

WATER PURCHASE CONTRACT

THIS WATER PURCHASE CONTRACT, made and entered into this 14th day of April, 1997 by and between the **CITY OF HENDERSON MUNICIPAL WATER & SEWER COMMISSION** of the CITY OF HENDERSON, KENTUCKY, a municipal corporation of the third class under the laws of the Commonwealth of Kentucky, hereinafter referred to as the "SELLER", and the **BEECH GROVE WATER SYSTEM**, a private water association, hereinafter referred to as the "PURCHASER",

W I T N E S S E T H :

WHEREAS, the SELLER owns and operates a water treatment plant in Henderson County, Kentucky, with lines which extend into McLean County, Kentucky, adjacent to the Beech Grove, Kentucky water system and

WHEREAS, the PURCHASER desires to obtain a supply of treated water from the SELLER and

WHEREAS, the SELLER is willing to sell to the PURCHASER a supply of water in excess of the water service obligations of the SELLER to its own customers and consumers.

NOW THEREFORE, in consideration of all of the premises, and of the mutual terms and conditions expressed herein, of the prompt payment of the rates as herein agreed to and set out, and of the prompt delivery of the water supply as herein agreed to and set out, the SELLER and the PURCHASER agree as follows:

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PURSUANT TO 807 KAR 5.011,
SECTION 9(1)
BY: Stephan D. Bell
SECRETARY OF THE COMMISSION

1. Subject to the terms, conditions and limitations herein set forth, the SELLER agrees to sell and deliver to the PURCHASER, and the PURCHASER agrees to purchase and receive from the SELLER, water required for normal water distribution operations of the PURCHASER, Further provided that in no event shall the SELLER be obligated to deliver water to the PURCHASER at a higher rate of delivery, or in a greater quantity, or at different periods, or at higher pressures, or at higher quality, than as provided for herein.

2. The SELLER shall, from the effective date of this contract until the expiration thereof, supply the water requirements of the PURCHASER as stated herein.

3. This contract shall become effective beginning April 14, 1997, and shall continue for a period of forty (40) years certain thereafter unless otherwise extended or modified by written agreement between the parties.

4. The SELLER shall furnish the PURCHASER, at the points of delivery hereinafter specified, such quantities of water as the PURCHASER may require, not exceeding a thirty (30) day average of one-half (0.5) million gallons of water for each 24-hour period; provided however, during any 24-hour period PURCHASER'S consumption shall not exceed a peak of 600,000 gallons. The maximum consumption rate of the Purchaser shall not exceed 420 gallons per minute (GPM). The Seller's obligation to supply the foregoing quantities of water is subject to reduction in the case of unavoidable casualty, major fires within Seller's direct service area, equipment failure, acts of God, strikes or other instances beyond the control of the SELLER and as provided for otherwise herein.

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5. The quality of water delivered by the SELLER to the point of sale shall meet the standards of all applicable state or federal regulatory agencies having jurisdiction over potable drinking water. The SELLER reserves the right to control and vary the quality of water delivered to the PURCHASER within the confines of the applicable regulations. The SELLER does not warrant, nor shall it be held liable for maintaining water quality or disinfection residual beyond the point of sale to the PURCHASER. The PURCHASER shall bear full responsibility for maintaining water quality or adequate disinfection residual throughout it's distribution system.

6. The SELLER shall deliver water to the PURCHASER at an average pressure of not less than thirty (30) pounds per square inch as provided for herein, and at the maximum rate of delivery as specified at the point of delivery during the period of withdrawal. The delivery point shall be located on KENTUCKY HIGHWAY 56 near the junction with Eastwood Ferry Road in McLean County, Kentucky.

7. The SELLER shall use reasonable diligence and care to provide a regular and uninterrupted supply of water to the PURCHASER so as to avoid any shortage or interruption of delivery. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire, use of water to fight fires, earthquake or other catastrophe shall excuse the SELLER from this provision for such reasonable period of time as may be necessary to restore service. The SELLER shall inform the PURCHASER, by telephone or by facsimile transmission, of the nature and extent of such temporary or partial failure to deliver water as soon as possible after such information is known by the SELLER.

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8. In the event of an extended shortage of water or diminution in the supply of available water to the SELLER or problems with the treatment process of the SELLER, over an extended period of time, the supply of water to the PURCHASER'S consumers shall be reduced or diminished in the same ratio or proportion as the water supplied to the SELLER'S other consumers is reduced or diminished.

9. The SELLER shall not be liable to the PURCHASER or any of the PURCHASER'S customers for any failure, interruption or shortage of water, or for any loss or damage resulting therefrom, occasioned in whole or in part by any cause beyond the reasonable control of the SELLER.

10. Should the PURCHASER require water in a quantity or quantities greater than a thirty (30) day average of one-half (0.5) million gallons in any 24-hour period, the PURCHASER shall notify the SELLER, in writing, of that fact and may request the SELLER to provide the necessary additional facilities to furnish the additional water to the PURCHASER. Said notice shall specify, in good faith, the total number of gallons of water required by the PURCHASER in any 24-hour period at each connection point and shall contain an agreement by the PURCHASER that the PURCHASER will consume, and/or pay for, a minimum of eighty percent (80%) of the total additional amount of water which it states it requires. When the SELLER receives such notice, the SELLER shall notify the PURCHASER, in writing, within ninety (90) days, whether or not the SELLER intends to provide additional facilities to furnish the additional water supply requested and the PURCHASER'S share of the cost for the additional facilities necessary to provide such additional water within the maximum of thirty-six (36) months after the date of the written reply of the SELLER to the PURCHASER'S demand for additional water. The PURCHASER shall pay for the

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capital cost for the new facilities shall be computed and paid by the PURCHASER to the SELLER based on the prorata percentage of the total cost for the additional facilities and on the PURCHASER'S average projected percentage of usage of the additional facilities annually for a period of twenty-five (25) years or for the period of financing for the facilities, whichever is longer. The depreciation costs associated with PURCHASER'S total capital cost participation for the construction of these additional facilities shall be excluded from future rate computations.

11. If the SELLER declines to provide additional facilities or if the PURCHASER does not agree to pay its share of the cost for the additional facilities, then the PURCHASER shall have the right to provide itself with such additional water from another source as it may require. Even though the PURCHASER may elect to provide water from another source for its increased requirements, the first one-half (0.5) million gallons per day usage shall continue to be purchased from the SELLER for the term of this contract.

12. The PURCHASER agrees to pay for the water so sold and delivered to the point where the Master Meters are installed at the initial rate of \$1.65 (one-dollar and sixty-five cents) per one thousand (1,000) gallons of water delivered through the Master Meters, and said payments shall become due when billed and shall be paid monthly by the PURCHASER within fifteen (15) days after receipt of the bill from the SELLER.

13. The SELLER covenants to maintain said rates in effect through December 31, 1999. The rates charged to the PURCHASER may be increased after January 1, 2000 as provided for herein.

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14. After written notice from the SELLER to the PURCHASER, at least sixty (60) days in advance of the effective date of a proposed rate adjustment, the rates to PURCHASER shall be increased based on the formula hereinafter provided. However, the rate shall never be less than \$1.65 (one-dollar and sixty-five cents) per one thousand (1,000) gallons. The costs so taken into account with respect to the proposed rate increases shall be the SELLER'S total costs for treating and distributing water, including the direct cost of operations, depreciation, and all general and administrative costs, as well as debt service interest costs based on that percentage of the total direct cost of operations of the SELLER'S south water and sewer systems which is associated with the south water treatment plant and south water distribution system, but exclusive of the cost of collecting its charges therefore, such total costs plus a 30% markup. The SELLER'S south water and sewer systems are defined as the water treatment plant and wastewater treatment plant located on KY Highway 2097 in Henderson County, Kentucky, and all connecting water and sewer lines and appurtenant structures in Henderson, Webster and McLean Counties, owned by the SELLER. The total costs, so determined, shall be certified to the PURCHASER by the SELLER'S outside auditor. The sewer system costs, which shall be included in the cost of treating water, are those costs which are related to treating and disposing of the sludge from the water treatment plant. Such costs of treating and distributing water shall be based on the net total number of gallons of water pumped into the distribution system by the SELLER, excluding the amount of water used directly by the SELLER in the operation of the South Water and Wastewater Treatment Plant facilities. The base period for calculating a rate adjustment shall be the full calendar year of the Seller immediately preceding the rate adjustment.

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15. Master Meters of the size required by the PURCHASER shall be furnished and installed by the SELLER, at the expense of the SELLER. The meters shall be located in reasonable proximity to the points of delivery to the PURCHASER'S system from the SELLER'S system, as mutually agreed upon by the parties. Should the location of the Master Meters require line extensions by the SELLER, the total cost for such extensions shall either be paid by the PURCHASER in a lump sum amount or by an increase in the monthly charges for water for a maximum period of sixty (60) months. If paid on a monthly basis, the monthly principal amount shall be charged plus interest at the APR of prime plus two-percent (2%). The Master Meters shall be equipped with double check valves or backflow prevention devices, which shall be located at a reasonable place or places at or near the point(s) of connection of said two (2) systems. The Master Meters shall also be equipped with electronic digital registers capable of transmitting an electronic signal to SELLER'S meter reading equipment. The ownership of the Master Meter installations shall remain with the SELLER. Such Master Meters shall measure the water furnished by the SELLER and used by the PURCHASER, on a monthly basis, and will be used as a basis to determine the monthly amounts to be paid by the PURCHASER to the SELLER for such water, subject to all applicable conditions and limitations mentioned herein. The meter or meters shall be read, so far as practicable, in accordance with the common practice of the waterworks system of the SELLER, and all billings shall be made in accordance with such water meter readings at the applicable rate in effect at the time of billing.

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16. The Master Meters shall be checked from time-to-time by both the SELLER and the PURCHASER through their authorized agents or employees, and said Master Meters, check valves and backflow prevention devices shall remain under the ownership of the SELLER and shall be maintained and tested by the SELLER according to any applicable rules and regulations of the Public Service Commission of Kentucky. If found to be inaccurate, the Master Meters shall be corrected as soon as practicable, and adjustments, either in favor of the PURCHASER or the SELLER, based on such meter testings shall be made to previous payments made by the PURCHASER for the preceding six (6) months' billings so as to conform to the results of such tests. Adjustments shall be made in six (6) equal installments over the next six (6) months of billing from the SELLER to the PURCHASER.

17. In consideration of the agreements of the PURCHASER contained herein, the SELLER agrees that throughout the effective period of this contract or any renewal thereof, PURCHASER has and shall continue to have the sole and exclusive right, so far as the SELLER is concerned, to sell, serve and provide water to water users and water customers within its jurisdictional service area except as excluded herein. The SELLER also agrees not to provide metered water services within the PURCHASER'S area, except as otherwise provided for herein, without the written permission of the PURCHASER, and shall refrain from competition with the PURCHASER within said area during the effective period of this contract or any renewal thereof.

18. The SELLER agrees that it will procure, furnish, install, operate and maintain the necessary facilities, ^{PUBLIC SERVICE OF KENTUCKY} ~~and~~ easements required to furnish the water meter service ^{NECESSARY} ~~and~~ necessary to serve the points described herein.

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19. If a new potential customer is located within the PURCHASER'S designated service area which has not previously been served by either the SELLER or PURCHASER, then it is agreed that the PURCHASER be given the exclusive right to install main lines and service lines if it is willing to do so to serve this customer. If the PURCHASER is not willing or not able to serve this customer, then the PURCHASER agrees to promptly grant written permission to the SELLER the option to serve the customer. Once a customer is served by either the SELLER or PURCHASER, then the service shall remain in effect perpetually and that area occupied by the customer shall automatically become part of the service area of whichever party provides the initial service.

20. The PURCHASER agrees to promptly grant written permission to the SELLER, of the option, to service new commercial or industrial large water customers within the PURCHASER'S service area if the PURCHASER is not willing or not able to serve this customer. A large water customer shall be defined as any customer which will use an average of more than 250,000 gallons per week. In the event the SELLER elects to serve a large customer, the SELLER shall serve the customer directly and shall not utilize the mains or facilities of the PURCHASER in supplying the customer.

21. Subject to other provisions of this Contract, all water mains connecting between the SELLER and the PURCHASER shall remain fully open at all times except during emergencies declared by the Mayor, City Manager, Chairman, General Manager or Superintendent of the SELLER or by the Chairman or Superintendent of the PURCHASER. During such declared emergencies the connections may be made on a temporary basis until the emergency is abated.

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22. In the event of a disaster which would interrupt the production or distribution of water from SELLER'S facilities, SELLER reserves the right to withdraw water for EMERGENCY USE only from the PURCHASER'S system. SELLER agrees not to withdraw water at rates or quantities which would create further emergency conditions within the PURCHASER'S system.

23. This right to withdraw water is reserved at all points of connections between the SELLER'S and PURCHASER'S systems. Any water withdrawn will be either metered or calculated and the amount credited against PURCHASER'S consumption.

24. In the event of a continuing interruption in the SELLER'S ability to produce and distribute water, the PURCHASER agrees to allow the SELLER to utilize the PURCHASER'S existing treatment facilities and distribution system to convey water from the PURCHASER or from other sources to the SELLER, until the interruption is abated. The water passing through the PURCHASER'S system shall be metered into the PURCHASER'S system and metered again into the SELLER'S system. The SELLER shall pay the full cost for all water delivered into the PURCHASER'S system and PURCHASER shall pay SELLER for PUBLIC SERVICE COMMISSION OF KENTUCKY that consumed within the PURCHASER'S system at the rate in effect at that time. EFFECTIVE

25. In the event that the SELLER should provide sewerage service to customers within the PURCHASER'S water service area, PURCHASER agrees to provide individual customer water consumption information to the SELLER. The information shall be provided only for those customers which have both water and sewer service. The PURCHASER shall supply this information to the SELLER within seven (7) calendar days after the water billing is generated. SELLER shall reimburse PURCHASER for all direct out-of-pocket costs incurred in providing this billing information.

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BY: Stacy M. Boy
SECRETARY OF THE COMMISSION

26. This Contract shall in no event be transferred or assigned by either party without the written consent of the other, unless required by law, and in such event, this agreement shall inure to and be binding on both parties, their successors and assigns.

27. Should any provision of this Contract be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall remain in full force and effect unless such invalid or unenforceable provision substantially alters the benefits of the Contract for either party.

28. Nothing contained in this contract is to be construed or intended by the parties as divesting the Public Service Commission of Kentucky of its jurisdiction over the PURCHASER and SELLER under the laws of Kentucky in force during the life of this Contract, if such jurisdiction exists.

29. The terms of this Contract are subject to the provisions of the rights of the respective holders of any bonds constituting a lien against the waterworks systems of the respective parties or against the revenues thereof.

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IN TESTIMONY WHEREOF, witness the signatures of the duly authorized officers of the parties hereto, with their corporate seals affixed, as of the date first hereinabove written.

CITY OF HENDERSON, KENTUCKY
acting by and through the City
of Henderson Water and Sewer
Commission

By Jack M. Taylor
Chairman

ATTEST:

[Signature]
General Manager

CITY OF HENDERSON, KENTUCKY

By: [Signature]
Mayor

ATTEST:

Joann Roberts
City Clerk

(Seal of City)

BEECH GROVE WATER SYSTEM

By David M. Scott
Chairman

ATTEST:

[Signature]
Secretary

(Seal of Water System)

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