

AMENDMENT TO WATER CONTRACT DATED JUNE 1, 1989

THIS AMENDMENT TO WATER CONTRACT is made and entered into this the 11th day of February, 1997, by and between **MUNICIPAL WATER AND 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 **HENDERSON COUNTY WATER DISTRICT**, a municipal corporation organized as a Water District under Chapter 74 of the Kentucky Revised Statutes, hereinafter referred to as the **"PURCHASER,"**

WHEREAS:

(1) Seller and Purchaser entered into a Water Contract dated June 1, 1989, under which Seller agreed to sell and deliver to Purchaser water at six (6) master metering points, and

(2) Seller has now constructed its new South Treatment Plant No. 2 and the parties have agreed to establish a seventh master metering point at this location for the sale and purchase of water, and the parties desire to set forth their agreement in writing by amending the aforementioned water contract,

NOW, therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties **AGREE, PROMISE** and **UNDERSTAND** as follows:

1. Seller agrees to sell and deliver to Purchaser, and Purchaser agrees to purchase and receive from Seller, water at a master metering point to be established by Purchaser in the vicinity of Seller's new South Treatment Plant No. 2 located at

4137 Quinn Landing Road, Henderson, Kentucky 42420, the exact location of the metering point being: East side of U. S. Highway 41 immediately north of Kentucky Highway 2097.

2. A. Purchaser shall pay the rate of \$1.00/1,000 gallons for all water purchased from this point up to a monthly average of 260,000 gallons per day. All water purchased per month over the 260,000 gallons per day average shall be at the then current rate per 1,000 gallons for water purchased from Seller's existing city water treatment plant. These rates shall be fixed through June 30, 1998.

B. After June 30, 1998, the rate for water sold from this point shall be calculated using a formula based on operational costs of the South Treatment Plant No. 2, including depreciation and interest on debt service, plus a 25% mark up (this calculation shall be the same as set forth in paragraph 13 of the June 1, 1989, Water Contract), for the first 260,000 gallons per day. All consumption from this point over 260,000 gallons per day, monthly average, shall be the aforementioned calculated rate or \$1.0773/1,000 gallons, whichever is greater.

C. Purchaser's consumption from this point shall not exceed a 30 day average of 500,000 gallons of water for each 24 hour period; provided, however, during any 24 hour period Purchaser's consumption shall not exceed a peak of 625,000 gallons; provided, further, that the peak rate of flow shall not exceed 500 gallons per minute.

3. Seller acknowledges that it has received from Purchaser a written request to increase the supply levels set forth

in paragraph 6 of the June 1, 1989, water contract and that Seller has the additional capacity to grant the increase. Therefore, when this amendment becomes effective the supply levels mentioned in said paragraph 6 are increased to 2,500,000 gallons and 3,000,000 gallons respectively. The supply levels set forth above in paragraph 2.C. shall be in addition to the foregoing supply levels.

4. In order to receive water at the aforementioned location Purchaser will be required to construct, at its expense, certain facilities including pump station, elevated tank, transmission main, and a master meter. Purchaser shall commence this construction by December 1, 1997, and Purchaser shall exercise good faith in order to complete the construction in a good and workmanlike manner as soon as practicable. If, for any reason Purchaser is unable to commence said construction by the aforementioned date then this contract may be terminated at the option of Seller.

5. This amendment shall be effective when Purchaser completes the aforementioned construction. Upon completion of the construction Purchaser shall give written notice of same to Seller, and the date of the notice shall be deemed to be the commencement date of this amendment. The parties understand, however, that this amendment is required to be approved by the Kentucky Public Service Commission and in no event will this amendment become effective prior to such approval.

6. The duration of this amendment shall be concurrent with the duration of the June 1, 1989, water contract as set forth in paragraph 3 thereof.

7. Except for the foregoing, the terms and provisions of the June 1, 1989, water contract are reaffirmed and ratified in their entirety.

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]

Approved By:

CITY OF HENDERSON, Kentucky

By [Signature]
Mayor

ATTEST:

[Signature]
City Clerk
(seal of City)

HENDERSON COUNTY WATER DISTRICT

By David Spainhourd
Vice Chairman

ATTEST:

Robert H. McIndoo
Secretary

(seal of Water District)