

11/16/61
- AMENDMENT OF CONTRACT -

This AMENDMENT OF CONTRACT, made as of the _____ day of December, 1961, by and between GREEN RIVER VALLEY WATER DISTRICT, a Water District created under and existing by virtue of the provisions of Chapter 74 of the Kentucky Revised Statutes, situated partly in Hart County, Kentucky, and partly in Barren County, Kentucky, (for convenience sometimes herein called the "District"); THE CITY OF HORSE CAVE, KENTUCKY, a municipal corporation of the Fifth Class in Hart County, Kentucky, and THE HORSE CAVE BOARD OF WATER COMMISSIONERS (for convenience both sometimes herein called "Horse Cave"); and THE CITY OF CAVE CITY, KENTUCKY, a municipal corporation of the Fifth Class in Barren County, Kentucky, and THE CAVE CITY UTILITY COMMISSION, (for convenience both sometimes herein called "Cave City");

W I T N E S S E T H:

THAT WHEREAS, the parties hereinabove named have previously entered into a written Contract dated as of the 15th day of June, 1961 (sometimes referred to by other dates on which the several parties adopted it), the same being further identified as an instrument in mimeographed form thirty-one pages in length and having attached thereto as "Exhibit A" a schedule of initial water rates and charges of the District (reference being hereby made to said instrument for the details thereof, and for the various agreements of the parties as therein set forth); and

WHEREAS, upon the basis of said Contract the Commission of the District, at a meeting held on the 24th day of November, 1961, adopted a certain Resolution in brief substance authorizing the

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issuance of the District's "Waterworks System Revenue Bonds" in the principal amount of \$1,035,000.00, and said bonds were publicly advertised for sale in the manner required by law upon the basis of sealed competitive bids to be received in the Multi-purpose Room of Caverna High School, on the east side of U. S. Highway 31-W, between the Cities of Horse Cave and Cave City, Kentucky, such bids to be received and considered by the Commission of the District on the 8th day of December, 1961, at the hour of 11:00 A.M., Central Standard Time; and

WHEREAS, prior to such date the Fiscal Agents employed by the District to assist in the preparation and marketing of said bonds reported to the Commission that they had been unable to generate sufficient interest among municipal bond dealers to give any reasonable assurance that a bid for the purchase of said bonds would be received by the Commission of the District upon the appointed day; and it was the recommendation of the Fiscal Agents that the proposed public sale be postponed rather than to accept the risk of conducting a public sale and receiving no bid; and thereupon the Commission of the District, acting upon such recommendations caused public notice to be given that the proposed sale of said bonds was postponed; and

WHEREAS, subsequently the Fiscal Agents, in association with other municipal bond dealers, called upon the Commission of the District to explain the reasons why the bond issue, and the Contract dated June 15, 1961, above referred to, were deemed unsatisfactory and unacceptable to municipal bond dealers for reoffering to their several customers in the usual manner; and it was the proposal of the Fiscal Agents and said additional municipal bond dealers that they join in proposing a new fiscal agency contract with the District

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and exert their best efforts in conjunction with the Engineers employed by the District, other Engineers independently employed by the Fiscal Agents, Bond Counsel of the District, and the District's Attorney, to prepare and submit recommendations as to the ways in which it would be necessary to amend the said Contract of June 15, 1961; and

WHEREAS, after due consideration the Commission of the District approved the proposed new fiscal agency Contract, and the Commission has now received from the Fiscal Agents their recommendations regarding changes which must be made by amendment of the said Contract of June 15, 1961, in order to render the District's bonds acceptable and marketable, the same being briefly summarized, as follows:

(a) Reduction in the over-all cost of the proposed water system of the District, with corresponding reduction in the amount of the proposed bond issue; principally by modification of the design of the filter plant, possibly by reducing the capacity of some or all of the principal transmission mains, elimination of some domestic service lines within the District, and reducing the amount of money to be set aside from bond proceeds for capitalized interest-- all as determined by the District's Engineers in consultation with the Fiscal Agent's Engineers.

(b) Elimination from the Contract of June 15, 1961, of sub-paragraph or sub-section (c) of paragraph X, whereunder the Cities of Horse Cave and Cave City are granted the privilege, at the election of either or both of them, to abandon upon reasonable notice to the District the alternative set forth in sub-paragraph or sub-section (b) of said paragraph X, and choose thereafter to purchase their respective full water requirements from the District at a wholesale rate and in accordance with master meters to be installed by the City or Cities making such election; it being the representation of the Fiscal Agents that the existence of this choice of a future alternative was a serious impediment to marketability;

(c) the taking of effective measures to assure that the District does not bear an unreasonable financial burden as a result of excessive water leakage within the several City systems, by providing for reimbursement by the Cities to the District, for leakages shown to exist in each City system in excess of ten per cent (10%) of the

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total amount of water used and employed within said Cities during the period of each billing period; and

(d) a covenant on the part of each of said Cities that so long as revenue bonds of the District remain outstanding and unpaid, each City will establish, maintain, and if necessary increase its schedule of water rates and charges as certified by such City to the District in accordance with the aforesaid Contract, in such manner as to produce revenues from the water customers thereof sufficient to meet the City's obligation to holders of its outstanding Waterworks Revenue Bonds by way of contractual deposits into the respective "Bond and Interest Redemption Funds" and "Depreciation Funds", with additional revenues available at all times equal to not less than 120% of the cost of operation and maintenance of each City's system, said percentage margin to be ascertained on a monthly basis, by reference to the average of the immediately preceding period of three (3) consecutive months."

(e) A covenant on the part of each of said Cities that so long as revenue bonds of the District remain outstanding and unpaid, neither City will operate any waterworks system in competition with said District, the District will have the exclusive right to serve all water customers within the Cities, and the Cities will satisfy their entire municipal water needs from the District.

AND WHEREAS, the parties to the Contract of June 15, 1961, have received, considered and fully discussed the above representations and recommendations of the Fiscal Agents, and now desire to join in this "Amendment of Contract" for the purpose of altering and changing their previous agreements and commitments in order that successful financing may be accomplished and in order that advantage may be taken of a proposal of the Fiscal Agents to guarantee that in the event such recommendations are followed and the revised and reduced bond issue is thereafter offered at public sale, they will submit, or cause to be submitted, either alone or in conjunction with others, a responsible bid for the purchase of the entire revised bond issue upon the terms which are specifically set forth in their Contract of fiscal agency (or upon terms more advantageous to the District);

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NOW, THEREFORE, in consideration of all of the foregoing and in the mutual realization that the common objectives of the parties, as described and set forth in the aforesaid Contract of June 15, 1961, cannot be accomplished otherwise, the undersigned GREEN RIVER VALLEY WATER DISTRICT, acting by and through its duly authorized Commission, the CITY OF HORSE CAVE, KENTUCKY, acting by and through its City Council and with the concurrence of its Board of Water Commissioners; and the CITY OF CAVE CITY, KENTUCKY, acting through its City Council and with the concurrence of the Cave City Utility Commission, do hereby agree that their Contract dated June 15, 1961, hereinabove identified and referred to, shall be and the same is hereby amended in the following respect:

(1) The design of the proposed water system and installations of the District shall, to the satisfaction of the Fiscal Agents, and with the concurrence of the Engineers employed by the District and the Engineers independently employed by the Fiscal Agents, be changed in such manner as to reduce the over-all costs, including capitalized interest and all fees and other proper expenses to such amount as may be reasonably financed through the issuance of Waterworks System Revenue Bonds.

(2) The course of action permitted to be chosen in the future by either or both of the Cities of Horse Cave and Cave City, as set forth in sub-paragraph or sub-section (c) of paragraph X of the Contract of June 15, 1961, is hereby eliminated from said Contract in its entirety; and the election of each City, as set forth in paragraph XI of said Contract to choose the alternative set forth in sub-paragraph or sub section (b) of said paragraph X is hereby made permanent and irrevocable as long as any Waterworks Revenue Bonds of the District shall remain outstanding and unpaid.

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(3) In order that the District may be guaranteed against losses in the respective Cities in excess of ten per cent (10%) of total water supplied during any billing period by the District, by way of leakage occurring in the respective systems, it is agreed that master meters shall be installed by the District and at the expense of the District in such manner as to provide accurate measurement of the quantity of water supplied to customers in each City. At the end of each month of the District's operations, the District shall determine from the meter readings of the customers served in each City the aggregate amount of water measured at the respective premises; and such aggregate amount or quantity shall be compared with the quantity or quantities shown by the master meter or master meters to have been supplied into the respective water systems, for the purpose of determining the amount of leakage or of use of water for fire hydrant purposes. If such comparison shall show in any month that as much as ninety per cent (90%) of the water supplied to each City has been accounted for by measurements through individual customer meters, then the loss of water in the system of such City, whether by leakage, freezing, or fire hydrant purposes, shall be deemed to be the normal, acceptable, and inevitable loss incident to such operation, and the City concerned shall have no obligation to the District by reason thereof. On the other hand, if in any month such comparison shows that the aggregate quantity of water accounted for through individual customer meters in either City shall be less than ninety per cent (90%) of the aggregate measurements of water furnished by the District into such City's system, then the excess over ten per cent (10%) shall be the direct obligation of the City to the District, the same to be paid from the said City's "Operation and Maintenance

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Fund" over and above the District's billings to the individual customers in accordance with sub-paragraph or sub-section (b) of paragraph X of said Contract, and the compensation to be paid to the District by the Cities in connection with such excessive leakage shall be at the same rate as that charged for the gallonage served through individual meters.

In the event either City shall deem its water losses to be unreasonably high, it may call upon the Commission of the District to take all reasonable measures to locate leaks and eliminate the same; and the Commission of the District agrees that it will take such action in this respect as its Engineers may recommend and advise as constituting reasonable measures; but the responsibility and liability of the District for performance in this respect shall be limited to such amounts as may be paid from such City's own "Depreciation Fund" as established and maintained in connection with its outstanding Waterworks Revenue Bonds and from the five cents (5¢) per thousand gallons "Special Sinking Fund" of said City, as provided for in the aforesaid Contract of June 15, 1961, and the District shall have no obligation to expend funds from any other source for such purposes. In the event either City shall become dissatisfied with the corrective measures taken by the Commission, it may employ Engineers of its own choosing for the purpose of causing such corrective measures to be taken and may expend for that purpose moneys in its own "Depreciation Fund" and in said City's five cents (5¢) per thousand gallons "Special Sinking Fund," as provided in said Contract.

(4) It is hereby expressly agreed and covenanted by the City of Horse Cave, Kentucky, and the City of Cave City, Kentucky, and their respective Utility Commissions, that so long as revenue

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bonds of the District, including parity bonds if any be issued, remain outstanding and unpaid, said Cities will establish, maintain, and if necessary increase their schedule of water rates and charges as certified to the District by said Cities, in accordance with the aforesaid Contract of June 15, 1961, in such manner as to produce revenues sufficient to meet the obligations of each City to holders of their respective outstanding Waterworks Bonds, with respect to contractual deposits into the respective "Bond and Interest Redemption Funds" and "Depreciation Funds," and said Cities additionally covenant and agree that said rates and charges shall be sufficient to assure at all times that monthly revenues available therefor shall be equal to at least 120% of the cost of operation and operation and maintenance of each City's system, as such term is defined in Section X(b) of the aforesaid Contract of June 15, 1961, said monthly requirements to be ascertained by reference to the average of the immediately preceding period of three (3) consecutive months.

(5) It is hereby expressly covenanted and agreed that so long as revenue bonds of the District remain outstanding and unpaid, the Cities of Cave City and Horse Cave, Kentucky, shall satisfy their entire municipal water needs from the District, that they will not operate any waterworks system in competition with the District, and that the District will have the exclusive right to serve all water customers within said Cities.

IN TESTIMONY WHEREOF, the parties hereto have caused this instrument to be executed in multiple copies in their names and on their behalf, each by its duly authorized officer whose signature is attested by the duly authorized Clerk or Secretary,

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and each party has caused its seal to be affixed to each copy, all upon the day and year first above written.

(SEAL)

ATTEST:

Donald McDonald
Secretary

GREEN RIVER VALLEY WATER DISTRICT

By A. D. Harmon Sr.
Chairman

(SEAL)

ATTEST:

William T. ...
City Clerk

CITY OF HORSE CAVE, KENTUCKY

By W. H. ...
Mayor

HORSE CAVE BOARD OF WATER COMMISSIONERS

Ann ...
Secretary

By W. B. Minor
Chairman

(SEAL)

ATTEST:

Hamilton Reynolds
City Clerk

CITY OF CAVE CITY, KENTUCKY

By Roger ...
Mayor

CAVE CITY UTILITY COMMISSION

Lewis E. ...
Secretary

By Russell ...
Chairman

STATE OF KENTUCKY)
) SS
COUNTY OF HART)

This day personally appeared before me, a Notary Public, in and for the State and County aforesaid RE Palmer Sr.

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STATE OF KENTUCKY)
) SS
COUNTY OF BARREN)

This day personally appeared before me, a Notary Public, in and for the State and County aforesaid, Roxie R. Smith, Mayor of the City of Cave City, Kentucky; a municipal corporation, and Hampton Reynolds, City Clerk of said City, personally known to me and personally known by me to be such officers and to be the same persons who executed as such officers, respectively, the within and foregoing instrument of writing, and such persons duly acknowledged the execution of the same to be their act and deed and the act and deed of said City.

Subscribed and sworn to before me this 9th day of February, 1967. My commission expires My Commission Expires August 8, 1964.

(SEAL)

J. J. Gardner
Notary Public
State at Large - Kentucky

STATE OF KENTUCKY)
) SS
COUNTY OF HART)

This day personally appeared before me a Notary Public, in and for the State and County aforesaid W. L. Minner, Chairman of the Horse Cave Board of Water Commissioners, a Commission duly organized and existing under and by virtue of an Ordinance of the City of Horse Cave, and Arman C. Haub, Secretary of said Commission, personally known to me and personally known by me to be such officers and to be the same persons who executed as such officers, respectively, the within and foregoing instrument of writing, and such persons duly acknowledged the execution of the same to be their act and deed and the act and deed of said Commission.

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