

## AGREEMENT

THIS AGREEMENT is made and entered into this the 14TH day of OCTOBER, 2014, by and between the **WATER AND SEWER COMMISSION OF THE CITY OF HENDERSON**, hereinafter "Commission", 111 Fifth Street, Henderson, Kentucky 42420, a division of the **CITY OF HENDERSON**, a municipal corporation, Henderson Municipal Center, P.O. Box 716, Henderson, Kentucky, 42419-0716, hereinafter collectively referred to as "City", and **BEECH GROVE WATER SYSTEM, INC.**, a not-for-profit Kentucky Corporation, 445 State Route 56 North, Calhoun, Kentucky 42327, hereinafter referred to as "Beech Grove". Commission, City and Beech Grove are referred to herein collectively as "the Parties".

### **WHEREAS:**

- 1) The Parties entered into a Water Purchase Contract dated 14 April 1997 (the "Contract"), under which Commission sells water wholesale to Beech Grove at designated metering points, and Beech Grove in turn provides retail water service to customers in its Service Area within McLean County, Kentucky; and
- 2) The Parties simultaneously entered into an "Agreement for the Construction and Installation of Water Main" (the "Construction Agreement") on 14 April 1997, as amended by a "Revised Agreement for the Construction and Installation of Water Main" dated 1 October 1998, (the "Revised Construction Agreement"), whereby Commission agreed to construct water mains, structures and facilities required to provide service to Beech Grove, and Beech Grove agreed to reimburse the Commission for expenditures related to this construction; and
- 3) The parties executed an "Understanding Related to Revised Agreement for the Construction and Installation of Water Main", being an agreement dated 27 June 2002 (the "Understanding"), in which the parties agreed that Beech Grove would retain ownership of a water storage tank located in Beech Grove ; and
- 4) The Contract had an initial term of forty (40) years; and
- 5) It appears to be in the best interests of the Parties that Beech Grove continue to purchase water from the Commission, and in turn sell and distribute water to the citizens in Beech Grove's service territory in McLean County; and
- 6) The Parties now desire to replace the Contract and the subsequent Agreements and Understandings with a new Agreement that brings all the terms of the Contract and the subsequent Agreements and Understandings into a single document, deleting those terms that no longer apply and making the Agreement easier to understand and implement.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual agreements and covenants contained herein the Parties agree as follows:

- 1) Subject to the terms, conditions and limitations herein set forth, the Commission agrees to sell and deliver to Beech Grove, and Beech Grove agrees to purchase and receive from the Commission, water required for the normal operations of Beech Grove. Beech Grove shall not be limited or restricted in any way as to the distribution or sale of the water purchased by Beech Grove, except as otherwise provided herein.
- 2) This Agreement shall become effective beginning 1 October 2014, and shall continue for a period of twenty-five (25) years certain thereafter, except as otherwise provided herein.
- 3) The quality of water delivered by the Commission at any points of sale to Beech Grove hereunder shall meet the standards of any state or federal regulatory agency having jurisdiction over Potable Drinking Water. The Commission does not warrant, nor shall it be held liable, for maintaining water quality beyond any points of sale to Beech Grove. Beech Grove shall bear full responsibility for maintaining water quality throughout its distribution system. The Commission agrees and warrants that it will cooperate with Beech Grove in delivering water to any point of sale that will allow Beech Grove to meet water quality standards in its distribution system, to the maximum extent practicable.
- 4) Commission shall use reasonable diligence and care to provide a regular and uninterrupted supply of water to Beech Grove and to avoid any shortage or interruption of delivery and storage thereof. Commission shall deliver water to Beech Grove at an average pressure of not less than thirty (30) pounds per square inch at the points of connection. Failures of pressure or supply due to breaks, power failure, flood, fire, use of water to fight fire, earthquake or other catastrophe shall excuse the Commission from this provision for such reasonable period of time as may be necessary to restore service. In the event of shortage of supply, the Commission shall make every effort to supply water to Beech Grove at the connection points, and Beech Grove shall make every effort to reduce water use by banning outdoor, non-commercial use in Beech Grove's Service Area. In the event of extreme shortage of supply, Beech Grove may be required to institute mandatory water conservation measures, including temporary service interruptions, to all or portions of the Beech Grove water supply system. Commission shall not be liable to Beech Grove for any failure, interruption or shortage of water supply, or any loss or damage resulting therefrom, occasioned in whole or in part by any cause beyond the reasonable control of Commission.

- 5) Commission shall supply water at Beech Grove's points of connection to the Commission's South Water System as defined herein in an aggregate quantity not exceeding a thirty day average of 400,000 gallons of water for each 24-hour period, provided however, during any 24- hour period Beech Grove's consumption shall not exceed a peak of 600,000 gallons, or a maximum consumption rate of four hundred twenty gallons per minute (420 gpm).
- 6) To supplement the storage capacity available in Beech Grove's water storage tank, Commission agrees to reserve one hundred thousand (100,000) gallons of water storage capacity in Commission's Four Star Tank for the exclusive use of Beech Grove in the event of an emergency, subject to the conditions of paragraph (4) above.
- 7) Connecting points between the systems shall be referred to as the "Master Meters", which shall be as shown on the "Master Meter List" attached to this Agreement as Appendix "A". This Master Meter List shall be updated from time to time by mutual agreement of the General Manager of the Commission and the Superintendent of Beech Grove, as Master Meters are added, subtracted, moved or modified. Master Meters shall include meters installed on residential, commercial or industrial water services located along Commission's water transmission main within Beech Grove's service territory in McLean County. Commission's water mains within McLean County are to provide metered water service to Beech Grove and not to any independent entity, with the exception of the Tyson Foods, Inc., chicken hatchery, which is and shall remain a customer of the Commission.
- 8) Master Meters shall be furnished and installed at the expense of Beech Grove and shall be located at mutually agreed points of connection as detailed in Appendix "A". These Master Meters shall measure the water furnished by the Commission to Beech Grove, and will be used as the basis to determine the monthly amounts to be paid by Beech Grove to the Commission for water furnished, subject to all applicable conditions and limitations set forth herein. Master Meters shall be read in accordance with the common practice of Beech Grove, and all billings shall be made in accordance with such water meter readings at the applicable rates. Where required, Master Meter locations shall be equipped at the expense of Beech Grove with check valves or backflow prevention devices acceptable to the Commission. At the request of Beech Grove, Commission may agree to furnish and install taps for Master Meters or complete Master Meter installations, and bill Beech Grove for such installation at actual cost plus a fifteen percent (15%) markup.
- 9) Master Meters shall be checked by both the Commission and Beech Grove on a mutually agreed schedule, and Master Meters larger than two inches (2") in diameter, check valves

and backflow prevention devices shall be maintained, calibrated and tested by Beech Grove in conformance with the Kentucky State Plumbing Code or applicable rules of the Public Service Commission. Test results shall be certified by a qualified individual, and shall be reported annually to the Commission no later than 1 February of each year. If any Master Meter is found to be inaccurate, it shall be replaced or repaired as soon as practicable, and adjustments based on such Master Meter testing shall be made in previous payments for the preceding six months' billings. Beech Grove shall maintain, at its expense, standby master meters for temporary replacement of any master meter removed for testing or repair. At Beech Grove's request, Commission may agree to perform the maintenance, calibration and testing of the above-named equipment, and subsequently bill Beech Grove for Commission's costs related to such maintenance, calibration and testing.

- 10) In the event that Beech Grove requires water in a quantity greater than the thirty day averages specified in paragraph (5) above, or in quantities that exceed the then-current capacity of the Commission's water distribution system serving any Master Meter, Beech Grove shall notify the Commission in writing and shall request the Commission to provide the necessary additional facilities to furnish an additional quantity of water to Beech Grove. Said notice by Beech Grove shall specify the quantity of water required by Beech Grove at each Master Meter in terms of 24-hour monthly average flows and 24-hour peak flows. Commission shall then notify Beech Grove in writing within sixty (60) days whether or not the Commission intends to provide additional facilities and Beech Grove's share of the cost for the additional facilities in order to provide said additional facilities within a timeframe established by the Commission's written reply. Beech Grove's share of the costs of such additional facilities shall be computed and paid based on a mutually agreed percentage of the total costs of the additional facilities, including debt service. The parties may negotiate mutually acceptable terms of finance and payment. If the Commission declines to provide additional facilities or if Beech Grove does not agree to pay its share of the costs for such additional facilities, then Beech Grove shall have the right to provide itself with such additional facilities for the production and distribution of water as it may require.
- 11) Commission agrees, except as herein provided, that Beech Grove has and shall continue to have the sole and exclusive right, so far as the Commission is concerned, to sell, serve and provide water to water users and water customers located within the Beech Grove service area in McLean County, except as excluded herein.

- 12) Beech Grove agrees to allow the Commission to service new large commercial or industrial water customers within Beech Grove's Service Area, if Beech Grove is unable or unwilling to serve such customer. A large water customer shall be defined as any customer using an average of more than 150,000 gallons per week. In the event that the Commission elects to serve a large customer, the Commission shall extend water mains directly to said customer and shall not utilize mains or facilities owned by Beech Grove in supplying this customer. Once a customer is served by either Commission or Beech Grove, then that service shall remain a customer of the initially serving Party throughout the term of this Agreement.
- 13) As of the date of this Agreement, Beech Grove agrees to pay for the water so sold and delivered to the points of connection at a rate of \$ 2.9346 per one thousand (1,000) gallons of water delivered through the Master Meters, said payment to be made not later than the 15<sup>th</sup> day of each month after the reading of the Master Meters.
- 14) The rate above shall be subject to adjustment in accordance with the procedures detailed below for audited cost-based adjustment based on the Commission's 2013-2014 fiscal year audited financial data, said adjustment to be effective March 1, 2015, and annually thereafter.
- 15) Rates charged to Beech Grove shall be increased or decreased annually, based on the audited, actual costs of the Commission for water production and distribution related to the Commission's South Water Treatment Plant and Distribution System (hereinafter "South System"). The costs so taken into account shall be the Commission's costs for treating and distributing water, including direct costs of operations, depreciation and all general and administrative costs, as well as debt service interest cost pro-rated based on the percentage of the total direct cost of operations for the Commission's utility systems associated with the South System, plus a fifteen percent (15%) markup. Such costs shall be certified to Beech Grove by the Commission, shall be separately computed for the South System, and shall be based on the net total number of gallons of water billed to all customers of the South System by the Commission. The base period for calculating any rate adjustment shall be the full fiscal year of the Commission immediately preceding each annual adjustment. Commission shall compute rates and certify same to the Kentucky Public Service Commission, and shall furnish annual audit statements and other information as required. Commission's South System is served by the South Water Treatment Plant, located at 4137 Quinns Landing Road, Robards, KY 42452.

- 16) Charges to Beech Grove for water use shall be adjusted downward by any metered use of water by Beech Grove for flushing or for other water quality-related uses. Such metered water quality uses shall be charged at Commission's marginal rate of water production at the South water treatment plant, subject to a limit for such water use of five percent (5%) of Beech Grove's total consumption. Water used for flushing shall be measured by acceptable meters. The marginal rate for water produced shall be calculated based on the incremental cost of production of water at the Commission's current average production rate in the South System, and shall consist of the incremental costs of electrical power and chemicals used.
- 17) Commission may provide sanitary sewer service to customers within Beech Grove's Service Area. Beech Grove agrees to provide individual customer water consumption information to the Commission for each such customer served with water by Beech Grove, and shall furnish this information to Commission within seven (7) calendar days after the water billing is generated. At Commission's request, Beech Grove may provide metered or flat rate billing service to such sewer customers of Commission as are provided water service by Beech Grove, at rates set by the Commission. Beech Grove shall deduct a service fee for each such sewer customer of Commission so served, said fee to be mutually agreed by the General Manager of the Commission and representatives of Beech Grove, and reviewed at least annually. Beech Grove shall remit said billed sewer service charges, minus the said service fees, to the Commission at least monthly. Beech Grove may charge fees for disconnection and reconnection of services, and for late payment or collection services required in the servicing and collection of these sewer charges by said sewer customers of Commission, and Beech Grove shall retain all fees and charges so collected.
- 18) Commission has installed fire hydrants and flushing hydrants along the water main owned by Commission in McLean County. Commission will be solely responsible for maintenance and repair of these fire hydrants and flushing hydrants. Water used in fire fighting or flushing shall be at the sole expense of Commission.
- 19) Beech Grove and the Commission agree to freely share information related to water use, water main breaks, water plant failures and other causes of increased water usage by Beech Grove or inability of the Commission to provide water in adequate quantities.
- 20) At regular intervals, but not less frequently than every four (4) years after the effective date of this Agreement, the Superintendent of Beech Grove and the General Manager of the Commission, and representatives of their respective Boards, shall meet and hold discussions

on future projects, on regulatory, financial and relational matters, and mutually determine if it is the interests of the parties to continue the terms of this Agreement, or to amend the Agreement in a mutually satisfactory manner.

- 21) To the extent that the Commission or Beech Grove now have or hereafter may have a legal duty to provide retail water service to any customer or future customer located in McLean County, the Parties agree to indemnify and hold harmless the other party from and against any and all claims, demands, actions, expenses or liabilities arising from or in connection with the legal duty of either party to serve said customer or future customer.
- 22) The terms of this Agreement are subject to the provisions of the rights of the respective holders of any bonds constituting a lien against the water systems of the respective parties or against the revenues thereof.
- 23) Should any provision of this Agreement be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect unless such invalid or unenforceable provision substantially alters the benefits of the Agreement for either party.
- 24) This Agreement 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 the benefit of and be binding on the parties hereto and their successors and assigns.
- 25) Any claims by either party against the other, related in any way to this agreement or the services provided by said agreement, shall be brought in Henderson County, Kentucky.
- 26) For purposes of this agreement, any time written notice is required, the noticing party shall send their notices to the following:
  - 1) Henderson Water Utility  
C/O General Manager  
111 5<sup>th</sup> Street  
Henderson, KY 42420
  - 2) Beech Grove Water System  
Office Manager  
445 State Route 56 N  
Calhoun, KY 42327
- 27) Upon the end of the twenty-five (25) year term of this Agreement, it shall automatically renew for additional terms of five (5) years, with no limit on the number of automatic renewals, unless terminated by written notice of either party, said notice to be served at

least six (6) months prior to the end of any such five year extended term. The Parties hereto may agree at any time to extend this Agreement for such longer term as they deem appropriate.

28) The terms and provisions of the Contract, the Construction Agreement, the Revised Construction Agreement, The Understanding, and any subsequent contracts or agreements, written or oral, are hereby repealed. This Agreement constitutes the entire agreement between the parties regarding the matters set forth herein and supersedes all prior written and verbal agreements, representations, promises or understanding between the parties regarding same. Any amendments to this agreement must be in writing and executed by both parties.

**IN TESTIMONY WHEREOF**, witness the signatures of the duly authorized officers of the Parties hereto, as of the date first written above.


**WATER AND SEWER COMMISSION  
OF THE CITY OF HENDERSON, KENTUCKY**


By:   
Paul Bird, Board Chairman

Attest:   
George Jones, Secretary-Treasurer

Date Signed: 10/10/2014

**CITY OF HENDERSON, KENTUCKY**

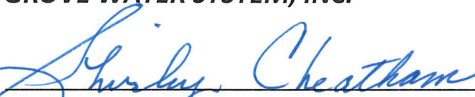
By:   
Steve Austin, Mayor

Attest:   
Carolyn Williams, City Clerk

Date Signed: 10-13-2014

**BEECH GROVE WATER SYSTEM, INC.**

By:   
Thomas Conrad, Chairman

Attest:   
Shirley Cheatham, Secretary-Treasurer

Date Signed: 10-14-14



**Appendix A – Beech Grove Master Meter List**

***The following Meters reads in Gallons***

Master Meter No. 1

**Meter # 46935801**

**Location:** 15025 Hwy 56

Main Size: 10"

Meter Size: 3/4"

Master Meter No. 2

**Meter # 46935799**

**Location:** 3100 McGhee Chapel Rd.

Main Size: 10"

Meter Size: 3/4"

Master Meter No. 3

**Meter # 46935800**

**Location:** 2887 McGhee Chapel Rd.

Main Size: 10"

Meter Size: 3/4"

Master Meter No. 4

**Meter # 46935802**

**Location:** 2887 McGhee Chapel Rd.

Main Size: 10"

Meter Size: 1"

Master Meter No. 5

**Meter # 35743417**

**Location:** Hwy 56 & Eastwood Ferry Rd.

Main Size: 10"

Meter Size: 6"