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WATER SYSTEM AND WASTEWATER SYSTEM
ACQUISITION AGREEMENT

This Water System and Wastewater Acquisition Agreement ("**Agreement**") with an effective date of April 25, 2023 is made and entered into by and between the City of West Point ("**City**"), 509 Elm Street, West Point, Kentucky 40177, a municipality organized pursuant to Kentucky statutes, acting herein through its Mayor, Richard Ciresi, as authorized, and the Hardin County Water District No. 1 ("**District**"), 1400 Rogersville Road, Radcliff, Kentucky, 40160, a water district organized pursuant to Kentucky statutes, acting herein through its Chairman, William Gossett, as authorized.

WHEREAS, the City of West Point is a municipal corporation duly organized and existing under the laws of the Commonwealth of Kentucky, being a home-rule city pursuant to Kentucky law; and

WHEREAS, Hardin County Water No. 1 is a duly organized and operating water district organized and existing under the laws of the Commonwealth of Kentucky, engaged in the business of treating and selling potable water, maintaining water distribution systems and wastewater treatment systems; and

WHEREAS, both the City and the District seek the benefit of economies of scale by transferring ownership of facilities which may assist City with managing future community development in the near and long term while relying on the District to expand and manage the water and wastewater systems of the City; and

WHEREAS, the City and the District have completed an infrastructure study, containing analyses, calculations, investigations, and identification of options necessary and appropriate to

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provide the City and District with utility service alternatives and the impact of such alternatives on rate payers and customers; and

WHEREAS, the City and the District agree to transfer the City's Water and Wastewater Systems to the District based upon the conclusions reached from the infrastructure study.

THEREFORE, the parties more specifically agree as follows:

1. The City will sell to the District, for good and valuable consideration, all of the City's tangible assets devoted to the City's water and wastewater utilities (“**the Utility Systems**”). The sale will include, but not be limited to, the tangible assets of the City's Utility Systems and all interest the City has in real property pertaining thereto, as well as all utility reserves, grant funding, and sinking fund reserves that may legally be transferred from the City to the District. All transferred assets shall be free and clear of any claim, debt or encumbrance.

Assets to be transferred include, but are not limited to the following:

A) Water System Assets:

- i. All water meters to include approximately 400 water meters and associated Customer Accounts;
- ii. 45,547 feet of water mains of various sizes inclusive of appurtenances;
- iii. All assets identified on Cities Depreciation Schedule associated with the water system. Said Depreciation Schedule shall be provided to the District upon execution of this agreement;
- iv. Specifically not acquired is the elevated water tank and the decommissioned pump system

B) Wastewater Treatment Assets

- i. Approximately 400 Customer Accounts;
- ii. 7 lift stations inclusive of appurtenances;
- iii. 85 manholes;
- iv. 12,541 feet of force main pipe of various sizes;
- v. 32,653 feet of gravity sewer of various sizes;
- vi. 200,000 GPD Water Treatment Facility
- vii. 15 acres of real property located at 16th Street West Point, KY
- viii. All assets identified on Cities Depreciation Schedule associated with the Waste Water system. Said Depreciation Schedule shall be provided to the District upon execution of this Agreement.

2. The consideration for the purchase shall be \$950,000.00 (“**Purchase Price**”).

The Purchase Price will first be allocated to pay in full the outstanding indebtedness owed by the City to the United States Department of Agriculture/Rural Development-DCFO in the approximate amount of \$245,000.00 and the Kentucky Infrastructure Authority in the approximate amount of \$190,000.00 (“**Outstanding Indebtedness**”).

The difference between the Purchase Price and the amount required to pay in full the Outstanding Indebtedness shall be paid by the District to the City in twelve equal quarterly installments over a period of three years with the first payment occurring 90 days after the Closing and each 90 days thereafter for a total of 12 payments over a period of three years.

As additional consideration, the City shall remit and assign to the District the approximately \$48,000.00 previously received from ARPA/CWP/SB36 funding and shall also

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remit and assign to District the approximately \$78,000.00 which has been allocated to the City but not yet received from the ARPA/CWP/SB36 funding.

3. The City and the District Warrant and Represent as follows:

- a. The City is a city of home-rule in Kentucky with the appropriate authority to enter into the transaction.
- b. The City warrants that as of the Effective Date of this Agreement its indebtedness on the Utility System has been fully disclosed and includes the following:



See Section 2

- c. The Parties have the full capacity, right and authority to enter into the Agreement and will obtain all appropriate consents, authorizations, approvals or other requirements as prescribed by law.
- d. The Agreement does not conflict with or result in a breach of any of the parties' other instruments, loans, grants, contracts, bonds, agreements, mortgages, or other restrictions to which either the City or the District is a party or to which any of their assets are subject.
- e. The District shall have no obligation to hire or retain any employee of the City.
- f. The parties will comply with all existing laws, rules, regulations, loans, contracts, bonds, agreements and decrees applicable to the Utility Systems before and after the sale.

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- g. The City warrants that any and all taxes, documents, employee withholding forms, licenses, and permits related to the City and its Utility System assets have been or will be appropriately filed and in current good standing as of the date of transfer and shall be the sole obligation of the City.
- h. The City shall convey good and marketable title to all Utility System assets. None of the transferred assets after the closing will be subject to any mortgage, pledge, lien, security interest, encumbrance, or adverse claim of any nature whatsoever, except as recognized by both the City and District and approved by any holder of any mortgage, liens, security interest, or adverse claim. The City's assets are as stated in the afore mentioned infrastructure study suitable for the purposes used. Any and all transferable warranties to which the City has rights are transferred to the District. All real estate transferred shall be conveyed by General Warranty deed free and clear of all encumbrances.
- i. The parties warrant to be solvent and able to meet all of their respective business obligations.
- j. The City warrants that any and all taxes, documents, employee withholding forms, licenses, and permits related to the City and its Utility System assets have been or will be appropriately filed and in current good standing as of the date of transfer.
- k. The City agrees to deliver to the District copies of its last two years of financial statements. The City warrants that there is no other debt or obligation except those incurred in the ordinary course of the City's business related to the Utility

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System, and that there is no condition or event that materially affects the Utility System assets of the City,

1. Any and all legal proceedings including legal action, arbitration, governmental investigation, or other legal or administrative proceedings, regarding the Utility System have been disclosed by the parties, and both parties agree to defend said action(s), which was in process or filed against said party, after the transfer date.
 - m. Until and through the date of the transfer, the parties shall conduct their business diligently and substantially in the same manner as business was conducted prior to the date of the transfer. Neither the City nor the District shall institute any new methods of accounting or operation or engage in any transition or activity except that which falls under the ordinary course of business and is consistent with past practice.
 - n. The City warrants not to further subject any of its Utility System assets to any mortgage, lien or encumbrance without notice to and approval of the District and shall not dispose of such assets without notice to the District.
 - o. The City shall maintain adequate insurance policies on the assets and retain all risk of loss regarding said assets prior to transfer,
 - p. The City agrees to provide all its records, including service and maintenance records, regarding the Utility System for calendar year 2015 through the present.
 - q. The City warrants that it has sufficient interest in land ownership for the proper operation and maintenance of the Utility System assets.
4. City and District agree that the District will have up to close of business on June 30, 2023 to terminate this Agreement for any reason or no reason in its sole discretion.

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By way of example only, the District may elect to terminate this Agreement if it is unable to obtain acceptable financing for the acquisition, if it fails to obtain the required regulatory approval, or if creditors of the City withhold required consent to the transfer. The District may elect to close prior to June 30, 2023 by giving written notice to the City of its intention to close and providing a mutually agreeable date, time and location for closing.

5. If the District does not terminate the Agreement in accordance with the paragraph set forth above, beginning on July 1, 2023 the acquisition Agreement shall become binding and the closing shall be concluded no later than 20 days after the final approval is received from the Public Service Commission and other regulatory agencies, (“Closing”)

6. In the event the District fails to close on the transaction after the expiration of the due diligence period on June 30, 2023, the City shall be entitled as its sole and exclusive recourse the sum of \$15,000.00 as liquidated damages in lieu of any and all other remedies. Provided, however, if the District fails to receive the required Public Service Commission approval the Agreement shall terminate and the District shall not be obligated to pay liquidated damages to the City in the amount of \$15,000.00.

7. The parties agree that the District is not assuming any of the City's liabilities or operating expenses.

8. The District and City agree that as of the date of execution of this Agreement that the District shall own and operate the Utility Systems acquired from the City and all customers served by the City shall be Customers of the District. After the acquisition date, said customers will be charged at those rates and charges as from time to time are approved by the Public Service Commission of the Commonwealth of Kentucky

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9. The parties agree that on or before closing date the City will provide the District with a current list of the customers and detailed arrangements shall be made for final transitional billing. Further, the City shall provide to the District the meter location of all accounts transferred to the District at least seven days prior to closing. The District will be entitled to all revenue from services provided by the District on or after the closing date. The District and City agree that after the transfer date, all Utility Service bills mailed to customers will be identified as the responsibility of the District, and the District shall be responsible for any and all inquiries, questions or complaints regarding water and sewer rates after that date. All outstanding receivables owed to the City as of the date of Closing shall be the sole responsibility of City.

10. The City agrees it has not conveyed, leased or in any way disposed of its Utility System assets prior to the closing without the consent of the District. At closing the City will transfer and convey to the District its Utility Systems assets together with all files, plats, maps, plans, records and ledgers or copies thereof in any way connected with the rendition of Utility System service by the City.

11. The parties anticipate that there will be several conditions precedent which are vital to the validity and enforceability of the Agreement and that those conditions will be specified in sufficient detail in writing.

12. The parties shall indemnify each other from any and all liability, loss or damage the other may suffer as a result of claims, demands, costs, or judgments against it arising out of the offending party's failure to perform any of the obligations arising out of the Agreement herein; negligence; failure to conform with statutes, ordinances, or other regulations or requirements of any governmental authority; or pre-existing debt or contingent liability,

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including but not limited to ERISA, environmental, or other liability, known or unknown, which occurs, originates, or attaches prior to the date of closing.

13. The parties agree that this acquisition Agreement is not modifiable except by writing signed by both parties.

14. The law firm of Skeeters, Bennett, Wilson & Humphrey of Radcliff, Kentucky represents the District. The City acknowledges that it has been advised to seek its own independent legal counsel and further acknowledges that the law firm of Skeeters, Bennett, Wilson & Humphrey has not offered the City any legal advice relative to the transaction herein described.

15. Each Party hereto shall be solely responsible for legal fees which they incur in relation to the transaction herein described.

16. The parties agree that this final action has been presented to and approved by the City and the District through its respective City Council and Board of Commissioners and any other organizations or regulatory agencies affected or having jurisdiction, state or federal, including but not limited to the Hardin County Fiscal Court; the Kentucky Public Service Commission; and the Kentucky Division of Water.

17. This Acquisition Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky and venue shall be in the Hardin Circuit Court to the exclusion of all other venues;

18. In the event of litigation, the prevailing party shall be entitled to all legal fees and court costs incurred;

19. There shall be no presumption in interpretation of this Agreement based upon which party was primarily responsible for drafting this Acquisition Agreement.

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20. The Districts obligation to consummate this transaction is predicated upon final written approval from all regulatory agencies including but not limited to the Kentucky Public Service Commission. In the absence of approval from the Kentucky Public Service Commission the District shall be relieved from all obligations relative to the terms and conditions set forth in this agreement. Furthermore, in the absence of approval from the Kentucky Public Service Commission the City waives any right, title or claim to enforce this agreement or to recoup actual damages or liquidated damages.

This Agreement, ratified by signatures of the designated representative of the City of West Point, as authorized, and the designated representative of the Hardin County Water District No. 1, as authorized, with an effective date as of the date signed by the last party to execute this Agreement.

CITY OF WEST POINT

HARDIN COUNTY WATER DISTRICT NO. 1



Mayor, Richard Ciresi DATE: 04/11/23

Chairman William Gossett DATE: 4-25-23