

ORDINANCE NO. 139, 2018

AN ORDINANCE OF THE CITY OF ASHLAND, KENTUCKY, AUTHORIZING AND DIRECTING STEPHEN E. GILMORE, MAYOR, TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF ASHLAND AND BIG SANDY WATER DISTRICT EXTENDING THE CONTRACT ADOPTED BY ORDINANCE NO. 77, SERIES OF 2013, TO FURNISH POTABLE WATER FOR DISTRIBUTION AND SALE WITHIN ITS WATER DISTRIBUTION SYSTEM BOUNDARIES UNTIL 2059 ENABLING THE WATER DISTRICT TO RECEIVE USDA RURAL DEVELOPMENT FUNDS.

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WHEREAS, Ordinance 77, Series of 2013 was adopted by the Ashland Board of City Commissioners authorizing an agreement between the City of Ashland and Big Sandy Water District for the City to furnish potable water for distribution and sale within the boundaries of the Big Sandy Water Distribution system, and

WHEREAS, in order for Big Sandy Water District to obtain loan and grant funds from USDA Rural Development, the agreement adopted by Ordinance 77, Series of 2013 must be extended for a period of forty (40) years until the year 2059;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ASHLAND, KENTUCKY:

SECTION 1. That Stephen E. Gilmore, Mayor of the City of Ashland, Kentucky, is hereby authorized and directed to execute an Agreement between the City of Ashland and Big Sandy Water District extending the contract adopted by Ordinance No. 77, Series of 2013, to furnish potable water for distribution and sale within its water distribution system boundaries until the year 2059. A true copy of said agreement is attached hereto and made a part hereof by reference.

SECTION 2. This ordinance shall be in full force and effect from and after its adoption, readoption and publication, as required by law.

SECTION 3. It is hereby authorized that publication of this ordinance be in summary form.


MAYOR

ATTEST:


CITY CLERK

ADOPTED BY THE BOARD OF COMMISSIONERS:
READOPTED BY THE BOARD OF COMMISSIONERS:
PUBLISHED:

SEP 13 2018

SEP 27 2018

REQUESTED/SPONSORED BY: RYAN EASTWOOD, CITY ENGINEER

ORDINANCE Agreement. Big Sandy Water District

AGREEMENT

THIS AGREEMENT, made and entered into this the 17th day of Sept, 2018, by and between the CITY OF ASHLAND, Boyd County, Kentucky, a municipal corporation of the second class under the laws of the Commonwealth of Kentucky, (hereafter "ASHLAND"), and the Big Sandy Water District, an independent water district created under the laws of the Commonwealth of Kentucky, (hereafter "BIG SANDY"),

WITNESSETH:

WHEREAS, ASHLAND, is the owner and operator of a municipally owned water works plant and water distribution system, and is able, to furnish BIG SANDY potable water for distribution and sale within its water distribution system boundaries, and

NOW, THEREFORE, it is mutually agreed and covenanted by and between the parties that ASHLAND agrees to sell and BIG SANDY agrees to buy potable water for and in consideration of the payment of the rates hereinafter established and set out to be paid to ASHLAND by BIG SANDY, and each and all of the further and additional mutual covenants and agreements hereinafter set out to be performed by both or either of said parties;

1. **BOUNDARIES.** The water supply furnished by ASHLAND to BIG SANDY shall be restricted to usage by BIG SANDY only within the boundaries of the Big Sandy Water District as approved by the Kentucky Public Service Commission. BIG SANDY shall not extend service into the area reserved to ASHLAND.

2. **QUANTITY.** BIG SANDY agrees and binds itself to purchase during the term of this Agreement, all of or a portion of the potable water required by BIG SANDY (subject to Section 7 dealing with "water shortage") for distribution within its present water distribution system, or any approved extensions within the boundaries, but not less than 500,000 gallons per month. If for any reason, ASHLAND is unable to provide 500,000 gallons per month, BIG SANDY shall not be required to purchase the minimum daily amount.

The water shall be taken by BIG SANDY through a meter or meters located at BIG SANDY Pump Station on State Route 538 or at such other places as may be mutually agreed upon in advance in writing between the parties.

3. **RATES AND BILLING.** BIG SANDY agrees and binds itself to pay for water at rates sold and delivered to it at the meter or meters on a monthly basis and according to statements tendered to BIG SANDY by ASHLAND, payments to be due and payable not later than the twentieth (20th) day of each month for all water so metered, sold and delivered during the preceding month. In the event BIG SANDY shall fail to pay any monthly statement or statements in the manner described, then and in that event, there shall be added a penalty of 8 percent (8%) on such amount due and unpaid, together with six percent (6%) interest per annum thereon from due date until paid, and upon the failure of BIG SANDY to pay said monthly water bills for two (2) consecutive months, then ASHLAND shall have the right and option to discontinue furnishing of said water until said past due bills are paid in full.

In the event a water meter has registered incorrectly, an estimate of the amount of water furnished through the faulty meter shall be prepared by ASHLAND for the purpose of billing BIG SANDY. The estimate shall be based upon the average of twelve preceding readings of the meter, exclusive of incorrect readings. When less than twelve correct readings are available, fewer readings including some obtained after the period of incorrect registration may be used.

BIG SANDY agrees and binds itself to purchase potable water that may be required by BIG SANDY, but not less than 500,000 gallons per month at prices, as follows:

Currently \$2.94 per one thousand (1000) gallons (until Dec 31, 2018)

It is mutually agreed that the term of this Agreement is such that the passage of time will require increases in the rates to be made for water hereunder. It is agreed that bulk water rates charged to BIG SANDY shall not exceed rates to other out-of-town bulk water customers.

ASHLAND may modify the schedule of rates for water hereunder from time to time outside the rates agreed upon herein, provided that:

- a. ASHLAND does not raise the rates higher than the yearly CPI index for water, sewer and garbage (Currently the City of Ashland Water Ordinance has an automatic increase by the CPI index on January 1 every year. This increase will apply to this contract); or:
- b. ASHLAND, prior to consideration of an increase (above the standard annual CPI index increase) in rates, may have a rate study conducted by an independent engineer chosen by ASHLAND, which rate study may provide the basis for any modification of the schedule of rates. Such rate study shall not be conducted more frequently than annually. ASHLAND shall give BIG SANDY prior notice of its intent to perform such study. BIG SANDY may, at its option and cost, provide ASHLAND with a rate study conducted by an engineer chosen by BIG SANDY. ASHLAND will cooperate with such engineer, and the study, when completed, shall be submitted to ASHLAND for consideration. BIG SANDY may provide ASHLAND other information it desires ASHLAND to consider in rate adjustment. ASHLAND agrees to meet with BIG SANDY and discuss the rate study or studies at BIG SANDY'S request.
- c. Following completion of the rate study by the independent engineer chosen by ASHLAND and based upon any additional considerations and information deemed appropriate, ASHLAND shall notify BIG SANDY of the proposed rate. However, no modification shall become effective earlier than ninety (90) days after the increase shall be adopted by ASHLAND, and ASHLAND shall give notice to BIG SANDY of such increase immediately after such increase shall have been adopted by ASHLAND. ASHLAND shall reasonably provide BIG SANDY information which would assist BIG SANDY in any presentation or application required with the Kentucky Public Service Commission for approval of proposed rates.

BIG SANDY, with the written approval of ASHLAND, has installed new infrastructure at its own cost that increases demand on the City of Ashland Water System. ASHLAND shall continue the prior agreed credit to BIG SANDY, an

infrastructure incentive, of \$0.75 per 1,000 gallons of ASHLAND water purchased by BIG SANDY for the remainder of the five (5) year period, by prior agreement. Said infrastructure incentive five-year period will expire on August 8, 2019

4. **METER PIT AND ACCESSORIES.** BIG SANDY shall, at its cost, provide and install water main, meter location inside the pump station, check valves and accessories to ASHLAND'S specifications. ASHLAND shall, at its cost, provide, install and annually calibrate the meter. If the meter is installed inside the pump station owned and maintained by BIG SANDY, BIG SANDY shall provide ASHLAND with keys to the pump station in order for ASHLAND staff to access the meter. The meter shall be the responsibility of ASHLAND for future replacement after the one year warranty period.

5. **BOOSTER PUMPS.** BIG SANDY shall have the right to install, maintain and operate booster pumps at its own cost within its lines in order to accelerate and increase the flow of water through the lines of BIG SANDY to its customers, if and when it is deemed by the said District necessary or reasonable so to do. No booster pumps shall be installed by BIG SANDY that creates a drop in pressure below forty-five (45) pounds per square inch on the suction side of the booster pumps, at an elevation of 630 feet above mean sea level.

6. **MAINTENANCE, LIABILITY, HOLD HARMLESS.** During the term of this Agreement, BIG SANDY shall, at its own expense, maintain the water main distribution system of BIG SANDY and, any agreed upon extension, and make all necessary repairs to said system. Nothing contained herein, however, shall be construed to hold ASHLAND liable for lack of adequate water supply and pressure within the BIG SANDY Water District due to any inadequacy on the part of the distribution system of BIG SANDY. ASHLAND bears no degree of responsibility for the water quality at any point beyond the meter delivery point assuming the water reaches the pump station meeting D.O.W. standards. BIG SANDY bears the responsibility for maintaining the water quality at any point beyond the meter and within its distribution system.

7. **WATER SHORTAGE.** In the event of a water shortage suffered by ASHLAND, all of the cities, water districts, corporations, or other entities purchasing

water from ASHLAND on a bulk agreement basis shall share in the shortage on a proportionate basis to their average daily usage. ASHLAND shall make every good faith effort to meet emergency needs of its bulk customers during such shortage by taking reasonable and responsible administrative action within the City and shall request such action be taken outside the City.

8. **TEMPORARY SHUT OFF.** It is further agreed that ASHLAND shall have the right to temporarily shut off the water supply of BIG SANDY or any part thereof whenever alterations, additions or maintenance operations make it necessary. ASHLAND shall give BIG SANDY reasonable notice and probable duration of such shutoffs, except that in case of serious break or accident water service may be discontinued without notice. Under no circumstances will ASHLAND be held liable or responsible for any damage that may result to BIG SANDY or its customers due to any necessary discontinuance of water service.

9. **SUCCESSORS OR ASSIGNS.** In the event of an occurrence rendering BIG SANDY incapable of performing under this Agreement, any successor of BIG SANDY, qualified under Kentucky law, shall succeed to the rights and duties of BIG SANDY under this Agreement subject to the prior written approval of ASHLAND. Otherwise, without the prior written approval of ASHLAND this Agreement may not be assigned or transferred.

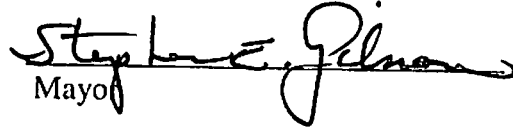
10. **COURT ACTION.** The parties reserve the right, either in law or equity, by suit, mandamus or other proceeding, to enforce or compel performance of any or all covenants contained, or for interpretation of the rights of the parties under this Agreement. Further, the parties acknowledge that any dispute between the parties shall be resolved in the state courts of the Commonwealth of Kentucky, including appellate levels of the court system or by any alternative dispute resolution process agreed to by the parties.

11. **TERM.** It is mutually agreed that the term of this Agreement shall be forty (40) years from January 1, 2019. Any extension beyond twenty-four months of the original forty-year term shall require approval by ASHLAND which shall not be unreasonably withheld.

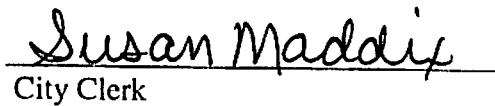
12. AMENDMENT. No officer, official or agent of either party has the power to amend, modify or alter this Agreement, waive any of its conditions or bind ASHLAND or BIG SANDY by making any promise or representation not contained herein. Any amendment must be agreed to in writing by the parties.

IN WITNESS WHEREOF OF WHICH, the City of Ashland, Kentucky, has caused its Corporate Name to be hereunto subscribed by its Mayor, attested by its City Clerk and its Corporate Seal to be hereunto affixed; and the Big Sandy Water District, has caused its name to be hereunto subscribed by its Chairman, attested by its Secretary/Treasurer, and its Corporate Seal to be hereunto affixed; all in quadruplicate identical copies, on the day and year first above written.

CITY OF ASHLAND, KENTUCKY

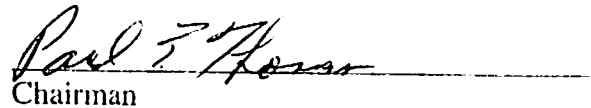

Mayor

ATTEST:

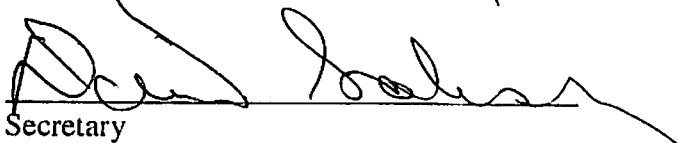

City Clerk

(SEAL)

BIG SANDY WATER DISTRICT


Chairman

ATTEST:


Secretary

(SEAL)