 report prepared in the context of Indian Hill’s water system master planning and model updates (the “January 2025 B&N Report”), and (ii) an August 26, 2025 report prepared at counsel’s request to analyze effects of disconnection and propose remedial options with conceptual costs (the “August 2025 B&N Report”). The January 2025 B&N Report is attached hereto as Exhibit H; the August 2025 B&N Report is also attached hereto as Exhibit I.

22. Indian Hill has treated these reports as “corroboration” for its asserted damages and for its position that Madeira must commit to pay Indian Hill’s asserted costs as a condition of any cooperation.

C. Letters Dated March 11, 2025 and April 15, 2025 Expand Upon Indian Hill’s Manufactured Damages Narrative.

23. On or about March 11, 2025, Phillips sent a written letter on behalf of Indian Hill to Madeira’s City Manager asserting that Madeira’s ordinance “provides notice of Madeira’s intent to terminate the Water Services Agreement ... pursuant to Section 11,” but that “the termination sought by Madeira constitutes a breach of the Water Services Agreement.” Phillips’ March 11, 2025 Letter to Madeira City Manager Michael Norton-Smith is attached hereto as Exhibit J.

24. In that same March 11, 2025 letter, Phillips asserted as a matter of law that “reasonable cause requires some level of breach,” and that Madeira’s termination grounds were an improper “business decision” insufficient to justify termination under Section 11. *See Exhibit J.*

25. Phillips further asserted that Madeira’s stated reasons for termination were “pre-textual,” that Madeira “does not like the deal it agreed to and has determined that it can get a better

deal from another provider,” and that the agreement “does not permit a unilateral termination for convenience.” *See Exhibit J.*

26. Phillips argued that Indian Hill “has not breached or otherwise defaulted,” that it is “uncontestable” Indian Hill has not breached, and that “Madeira appears to be the party preparing to breach,” thereby attempting to transform Section 11’s “termination-by-notice” straightforward grammatical structure into a “termination-only-for-breach” scheme never negotiated for or agreed to by the parties. *See Exhibit J.*

27. Phillips asserted that Madeira’s contemplated termination “also breaches the duty of good faith and fair dealing,” contending Madeira “cannot now skirt its obligation under the contract merely because it dislikes the agreed upon terms,” notwithstanding the parties’ negotiated Section 11 termination-by-notice option either party could have exercised during the term. *See Exhibit J.*

28. Phillips asserted that Madeira’s termination was “inconsistent with the Joint Fire District Agreement,” alleging that Joint Fire District Chief Stephen Oughterson informed Madeira that termination “will cause decreased ‘fire flows’ and reduce the JFD’s ability to fight fire,” and that termination “would prevent the JFD from providing sufficient water to all properties within the Fire District.” *See Exhibit J.*

29. Phillips also claimed that Indian Hill desired to resolve the matter “in an amicable and neighborly manner,” requested a meeting with Madeira’s administrative staff, and sought to frame Indian Hill’s willingness to “sit down” as voluntary “good faith” efforts, despite the contractual language already obligating both parties to engage in good faith transition negotiations. *See Exhibit J.*

30. On or about April 15, 2025, Phillips sent a second letter to Madeira's City Manager following up on his March 11 letter, stating that "More than a month has passed ... and you have not responded," and characterizing Madeira's lack of response as "of great concern to the Village." Phillips' April 15, 2025 Letter to Madeira City Manager Michael Norton-Smith is attached hereto as Exhibit K.

31. In that April 15 letter, Phillips demanded a meeting "to discuss how Madeira can make the Village whole," and threatened that if Madeira did not provide meeting dates "within 5 days," the Village would "have no choice but to sue to enforce the terms of the Water Services Agreement and the Joint Fire District Agreement." *See* Exhibit K.

32. In that April 15 letter, Phillips asserted that if Madeira proceeded with termination, the Village would suffer "at least \$4,000,000 in damages, as estimated by an engineer, to remedy fire flow issues caused by Madeira's breach," and would incur "additional and significant damage as a result of lost future income." *See* Exhibit K.

33. Phillips further asserted in the April 15 letter that the Village's "good faith efforts to resolve this issue are not a tacit admission that Madeira is permitted to terminate," and claimed the Village "has repeatedly accommodated the changing wishes and desires of Madeira," reinforcing that Indian Hill viewed cooperation and collaboration as discretionary leverage rather than a contractual obligation during a termination-by-notice transition process. *See* Exhibit K.

D. B&N's January 2025 and August 2025 Reports Are Internally Opaque and Logically Inconsistent.

34. The January 2025 B&N Report acknowledged limitations in its calibration and testing inputs, including that adjacent hydrants used during field testing were not provided and that B&N "made assumptions" as to which adjacent hydrant best matched test results. *See* January 2025 B&N Report (Exhibit H).

35. While the January 2025 B&N Report contained conclusions about fire flow impacts at specific locations, it failed to disclose sufficient modeling inputs, assumptions, or sensitivity analysis to support the precision of point estimates used in later advocacy by Indian Hill. *See* January 2025 B&N Report (Exhibit H).

36. The January 2025 B&N Report stated, on the one hand, that “fully restoring fire flows” to certain roads was not a realistic goal, while also identifying a “most feasible option” that would raise fire flows in the area “to over 1,000 gpm” (excluding dead ends), without defining the benchmark that constituted “full restoration.” *See* January 2025 B&N Report (Exhibit H).

37. The January 2025 B&N Report also treated the replacement of an existing elevated storage tank as a long-standing system need due to age and height constraints, reiterated that B&N recommended a Camargo Club location dating back to 2008, and recommended installation of a new 1.5 MG elevated tank “whether Madeira is disconnected or not,” based in part on long-term flexibility and unknown future demand – factors in no way logically attributable to Madeira’s future disconnection – yet the cost of the storage tank formed the financial basis for Indian Hill’s initial \$4,000,000 demand of Madeira. *See* January 2025 B&N Report (Exhibit H).

38. The January 2025 B&N Report also describes certain trunk/main improvements on Drake Road and Shawnee Run Road as “currently planned,” reflecting preexisting system upgrade plans not caused by any termination notice or future disconnection. *See* January 2025 B&N Report (Exhibit H).

39. The August 2025 B&N Report was prepared at Indian Hill’s counsel’s request and adopts a different stated objective, asserting that “multiple options were explored to restore fire flow ... back to equivalent existing conditions,” without clearly defining “equivalent existing

conditions” or tying that benchmark to any adopted minimum fire flow requirement under an approved method. *See* August 2025 B&N Report (Exhibit I).

40. The August 2025 B&N Report imposes “design limitations” and assumptions that materially drive its conclusions (including constraints on easements and routing), yet the report does not present sensitivity analysis showing whether less restrictive approaches, such as cooperative looping or alternative interconnections, could materially reduce or eliminate claimed deficiencies. *See* August 2025 B&N Report (Exhibit I).

41. The August 2025 B&N Report treats Drake Road and Shawnee Run Road improvements as “proposed as part of future upgrades” while simultaneously including their conceptual costs in a fire flow restoration estimate and presenting them as “needed as part of fire flow restoration,” without segregating baseline capital modernization costs from incremental, disconnection caused costs. *See* August 2025 B&N Report (Exhibit I).

42. Notably, the August 2025 B&N Report abandoned the cost of 1.5 MG storage tank featured prominently in the January 2025 B&N Report (and used as a basis for Indian Hill’s initial \$4,000,000 demand), without reconciling why a tank replacement deemed necessary just months ago was excluded from the August remediation narrative. *See* January 2025 B&N Report (Exhibit H) and August 2025 B&N Report (Exhibit I).

43. The January 2025 and August 2025 reports also differ materially in assumed disconnection configuration and boundary conditions, including treatment of mains that are within Madeira limits but assumed to remain part of Indian Hill’s system in the August report, undermining any claim that the reports are consistent corroboration of a single, fixed “damage” condition attributable to Madeira. *See* January 2025 B&N Report (Exhibit H) and August 2025 B&N Report (Exhibit I).

44. Accordingly, Indian Hill’s demand that Madeira pay “at least \$13,000,000” as a non-negotiable “separation cost” (just like its initial \$4,000,000) was neither anchored in a stable scientific predicate nor the legal obligations of the parties; instead, the undisclosed limitations driving B&N’s report conclusions, as well as their reliance upon undefined and evolving benchmarks, function as little more than convenient cover for Indian Hill to recharacterize their preexisting capital project needs as contractual “damages” – which runs counter to the Contract’s and 2023 Amendment’s allocation of infrastructure repair and replacement responsibility and the agreements’ inclusion of an option for either party to terminate for reasonable cause during the term. *See* Contract at ¶ 11 (Exhibit A); 2023 Amendment at ¶¶ 11–12 (Exhibit B); *see also*, Exhibit H and I and G.

E. Indian Hill’s Conditional Refusal to Cooperate Unless Madeira Pays Extra-Contractual Costs.

45. Indian Hill officials, including its Law Director, have repeatedly stated that Indian Hill will not cooperate in designing a cost-effective transition unless Madeira first agrees to pay Indian Hill’s asserted costs, consultant fees, and profit related components, even though the Contract contains no such obligations. *See* Contract at ¶ 11 (Exhibit A); 2023 Amendment at ¶ 12 (Exhibit B).

46. Instead of navigating with full transparency the two-year transition period contemplated by the parties, Indian Hill has used the two B&N reports to bootstrap scientific-sounding support to numerous letters demanding “at least” \$13,000,000 from Madeira taxpayers (plenty of whom are currently IHWW ratepayers), all the while (a) requesting collaboration meetings with Madeira officials only to decline to provide materials in advance, (b) using inflammatory language during “collaboration” meetings that blatantly mischaracterizes the parties obligations under the agreements (i.e., even likening Madeira’s reasoned decision to terminate to

“a divorce that Indian Hill does not want”), (c) improperly characterizing requests for supporting information as “pre-litigation discovery,” and (d) stonewalling Madeira’s attempts to obtain logistical information/ documents as the parties advance toward the date of disconnection and transition.

47. Indian Hill’s conduct in this regard violates the Contract’s and 2023 Amendment’s implied covenant of good faith and fair dealing and the 2023 Amendment’s express obligation to meet regularly and negotiate in good faith regarding transfer of Madeira-owned mains.

F. Additional Written Conditionality and Coercive Preconditions Reflected in Phillips’ March 11 and April 15 Letters.

48. Phillips’ March 11, 2025 letter demanded that Madeira meet with Indian Hill’s administrative staff and Phillips to “resolve this issue,” premised on Phillips’ stated belief that Madeira’s notice of termination “constitutes a breach,” and that Madeira must “reconsider its position and honor its contractual obligation.” *See Exhibit J.*

49. Phillips’ April 15, 2025 letter escalated that demand by expressly requesting a meeting “to discuss how Madeira plans to make the Village whole,” imposing an ultimatum requiring meeting dates within five (5) days, and threatening suit to “enforce the terms of the Water Services Agreement and the Joint Fire District Agreement.” *See Exhibit K.*

50. Phillips’ April 15, 2025 letter also asserted a minimum damages figure (“at least \$4,000,000 ... estimated by an engineer”) and separately claimed “lost future income” based on an alleged October 2023 “recommitment,” reflecting an attempt to convert a termination-by-notice clause into an extra-contractual damages and profit recovery regime. *See Exhibit K.*

51. Phillips’ letters misrepresent Madeira’s stated reasons for termination as “assumptions and future forecasts, not facts,” while simultaneously insisting that termination would be a breach and that Indian Hill is entitled to damages, demonstrating the absence of any

stable, fact-supported predicate for the payment demands being used to condition cooperation. *See Exhibit J and K.*

52. Phillips' April 15, 2025 letter further asserted that "there is no question that the Village's water quality meets all current OEPA requirements" and that Indian Hill is "pursuing compliance with USEPA mandates set forth in April 2024 with a deadline of April 2029," while simultaneously asserting that Madeira's termination is a breach, evidencing Defendant's position that Madeira must remain bound regardless of long-term compliance risk allocation and regardless of the contract's express termination-by-notice language. *See Exhibit K.*

53. Phillips' March 11, 2025 letter asserted that the Contract does not require Indian Hill "to beat prices from other providers," "provide forecasting," "provide an extensive water system," or "provide service stability as determined by Madeira alone," while still demanding that Madeira remain in the agreement and accusing Madeira of pretext, evidencing an attempt to strip Madeira of the benefit of the bargain and to impose unilateral criteria for when termination-by-notice is "allowed." *See Exhibit J.*

54. Phillips' March 11, 2025 letter asserted that the Water Services Agreement "was recently extended in October of 2023 and is effective until 2043," and invoked that extension as a basis to argue Madeira is acting opportunistically and in bad faith, despite the plain text of the termination clause in Section 11 authorizing termination for reasonable cause with two years' notice. *See Exhibit J.*

55. Phillips' letters repeatedly frame Indian Hill's willingness to "sit down" and discuss the issue as "good faith efforts," while simultaneously asserting that Madeira's termination is a breach (despite the fact that it is expressly allowed by the contract) and conditioning resolution on Madeira making Indian Hill "whole," reflecting a coercive, extra-contractual posture consistent

with Defendant's later statements that it would not cooperate absent advance payment commitments. See Exhibit J and K.

G. Numerous Verbal Admissions of Bad Faith by Indian Hill.

56. On or about May 28, 2025, Madeira and Indian Hill officials, with their attorneys, met to discuss Madeira's decision whether and when to transition water services providers such that its entire community would be serviced solely by GCWW. During that meeting, Phillips stated that Indian Hill would not agree to discuss or assist with a transition of water service until Madeira agreed to pay Indian Hill's alleged separation costs.

57. On or about August 20, 2025, Madeira Law Director Brian W. Fox ("Fox") met with Phillips by phone to discuss Madeira's decision whether and when to transition water services providers such that its entire community would be serviced solely by GCWW. During that call, Phillips stated that the "worst case scenario" for their alleged separation costs was at least \$12,000,000, but that the cost could be decreased if Madeira agreed to pay Indian Hill's separation costs. During the call, Phillips also refused to provide the August 2025 B&N Report in advance of the next collaboration meeting between the parties.

58. On or about September 10, 2025, Fox met with Phillips by phone to discuss Madeira's decision whether and when to transition water services providers such that its entire community would be serviced solely by GCWW. During that call, Phillips stated that Indian Hill would not collaborate or cooperate with the transition until there was a legally binding agreement for Madeira to pay Indian Hill's alleged separation costs and lost profits.

H. Written Threats and Demands from Indian Hill Officials Further Demonstrate Pattern of Bad Faith and Breach.

59. Phillips' written "make the Village whole" demands on March 11, 2025 and April 15, 2025 preceded and foreshadowed Phillips' subsequent oral admissions that Indian Hill would

not cooperate in designing a cost-effective transition unless Madeira provided “legally binding assurance” of payment for Indian Hill’s asserted costs and profit-related demands. *See Exhibit J*, and K.

60. Phillips’ April 15, 2025 letter asserted “at least \$4,000,000 in damages, as estimated by an engineer,” plus “lost future income,” demonstrating a baseline damages narrative that later escalated into substantially larger figures tied to B&N’s August conceptual cost estimate, further supporting that Indian Hill’s damages posture was manufactured, rudderless, and aimed at generating leverage rather than being scientifically grounded or arising from the plain language of the Contract or 2023 Amendment. *See Exhibit K*.

61. Phillips’ written assertions that termination would “prevent the JFD from providing sufficient water to all properties within the Fire District” and would reduce fire flows were made before any stable, fully disclosed engineering basis was provided to Madeira, reinforcing that Indian Hill used public safety framing as pressure while withholding timely transparency. *See Exhibit J*.

62. Phillips’ letters confirm that Indian Hill’s litigation threat was not limited to the Water Services Agreement but extended to the Joint Fire District Agreement, increasing coercive leverage and public safety implications despite the absence of any contractual provision shifting Indian Hill’s asserted infrastructure costs or lost profits to Madeira upon termination by two-year’s advance notice. *See Exhibit J* and K.

63. Phillips’ written position that Madeira’s grounds for termination were “pre-textual” and driven by a desire for a “better deal,” coupled with his demand that Madeira “make the Village whole,” further evidences Defendant’s attempt to leverage and transform a bargained-for

termination option available to either party into a “termination-for-convenience-prohibition-absent-eight-figure-payment” provision. *See Exhibit J and K.*

64. Phillips’ letters stated that Indian Hill’s service has been “best in class,” that Indian Hill meets OEPA requirements, and that Indian Hill is pursuing USEPA compliance through 2029, statements that underscore that Indian Hill’s claim is not that it cannot perform under the agreements, but rather that it seeks to block termination and extract extra-contractual money as the price of good faith transition. *See Exhibit J and K.*

65. These admissions demonstrate that Indian Hill has conditioned its performance and cooperation obligations on Madeira’s acceptance of extra-contractual payment demands, notwithstanding that the Contract expressly permits termination by notice and requires good faith transition negotiations.

I. Indian Hill’s Failure to Comply with Ohio’s Public Records Act.

66. Madeira has sought collaboration, transparency, and technical grounding consistent with an orderly two-year transition; Indian Hill has instead used conditionality, opacity, and shifting technical narratives to pressure Madeira to accept payment demands not found in the Contract.

67. Ohio’s Public Records Act, R.C. 149.43, imposes a mandatory, affirmative obligation on public offices to promptly prepare and make available records documenting the organization, functions, policies, decisions, procedures, operations, or other activities of the office. When records are withheld in whole or in part, the public office must identify the legal basis for withholding and produce all reasonably segregable, non-exempt portions.

68. Indian Hill is a public office subject to R.C. 149.43. Indian Hill has acted through its solicitor and administrator in responding to public records requests made by Madeira.

69. On April 23, 2025, Madeira submitted a written public records request, pursuant to R.C. 149.43, seeking seven discrete, time-bounded categories of records relating to Indian Hill Water Works' operations, PFAS testing and compliance, rate setting, system expansion, Joint Fire District water supply needs, and fire flow conditions. The request was limited to records from April 30, 2012 to the present and expressly requested production of reasonably segregable nonexempt records if any portion was claimed exempt.

70. On May 13, 2025, Phillips produced records responsive to only three categories (consumer confidence reports, rate ordinances, and territory extension ordinances), and denied the remaining four categories in full on the stated ground that they were "overly broad."

71. The categories denied as "overly broad" included records relating to PFAS testing and EPA compliance, Joint Fire District water supply and distribution needs, and fire flow conditions, subjects that are central to Indian Hill's later claims of system vulnerability, fire flow degradation, and alleged damages.

72. Phillips' denial letter relied on generalized case law concerning indiscriminate keyword searches and requests lacking temporal or subject matter limits. Madeira's April 23rd request, however, contained explicit date limitations, discrete subject categories, and a request for partial production where applicable.

73. On April 18, 2025, GCWW prepared a detailed technical information request identifying records required to plan the transition of Madeira's water service, including system configuration, interconnections, flow direction, GIS data, hydraulic models, fire flow testing, and prior studies. On May 28, 2025, Madeira transmitted that request to Indian Hill.

74. On June 25, 2025, Indian Hill responded by producing no documents. Instead, Indian Hill asserted that none of the requested information constituted public records,

characterized any response as a discretionary “courtesy,” and repeatedly stated that critical system information “needs to be determined with the help of consultants.”

75. Indian Hill further asserted that GIS and system configuration information “needs to come from Madeira” because Madeira owns certain assets, notwithstanding that the requests sought Indian Hill’s own records, analyses, assumptions, communications, and consultant materials documenting Indian Hill’s public functions.

76. Indian Hill’s June 25th response thus simultaneously claimed (a) that it needed the same information to determine alleged separation costs and system impacts, and (b) that it would not produce records documenting that information because further consultant work was required.

77. For convenience of review, the following table summarizes the continuity of subject matter across Madeira’s requests, Indian Hill’s responses, and the categories:

Requester	Date Requested	Category of Records	IH’s Response	IH’s Stated Rationale
Madeira	Apr. 23, 2025	CCRs	Produced	Legislative / Historical Only
Madeira	Apr. 23, 2025	Rate Ordinances	Produced	Legislative Only
Madeira	Apr. 23, 2025	Territory Ordinances	Produced	Legislative Only
Madeira	Apr. 23, 2025	PFAS/EPA Compliance	Denied	“Overly Broad”
Madeira	Apr. 23, 2025	Joint Fire District Supply	Denied	“Overly Broad”
Madeira	Apr. 23, 2025	Fire Flow Records	Denied	“Overly Broad”

GCWW (via Madeira)	Apr./May 2025	System Configuration	None	“Needs Consultants”
GCWW (via Madeira)	Apr./May 2025	GIS/Hydraulic Models	None	Shifted to Madeira
GCWW (via Madeira)	Apr./May 2025	Fire Flow Testing	None	Deferred/Refused

78. Indian Hill’s production has been limited to static legislative artifacts, while operational, technical, modeling, and consultant records, later relied upon to assert damages, have been denied, deferred, or withheld.

79. Indian Hill’s reliance on generalized “overly broad” objections is legally insufficient where requests are time-bounded, subject specific, and aimed at obtaining records documenting core governmental functions such as fire protection, water distribution, and infrastructure planning.

80. Indian Hill’s assertion that requested records are “not public records” because they concern infrastructure, modeling, or consultant analyses is contrary to Ohio law. Records documenting a public office’s activities do not lose public record status because they are technical, incomplete, or generated by consultants.

81. Nor may Indian Hill avoid production by asserting that records “need to be determined” in the future. The Public Records Act requires production of existing records, including drafts, assumptions, correspondence, and interim analyses maintained by or for the public office.

82. Indian Hill’s records posture is therefore inconsistent with R.C. 149.43 and materially impedes transparency at the same time Indian Hill demands payment based on undisclosed assumptions and analyses.

83. Because Madeira has an immediate obligation to protect public health and fire protection by ensuring uninterrupted, safe water service during its transition to GCWW, Indian Hill's refusal to cooperate and to provide critical system and fire flow information necessitated prompt legal action and the adoption of an emergency resolution authorizing this litigation to compel compliance and protect Madeira's residents.

84. On January 26, 2026, Madeira passed and adopted Resolution No. 14-26 authorizing Madeira's law director to initiate litigation on Madeira's behalf against Indian Hill and declaring an emergency. Resolution No. 14-26 is attached hereto as Exhibit L.

IV. INDIVIDUAL ARTICULATION OF CLAIMS.

COUNT I: DECLARATORY JUDGMENT (R.C. Chapter 2721)

85. Madeira incorporates by reference Paragraphs 1 through 84 as if fully rewritten herein.

86. An actual, present, and justiciable controversy exists between Madeira and Indian Hill regarding their respective rights and obligations under the Contract and Amendment, including but not limited to:

- a. Whether Madeira may terminate the Contract for reasonable cause upon two years written notice under Section 11 of the Contract and 2023 Amendment (Exhibit A and B);
- b. Whether Indian Hill may lawfully demand, as a condition of cooperation or transition, that Madeira pay Indian Hill's asserted separation infrastructure costs, consultant costs, and/or alleged "profit delta," where no such obligations appear in the Contract or Amendment (Exhibit A and B);

- c. Whether Indian Hill has a duty during the two-year notice period to meet regularly and negotiate in good faith regarding transfer of Madeira-owned mains pursuant to Section 12 of the 2023 Amendment (Exhibit B), and to refrain from imposing non-textual conditions that frustrate the contractual termination mechanism;
 - d. Whether Indian Hill's reliance on shifting and internally inconsistent B&N reports and undefined remedial benchmarks can create contractual obligations that were not bargained for and not expressed in the Contract (Exhibit H and I), as amplified by Indian Hill's demand letter asserting "no dispute" and "sole" causation (Exhibit G).
 - e. Whether Phillips' March 11 and April 15 letters, asserting that "reasonable cause requires some level of breach," that Madeira's termination grounds are "pre-textual," and that Madeira must "make the Village whole," create a concrete, immediate dispute requiring declaratory resolution of the meaning and effect of Section 11 of the Contract and Section 11 of the 2023 Amendment and the parties' transition obligations under Section 12 of the 2023 Amendment. *See* Exhibit J and K.
87. Madeira is entitled to a declaration that:
- a. Termination for reasonable cause upon two years written notice is permitted under Section 11 of the Contract and Section 11 of the Amendment (Exhibit A and B);
 - b. The Contract and 2023 Amendment do not impose an "exit fee," reimbursement of Indian Hill's asserted separation infrastructure costs,

reimbursement of Indian Hill’s consultant costs, or any obligation to compensate Indian Hill for an alleged “lost profit” or “profit delta” as conditions of termination or cooperation (Exhibit A and B);

- c. Indian Hill must comply with Section 12 of the 2023 Amendment by meeting regularly and negotiating in good faith concerning transfer of Madeira-owned mains, without conditioning cooperation on extra-contractual payment demands (Exhibit B);
- d. Indian Hill may not manufacture contractual obligations by adopting undefined “equivalent existing conditions” benchmarks and recharacterizing baseline capital upgrades as “termination damages” without contractual authorization (Exhibit G, J, and K).

88. Madeira further seeks such additional relief as permitted under R.C. 2721.09 and R.C. 2721.16, including orders necessary to give effect to the requested declarations.

COUNT II: ANTICIPATORY REPUDIATION (Anticipatory Breach)

89. Madeira incorporates by reference Paragraphs 1 through 88 as if fully rewritten herein.

90. The Contract and 2023 Amendment impose ongoing duties during the contractual term and during any termination-by-notice period, including but not limited to duties to perform consistently with the Contract, and the 2023 Amendment’s express duty to meet regularly and negotiate in good faith regarding transfer of Madeira-owned mains (2023 Amendment at ¶ 12 (Exhibit B)).

91. Indian Hill, through its officials including its solicitor, has clearly and unequivocally stated that it will not cooperate in designing or implementing a cost effective

transition and will not provide assistance or information necessary to effectuate transition unless Madeira first agrees to pay Indian Hill's asserted infrastructure costs, consultant fees, and/or profit-related demands, conditions not found in the Contract or 2023 Amendment.

92. Phillips' April 15, 2025 letter demanded meeting dates within five (5) days "to discuss how Madeira plans to make the Village whole" and threatened suit if Madeira did not comply, further evidencing Indian Hill's refusal to proceed with transition discussions except on Indian Hill's non-contractual payment terms. See Exhibit K.

93. Indian Hill's statements and conduct since Madeira began exploring its contractual option to terminate in late 2024, including but not limited to statements referenced above, constitute a clear and unequivocal repudiation of its obligation to engage in good faith transition negotiations and cooperate in a manner consistent with the parties' contractual termination mechanism.

94. Indian Hill's anticipatory repudiation has forced Madeira to incur additional costs and to operate under increased uncertainty and inefficiency in planning a lawful and orderly transition.

95. By virtue of the foregoing, Madeira has been financially damaged in an amount to be proven at trial but believed to be in excess of \$25,000, particularly given the unwarranted combativeness and erratic behavior by Indian Hill's officials and the resulting adverse economic consequences including, without limitation, increased engineering and evaluation costs, duplicated modeling and analysis work, increased professional time expended to respond to shifting and opaque cost narratives, delay and acceleration impacts on planning, and increased costs associated with developing substitute pathways for cooperation and information exchange that Indian Hill improperly withheld.

COUNT III: BREACH OF CONTRACT (Good Faith Performance and Enforcement of Express Contractual Obligations)

96. Madeira incorporates by reference Paragraphs 1 through 95 as if fully rewritten herein.

97. Under Ohio law, every contract imposes an implied duty of good faith and fair dealing in the performance and enforcement of its express terms. This duty does not create obligations independent of the contract but governs the manner in which contractual discretion is exercised and contractual duties are performed.

98. The Contract expressly grants Madeira the right to terminate the parties' contractual relationship for reasonable cause upon two years' written notice (Contract at ¶ 11 (Exhibit A); 2023 Amendment at ¶ 11 (Exhibit B)) and imposes an express obligation on the parties to engage in good faith negotiations concerning the transition and transfer of Madeira-owned water mains (2023 Amendment at ¶ 12 (Exhibit B)). These provisions require reasonable cooperation, transparency, and good faith performance to effectuate an orderly transition.

99. Indian Hill materially breached the Contract, including but not limited to Section 11 of the Contract (Exhibit A) and Sections 11 and 12 of the 2023 Amendment (Exhibit B), by engaging in conduct that frustrated Madeira's express termination rights and defeated the purpose of the Contract's transition framework, including the following acts and omissions:

- a. Conditioning cooperation required for transition planning and termination implementation on Madeira's agreement to pay extracontractual costs and profit-based demands not authorized by the Contract;
- b. Withholding substantive transparency, technical support, and timely disclosure necessary to effectuate transition planning, while simultaneously asserting escalating and shifting cost demands;

- c. Treating Madeira's contractual requests for substantiation and collaboration as "pre-litigation discovery" and refusing to engage unless paid, thereby obstructing the termination-by-notice mechanism and breaching the 2023 Amendment's express good faith negotiation obligation;
- d. Advancing inconsistent and methodologically opaque engineering narratives through Burgess & Niple reports, including shifting analytical benchmarks, omitting previously identified remedial options, recharacterizing preexisting capital upgrades as disconnection attributable damages, and demanding payment as though causation and scope were settled (Exhibit G, H, and I);
- e. Issuing categorical assertions that claimed damages were "solely Madeira's doing" and that "there is no dispute" as to causation, despite internal inconsistencies, undefined benchmarks, and assumption driven modeling within the reports relied upon (Exhibit G, H, and I);
- f. Threatening litigation under both the Water Services Agreement and the Joint Fire District Agreement unless Madeira acceded to a "make whole" payment process, while simultaneously withholding timely transparency and advancing shifting damages figures, thereby using uncertainty as leverage rather than performing contractual transition obligations (Exhibit J and K); and
- g. Advancing inconsistent damages narratives over time, ranging from "at least \$4,000,000" plus alleged lost future income to substantially larger consultant driven figures, without segregating baseline capital

modernization from disconnection attributable costs, thereby impairing Madeira's ability to exercise its contractual rights in a commercially reasonable manner.

100. Indian Hill's foregoing conduct constitutes a breach of the Contract's express terms and violates the implied duty of good faith and fair dealing inherent in those provisions by depriving Madeira of the benefit of its contractual bargain, including its right to terminate upon notice and to engage in an orderly, good faith transition process.

101. By virtue of the foregoing, Madeira has been financially damaged in an amount to be proven at trial but believed to be in excess of \$25,000, including, without limitation, increased professional and administrative expenses, inefficiencies and delays in transition planning, additional costs incurred to respond to shifting and unsupported technical assertions, and increased costs associated with maintaining continuity of service in the face of Indian Hill's obstructive performance.

COUNT IV: DECLARATORY RELIEF / VIOLATION OF OHIO'S PUBLIC RECORDS ACT (R.C. 149.43) (MANDAMUS EXPRESSLY RESERVED)

102. Madeira incorporates by reference Paragraphs 1 through 101 as if fully rewritten herein.

103. Indian Hill is an Ohio political subdivision subject to R.C. 149.43 and is required to promptly produce public records upon request, to identify legal bases for any withholding, and to produce all reasonably segregable non-exempt portions.

104. Madeira submitted public records requests on April 23, 2025 and transmitted GCWW's April 18, 2025 technical request on May 28, 2025, all seeking existing records

documenting Indian Hill's water system operations, fire flow analyses, consultant work, and asserted damages.

105. Indian Hill has denied, deferred, or refused to produce responsive records based on legally insufficient justifications, including generalized "overly broad" objections, assertions that records are "not public," consultant-based deferrals, and shifting responsibility to Madeira.

106. An actual controversy exists regarding Indian Hill's compliance with R.C. 149.43. Declaratory and injunctive relief are necessary to terminate uncertainty and compel lawful production during the transition period.

107. Indian Hill's records noncompliance is not ancillary. It reinforces Madeira's entitlement to declaratory relief by demonstrating that Indian Hill seeks to impose extracontractual obligations while withholding the factual predicates for those demands. It reinforces anticipatory repudiation by conditioning cooperation and information exchange. It reinforces bad faith by evidencing a pattern of selective transparency designed to control leverage rather than comply with statutory and contractual obligations.

108. In light of the foregoing, Madeira seeks:

- a. A declaration that Indian Hill has violated R.C. 149.43;
- b. Injunctive relief compelling compliance; and
- c. Such other relief as is just and equitable.
- d. Madeira expressly reserves all rights to pursue mandamus relief, statutory damages, attorney's fees, and costs under R.C. 149.43.

V. **PRAYER FOR RELIEF.**

WHEREFORE, Plaintiff City of Madeira, Ohio respectfully requests that this Court enter judgment in its favor and against Defendant City of the Village of Indian Hill, Ohio, and grant the following relief:

- A. Judgment in favor of Madeira on **COUNT I**, declaring that, pursuant to R.C. Chapter 2721, Madeira City Council's termination for reasonable cause upon two-years written notice as enacted by Ordinance Nos. 25-02 and 25-12 was permitted by the plain language of those agreements;
- B. Judgment in favor of Madeira on **COUNT I**, declaring that, pursuant to R.C. Chapter 2721, the Contract and 2023 Amendment do not impose any obligation upon Madeira to pay Indian Hill's asserted separation infrastructure costs, consultant costs, or any alleged lost profit or "profit delta" as conditions of termination or good faith cooperation;
- C. Judgment in favor of Madeira on **COUNT I**, declaring that, pursuant to R.C. Chapter 2721, Indian Hill must comply with Section 12 of the 2023 Amendment by meeting regularly and negotiating in good faith concerning transfer of Madeira-owned mains, without conditioning cooperation on extra-contractual payments;
- D. Judgment in favor of Madeira on **COUNT II (Anticipatory Repudiation)** and **COUNT III (Breach of Contract)**, with an award of compensatory damages in an amount to be proven at trial but believed to be in excess of \$25,000;
- E. A declaration that Indian Hill has violated R.C. 149.43;
- F. Injunctive relief compelling Indian Hill's compliance with R.C. 149.43;

- G. Statutory damages, attorney's fees, and costs in connection with Indian Hill's failure to comply with R.C. 149.43;
- H. Pre-judgment and post-judgment interest as permitted by law;
- I. Costs of this action; and
- J. Such other and further relief as the Court deems just and equitable.

VI. JURY DEMAND.

Plaintiff City of Madeira, Ohio demands a trial by jury on the foregoing claims so triable.

Respectfully submitted,

/s/ Brian W. Fox

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Counsel for Plaintiff City of Madeira, Ohio

PRAECIPE FOR SERVICE

The Plaintiff requests that the Clerk issue a *SUMMONS* along with a copy of this Complaint to the Defendant at the address identified in the caption on page one via U.S. Certified Mail, return receipt requested.

/s/ Brian W. Fox

Brian W. Fox, Esq. (Ohio Bar No. 0086851)