

RECEIVED

DEC 11 1987

ORDINANCE NO. 74, 1985

DIVISION OF UTILITY  
ENGINEERING & SERVICES

AN ORDINANCE OF THE CITY OF ASHLAND, KENTUCKY, AUTHORIZING AND DIRECTING EVERETT B. REEVES, MAYOR, TO EXECUTE AN AMENDMENT TO THE AGREEMENT DATED OCTOBER 15, 1973 BETWEEN THE CITY OF ASHLAND, KENTUCKY, AND CANNONSBURG WATER DISTRICT, FOR THE FURNISHING OF WATER BY SAID CITY TO THE CANNONSBURG WATER DISTRICT.

\* \* \* \*

BE IT ORDAINED BY THE CITY OF ASHLAND, KENTUCKY:

SECTION 1. That Everett B. Reeves, Mayor of the City of Ashland, be and he is hereby authorized and directed to execute an amendment between the City of Ashland, Kentucky, and Cannonsburg Water District, for the furnishing of water by said City to the Cannonsburg Water District. A true copy of said amendment to the agreement is attached hereto and made a part hereof by reference.

SECTION 2. This ordinance shall be in full force and effect from and after its adoption, readoption and publication, as required by law.

SECTION 3. It is hereby authorized that publication of this ordinance be in summary form.

Everett B. Reeves  
MAYOR

ATTEST:

Robert W. Johnson  
CITY CLERK

ADOPTED BY THE BOARD OF COMMISSIONERS

READOPTED BY THE BOARD OF COMMISSIONERS

PUBLISHED

JUN 18 1985

JUN 19 1985

JUN 23 1985

REQUESTED BY/SPONSORED BY/APPROVED BY: WILLIAM H. FISHER, JR.  
CITY MANAGER

A G R E E M E N T

THIS AMENDMENT TO THE AGREEMENT dated October 15, 1973, made and entered into this the 1<sup>st</sup> day of July, 1985, by and between the CITY OF ASHLAND, Boyd County, Kentucky, a municipal corporation of the second class under the laws of the Commonwealth of Kentucky, (hereafter "ASHLAND"), and the Cannonsburg Water District, an independent water district created under the laws of the Commonwealth of Kentucky, (hereafter "CANNONSBURG"),

WITNESSETH:

WHEREAS, ASHLAND, is the owner and operator of a municipally owned water works plant and water distribution system, and is able, to furnish CANNONSBURG potable water for distribution and sale within its water distribution system boundaries as exist on the date of this Agreement or any agreed upon extension of said boundaries, and

WHEREAS, CANNONSBURG has by Agreement dated October 15, 1973, secured for distribution and sale through its water distribution system within its existing boundaries, an adequate supply of water of the quality supplied to the domestic, commercial and industrial customers and consumers of ASHLAND;

NOW, THEREFORE, it is mutually agreed and covenanted by and between the parties that ASHLAND agrees to sell and CANNONSBURG agrees to buy potable water for and in consideration of the payment of the rate or rates hereinafter established and set out to be paid to ASHLAND by CANNONSBURG, and each and all of the further and additional mutual covenants and agreements hereinafter set out to be performed by both or either of said parties:

1. BOUNDARIES. The water supply furnished by ASHLAND to CANNONSBURG shall be restricted to usage within the CANNONSBURG Boundary as such limits exist on the date of this Agreement, as set forth on the map attached hereto and made a part hereof, marked Exhibit "A" for identification.

Further, such water supply may be extended to any other properties when and if annexed to said CANNONSBURG, only upon and with specific prior written approval of ASHLAND.

The parties recognize that CANNONSBURG has constructed lines outside its boundaries without the prior written approval of ASHLAND. The parties agree that they shall within a reasonable time resolve disputes relating to those lines and where it is possible for ASHLAND to serve the related customers, CANNONSBURG shall sell the lines at its cost to ASHLAND. CANNONSBURG shall comply in the future with the requirement of prior written approval.

2. QUANTITY AND BILLING. CANNONSBURG agrees and binds itself to purchase during the term of this Agreement, all of the potable water required by CANNONSBURG (subject to Section 9 dealing with "shortage") for distribution within its present water distribution system, or any approved extensions within the boundaries, but not less than 500,000 gallons per day nor more than 1,000,000 gallons per day.

It is understood at the present CANNONSBURG is purchasing no more than 750,000 gallons per month from the Big Sandy Water District for serving customers in Briarwood Estates. CANNONSBURG agrees it shall not purchase water in excess of that amount from the Big Sandy Water District nor shall it purchase water from any other source. CANNONSBURG

shall restrict water so purchased to the use of the customers in Briarwood Estates and not expand that service.

The water shall be taken by CANNONSBURG through a meter or meters located at or adjacent to U.S. Highway 60 at Summit near Summit Road intersection, or at such other places as may be mutually agreed upon in advance in writing between the parties.

CANNONSBURG agrees and binds itself to pay for water at rates set out in Section 3 for all water metered, sold and delivered to it at the meter or meters on a monthly basis and according to statements tendered to CANNONSBURG by the ASHLAND, payments to be due and payable not later than the twentieth (20th) day of each month for all water so metered, sold and delivered during the preceding month. In the event CANNONSBURG shall fail to pay any monthly statement or statements in the manner described, then and in that event, there shall be added a penalty of 8 percent (8%) on such amount due and unpaid, together with six percent (6%) interest per annum thereon from due date until paid, and upon the failure of CANNONSBURG to pay said monthly water bills for two (2) consecutive months, then ASHLAND shall have the right and option to discontinue furnishing of said water until said past due bills are paid in full.

In the event a water meter has registered incorrectly, an estimate of the amount of water furnished through the faulty meter shall be prepared by ASHLAND for the purpose of billing CANNONSBURG. The estimate shall be based upon the average of twelve preceding readings of the meter, exclusive of incorrect readings. When less than twelve correct readings are available, fewer readings, including some obtained after the period of incorrect registration may be used.

3. RATES. CANNONSBURG agrees and binds itself to purchase all potable water (except that amount purchased from the Big Sandy Water District as outlined in paragraph 2) that may be required by CANNONSBURG, but not less than 500,000 gallons per day nor more than 1,000,000 gallons per day at a price of One Dollar and Five Cents (\$1.05) per one thousand (1,000) gallons of potable water.

The rates for potable water shall remain in full force and effect until the revenue resulting from said rates becomes inadequate to meet the costs related to water production and delivery to CANNONSBURG and ASHLAND shall deem it necessary to increase the rates for water.

It is mutually agreed that the term of this Agreement is such that the passage of time will require increases in the rates to be made for water hereunder.

ASHLAND may modify the schedule of rates for water hereunder from time to time, provided:

a. ASHLAND shall prior to consideration of an increase in rates have a rate study conducted by an independent engineer chosen by ASHLAND, and ASHLAND shall then base any modification of the schedule of rates recommended by said rate study. ASHLAND shall give CANNONSBURG prior written notice of its intent to perform such study, and CANNONSBURG may, at its option and cost, provide ASHLAND with a rate study conducted by an Engineer chosen by CANNONSBURG. ASHLAND will cooperate with such Engineer, and the study when completed shall be submitted to ASHLAND for consideration along with ASHLAND'S study.

b. The criteria for determining necessary plant, plant value, and operation, maintenance and depreciation expense as they relate to charges for water supplied to CANNONSBURG, shall be the values, etc.

arrived at by the independent auditor's of ASHLAND for the immediate preceding fiscal year subject in ASHLAND'S discretion to modifications to bring such values current based upon standard, accepted accounting practices.

c. Following the rate study and based upon additional considerations and information deemed appropriate, ASHLAND shall notify CANNONSBURG of the proposed rate. However, no modification shall become effective earlier than sixty (60) days after the increase shall be adopted by ASHLAND, and, ASHLAND shall give written notice to CANNONSBURG of such increase immediately after such increase shall have been adopted by ASHLAND.

d. If the representatives of the parties cannot within said thirty (30) days agree upon the proposed rate, the matter shall be referred to arbitration at the request of either party. Failure by CANNONSBURG to give written notice of its disagreement with the proposed rate to ASHLAND within the thirty (30) day from receipt of notice of the proposed increase shall constitute acceptance of the rate. The request for arbitration shall be mad in writing by Registered Mail addressed to the City Manager, City Building, Ashland, Kentucky, and to the Cannonsburg Water Dsitrc. Each party shall within ten (10) days following receipt of such notice select one arbitrator who is in any way financially interested in the water contract or otherwise employed by either party. Upon selection each party shall immediately notify the other in the manner provided above of its arbitrator. Each arbitrator shall be a person generally familiar with the operation of water purification plants and distribution systems. The arbitrators selected by the parties shall meet within five days after the selection of the

last arbitrator and, if they cannot resolve the questions among themselves within ten days then they shall select a third party upon the standards set forth herein to be a third arbitrator. The decision of any two arbitrators shall be binding upon the parties.

In the event that the arbitrators cannot agree upon new water rates within thirty days after the first meeting of such arbitrators, then either party may file an action in the Boyd Circuit Court and submit the matter for determination by a Judge of the Court without the intervention of a jury.

The costs of arbitration shall be shared equally by the parties.

e. It is understood a rate increase by CANNONSBURG to its customers requires approval of the Kentucky Public Service Commission (PSC), and CANNONSBURG shall take every effort to obtain the earliest possible approval upon agreement of the rate by the parties. Any rate increase between the parties shall become effective immediately upon approval by the P.S.C. of the proposed rate.

4. REPORTS. CANNONSBURG shall submit a copy of its annual audit within 30 days from receipt.

CANNONSBURG shall maintain suitable records of the hourly and daily consumption of water by the consumers and these records shall be available to ASHLAND for review and on ASHLAND'S request copying at all reasonable times.

CANNONSBURG agrees to submit to ASHLAND any change of CANNONSBURG'S prevailing water rate schedule as applicable to its consumers prior to implementing any rate change. It shall provide all

rates, changes and relevant information and the premise on which rates have been formulated.

It is understood CANNONSBURG shall provide upon request by ASHLAND information to ASHLAND regarding water consumption by customers who discharge sewage into ASHLAND's system for use by ASHLAND in billing for such sewage service.

5. METERS. The meter or meters (under Section 3) shall be furnished, and installed and maintained by ASHLAND. They shall be of adequate size and standard make and design, and to be kept as accurate by ASHLAND as good water works practice permit. The meters shall be property of ASHLAND.

CANNONSBURG makes no claim on the meter station and the meter station shall at all times be accessible to ASHLAND, its duly authorized agents and employees, for the purpose of inspection. ASHLAND reserves the right to inspect, test, repair and replace the meter as required. Should CANNONSBURG desire to upgrade meters such replacement cost shall be borne by CANNONSBURG.

6. CHECK VALVE. Due to the fact that CANNONSBURG purchases water from sources other than ASHLAND, should the conditions arise necessitating the installation of a check valve, CANNONSBURG shall, at its cost, provide, install and maintain a check valve on the CANNONSBURG side of the meter. The check valve shall be of standard make and design, approved in advance by ASHLAND.

7. BOOSTER PUMPS. CANNONSBURG shall have the right to install booster pumps at its own cost within its lines in order to accelerate and increase the flow of water through the lines of CANNONSBURG to its customers, if and when it is deemed by the said



District necessary or reasonable so to do. No booster pumps shall be installed by CANNONSBURG that creates a drop in pressure below forty-five (45) pounds per square inch on the suction side of the booster pumps.

8. MAINTENANCE, LIABILITY, HOLD HARMLESS. During the term of this Agreement, CANNONSBURG shall, at its own expense, maintain the water main distribution system of CANNONSBURG and, any agreed upon extension, and make all necessary repairs to said system. Nothing contained herein, however, shall be construed to hold ASHLAND liable for lack of adequate water supply and pressure within the CANNONSBURG District due to any inadequacy on the part of the distribution system of CANNONSBURG, nor due to any inadequacy of the water supply or distribution system of ASHLAND. ASHLAND shall not be responsible in damages for interruption or failure to supply water to CANNONSBURG and shall be saved and held harmless from all damage of any kind, nature and description which may arise as a result of making this Agreement and furnishing water hereunder.

ASHLAND bears no degree of responsibility for the water quality at any point beyond the meter delivery point. CANNONSBURG bears the responsibility for maintaining the water quality at any point beyond the meter and within it's distribution system.

9. WATER SHORTAGE. In the event of a water shortage suffered by ASHLAND, all of the cities, water districts, corporations, or other entities purchasing water from ASHLAND on a bulk agreement basis shall share in the shortage on a proportionate basis to their average daily usage, such proportionate distribution shall in no way affect the supply of water to the regular domestic, commercial and industrial customers of

ASHLAND who do not purchase water from ASHLAND on a bulk agreement basis.

10. TEMPORARY SHUT OFF. It is further agreed that ASHLAND shall have the right to temporarily shut off the water supply of CANNONSBURG or any part thereof whenever alterations, additions or maintenance operations make it necessary. ASHLAND shall give CANNONSBURG reasonable notice and probable duration of such shutoffs, except that in case of serious break or accident water service may be discontinued without notice. Under no circumstances will ASHLAND be held liable or responsible for any damage that may result to CANNONSBURG or its customers due to any necessary discontinuance of water service.

11. SUCCESSORS OR ASSIGNS. In the event of an occurrence rendering CANNONSBURG incapable of performing under this Agreement, any successor of CANNONSBURG, qualified under Kentucky law, shall succeed to the rights and duties of CANNONSBURG under this Agreement subject to the prior written approval of ASHLAND. Otherwise, without the prior written approval of ASHLAND this Agreement may not be assigned or transferred.

12. COURT ACTION. The parties reserve the right, either in law or equity, by suit, mandamus or other proceeding, to enforce or compel performance of any or all covenants contained, or for interpretation of the rights of the parties under this Agreement. Further, the parties acknowledge that the Boyd Circuit Court shall have jurisdiction over disputes arising from this Agreement.

13. TERM. It is mutually agreed that of the term under the Agreement dated October 15, 1973 remain in full force and effect.

No officer, official or agent of either party has the power to amend, modify or alter this Agreement or waive any of its conditions or

to bind ASHLAND by making any promise or representation not contained herein.

IN WITNESS WHEREOF OF WHICH, the City of Ashland, Kentucky, has caused its Corporate Name to be hereunto subscribed by its Mayor, attested by its City Clerk and its Corporate Seal to be hereunto affixed; and the Cannonsburg Water District, has caused its name to be hereunto subscribed by its Chairman, attested by its Sec/Treas, and its Corporate Seal to be hereunto affixed; all in quadruplicate identical copies, on the day and year first above written.

CITY OF ASHLAND, KENTUCKY

By [Signature]  
Mayor

ATTEST:

[Signature]  
City Clerk

(SEAL)

CANNONSBURG WATER DISTRICT

By [Signature]  
Title: Chairman

ATTEST:

[Signature]  
Title: Sec. Treas

(SEAL)