

**The Water Service Agreement Among the City of Cincinnati, Ohio, the Boone-Florence Water Commission, the Boone County Water District, and the City of Florence, Kentucky**

**THIS AGREEMENT**, made and entered into this 2ND day of MARCH, 1999, by and among the City of Cincinnati ("Cincinnati"), the Boone-Florence Water Commission ("Water Commission"), the Boone County Water District ("Boone"), and the City of Florence, Kentucky ("Florence").

**WITNESSETH:**

**WHEREAS**, Florence and the Boone have the responsibility of providing a safe, clean, and adequate supply of water to the citizens and other consumers in the City of Florence and Boone County; and

**WHEREAS**, Boone County and Florence are recognized as one of the fastest growing metropolitan regions in the United States; and

**WHEREAS**, Comprehensive Plan projections indicate this rapid rate of growth will continue into the foreseeable future creating increased demands for an adequate water supply; and

**WHEREAS**, studies indicate that savings in excess of Fifty Million Dollars may be achieved if Florence and Boone purchase their water supply from the City of Cincinnati rather than initiate the construction of a major water treatment facility plant in Boone County on the Ohio River; and

**WHEREAS**, the City of Cincinnati, Ohio, has a state-of-the-art water supply treatment facility with excess capacity to satisfy the present and future growth demands of Florence and Boone County at significant cost savings to the water users of Boone County; and

**WHEREAS**, Florence and Boone have created a Boone-Florence Water Commission ("Water Commission") under KRS Chapter 74.420 to 74.520 to purchase water supply services from the City of Cincinnati, which water supply would be available to Florence and Boone Water Systems for sale and distribution to water customers throughout Boone County; and

**WHEREAS**, the respective public agencies who are parties to this Agreement wish to take cooperative action to plan, design, and construct a major water transmission system which would connect with water supply lines from Cincinnati, crossing by tunnel under the Ohio River to a reservoir and master meter site in Boone County, with water then pumped into the water distribution lines of Florence and Boone; and

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**WHEREAS**, the respective public agencies wish to utilize their own personnel and facilities to cooperatively provide an adequate water supply for Florence and Boone County on a purchase-of-services basis rather than forming a new or joint agency to accomplish this public purpose; and

**WHEREAS**, it has been determined that this Agreement and an Interlocal Agreement involving the City of Florence, Boone County Water District, the Boone-Florence Water Commission, and the City of Cincinnati will permit the local governmental units to make the most efficient use of their powers, enabling them to cooperate on a basis of mutual advantage, providing water supply services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population growth, and other factors influencing the needs and development of Florence and Boone County; and

**WHEREAS**, the sale of surplus water by Cincinnati to the Water Commission will benefit Cincinnati and existing Cincinnati customers by further spreading and reducing the unit base costs to produce water.

**NOW, THEREFORE**, in consideration of the promises, covenants, terms, and conditions contained herein, the parties hereby agree as follows:

**Section 1. PURPOSE OF CONTRACT**

The purpose of this Agreement is to establish the terms and conditions pursuant to which Cincinnati will provide wholesale water service to the Water Commission, and those entities and persons which it serves, namely Boone and Florence. During the Agreement period, Cincinnati will provide no water service within Boone County other than as provided herein. It is expressly understood and agreed by the parties that (a) the Water Commission, Boone, and Florence, in paying the costs and charges set forth herein, directly or indirectly, are purchasing water and water service and not any Cincinnati-owned portions of the physical plant, mains, or other property used in providing said water and water service; and (b) Cincinnati has no ownership or responsibility for the Boone or Florence water distribution systems, or responsibility for any acts of the Water Commission including, but not limited to improvements, maintenance, repair, or the quality of water beyond the master meters including requirements of the Ohio Environmental Protection Agency (OEPA), the U.S. Environmental Protection Agency (USEPA) Region Five, the Commonwealth of Kentucky, Cabinet for Natural Resources, Division of Water (DOW), and/or applicable state or federal statutes, including but not limited to the Safe Drinking Water Act and its amendments, except as may be expressly stated herein.

**Section 2. AGREEMENT DURATION, TERMINATION, AND DEFAULT**

This Agreement shall be in force for a period of 29 years commencing upon the date of its execution by Cincinnati, the final executing party.

Upon default of any of the terms of this Agreement including but not limited to failure to pay rates and charges, violation of any material provision of this Agreement, law, or regulation, the

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non-defaulting party or parties may terminate this Agreement by giving a 180-day notice; however, during the 180-day notice period, the defaulting party shall have the right to cure any such default. The right-to-cure period may be extended upon mutual agreement of all parties. If the Water Commission, and/or Boone, and/or Florence default during this Agreement, it or they will be required to pay all resultant damages which may include all of Cincinnati's Costs as defined below including principal and interest incurred by Cincinnati to the date of default as well as all outstanding principal and interest of the Cincinnati Water Works Improvements as identified in "Exhibit A," and as identified in "Exhibit E", Cincinnati Improvements for 30 mgd., in addition to any rates or charges that remain unpaid as of the date of the default. Should any incidence of default not be resolved within 180 days as same may be extended, all available legal and equitable remedies may be exercised by the parties.

### Section 3. CAPITAL IMPROVEMENTS

#### (A) Cincinnati Responsibility

Subject to the Excusable Delay provisions of Section 16 and Cincinnati Cost Limits of Section 3(A)(1), Cincinnati agrees: (a) to design, build (according to all applicable local standards, or better), own, maintain, and operate the capital improvements necessary to initially convey water in a maximum quantity of 20 million gallons per day (mgd), identified as "Cincinnati Water Works Improvements" as more specifically identified in "Exhibit A," attached hereto and made a part hereof; and (b) to provide improvements as required in Section 3(B)(2) and Section 10 to eventually convey 30 mgd, identified as "Cincinnati Improvements for 30 mgd," as more specifically identified in "Exhibit E" attached hereto and made a part hereof; and (c) to use its best efforts to complete all necessary infrastructure improvements within 48 months of the execution of this Agreement, and to progress towards completion of same in accordance with the "Cincinnati Progress Schedule," marked "Exhibit A-1," attached hereto and made a part hereof.

All public records of the City of Cincinnati which in any way relate to this project shall be available for review by the parties upon reasonable request.

#### (A)(1) Cincinnati Cost Limits/Excess Costs

The parties to this Agreement agree that Cincinnati's present estimate of "Cincinnati Costs," as defined below, of Twenty-Four Million Nine Hundred Eighty-Eight Thousand Dollars (\$24,988,000), which includes a contingency amount of approximately Six Million Four Hundred Sixty-Eight Thousand Dollars (\$6,468,000), is fair and reasonable. In the event Cincinnati Costs exceed Twenty-Four Million Nine Hundred Eighty-Eight Thousand Dollars (\$24,988,000), the rate differential applicable to the Water Commission wholesale rate set forth in Section 7 below shall be permanently adjusted by a factor of \$.01 for each increment of Five Hundred Thousand Dollars (\$500,000), or any portion

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of said amount, by which Cincinnati's actual costs exceed the present estimate. This rate adjustment shall not exceed a factor of 1.04, or total maximum Cincinnati Costs of Twenty-Seven Million Dollars (\$27,000,000).

"Cincinnati Costs" are defined as:

- a) Acquisition of real property interests in Ohio and Kentucky deemed necessary by Cincinnati for the Cincinnati Water Works Improvements, including all costs in connection therewith (including but not limited to purchase or lease price, costs of appraisal, court costs and fees, environmental studies, title insurance costs, and any relocation payments in accordance with Cincinnati Municipal Code Chapter 740);
- b) Reasonable costs of design, engineering, construction, and inspection of the Cincinnati Water Works Improvements;
- c) All other reasonable and direct expenses payable to third parties in connection with Cincinnati's responsibilities under this Agreement;
- d) Cincinnati's reasonable and necessary legal and administrative costs in connection with this Agreement and acquisition of the property; and
- e) Reasonable and necessary costs incurred by Cincinnati in connection with any other Cincinnati responsibility under this Agreement.

Cincinnati agrees to use reasonable efforts to minimize Cincinnati Costs. If Cincinnati Costs are at any time expected to exceed the anticipated maximum Cincinnati Costs of \$27,000,000, based on Cincinnati Costs incurred to that time and a reasonable estimate of remaining Cincinnati Costs, Cincinnati shall promptly notify the Water Commission, Boone, and Florence in writing of the anticipated excess costs ("Excess Costs"). The parties agree that Excess Costs of \$1,000,000 or less will be shared equally between the Water Commission and Cincinnati, unless such Excess Costs are solely related to a discretionary change or betterment request by one of the parties. In the event of a discretionary change or betterment request by one or more of the parties, the requesting party(ies) shall exclusively bear all related Excess Costs. Should Excess Costs to be shared equally between the Water Commission and Cincinnati exceed the \$1,000,000 maximum, allocation of responsibility for payment among the parties shall be submitted to the Conflict Resolution Committee provided in Section 9 below. However, Cincinnati may elect in Cincinnati's sole discretion to provide additional Cincinnati funds for the Excess Costs. Cincinnati shall make such election by written notice to the other parties within thirty (30) days of Cincinnati's recognition and reasonable anticipation of Excess Costs. Any obligation of Cincinnati arising from this subsection 3(A)(1) in excess of \$27,000,000 is conditioned upon the availability and future appropriation of funds.

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**(A)(2) Water Commission Cooperation**

The Water Commission shall use its reasonable efforts to assist Cincinnati in acquiring either by eminent domain or other means the real property interests necessary for Cincinnati to construct infrastructures in Kentucky, including Ohio River tunnel access, water main, pump station, reservoir, rechlorination equipment, point-of-delivery facility, and satellite monitoring facilities within Boone County, all as more specifically identified in "Exhibit A," and in obtaining any Commonwealth of Kentucky, county, municipal government, or United States Corps of Engineers permits or applications for the construction of the Cincinnati Water Works Improvements in Kentucky. Cincinnati shall not be held in default of this Agreement or otherwise liable for damages should construction of the Cincinnati Water Works Improvements be suspended or delayed due to a delay in obtaining the real property interests necessary to construct the Cincinnati Water Works Improvements in Kentucky as identified in "Exhibit A," or the necessary permits or applications not caused by Cincinnati's negligence. Certain real property interests necessary to construct the Cincinnati Water Works Improvements in Kentucky as identified in "Exhibit A" are listed in order of preference primarily based upon engineering standards, construction feasibility, and cost considerations. Should real estate appraisals and anticipated acquisition costs of the preferred real property interests be excessive or cost prohibitive, upon approval of the Director of the Cincinnati Water Works, the lands listed in second order of preference may be acquired.

Prior to acquisition of any real property interests for Cincinnati Water Works Improvements in Kentucky, the Water Commission shall secure written Cincinnati approval of the acquisition costs.

**(A)(3) Lease/Purchase Real Property in Kentucky**

Cincinnati agrees to lease or purchase the necessary Kentucky real property interests from the Water Commission as described above in subsection (A)(2) upon such terms and conditions which are in substantial conformance with Exhibit "F," "Lease," and Exhibit "G," "Deed." The purchase price or lease payments shall be derived from the then current appraisals and be acceptable to Cincinnati and the Water Commission.

**(B) Water Commission, Boone, and Florence Responsibility**

The Water Commission, Boone, and Florence agree to design, construct, own, maintain, and operate all of the capital improvements identified as "Water Commission, Boone, & Florence Improvements," as more specifically identified in "Exhibit B," attached hereto and made a part hereof. The design, construction, and maintenance of all said capital improvements shall be accomplished in accordance with plans which have been reviewed and commented on by Cincinnati. Cincinnati's comments of said plans shall in no way

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be construed as a guarantee of their appropriateness for the purpose for which they are to be constructed. The Water Commission, Boone and Florence agree to use their reasonable efforts to complete these infrastructure improvements within 48 months of execution of this Agreement, and to progress towards completion of same in accordance with the "Water Commission, Boone & Florence Progress Schedule," marked "Exhibit B-1." The Water Commission, Boone, and Florence hereby grant to Cincinnati an access easement to said structures by, through, and over the property of the Water Commission, Boone, and Florence for the purposes of inspection, maintenance, repair, and replacement of Cincinnati-owned structures by Cincinnati. Upon completion of the improvements for which it is responsible, as defined herein, and final Cincinnati inspection and approval, the master meter(s) and equipment enclosure adjacent to the point-of-delivery treatment facility will become the property of Cincinnati, and appropriate access rights granted. The associated meter pit(s), backflow prevention (if required), and other valves and appurtenances shall remain the property of Water Commission, and/or Boone, and/or Florence.

**(B)(1) Cincinnati Access**

The Water Commission, Boone, and Florence shall, during construction and throughout the term of this Agreement, through issuance of rights of entry or grants of easements, allow Cincinnati access to all Water Commission, Boone, and Florence storage facilities, equipment enclosures at the storage facilities that may contain Cincinnati water flow or other monitoring equipment, master meter(s) pits, and other appurtenances through which water supplied by Cincinnati is conveyed or in any way associated, for the purpose of maintaining or monitoring Cincinnati-owned equipment, recognizing however that Cincinnati is not responsible for design, adequacy, construction, or inspection of the Water Commission, Boone, and Florence water distribution and transmission systems. The rights of access shall not be construed to require Cincinnati to perform ongoing inspection, monitoring, maintenance, and/or repair of said Water Commission, Boone, or Florence equipment, it being expressly agreed that Cincinnati is required to monitor the Water Commission, Boone, and Florence water distribution systems only as described in Sections 5 and 6 below.

**(B)(2) System and Storage Expansion**

The parties anticipate that during the term of this Agreement, system expansion and improvement to the Cincinnati, Boone, and Florence infrastructures will be necessary to convey up to an additional 10 mgd of water for a total of 30 mgd of water, to serve increasing water demands within Boone County. Cincinnati, the Water Commission, Boone, and Florence agree, at a minimum, to design and construct the infrastructure(s) necessary to meet the 30 mgd requirement, all as further described in the "Cincinnati Improvements for 30 mgd," marked "Exhibit E" and "Water Commission, Boone & Florence Improvements", marked "Exhibit B", attached hereto and made a part hereof. Any obligation of Cincinnati arising

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from this Section which causes Cincinnati to exceed "Cincinnati Costs" of \$27,000,000 is conditioned upon the availability and future appropriation of funds for the purpose of such system expansion.

The Water Commission, Boone, and Florence agree to maintain on their combined distribution and transmission system water storage facilities capable of storing 80 percent of their combined average-day demand. The facilities shall be able to store water at a 1,082-foot elevation or capable of receiving water from the 1,082-foot elevation. Should water demand and usage projections, duly considered by the parties and reported at the Biennial Meetings as required by Section 10, show that the combined system storage will drop below 80 percent, the Water Commission, Boone and Florence will design and construct the necessary infrastructure(s) to achieve an 80 percent level of storage.

#### **Section 4. OPERATION AND MAINTENANCE**

##### **(A) Cincinnati Responsibility/Reimbursement**

Cincinnati shall own, maintain, repair, and operate the Cincinnati water system including the Ohio River tunnel, tunnel accesses, the water main to the pump station, reservoir, rechlorination equipment, and point-of-delivery facility. However, should repair of the Cincinnati water system become necessary as the result of any negligent act or failure to act of another party to this Agreement, the responsible party shall reimburse Cincinnati for all related costs.

##### **(A)(1) Master Meter Operation/Energy Costs**

Cincinnati shall operate and maintain the master meter at the point-of-delivery facility so as to record within the accuracy prescribed by then-current American Water Works Association standards applicable to the type(s) of meter(s) in service. Upon written notification to Cincinnati, the Water Commission, Boone, or Florence shall have the right to have the master meter(s) tested at the requesting party's expense. The Water Commission and/or Boone and/or Florence shall be responsible for any periodic charges for electric power to any above-ground enclosure adjacent to the point-of-delivery facility and satellite monitoring facilities, and for all maintenance and any periodic charges for a dedicated telephone line used to "read" the master meter(s) and satellite monitoring facilities used to measure water quality and supply demands.

##### **(A)(2) Storage Tank Monitoring and Pump Station Operation/Energy Costs**

Beginning on the first day water is provided by Cincinnati, Cincinnati agrees to monitor the current Florence Mall Road Tank and operate the adjacent Pump Station and any other storage facilities and pump stations, either existing or to be

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constructed, based upon the operating criteria set forth in "Exhibit D," "General Operating Parameters", attached hereto and made a part hereof. The referenced operating criteria may be modified by mutual agreement of the parties without amendment to this Agreement. The Water Commission, Boone, and Florence agree to allow Cincinnati to monitor, by use of "SCADA" and/or other means, any other storage and pumping facilities in their respective water transmission and distribution systems to allow for the proper distribution of water throughout their systems. Additionally, the Water Commission, Boone, and Florence agree to allow Cincinnati to monitor, by use of "SCADA" equipment and/or other means, additional "pressure points" at mutually-agreed-upon locations throughout their respective systems.

Cincinnati is not responsible for operating costs, repair, or maintenance of the Florence Mall Road Storage Facility and Pump Station or any other storage and pump stations monitored or operated by Cincinnati. Cincinnati assumes no liability for any water main break or other disruption of water service to the Water Commission, Florence, or Boone.

Cincinnati shall furnish a 20 Amp, 117 V.A.C. circuit from the Water Commission's, Boone's, or Florence's existing electrical distribution panel(s) to the locations where Cincinnati's SCADA equipment will be located. The Water Commission and/or Boone and/or Florence shall be responsible for any periodic charges for electric power to any monitoring facilities or pump stations, and for all maintenance and any periodic charges for a dedicated telephone line used to "read" the satellite monitoring facilities used to measure water pressure and supply demands.

**(B) Water Commission, Boone, and Florence Responsibility/Reimbursement**

The Water Commission, Boone, and Florence shall own, maintain, repair, and operate their existing water systems and their respective water systems as improved in accordance with Exhibits B. However, should repair of the Water Commission's, Boone's, or Florence's water system become necessary as the result of any negligent act or failure to act by Cincinnati, Cincinnati shall either reimburse or credit the damaged party for all related costs. The Water Commission, Boone, and Florence shall individually be responsible for any improvements, maintenance, or repair of the master meter pit(s), backflow prevention devices and operation, and all other valves and appurtenances which are part of each entity's water system. The Water Commission, Boone, and Florence shall individually be responsible for having any required backflow prevention devices which are a part of each entity's water system tested annually, providing certification thereof, and paying any fees associated with the certification and testing.

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**Section 5. DAILY SUPPLY OF WATER AND OPERATIONS**

Cincinnati, the Water Commission, Boone, and Florence agree to operate their respective distribution and transmission systems so as not to adversely affect the others' systems. Subject to Section 11 herein, Cincinnati will supply water to the master meter(s) within or immediately adjacent to the point-of-delivery facility. The Water Commission agrees to accept and pay for no less than a minimum daily quantity of 6 mgd, averaged over a six-month period at the end of each February and August, beginning 48 months from the date of execution of this Agreement should Cincinnati be able to provide water on and after that date, and continue for the entire remaining term of this Agreement. Should Cincinnati be able to supply water at some earlier time, and the Water Commission, Boone, and Florence are able and willing to accept water, Cincinnati may provide water at such earlier time, subject to the minimum daily use quantity of 6 mgd.

In order to properly operate the point-of-delivery facility and to meet the long-term delivery demands of a maximum of 30 mgd, the Water Commission, Boone, and Florence agree to allow Cincinnati to install and maintain electronic monitoring of water flow and pressure devices or other SCADA equipment at mutually-agreed-upon locations throughout the Boone and Florence water distribution systems. Cincinnati shall be responsible to purchase the electronic monitoring of water flow and pressure devices or other SCADA equipment, and provide routine maintenance and repair to such equipment. The Water Commission and/or Boone and/or Florence shall be responsible for any periodic electric charges to operate the water flow and pressure devices or other SCADA equipment.

Subject to Section 11 herein, Cincinnati agrees to use its reasonable efforts to provide a sufficient supply of water to the Water Commission, Boone, and Florence to meet the maximum-day demands as identified in "Exhibit C," "Projected Usage," attached hereto and made a part hereof.

**Section 6. WATER QUALITY, DATA, AND RESPONSE**

Cincinnati will supply to the master meter(s) water satisfying, as required, all OEPA, USEPA Region Five, and the Safe Drinking Water Act requirements. In addition, Cincinnati will be capable of providing to the master meter(s), plus or minus 0.2 mg/L, a chlorine residual up to the maximum initial design capacity of the point-of-delivery facility. Cincinnati will add chlorine as directed by Kentucky water quality agencies and the Water Commission, and at a dosage directed by the Water Commission. Should any incident or condition occur beyond the point-of-delivery facility which is beyond the control of Cincinnati, such as a water main or appurtenance failure or contamination which affects Cincinnati's ability to maintain the chlorine residual, Cincinnati is relieved of its obligation so long as the deleterious condition exists.

Cincinnati will provide all water quality data required by the Kentucky Division of Water and other lawful regulatory authorities for the point-of-delivery facility if requested to do so by any regulatory authority or by the Water Commission, Boone, or Florence. Cincinnati will notify the

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appropriate Water Commission, Boone, and Florence personnel as soon as possible should Cincinnati's testing and monitoring indicate Cincinnati is not in compliance with any OEPA, USEPA Region Five, or Safe Drinking Water Act requirements, and concurrently take all necessary and appropriate action to achieve compliance.

**Section 7. RATES AND BILLING**

The Water Commission shall initially pay for water provided, including minimum quantities, at a rate of \$0.82 per 100 cubic feet (ccf). This rate of \$0.82 per ccf is 0.89 times, or 89 percent, the current rate paid by Cincinnati residential customers in the monthly consumption bracket for usage over 60,000 cubic feet, currently \$0.92. The differential of 0.89 applicable to the Water Commission wholesale water rate shall not change except by amendment to this Agreement.

After the twenty-fourth (24<sup>th</sup>) year of this Agreement, the commodity charge paid by the Water Commission shall be reduced by eighteen (18) percent. For example, if the commodity charge to the Water Commission in the twenty-fourth year is \$1.00 per ccf, that rate would be reduced to \$0.82 in the twenty-fifth year of this Agreement. This eighteen percent (18%) reduction in the commodity charge as expressed in dollars and cents will change the differential of 0.89 to be in effect the first 24 years of this Agreement as specified in this Section 7. That new differential, beginning in the twenty-fifth year of this Agreement, shall be calculated by Cincinnati and Cincinnati shall inform the Water Commission of the new rate and rate differential in writing prior to the new rate and differential going into effect.

The differential of 0.89 established herein solely applies to the provision of Cincinnati water for consumption in Boone County. Should the Water Commission, at any time, desire to purvey water provided by Cincinnati to other persons or entities beyond Boone County, other than those provided service by Boone or Florence as of the date of the execution of this agreement, the rate differential to be paid for such additional water and other pertinent provisions of this Agreement shall be subject to negotiation and resolution of all matters between and among Cincinnati, the Water Commission, Boone, and Florence, and this Agreement amended.

Council of the City of Cincinnati shall, from time to time, fix by ordinance the charges for water supplied to City of Cincinnati consumers and other retail and wholesale consumers. Future rate increases to the Water Commission shall be automatically increased (without the necessity for amendment to this Agreement) on the effective date of the increase as the Council of the City of Cincinnati increases those rates to City of Cincinnati consumers.

The parties hereto represent and agree that the water rate established herein is based upon the assumption that Cincinnati is not and will not be required to pay any local or Commonwealth taxes. Should at any time, during the term of this Agreement, Cincinnati be required to pay local or Commonwealth taxes of any kind, Cincinnati will be reimbursed in full by the Water Commission.

The Water Commission, Boone, and Florence grant to Cincinnati the exclusive right to provide water service to the Water Commission, Boone, and Florence, effective the date Cincinnati is

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able to provide water to the Water Commission, Boone, and Florence in accordance with the terms of this Agreement. No other water service shall be supplied by or to the Water Commission, Boone, or Florence following that effective date unless permitted to do so by Cincinnati on a standby basis due to an emergency condition. An "emergency" shall mean any situation arising from fire, flood, storm, breakdown of a water system, or unpotable condition causing an immediate threat to life, health, or property.

Bills for water shall be rendered monthly by Cincinnati and shall be based upon the amount of water furnished during the preceding month as shown by the master meter(s), or the minimum daily usage established in Section 5. Each such bill shall set forth meter readings and the amount of water consumed through each meter. Payment shall be made by the Water Commission on or before the due date on the bill; currently, 25 days after issuance. If such bill is not paid by the due date, a service charge shall be added at the rate then charged by Cincinnati to its customers per month (currently, 0.83 percent per month).

If a monthly bill or billings must be estimated due to the inaccuracy of any metering or transmitting equipment, the charges for water shall be corrected by Cincinnati based upon the best available data for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of test and repair, but in no event further back than a period of six (6) months. The amount and rates of water delivered during such period may be estimated (a) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (b) if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity and rates of delivery by reference to deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

#### Section 8.     **ADVISORY COMMITTEE**

To address the future needs of the Cincinnati, Water Commission, Boone, and Florence consumers, the parties will form an advisory committee to facilitate communication and to coordinate response to mutual concerns for water quality and supply. The advisory committee shall consist of the Cincinnati Water Works Director and representatives of the Water Commission, Boone, and Florence, and each shall nominate one other person to be selected to the committee for a total of eight committee members. The advisory committee shall meet at least once a year or more often to address concerns. Each party shall be responsible for any expenses incurred by its representatives.

#### Section 9.     **CONFLICT RESOLUTION**

All parties agree to form, on an as-needed basis, a Conflict Resolution Committee (CRC) to attempt to resolve issues arising from contract language, construction of the infrastructure, water quality issues, water quantity concerns, or other matters of mutual concern or conflict.

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After 60 calendar days of discussion, if the parties cannot reach agreement on the item(s) at issue, any party may declare an impasse and request, in writing, to all others that the unresolved issue or issues be submitted to a three-person advisory CRC. The Water Commission, Boone, and Florence shall name one member of the CRC, Cincinnati shall name a member, and the two members so named shall designate a third member. The three CRC members shall select one of their number to serve as chairperson.

The CRC shall have the authority to hold hearings and to confer with representatives of Cincinnati, the Water Commission, Boone, and Florence, independently or otherwise before making any recommendations.

The CRC shall act in an advisory capacity only and issue a written report to each party setting forth a proposed resolution as to each issue. The CRC report shall be issued within 15 calendar days after the final hearing or meeting date unless the majority of the CRC extends its deadline by not more than ten (10) additional days.

Within ten (10) days of issuance of the CRC report, Cincinnati, the Water Commission, Boone, and Florence shall indicate their acceptance or rejection of the recommendations of the CRC. If all representatives of the parties to this Agreement accept the recommendations of the CRC, the accepted recommendations shall be memorialized upon execution of a letter or memorandum of understanding, or, if legally required, recommendation to their respective controlling boards, councils, or commissions for formal adoption and/or amendment of this Agreement.

Should any party fail to accept the CRC recommendation, the parties shall continue discussions for a 30-day calendar period. If within that 30-day period the issue is still not resolved, the recommendation(s) not accepted shall not bind the parties and any party may pursue its legal remedies. Nothing contained herein shall limit the right of any party to seek legal recourse at any time and whether or not any time period prescribed herein is exhausted.

The parties shall pay the expenses of their respective appointees to the CRC, and equally share the expenses of the Committee.

## **Section 10. BIENNIAL MEETING/EXTENSION OF AGREEMENT**

### **(A) Biennial Meeting**

The infrastructure improvements to be made by Cincinnati, the Water Commission, Boone, and Florence will initially provide for and allow a maximum water supply of 20 mgd to the Water Commission. To provide Cincinnati, the Water Commission, Boone, Florence, and other affected entities time to design and construct any additional infrastructures necessary to accommodate an increase in the volume of water service to the Water Commission and those entities and persons which it serves, Cincinnati, the Water Commission, Boone, and Florence agree to meet and review every two years the average usage and the projected maximum-day demand for water service over the following two years. The Water Commission, Boone, and Florence shall provide

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Cincinnati information on the projected average-day and maximum-day usage based upon the best available information. The biennial meetings shall commence within two years of the execution of this Agreement.

The parties shall jointly develop and issue a biennial report containing agreed average-day and maximum-day usage projections for water service over the following two years. Should agreed projections indicate the need for infrastructure expansion and improvement to meet those projections, Cincinnati, the Water Commission, Boone, and Florence shall proceed in accordance with the terms of Section 3(B)(2) above.

(B) Extension of Agreement

At the twelfth biennial meeting, or at such earlier time as the parties might agree, the parties shall commence good faith discussions concerning an extension of this Agreement beyond its initial twenty-nine-year term.

Section 11. GENERAL SUPPLY OF WATER

Cincinnati recognizes that a reliable supply of water to the Water Commission and those entities and persons which it serves, including Boone and Florence, is of primary importance for fire suppression, drinking water, and all other public water purposes. Cincinnati pledges to use its reasonable efforts to provide a potable, stable, and adequate supply of water in the quantities anticipated by this Agreement. If a disruption of service should occur as in the case of breaks and mains, serious damage to reservoirs or pumping stations, or other emergencies, Cincinnati will use its reasonable efforts to repair as soon as possible any infrastructure damage resulting in a reduction of service.

As between this Agreement with the Water Commission, Boone, Florence, and current or future contracts with other political subdivisions or private companies that are furnished standby, wholesale, or other water service from Cincinnati, there shall be no prior rights to service by reason of an earlier date of contract. Except as may be required by law, in the event of a shortage of water, Cincinnati shall allocate any surplus water on a commercially-reasonable basis among other consumers outside the City of Cincinnati, including the Water Commission, Boone, and Florence. "Commercially-reasonable basis" is defined herein to include at least the following factors: the physical status and operational capabilities of the pretreatment storage and settling facilities; the operational capabilities of the water treatment plant; the availability of water due to water quality emergencies; and the operational capabilities of the water distribution and transmission system.

It is understood and agreed that the supply of water by Cincinnati is at all times dependent upon the existence of a surplus supply of water beyond the water needed for consumers located within the City of Cincinnati. Cincinnati shall not be liable for any damages or failure to furnish water or minimum pressure except where such failures result from a breach of this Agreement, but in no event shall Cincinnati be liable for consequential or special damages by reason of any failure to furnish water or minimum pressure, it being understood that the supply of water or minimum

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SECRETARY OF THE COMMISSION

pressure is not guaranteed to consumers served hereby or to consumers residing within the limits of the City of Cincinnati

**Section 12. ENTIRE AGREEMENT - SUCCESSORS - ASSIGNMENT**

This Agreement constitutes the entire understanding of the parties. Any oral representations or modifications concerning this Agreement shall be of no force and effect. Notwithstanding any representations to the contrary or other facts, the parties are not bound to the provisions of this Agreement prior to full and final execution of this document by all parties. This Agreement may not be assigned without the written consent of all parties. This Agreement may be amended only by a written amendment duly authorized and executed by all parties.

**Section 13. GOVERNING FORUM**

Any controversies between and among the parties hereto arising from this Agreement shall be litigated in the Federal Courts.

**Section 14. NOTICES**

Except as may otherwise be provided herein, all notices, demands, requests, and other communications under this Agreement shall be in writing and shall be either personally delivered, sent by registered or certified mail, or sent by courier to the following addresses (or to such other address as may be designated by written notice transmitted in accordance with this provision):

1. In case of Cincinnati, to: City Manager, City of Cincinnati  
Room 152, City Hall  
801 Plum Street  
Cincinnati, Ohio 45202

With a copy to: Director, Cincinnati Water Works  
City of Cincinnati  
4747 Spring Grove Avenue  
Cincinnati, Ohio 45232

2. In case of the Water Commission, to:

Boone-Florence Water Commission  
C/O Florence Water & Sewer Commission  
8100 Ewing Blvd.  
Florence, Kentucky 41042

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BY: Stephan O. Bell  
SECRETARY OF THE COMMISSION

3. In case of Boone, to: District Manager  
Boone County Water District  
2415 Burlington Pike  
Burlington, Kentucky 41005

4. In case of Florence, to: General Manager  
Florence Water & Sewer Commission  
8100 Ewing Blvd.  
Florence, Kentucky 41042

#### Section 15. NO WAIVER

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provisions or of any other provision.

#### Section 16. EXCUSABLE DELAY

Each party shall be excused from performing any of its respective duties, obligations, or undertaking provided in this Agreement (except any obligations to pay any sums of money) in the event and so long as the performance of such duty, obligation, or undertaking is prevented, delayed, retarded, or hindered by unforeseeable causes beyond the control and without fault or negligence including, but not limited to an act of God, acts or delays of another party, litigation, unusually severe weather, epidemics, quarantine restrictions, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, civil commotion, sabotage, malicious mischief, strike, lock-out, action of labor unions, condemnation, governmental restriction, order of civil or military or naval authorities, embargo, impossibility of obtaining materials, delays of contractors, subcontractors, or materialmen due to such causes, or any other cause whether similar or dissimilar to the foregoing, not within the reasonable control of the party in question (specifically excluding delays resulting from a party's inability to obtain financing or a party's lack of capital, except if due to the default of another party), provided that a party entitled to such extension shall: (a) give prompt written notice to the other parties as soon as possible (no later than thirty days) after the occurrence causing such delay, asserting its claim of right to such extension and the reasons therefor and the duration thereof, or, if continuing, the estimated duration thereof; and (b) if the delay is continuing on the date of notification, within thirty days after the end of the delay, notify the other parties in writing of the duration of the delay.

#### Section 17. SEVERABILITY

In the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained will not affect the validity of any other covenant, condition, or provision provided that the validity of any such covenant, condition, or provision does not materially

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SECRETARY OF THE COMMISSION

prejudice any party in each of their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

**Section 18. INCORPORATION OF REQUIRED PROVISIONS**

The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

**Section 19. RELATIONSHIP OF PARTIES**

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between or among the parties hereto. The parties shall understand and agree that neither the method of payment provided for hereunder nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the contractual relationship.

**Section 20. LIABILITY OF AGENTS OR EMPLOYEES**

No officer, agent, or employee of any party hereto shall be charged personally or held contractually liable by or to any other party under the provisions of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

**Section 21. NOTICE OF CLAIMS**

Each party hereto shall give to all others prompt and timely written notice of any claim made or suit-instituted coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects or might affect any party, and all shall have the right to participate in the defense of the same to the extent of its own interest.

**Section 22. CONTINGENCY**

This Agreement is contingent upon the approval of an Interlocal Agreement attached hereto and made a part hereof as "Exhibit H", by the Kentucky Attorney General and the Kentucky Public Service Commission.

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SECTION 9 (1)

BY: Stephen O. Bee  
SECRETARY OF THE COMMISSION

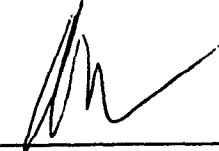


IN WITNESS WHEREOF, the City of Cincinnati, the Boone-Florence Water Commission, the Boone County Water District, and the City of Florence, Kentucky, have executed this agreement on the 2ND day of March, 1999.

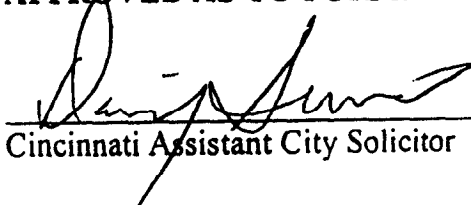
**RECOMMENDED BY:**

  
\_\_\_\_\_  
David E. Rager  
Director of Cincinnati Water Works

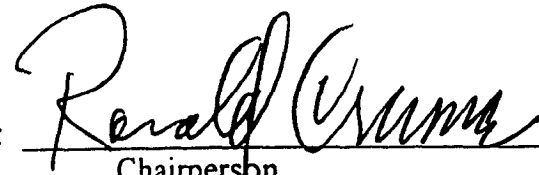
**CITY OF CINCINNATI**

By:   
\_\_\_\_\_  
John F. Shirey  
City Manager

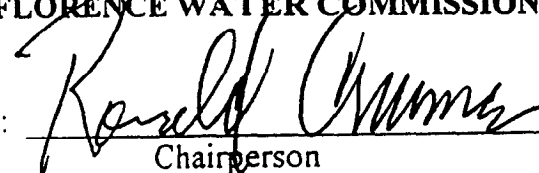
**APPROVED AS TO FORM:**

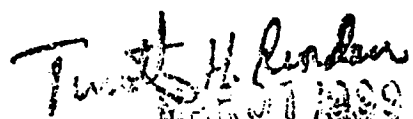
  
\_\_\_\_\_  
Cincinnati Assistant City Solicitor

**BOONE COUNTY WATER DISTRICT**


By:   
\_\_\_\_\_  
Chairperson

**BOONE-FLORENCE WATER COMMISSION**

By:   
\_\_\_\_\_  
Chairperson


  
\_\_\_\_\_  
Trust H. Rendon  
March 2, 1999

**CITY OF FLORENCE**

By:   
\_\_\_\_\_  
Mayor

PUBLIC SERVICE COMMISSION  
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BY:   
SECRETARY OF THE COMMISSION

## SUMMARY of EXHIBITS

- Exhibit A** CWW improvements and estimated costs for Cincinnati system, tunnel, and all Kentucky construction we are responsible for to achieve 20 mgd.
- Exhibit A-1** Cincinnati Progress Schedule, timeline for design, construction and completion in 48 months of improvements needed to be capable of supplying 20 mgd.
- Exhibit B** Water Commission, Boone, and Florence improvements necessary for Boone and Florence to receive 30 mgd.
- Exhibit B-1** Water Commission, Boone, and Florence timeline for design, construction, and completion in 48 months of improvements needed to be capable of receiving 30 mgd.
- Exhibit C** Projected Usage, Florence, Boone and Combined.
- Exhibit D** Florence operating criteria for Florence Tanks and Pump Stations.
- Exhibit E** Future CWW improvements necessary to provide an additional 10 mgd.
- Exhibit F** Specimen lease for Cincinnati to lease real property interests in Northern Kentucky from Water Commission.
- Exhibit G** Specimen Deed
- Exhibit H** The Interlocal Agreement among the Water Commission, Florence, Boone County, and Cincinnati.

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BY: Stephen O. Bess  
SECRETARY OF THE COMMISSION

**EXHIBIT A**  
**Cincinnati Water Works Improvements**

Description	Stage I 20 mgd MDD
<b><u>Capital</u></b>	
Transmission Main Fac.	\$7,500,000
River Crossing/Tunnel	3,200,000
Point of Delivery Facility	7,780,000
<b>Capital Subtotal</b>	<b>\$18,480,000</b>
<b><u>Ancillary</u></b>	
Construction Contingency (15%)	\$2,772,000
Legal, Admin., & Engineering (20%)	3,696,000
<b>Ancillary Subtotal</b>	<b>\$6,468,000</b>
<b><u>Land Acquisition</u></b>	
Point of Delivery Facility (Boone County, approximately 5 acres)*	\$20,000
HDD easements	\$20,000
<b>Land Acquisition Subtotal</b>	<b>\$40,000</b>
<b>TOTAL</b>	<b>\$24,988,000</b>

\* First Choice Site, Boone County Map 70, parcels 20 & 21  
Second Choice Site, Boone County Map 70, parcel 17

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BY: Stephan B. Bell  
SECRETARY OF THE COMMISSION

**EXHIBIT A-1**  
**Cincinnati Progress Schedule**

ACTIVITY	PROJECTED COMPLETION DATE
<b><u>Engineering Phase</u></b>	
Transmission Main Facilities	September 1999
River Crossing	December 1999
Point of Delivery Facility	December 1999
<b><u>Construction Phase</u></b>	
Transmission Main Facilities	June 2002
River Crossing	June 2002
Point of Delivery Facility	January 2003

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BY: Stephen D. Bee  
SECRETARY OF THE COMMISSION

**EXHIBIT B**  
**Water Commission, Boone & Florence Improvements**  
**(Estimated)**

**Capital**

Transmission Main Facilities	\$18,782,075
Hebron Storage Tank (1mg)	\$1,000,000
Florence Storage Tank (2mg)	\$2,000,000
Frogtown Storage Tank (2mg)	<u>\$2,000,000</u>
Capital Total	\$23,632,075

**Ancillary**

Construction Contingency (15%)	\$3,544,811
Legal, Administrative & Engineering (20%)	<u>\$4,726,415</u>
Ancillary Total	\$8,271,226

**Land Acquisition**

Point of Delivery Facility (Boone County, approximately 5 acres) *	\$20,000
HDD access & easements	<u>\$20,000</u>
Land Acquisition Total	\$40,000

**TOTAL**

**\$31,943,301**

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\* First Choice Site, Boone County Map 70, parcels 20 & 21  
Second Choice Site, Boone County Map 70, parcel 17

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SECTION 9 (1)  
BY Stephan D. Blevins  
SECRETARY OF THE COMMISSION

**EXHIBIT B-1**  
**Water Commission, Boone & Florence Progress Schedule**

ACTIVITY	PROJECTED COMPLETION DATE
<b><u>Engineering Phase</u></b>	
Transmission Main Facilities	November 1999
Hebron Storage Tank	December 1999
New Florence Storage Tank	December 1999
Frogtown Storage Tank	December 1999
<b><u>Construction Phase</u></b>	
Transmission Main Facilities	December 2002
Hebron Storage Tank	December 2002
New Florence Storage Tank	December 2002
Frogtown Storage Tank	December 2002

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PURSUANT TO 807 KAR 5.011  
SECTION 9 (1)

BY: Stephen O. Bee  
SECRETARY OF THE COMMISSION

**EXHIBIT C**  
**Projected Usage, Florence**

<b>CITY OF FLORENCE, KENTUCKY PROJECTED WATER SYSTEM DEMANDS</b>			
<b>YEAR</b>	<b>AVERAGE (mgd)</b>	<b>MAXIMUM (mgd)</b>	<b>MINIMUM (mgd)</b>
1997	3.00	5.60	1.13
1998	3.06	5.51	1.22
1999	3.12	5.62	1.25
2000	3.18	5.73	1.27
2001	3.25	5.85	1.30
2002	3.31	5.96	1.32
2003	3.38	6.08	1.35
2004	3.45	6.20	1.38
2005	3.51	6.33	1.41
2006	3.59	6.45	1.43
2007	3.66	6.58	1.46
2008	3.73	6.71	1.49
2009	3.80	6.85	1.52
2010	3.88	6.99	1.55
2011	3.96	7.13	1.58
2012	4.04	7.27	1.62
2013	4.12	7.41	1.65
2014	4.20	7.56	1.68
2015	4.28	7.71	1.71
2016	4.37	7.87	1.75
2017	4.46	8.02	1.78
2018	4.55	8.18	1.82
2019	4.64	8.35	1.86
2020	4.73	8.52	1.89
2021	4.83	8.69	1.93
2022	4.92	8.86	1.97
2023	5.02	9.04	2.01
2024	5.12	9.22	2.05
2025	5.22	9.40	2.09
2026	5.32	9.58	2.13
2027	5.43	9.77	2.17
2028	5.54	9.97	2.22
2029	5.65	10.17	2.26

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PURSUANT TO 807 KAR 5:011,  
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BY: Stephan Bice  
SECRETARY OF THE COMMISSION

**EXHIBIT C continued,  
Projected Usage, Boone County**

BOONE COUNTY, KENTUCKY PROJECTED WATER SYSTEM DEMANDS			
YEAR	AVERAGE (mgd)	MAXIMUM (mgd)	MINIMUM (mgd)
1997			
1998			
1999	4.10	8.60	2.70
2000	4.30	9.10	2.90
2001	4.60	9.70	3.10
2002	4.90	10.30	3.30
2003	5.20	10.90	3.50
2004	5.50	11.50	3.70
2005	5.80	12.20	3.90
2006	6.20	12.90	4.10
2007	6.50	13.70	4.40
2008	6.90	14.50	4.60
2009	7.30	15.40	4.90
2010	7.80	16.30	5.20
2011	8.10	17.00	5.40
2012	8.40	17.70	5.60
2013	8.80	18.40	5.90
2014	9.10	19.10	6.10
2015	9.50	19.90	6.30
2016	9.80	20.70	6.60
2017	10.20	21.50	6.90
2018	10.70	22.40	7.10
2019	11.10	23.30	7.40
2020	11.50	24.20	7.70
2021	12.00	25.20	8.00
2022	12.50	26.20	8.30
2023	13.00	27.20	8.70
2024	13.50	28.30	9.00
2025	14.00	29.40	9.40
2026	14.60	30.70	9.70
2027	15.10	31.70	10.00
2028	15.70	32.90	10.40
2029	16.30	34.20	10.80

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BY: Stanley O. Bell  
SECRETARY OF THE COMMISSION



**EXHIBIT C continued,**  
**Projected Usage, Florence & Boone Combined**

<b>BOONE &amp; FLORENCE (COMBINED)</b>			
<b>PROJECTED WATER SYSTEM DEMANDS</b>			
<b>YEAR</b>	<b>AVERAGE (mgd)</b>	<b>MAXIMUM (mgd)</b>	<b>MINIMUM (mgd)</b>
1999	7.2	14.2	3.9
2000	7.5	14.8	4.2
2001	7.8	15.5	4.4
2002	8.2	16.3	4.6
2003	8.6	17.0	4.9
2004	8.9	17.7	5.1
2005	9.3	18.5	5.3
2006	9.8	19.4	5.5
2007	10.2	20.3	5.9
2008	10.6	21.2	6.1
2009	11.1	22.2	6.4
2010	11.7	23.3	6.8
2011	12.1	24.1	7.0
2012	12.4	25.0	7.2
2013	12.9	25.8	7.5
2014	13.3	26.7	7.8
2015	13.8	27.6	8.0
2016	14.2	28.6	8.3
2017	14.7	29.5	8.7
2018	15.2	30.6	8.9
2019	15.7	31.6	9.3
2020	16.2	32.7	9.6
2021	16.8	33.9	9.9
2022	17.4	35.1	10.3
2023	18.0	36.2	10.7
2024	18.6	37.5	11.0
2025	19.2	38.8	11.5
2026	19.9	40.3	11.8
2027	20.5	41.5	12.2
2028	21.2	42.9	12.6
2029	22.0	44.4	13.1

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PURSUANT TO 807 KAR 5015,  
 SECTION 9 (1)  
 BY: Stephan O. Bell  
 SECRETARY OF THE COMMISSION

## **EXHIBIT D**

### **General Operating Parameters**

Point-of-delivery or primary pumpage shall be increased and decreased as determined by system demands. Elevated storage shall be allowed to rise and fall through its operating range to minimize increasing and decreasing primary pumpage. Primary pumpage shall be regulated to the extent possible to insure that elevated storage is maintained at all times within its operating range. It is the goal to have the elevated storage at the upper limit of its operating range in the morning before system demands begin to increase and it may be at its minimum levels as the system demands begin to decrease for the day. A 50 percent daily cycle though the operating range is felt to be necessary for water quality purposes. Greater cycles will be experienced during periods of high usage.

The ground storage tanks and their associated pumping facilities shall be operated in a manner that the storage is at its maximum attainable level in the early morning hours and it may be at minimum levels as the system demands begin to decrease for the day. The repumpage facilities shall be started at a point where system demand is depleting the elevated storage at a rate where minimum elevations in these holders would be reached before system demands would decrease below primary pumpage rates. While aiding in maintaining elevated storage, primary pumpage rates will be increased as necessary to insure that the combination will maintain the elevated levels within the operating range. When system demands decrease below primary pumpage rates and elevated storage facilities are rising, water shall be replenished at a controlled rate so as to minimize pressure rise and fall in the system. Primary pumpage shall also be decreased to further mitigate system pressure increases. A 50 percent daily cycle of the water in ground storage is felt to be necessary for water quality purposes. Greater cycles will be experienced during periods of high usage.

Prior to initial operation, all parties shall agree upon maximum and minimum pressures and elevations for system startup. These parameters shall be reviewed through the entire first year of operation to finalize overall operating criteria.

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PURSUANT TO 207 KAR 5.011,  
SECTION 3 (1)

BY: Stephan O. Bell  
SECRETARY OF THE COMMISSION

## EXHIBIT E

### Cincinnati Improvements for 30 mgd.

Description	Stage II 30 mgd MDD
<b><u>Capital</u></b>	
Transmission Main Fac.	N/A
River Crossing/Tunnel	N/A
Transmission Pumping Facility	400,000
<b>Capital Subtotal</b>	<b>\$400,000</b>
<b><u>Ancillary</u></b>	
Construction Contingency (15%)	\$60,000
Legal, Admin., & Engineering (20%)	\$80,000
<b>Ancillary Subtotal</b>	<b>\$140,000</b>
<b><u>Land Acquisition</u></b>	
Point of Delivery Facility	N/A
HDD	N/A
<b>Land Acquisition Subtotal</b>	<b>\$0</b>
<b>TOTAL</b>	<b>\$540,000</b>

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PURSUANT TO 807 KAR 5011  
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BY: Stephen O. Bell  
SECRETARY OF THE COMMISSION

**EXHIBIT F**

**Specimen Lease terms for Cincinnati to lease land from Water Commission for Point of Delivery Facility**

**GROUND LEASE**  
**BETWEEN**  
**BOONE - FLORENCE WATER COMMISSION**  
**AND**  
**CITY OF CINCINNATI, OHIO**

\* \* \* \* \*

THIS AGREEMENT made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 1999, by and between BOONE - FLORENCE WATER COMMISSION, a body corporate and politic created pursuant to the provisions of Chapter 74.420 *et seq* of the Kentucky Revised Statutes, hereinafter referred to as the "Commission" and the CITY OF CINCINNATI, OHIO, a body corporate and politic created pursuant to the provisions of Chapter \_\_\_\_\_ of the Ohio Revised Statutes, hereinafter referred to as the "City".

WHEREAS, the Commission was established to purchase water supply services from the City of Cincinnati, Ohio, which water supply is to be available to the City of Florence, Kentucky and the County of Boone, Kentucky Water Systems for sale and distribution to water customers;

WHEREAS, the City has a state of the art water supply treatment facility with excess capacity to satisfy the present and future growth demands of the City of Florence, Kentucky and the County of Boone, Kentucky at significant cost savings to the water customers of the Commission,

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BY: Stephen O. Kelly  
SECRETARY OF THE COMMISSION

WHEREAS, the respective public agencies who are parties to this Agreement wish to take cooperative action to plan, design and construct a major water distribution system which would connect with water supply lines from the City, crossing by tunnel under the Ohio River to a reservoir and master meter site in Boone County, Kentucky, with water then pumped into the water distribution lines of the City of Florence, Kentucky and the County of Boone, Kentucky;

WHEREAS, Commission and City have entered into a Water Service Agreement dated as of \_\_\_\_\_, 1999 to provide for the City's supplying of water to the Commission; and

WHEREAS, it is necessary for the City to build certain improvements as described on Exhibit "A" attached hereto and incorporated herein by reference and captioned "Cincinnati Improvements", in the County of Boone, Kentucky, in order for the City to be able to supply water to the Commission;

WHEREAS, the Commission is the owner in fee simple of that certain real estate known as \_\_\_\_\_, and more particularly described on Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Commission and City wish to provide for the lease of the real estate described in Exhibit "B" by the Commission to the City for the purpose of the City constructing necessary improvements for the supply of water to the Commission;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
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PURSUANT TO 207 KAR 6011  
SECTION 9 (1)

BY: Stephen D. Bell

**SECTION I**  
**DEFINITION**

Unless the context clearly indicates some other meaning, the following words and terms shall, for all purposes of this Ground Lease, have the following meanings:

**Applicable Laws** shall mean all laws, ordinances, orders, rules and regulations of all federal, state and municipal governments in the appropriate departments, commissions, boards and offices thereof, including those of the parties hereto, having jurisdiction over the Leased Premises, legally applicable to the City's activities hereunder.

**Bond or Bonds** means the bonds authorized to be issued under the indenture (if financing provided by issuance bonds).

**Boone County Water District** shall mean the Boone County Water District.

**City**, shall mean the City of Cincinnati, Ohio, organized pursuant to Chapter \_\_\_\_\_ to the Ohio Revised Code.

**Commission** shall mean the Florence - Boone Water Commission established by the City of Florence and the Boone County Water District pursuant to the provisions of KRS Chapter 74.420 *et seq.*

**Florence** shall mean the City of Florence, Kentucky.

**Ground Lease** means this Agreement, dated as of \_\_\_\_\_, 1999 entered into by and between the Commission and the City, together with all amendments and supplements hereto hereafter made in accordance with the provisions hereof.

**Leased Premises** shall mean that parcel of land containing approximately \_\_\_\_\_ acres leased to the City hereunder and specifically identified on Exhibit B attached hereto and incorporated herein by reference.

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**Project Facilities** shall mean all improvements acquired, installed or constructed on the Leased Premises by the City.

**Site Improvements** shall mean the construction of the facilities identified on Exhibit "A" attached hereto and incorporated herein by reference including, but not limited to, all clearing, grading, draining and construction of the Project Facilities.

**Term or Term of this Ground Lease** shall mean the Term as set forth in Section V hereof.

**SECTION II**  
**LEASED PREMISES**

The Commission does hereby devise and exclusively lease unto the City, and the City does hereby take from the Commission, that parcel of land containing approximately \_\_\_\_\_ acres of land as set forth and identified on Exhibit "B", attached hereto and incorporated herein by reference and hereinafter referred to as the Leased Premises.

**SECTION III**  
**SITE DEVELOPMENT BY THE CITY**

All construction costs incurred by the City for the construction of the Project Facilities, including, but not limited to, costs incurred for clearing, grading and draining of the Leased Premises shall be borne by the City and shall be the City's sole responsibility. Construction Costs means the sum of all monies paid by the City to third parties for the actual clearing, grading, draining, paving and construction to be performed by the City.

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**SECTION IV**  
**CONSTRUCTION OF IMPROVEMENTS BY CITY**

A. City shall, at its own expense and without cost to the Commission, commence and complete construction of the Project Facilities, including support facilities, fixtures and landscaping, all as set out forth on Exhibit "A" as the same may be modified from time to time. The Project Facilities shall be of good material, sound construction, attractive in design and in accordance with applicable building standards.

B. The Commission agrees to cooperate with the City in regard to the construction and installation of the Project Facilities and any approval required to be given by the Commission shall be given in a timely fashion so as not to delay or interfere with the progress of the construction work by the City. Furthermore, all such approvals shall not be unreasonably withheld.

C. During the period of construction, the Commission, at its own expense, shall have the right to inspect any or all construction work, workmanship, material and installation involved in or incidental to the construction of the Project Facilities.

**SECTION V**  
**TERM**

A. **Initial Term.** This Ground Lease shall become effective \_\_\_\_\_.  
The "Initial Term" of this Ground Lease shall commence on the date that the City commences construction of the Project Facilities on the Leased Premises and shall continue in full force and effect, unless otherwise terminated prior thereto as hereinafter provided, for a period of 40 years.

B. **Extended Term.** Upon expiration of the Initial Term of this Ground Lease, the City may extend the Term of this Ground Lease for \_\_\_\_\_ additional periods of \_\_\_\_\_. Such

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option shall be exercisable by the giving of written notice by the City to the Commission not more than \_\_\_\_ months nor less than \_\_\_\_ months prior to the expiration of either the Initial Term or the applicable Renewal Term. If the City fails to renew this Ground Lease for the first Renewal Term, then the option to renew for the additional Renewal Term shall terminate. If tax free industrial revenue bond financing is utilized, the Initial Term and the options must coincide with the requirements of the Internal Revenue Code for tax-exempt financing.

**SECTION VI**  
**RENTAL PAYMENTS TO COMMISSION**

A. **Ground Rental.** Commencing on the first day of the Term of this Ground Lease (the "Rental Commencement Date"), the City shall pay to the Commission for the use and occupancy of the Leased Premises throughout the Term hereof and/or the Extended Term hereof an annual Ground Rental, payable as follows:

This Section can be completed when it has determined whether the City will make actual payments to the Commission or whether rent shall be taken as a credit against water service.

As used in this Subsection A of this Section VI, the Term "Lease Year" means a consecutive 12 month period commencing on the first day of the Term of this Ground Lease and terminating 12 months thereafter, and each consecutive 12 month period thereafter.

**SECTION VII**  
**USE OF LEASED PREMISES**

A. City shall use the Leased Premises generally for the installation and operation of the Project Facilities as identified on Exhibit "A" attached hereto and incorporated herein by reference.

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**SECTION VIII**  
**GENERAL OBLIGATIONS OF CITY**

A. During the term of this Ground Lease, the operation, maintenance and repair of the Leased Premises and the Project Facilities shall be obligation and responsibility of the City. City agrees that during the Term hereof, it will keep at its own expense, maintain or caused to be maintained, and will keep or cause to be kept, the Leased Premises and Project Facilities in good condition (ordinary wear and tear excepted) and in a reasonably safe condition as its operations permit.

B. City will pay during the Term of this Ground Lease, as the same respectively become due, all taxes and governmental charges and assessments of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Leased Premises and the Project Facilities or any machinery, equipment or other property installed by the City therein or thereon.

C. City shall provide and use suitable covered metal receptacles for all garbage, trash and other refuse in or in connection with the Leased Premises.

**SECTION IX**  
**EVENTS OF DEFAULT AND REMEDIES**

A. **Events of Default Defined.** The following shall be "Events of Default" under this Ground Lease and the Term "Event of Default" shall mean, whenever it is used in this Ground Lease any one or more of the following events:

1. The City shall fail to pay when due and owing any installment of rent, or any part thereof provided for in this Ground Lease, and such failure shall continue unremedied for a period of 30 days; or

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2. The Commission shall fail to pay when due and owing any rates and charges due and owing to the City pursuant to the terms of Section VII of the Water Service Agreement (Water Service Agreement) dated as of \_\_\_\_\_ between the City and the Commission, and such failure shall continue unremedied for a period of 30 days; or
3. The City and/or Commission shall fail to observe or perform any other of each party's respective covenants, agreements or obligations hereunder and/or under the terms of the Water Service Agreement (Water Service Agreement) and such failure shall continue unremedied for a period of 180 days after the non-defaulting party shall have given to the defaulting party written notice specifying that the defaulting party has failed to observe or perform any such covenant, agreement or obligation, plus such additional time as is reasonably required to correct any such failure if the defaulting party has instituted corrective action within such 180 day period and is diligently pursuing the same to completion; or
4. The City and/or Commission shall terminate the Water Service Agreement.

Notwithstanding the foregoing, each party shall be excused from performing any of its respective duties, obligations or undertakings provided in this Ground Lease (except any obligations to pay any sums of money when due) in the event, and so long as the performance of such duty, obligation or undertaking is prevented, delayed, retarded or hindered by unforeseeable causes beyond the control of the party claiming excusable delay and without fault or negligence, including, but not limited to, an act of God, acts or delays of another party, litigation, unusually severe weather, epidemics, quarantine restrictions, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, civil commotion, sabotage, malicious mischief, strike,

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SECRETARY OF THE COMMISSION

lockout, action of labor unions, condemnation, governmental restriction, order of civil or military or naval authorities, embargo, impossibility of obtaining materials, delays of contractors, subcontractors or materialmen due to such causes, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the party claiming such excusable delay (specifically excluding delays resulting from a party's inability to obtain financing or a party's lack of capital, except, if due to the default of another party); provided, that a party entitled to an extension because of excusable delay shall:

- (i) give prompt written notice to the other party as soon as possible (no later than 30 days after the occurrence causing such delay), asserting its claim of right to such extension and the reasons therefor and the duration thereof, or, if continuing, the estimated duration thereof; and
- (ii) if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the other parties in writing of the duration of the delay.

**B. Remedies on Default.** Upon the occurrence of any Event of Default referred to above in Subsection A and at any time thereafter so long as the same shall be continuing, the non-defaulting party, may at its sole election and discretion, give the defaulting party written notice of its intention to terminate this Ground Lease on the date specified in the notice, which date shall not be earlier than 180 days after the date of notice, and, if curative action has not been commenced in accordance with the applicable provisions of Subsection A of this Section, this Agreement and the Term of this Ground Lease shall thereupon cease.

No waiver, expressed or implied, of default by a non-defaulting party of any of the terms, covenants or conditions hereof to be performed, kept and observed by the other party shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by the defaulting party. The performance of all or any part of the terms of this Ground Lease by the non-defaulting party for

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or during any periods after default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the defaulting party shall not be deemed a waiver of any right on the part of the non-defaulting party to terminate this Ground Lease for failure by the defaulting party to so perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed.

**SECTION X**  
**ENVIRONMENTAL MATTERS**

The Commission shall be responsible for the removal or mitigation of any contamination of the Leased Premises which violates any federal or state environmental law and/or regulation and for the removal or mitigation of any other environmental condition, which existed prior to the commencement of the Term of this Ground Lease, which would substantially interfere with the use of the Leased Premises by the City for the purposes contemplated hereunder. It is expressly agreed by and between the parties hereto that the Commission shall deliver the Leased Premises to the City in such a manner that the Leased Premises shall be deemed to be within compliance with the City's ordinances, rules and regulations regarding acquisition of real estate by the City.

**SECTION XI**  
**ASSIGNMENT AND SUBLETTING**

Neither the City nor the Commission shall at any time assign this Ground Lease or any part hereof or sublet or underlet the Leased Premises without the consent in writing of the other party.

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SECRETARY OF THE COMMISSION

**SECTION XII**  
**HOLDING OVER**

In the event the City shall hold over and remain in possession of the Leased Premises after expiration of the Term of this Ground Lease without any renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of the Term of this Ground Lease but shall only create a tenancy for month to month which may be terminated at any time.

**SECTION XIII**  
**NO PERSONAL LIABILITY**

A. No covenant, obligation or agreement of the Commission shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the Commission and other than his or her official capacity, and neither the members of the Commission, any official nor any officer, agent or employee of the Commission shall be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the Commission contained in this Ground Lease.

B. No covenant, obligation or agreement of the City shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the City in other than his or her official capacity, and neither the members of council of the City nor any officer, agent or employee of the City shall be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the City contained herein.

**SECTION XIV**  
**GENERAL PROVISIONS**

A. Rights Cumulative. Each right of the parties hereto is cumulative and in addition to each of the other legal rights that a party may have in the event of a default of the other.

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SECRETARY OF THE COMMISSION

B. Captions. The captions in this Ground Lease are for convenience or reference only and shall in no way define, limit or describe any of the provisions of this Ground Lease.

C. Nonwaiver of Rights - No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party. No notice shall be required to restore time of the essence.

D. Notices - Notices required herein may be given by registered or certified mail, return receipt requested, by depositing the same in the United States mail in the continental United States, postage prepaid. Either party shall have the right by giving written notice to the other, to change the address at which its notices are to be received. Notices to the City shall be addressed as follows:

City Manager, City of Cincinnati  
Room 152, City Hall  
801 Plum Street  
Cincinnati, Ohio 45202

with a copy to:

Director, Cincinnati Water Works  
City of Cincinnati  
4747 Spring Grove Avenue  
Cincinnati, Ohio 45232

Notices to Commission shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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REGISTRAR OF THE COMMISSION

with a copy thereof to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

E. Severability - In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained will not affect the validity of any other covenant, condition or provision; provided that the validity of any such covenant, condition, or provision does not materially prejudice either the Commission or City in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Ground Lease.

F. Waiver of Claims - City and Commission hereby waive any claim against the other and its officers, agents, or employees caused by any suit or proceedings directly or indirectly attacking the validity of this Ground Lease or any part thereof, or by any judgment or award in any suit or proceeding declaring this Ground Lease null, void or voidable, or delaying the same or any part thereof from being carried out.

G. Incorporation of Exhibits - All exhibits referred to in this Ground Lease are intended to be and hereby are specifically made a part of this Ground Lease.

H. Incorporation of Required Provisions - The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

I. Relationship of Parties - Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship.

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J. Liability of Agents or Employees - No officer, agent, or employee of the Commission or City shall be charged personally or held contractually liable by or to the other party under the provisions of this Ground Lease or because of any breach thereof or because of its or their execution or attempted execution.

K. Successors and Assigns Bound - This Ground Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, where permitted by this Ground Lease.

L. Governing Law - Any controversies between and among the parties hereto arising from and in relation to the terms of this Ground Lease shall be litigated in the Federal Courts.

M. Writing Required - Neither this Ground Lease nor any term or provision hereof may be changed, waived, discharged, or terminated orally but only by an instrument in writing signed by both parties.

N. The Commission or the City may have this agreement for Ground Lease placed of record in the real estate records of the Boone County Clerk's office at Burlington, Kentucky.

#### SECTION XV COUNTERPARTS

This agreement may be executed in any number of counterparts each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument.

#### SECTION XVI ENTIRE AGREEMENT

The parties hereto understand and agree that this instrument contains the entire Ground Lease between the parties. The parties further understand and agree that ~~neither party nor its~~ agents have made representations or promises with respect to this Ground Lease ~~except as~~

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BY Sharon O. Burt  
SECRETARY OF THE COMMISSION

Expressly set forth herein and that no claim or liability shall arise for any representations or promises not expressly stated in this Ground Lease. Any other writing or parol agreement with the other party being expressly waived.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officers.

**Boone-Florence Water Commission**

**City of Cincinnati, Ohio**

By: \_\_\_\_\_

By: \_\_\_\_\_

John F. Shirey

Its: \_\_\_\_\_

Its: City Manager

WITNESS AS TO EACH SIGNATURE:

WITNESS AS TO EACH SIGNATURE:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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BY: Shirley D. Bell  
SECRETARY OF THE COMMISSION

**EXHIBIT G**  
**SPECIMEN DEED for POINT of DELIVERY FACILITY**

**D E E D**

**KNOW ALL MEN BY THESE PRESENTS:**

That **BOONE-FLORENCE WATER COMMISSION**, a Kentucky municipal corporation established pursuant to KRS Chapter 74.420 et seq.

the GRANTOR(S), for and in consideration of One Dollar (\$1.00) and other good and valuable consideration

paid to the GRANTOR(S) by the GRANTEE(S) herein, the receipt of which is hereby acknowledged, do bargain, sell and convey to the following named GRANTEE(S), **CITY OF CINCINNATI, OHIO**, its successors and assigns forever, the following described real estate, in the City of \_\_\_\_\_, County of Boone, and State of Kentucky \_\_\_\_\_, to wit:

Street Address: \_\_\_\_\_

Grantee(s) Address: Room 152, City Hall, 801 Plum Street, Cincinnati, Ohio 45202

Grantor(s) Address: \_\_\_\_\_

Group No.: \_\_\_\_\_ PIDN: \_\_\_\_\_ Plat No.: \_\_\_\_\_

**LEGAL DESCRIPTION**

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SECRETARY OF THE COMMISSION

Being the same property conveyed to the Boone-Florence Water Commission from \_\_\_\_\_ by deed dated \_\_\_\_\_ and recorded at Deed Book \_\_\_\_\_, Page \_\_\_\_\_ of the Boone County Clerk's records at Burlington, Kentucky.

The persons signing on behalf of the Grantor and the Grantee have been duly authorized to do so.

Together with all the privileges and appurtenances to the same belonging. To have and to hold forever the same to the GRANTEE(S), in the fashion and manner stated above in the conveying clause, with covenants of general warranty.

GRANTOR(S) and GRANTEE(S) both certify, under oath, that the consideration reflected in this deed is the full consideration paid for the property and GRANTEE(S) join(s) in this deed for the sole purpose of making this certificate about the consideration.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_\_.

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FCV: \_\_\_\_\_

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**GRANTOR(S):**

**GRANTEE(S):**

**Boone-Florence Water Commission**

**City of Cincinnati, Ohio**

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BY Shirley A. Bell  
SECRETARY OF THE COMMISSION

By: \_\_\_\_\_

By: \_\_\_\_\_

John F. Shirey

Its: \_\_\_\_\_

Its: City Manager

WITNESS AS TO EACH SIGNATURE:

WITNESS AS TO EACH SIGNATURE:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**STATE OF KENTUCKY, COUNTY OF BOONE [GRANTOR(S)]**

The foregoing instrument was sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the Boone-Florence Water Commission, on behalf of the Boone-Florence Water Commission.

\_\_\_\_\_  
NOTARY PUBLIC

My Jurisdiction is: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**STATE OF OHIO, COUNTY OF HAMILTON [GRANTEE(S)]**

The statement about consideration in the foregoing instrument was sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 199 \_\_\_\_, by \_\_John F. Shirey, the City Manager of the City of Cincinnati, Ohio, on behalf of the City of Cincinnati, Ohio.

\_\_\_\_\_  
NOTARY PUBLIC

My Jurisdiction is: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

MAIL TO: This instrument prepared by ZIEGLER & SCHNEIDER, P.S.C., Attorneys at Law, 541 Buttermilk Pike, Suite 500, P.O. Box 175710, Covington, Kentucky 41017-5710 by \_\_\_\_\_, Attorney.  
Karen Burris Baker

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BY: Stephanie R. [Signature]  
SECRETARY OF THE COMMISSION

## **EXHIBIT H**

### **INTERLOCAL COOPERATIVE AGREEMENT**

WHEREAS, the City of Florence ("Florence") and the Boone County Water District ("Boone") have the responsibility of providing a safe, clean, and adequate supply of water to the citizens of Florence and Boone County; and

WHEREAS, Boone and Florence are recognized as one of the fastest growing metropolitan regions in the United States; and

WHEREAS, Comprehensive Plan projections indicate this rapid rate of growth will continue into the foreseeable future creating increased demands for an adequate water supply; and

WHEREAS, studies indicate that savings in excess of fifty million dollars may be achieved if Florence and Boone purchase their water supply from the City of Cincinnati rather than initiate the construction of a major water treatment facility plant in Boone County on the Ohio River; and

WHEREAS, the City of Cincinnati, Ohio has a state of the art water supply treatment facility with excess capacity to satisfy the present and future growth demands of Florence and Boone at significant cost savings to the water users of Boone County; and

WHEREAS, Florence and Boone have created a Boone-Florence Water Commission ("Water Commission") under KRS Chapter 74.420 to 74.520 to purchase water supply services from the City of Cincinnati, which water supply would be available to Florence and Boone Water Systems for sale and distribution to water customers throughout Boone County; and

WHEREAS, the respective public agencies who are parties to this Agreement wish to take cooperative action to plan, design, and construct a major water transmission system which would connect with water supply lines from Cincinnati, crossing by tunnel under the Ohio River to a reservoir and master meter site in Boone County, with water then pumped into the water distribution lines of Florence and Boone; and

WHEREAS, the respective public agencies wish to utilize their own personnel and facilities to cooperatively provide an adequate water supply for Florence and Boone on a purchase of services basis rather than forming a new or joint agency to accomplish this public purpose; and

WHEREAS, it has been determined that an Interlocal Cooperative Agreement involving the City of Florence, Boone County Water District, the Boone-Florence Water Commission, and the City of Cincinnati will permit the local governmental units to make the most efficient use of their powers, enabling them to cooperate on a basis of mutual advantage, providing water supply services and facilities in a manner and pursuant to forms of governmental organization that will

accord best with geographic, economic, population growth, and other factors influencing the needs and development of Florence and Boone.

NOW, THEREFORE, the public agencies do enter this Interlocal Cooperative Agreement as authorized by KRS Chapter 65.210 through 65.300.

1. Purpose.

The purpose of this Agreement is for the public entities to cooperate allowing the City of Cincinnati to provide wholesale water service to the Water Commission, and those entities which it serves, namely the Boone County Water District and the City of Florence. By separate Water Service Agreement, the parties intend to establish the terms and conditions by which capital improvements will be made to extend water mains in the Cincinnati water system, which extension will involve an Ohio River tunnel, tunnel accesses, water mains to the pump station, reservoirs, rechlorination equipment, testing and monitoring systems, point of delivery facility, and master meter mechanisms. The parties intend for this Interlocal Cooperative Agreement to involve the purchase of governmental services on a contractual basis rather than the creation of a separate legal entity to conduct the public undertaking.

2. Duration of Agreement.

This Interlocal Agreement shall be in force for an initial period of twenty-nine (29) years commencing on the date that the Water Service Agreement between the parties takes effect. After twenty-four (24) years, or at such earlier time as the parties agree, the parties shall commence good faith discussions concerning an extension of this Agreement beyond its initial twenty-nine (29) year term. The parties acknowledge that the water commission, as authorized by KRS 74.490, may enter contracts to supply water for periods up to fifty (50) years. In the event the parties terminate the Water Service Agreement, said termination will operate to terminate this Interlocal Agreement.

3. Manner of Financing and Operation

The City of Cincinnati, by separate Water Service Agreement, agrees to design, finance, build, own, maintain, and operate the capital improvements necessary to initially convey water to the Water Commission in a maximum quantity of 20 million gallons per day (mgd) with expansion capacities up to 30 million gallons per day. The Water Commission, Boone and Florence agree to design, finance, build, own, maintain and operate the capital improvements for water distribution from the point of delivery or master meter, where wholesale water is sold by the City of Cincinnati to the Water Commission. Florence and the Boone County Water district agree to contract with the Water Commission under KRS 74.480 as the exclusive water supply for the respective water distribution systems. The Water Commission in turn shall pay to the City of Cincinnati on a monthly basis for the wholesale water supplied as measured by the master meter and point of distribution facility.

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4. Lease or Purchase of Kentucky Real Estate

The extension of water mains from the Cincinnati system through a tunnel under the Ohio River to a point of distribution facility in Kentucky will require the Water Commission to use reasonable efforts to assist Cincinnati in acquiring either by eminent domain or other means the real property interests necessary for Cincinnati to construct infrastructures in Kentucky. The Water Commission is authorized by KRS 74.470 to exercise the power of condemnation delegated and granted to a "governmental agency" under the terms and provisions of KRS Chapter 58. As provided in the Water Service Agreement, Cincinnati agrees to lease or purchase the necessary Kentucky real property interests from the Water Commission in order to comply with its obligation to supply wholesale water services to the Water Commission.

5. Method of Termination

The separate Water Service Agreement will provide for permissible methods of termination, provided that if terminated prior to expiration of the initial term, then the Water Commission and/or Boone and/or Florence will reimburse the City of Cincinnati for all resultant damages which may include all of Cincinnati's Costs as defined in the Water Service Agreement, including the unamortized or unpaid balance of all principal and interest costs incurred by the City of Cincinnati in providing capital improvements and the system of wholesale water supply, including the point of delivery facility and monitoring system costs in Kentucky. Upon termination, property held in the name of the respective parties shall remain the property of each such governmental entity. Specifically, those improvements initially designed and constructed as "Cincinnati Water Works Improvements" under Exhibit "A" of the Water Service Agreement shall remain the property of Cincinnati and those improvements designated as "Water Commission, Boone & Florence Improvements" under Exhibit "B" of the Water Service Agreement shall remain the property of the entity designing and constructing said improvement.

6. Administrative Provisions

As required by KRS 65.250 (2), since this Interlocal Cooperative Agreement does not establish a separate legal or administrative entity to conduct the joint or cooperative undertaking, the parties agree to the following provisions:

- (a) to facilitate communication and to coordinate response to mutual concerns for water quality and supply, an eight (8) member joint committee shall be appointed to include the Cincinnati Water Works Director, and representatives of the Water Commission, Boone and Florence. Each public agency represented shall nominate one other person to the committee.
- (b) Real and personal property shall be held in the name of the respective public agencies who are party to this Agreement according to the Water Service Agreement among the parties.





Approved Pursuant to KRS 65.260

\_\_\_\_\_  
Hon. A.B. Chandler III  
Attorney General  
Commonwealth of Kentucky

Date \_\_\_\_\_

Approved Pursuant to KRS 65.300

\_\_\_\_\_  
Chairman  
Kentucky Public Service Commission

Date \_\_\_\_\_

PUBLIC SERVICE COMMISSION  
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PURSUANT TO 607 KAR 5:011  
SECTION 9 (1)

BY: Shirley Bell  
SECRETARY OF THE COMMISSION

**CERTIFICATE OF RECORDING**

Commonwealth of Kentucky  
County of Boone

I, Marilyn Rouse, Clerk of the County Court for the aforesaid, hereby certify that a certified copy of the Interlocal Cooperative Agreement was this day presented in my office, certified as above, and this day left for records at \_\_\_\_\_.

Wherefore, the same, the foregoing certificate and this certificate are duly recorded in my office.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_ 1999.

Marilyn Rouse, Clerk

By: \_\_\_\_\_, D.C.

**SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY**

I, John Y. Brown III, Secretary of the Commonwealth of Kentucky, hereby certify that a certified copy of the Interlocal Cooperative Agreement was filed with this office as required under KRS 65.290 and left for record this \_\_\_\_ day of \_\_\_\_\_ 1999.

John Y. Brown  
Secretary of State

By: \_\_\_\_\_

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

NOV 09 2000

PURSUANT TO 807 KAR 5-011  
SECTION 9 (1)

By: Debra D. Hill  
SECRETARY OF THE COMMISSION