

AGREEMENT  
FOR THE  
CONSTRUCTION AND INSTALLATION OF WATER MAIN

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This AGREEMENT is made and entered into by and between the CITY OF HENDERSON, KENTUCKY, a Kentucky municipal corporation; and BEECH GROVE WATER SYSTEMS, INC., a not-for-profit Kentucky corporation;

WITNESSETH:

PREMISES

A. The parties to this agreement are: (i) the CITY OF HENDERSON, KENTUCKY, a Kentucky municipal corporation acting by and through its municipal WATER and SEWER COMMISSION authorized by the applicable provisions of KRS Chapter 96 and established by ordinance and resolution of the Board of Commissioners of the City of Henderson whose principal office is located at 111 Fifth Street in Henderson, Kentucky; and (ii) the BEECH GROVE WATER SYSTEMS, INC., a Kentucky not-for-profit corporation whose principal office address is P.O. Box 118, Beech Grove, Kentucky 42322.

B As used herein, reference to the City of Henderson, Kentucky, includes the Water and Sewer Commission of the City of Henderson, Kentucky. For purposes of brevity the City of Henderson, Kentucky and the Water and Sewer Commission shall be referred to collectively as "the City of Henderson" and sometimes "the City", and both of such terms include all of their respective officers, agents, employees and contractors.



C. For brevity, Beech Grove Water Systems, Inc. shall be referred to as "Beech Grove Water System" and such term shall include all of its officers, directors, employees, agents and contractors.

D. The City and Beech Grove Water System are also sometimes referred to herein collectively as "the Parties."

E. The City owns and operates a water treatment plant and appurtenant equipment, lines and facilities, (hereinafter collectively referred to as "the WTP") in Henderson County, Kentucky. Presently some of the City's water lines running from its WTP extend into and serve various customers in McLean County, Kentucky, including the Beech Grove Water System.

F. Beech Grove Water System was organized for the purpose of operating a potable water supply and distribution system for users in McLean County having need of such water. Beech Grove Water System desires to purchase additional supplies of potable water from the City of Henderson for resale to its various customers and users in McLean County.

G. The City of Henderson has the capacity and capability of furnishing the requested additional supplies of water to Beech Grove Water System but only through the expenditure of a large sum of money for the construction and installation of the necessary water mains, lines and appurtenant structures and facilities. For the sake of brevity in this Agreement, the construction and installation of the water main, lines, structures and facilities shall be referred to as "the Project."



H. To induce the City of Henderson to make the necessary expenditure and to undertake the Project, Beech Grove Water System makes the representations and assumes the obligations herein stated.

I. The Parties desire to reduce their agreement and understanding to writing and such is the purpose of this document.

NOW, THEREFORE, it is AGREED and UNDERSTOOD by the Parties as follows:

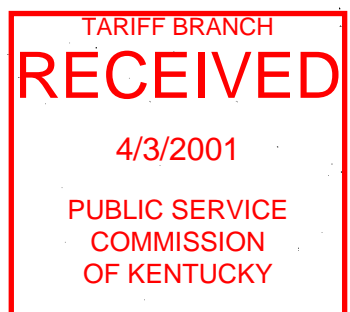
1. At present the City of Henderson owns, operates and maintains a water main in McLean County which runs from the Green River generally along Kentucky State Highway 56 to the Hudson Foods, Inc. chicken hatchery.

2. Upon the terms and conditions stated herein, the City of Henderson agrees to extend a ten inch (10") water main (hereinafter called the "Water Main") from a point at the terminus of its present water main on Kentucky State Highway 56 to a point in the town of Beech Grove, Kentucky near where Kentucky State Highway 56 and Kentucky State Highway 136 intersect.

3. The City of Henderson shall perform all of the planning, engineering and labor and shall furnish all of the materials necessary for the Project.

4. To provide the funds necessary for Project the City of Henderson will incur debt through a borrowing for which it shall be responsible to its lender for repaying in installments of principal and interest over a term of years.

5. As an inducement for the City of Henderson to incur the debt necessary for the Project and to undertake the Project, Beech Grove Water System agrees to reimburse the City for its "TOTAL COST" (hereinafter defined) for the Project.



6. When reference is made in this agreement to the "TOTAL COST" to the City for the Project, such term means, unless the words used or the context requires a different meaning:

The TOTAL COST to the City of Henderson for all of the planning, engineering, technical support, legal, administrative support, contract administration and management, supervisory support, operational support, labor, materials (whether the same be performed and/or furnished by the City or by its agents, contractors or employees), and principal and interest debt service on all debt incurred by the City, directly or indirectly, for the Project PLUS a FIFTEEN per cent (15%) mark-up applied on all of such costs.

7. Beech Grove Water System shall reimburse the City for its TOTAL COST for the Project in equal monthly installments which shall become due and be paid on the tenth day (10th) of each succeeding month commencing on the tenth (10th) day of the month immediately following the first month of the provision of water through the Water Main to the Beech Grove Water System and continuing on the tenth (10th) day of each successive month thereafter until the Beech Grove Water System has fully reimbursed the City of Henderson for TOTAL COST for the Project.

8. Until the Beech Grove Water System has fully reimbursed the City for its TOTAL COST for the Project, the City of Henderson shall retain ownership of and control over the Water Main. When the City of Henderson is fully reimbursed for its TOTAL COST for the Project, the City shall transfer ownership of the Water Main to the Beech Grove Water System.

9. Beech Grove Water System shall maintain its rates for water service furnished to its customers at a level necessary to reimburse the City in a timely fashion for its TOTAL COST for the Project.



10. Beech Grove Water System shall, at its sole cost and expense, acquire all of the easements and rights-of-way necessary, including temporary and permanent easements and rights-of-way, for unhampered access by the City of Henderson to the Water Main both during construction and thereafter. The City of Henderson shall not begin construction of the Water Main until the Beech Grove Water System certifies, through written documentation, that all of such easements and rights-of-way have been acquired. Furthermore, Beech Grove Water System agrees that it will assign all of its rights to such easements and rights-of-way to the City of Henderson prior to the time the City of Henderson commences construction of the Water Main.

11. Prior to the City commencing construction of the Water Main, Beech Grove Water System shall obtain written permission from the Public Service Commission of Kentucky to undertake the obligations of this agreement and the establishment and maintenance of rates necessary to reimburse the City for its TOTAL COST for the Project as herein defined.

12. As security that Beech Grove Water System will reimburse the City for its cost in constructing and installing the Water Main on a timely fashion as herein provided, and as an inducement to the City to undertake the construction and installation of the Water Main, Beech Grove Water System agrees to grant the City a mortgage and security interest in all of its water system, plant, distribution lines, structures and appurtenant equipment, property (real and personal), and to make an assignment to the City of all of its revenues, rents and profits. A facsimile of the Mortgage and Security Agreement, Financing Statement and Assignment of Revenues which Beech Grove Water System

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COMMISSION  
OF KENTUCKY

shall grant to the City are attached as Exhibits "A", "B" and "C", and incorporated herein by reference.

13. As a further inducement to the City of Henderson to undertake the Project, Beech Grove Water System states:

(a) That it is a corporation in good standing in Kentucky and has full right and authority to assume the obligations and make the representations herein expressed.

(b) That the execution of this document and such other documents as are necessary to facilitate the undertakings herein expressed, for and on behalf of the Beech Grove Water System, have been duly authorized by its directors and officers at a properly called meeting.

(c) That it has neither done any act nor failed to do any act which might prevent the City from, or limit the City in, acting under any provisions of this agreement or any of the documents to which reference is made herein.

(d) That there exists no default or any state of facts which would or could, with the passage of time or the giving of notice, or both, constitute a default on the part of Beech Grove Water System under the terms of this Agreement or of any of the documents referred to generally or specifically herein.

(e) That neither the execution and delivery of this Agreement or of any of the documents necessary or appropriate to facilitate the undertaking of the Parties, as expressed herein, nor any covenant or representation made herein by the Beech Grove Water System conflicts with, or constitutes a breach or default under any agreement, indenture, undertaking or instrument to which it is a party or is subject, or any law, ordinance, administrative regulation or court decree which is applicable to it.



(f) That no action has been brought or, to the knowledge of Beech Grove Water System, is threatened, which would interfere in any way with the right of Beech Grove Water System to execute this Agreement or any documents necessary or appropriate to facilitate the undertakings herein expressed and to perform all of its obligations under any of such documents.

14. Beech Grove Water System covenants with the City as follows:

(a) It shall fulfill, perform and observe all of the terms and conditions of this and such other documents as are necessary or appropriate to facilitate the undertakings herein expressed.

(b) That it shall not, without prior written consent of the City of Henderson, do or fail to do any act if such act or failure would constitute a violation of this or any other document necessary or appropriate to facilitate the undertaking herein expressed.

15. Nothing contained in this Agreement shall be construed as fixing the rates which the City of Henderson will charge Beech Grove Water System for the water delivered and sold through the Water Main. The delivery of the water to Beech Grove Water System by the City of Henderson and the rates charged or to be charged by the City for such water is, and/or shall be, the subject of a separate water purchase agreement between the City and Beech Grove Water System. The Parties acknowledge that at the present time they have joined in a Water Purchase Agreement, dated April 14, 1997 and nothing contained in this agreement shall be deemed to abrogate, in any manner, the terms and conditions of that agreement and vice versa.



16. For so long as Beech Grove Water System is not in default of the terms of this Agreement, or any other agreement between the Parties, whether or not related to the Project, it shall have the privilege of tapping onto the Water Main at various locations in order to serve its customers with potable water. However, such tapping and withdrawal shall be in accordance with the Water Purchase Contract between the Parties.

17. Until such time as Beech Grove Water System has fully reimbursed the City for its TOTAL COST for the Project, Beech Grove Water System shall not purchase potable water for resale from any source other than the City under any circumstances save an emergency condition which makes it impossible or impractical, in the opinion of the City, to supply Beech Grove Water System potable water at all or in the quantities required by it.

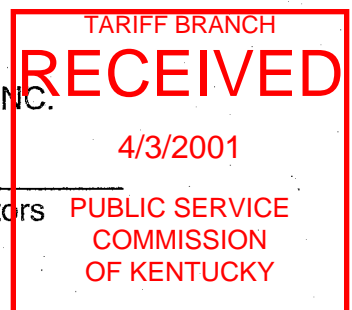
18. The City of Henderson shall not be liable to Beech Grove Water System, or to the customers of Beech Grove Water System, for loss or damage of any kind or description directly or indirectly related to any failure, interruption of service, shortage of water, loss of water pressure or other cause.

19. The execution of this Agreement by the undersigned for and on behalf of Beech Grove Water System was authorized by a resolution of its Board of Directors on March 12, 1998.

20. The execution of this agreement by the undersigned for and on behalf of the City of Henderson was duly authorized by a resolution of the Water and Sewer Commission of the City of Henderson with the authority of the Board of Commissioners of the City of Henderson, its governing body.

BEECH GROVE WATER SYSTEMS, INC.

BY: David M. Scott  
Chairman of the Board of Directors





ATTEST:

Billy Worley  
Secretary of the corporation

THE CITY OF HENDERSON, KENTUCKY

BY: Jeanne Marie Gadiant  
Chairman of the Water and Sewer Commission

COMMONWEALTH OF KENTUCKY

COUNTY OF MCLEAN ... Sct.

The foregoing agreement signed and acknowledged before me by David M. Scott, Chairman of the Board of Beech Grove Water Systems, Inc. and by Billy Worley, its Secretary on the 18 day of March, 1997.

MY COMMISSION EXPIRES: 4/28/01  
Johnnie Phillips  
Notary Public

*J.P.*

(CONTINUE TO NEXT PAGE)

COMMONWEALTH OF KENTUCKY

COUNTY OF HENDERSON ... Sct.

*Jeanne Marie Gadiant*

The foregoing agreement was signed and acknowledged before me by Jack Taylor, Chairman of the Water and Sewer Commission of the City of Henderson, Kentucky, on the 14<sup>th</sup> day of April, ~~1997~~ 1998.

MY COMMISSION EXPIRES: 9/25/99  
Jackie A. Kenney-Folsom  
Notary Public

This Instrument Prepared By:  
JOHN STANLEY HOFFMAN  
SHEFFER-HOFFMAN  
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Telephone: (502) 826-3300

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