

WATER PURCHASE AGREEMENT

BETWEEN

CITY OF DAWSON SPRINGS, KENTUCKY

AND

SOUTH HOPKINS WATER DISTRICT

JUNE 11, 2019

**KENTUCKY
PUBLIC SERVICE COMMISSION**

Gwen R. Pinson
Executive Director



EFFECTIVE

7/15/2019

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

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WATER PURCHASE AGREEMENT

This Water Purchase Agreement (the "Agreement") is made and entered into as of the 11th day of June, 2019, by and between the **CITY OF DAWSON SPRINGS, KENTUCKY**, P.O. Box 345, 200 West Arcadia Avenue, Dawson Springs, Kentucky 42408, hereinafter referred to as "City" or the "Seller," and the **SOUTH HOPKINS WATER DISTRICT**, P.O. Box 487, 129 South Main Street, Dawson Springs, Kentucky 42408, hereinafter referred to as the "Purchaser."

WITNESSETH:

WHEREAS, the Seller is a duly organized and existing municipal corporation and city of the home rule class of the Commonwealth of Kentucky;

WHEREAS, the Purchaser is a water district organized pursuant to KRS Chapter 74;

WHEREAS, the Seller currently owns and operates water supply, treatment, and distribution facilities;

WHEREAS, the Purchaser currently owns and operates a water distribution system;

WHEREAS, the Purchaser has been purchasing potable water from the Seller pursuant to the provisions of a Water Purchase Contract dated March 2, 1978 (the "Existing Contract");

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WHEREAS, the Existing Contract has been amended or modified on numerous occasions;

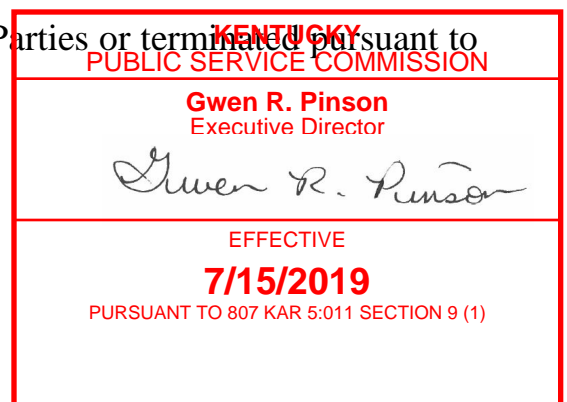
WHEREAS, the Parties wish to supersede the Existing Contract, and all amendments or modifications thereto, with this Agreement;

WHEREAS, by Resolution No. 2019-04 duly adopted on May 28, 2019 by the Seller's City Council, this Agreement was approved and the Seller's Mayor was authorized to execute this Agreement for and on behalf of the Seller; and

WHEREAS, by Resolution No. 2019-06-01 duly adopted on June 11, 2019, by the Board of Commissioners of the Purchaser, this Agreement was approved and the Purchaser's Chairman was authorized to execute this Agreement for and on behalf of the Purchaser.

NOW THEREFORE, in consideration of the foregoing and the mutual terms and conditions contained herein, the Seller and Purchaser agree as follows:

1. Term of Agreement. The term of this Agreement shall extend for a period of approximately 50 years, commencing on the Effective Date hereof as provided in paragraph 17 and terminating on June 30, 2069, unless otherwise extended or modified by written agreement of the Parties or terminated pursuant to the terms of this Agreement.




2. **Quantity of Water.** The Seller shall furnish to the Purchaser, at the points of delivery hereinafter specified, such quantities of water as the Purchaser may require, but not to exceed an amount which, when combined with the usage of all other customers of the Seller, would exceed the Seller's water production capacity.

3. **Quality of Water.** The Seller shall furnish to the Purchaser, at the points of delivery hereinafter specified, during the term of this Agreement, or any renewal or extension thereof, potable, treated water meeting the applicable water quality standards of all appropriate state and federal regulatory agencies.

4. **Operation of System.** The Seller shall, at all times, operate and maintain its water system in an efficient manner and shall take such action as may be reasonably necessary to perform its obligations under this Agreement. Temporary or partial failures to deliver water shall be remedied diligently with all practicable dispatch. The Seller shall immediately inform the Purchaser by telephone, by email, or by facsimile transmission of the nature and extent of such temporary or partial failure to deliver water. In the event of an extended shortage of water, or if the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to the Purchaser shall be reduced or diminished in the same proportion as the supply to the Seller's other customers is reduced or diminished. The Purchaser also

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as may be reasonably necessary to curtail water usage within its system in response to a shortage of water.

5. Delivery Points. The Seller shall deliver the water to the Purchaser at the existing points of delivery shown below and at such additional or substitute points of delivery which may be agreed upon in writing by both Parties:

A. Highway 62 East Meter, a 4-inch magnetic flow (MAG) meter, which is located on the north side of U.S. Highway 62 East;

B. Jimmy Lovell Road Meter, a 2-inch turbine meter, which is located on the left of Jimmy Lovell Road before the railroad tracks;

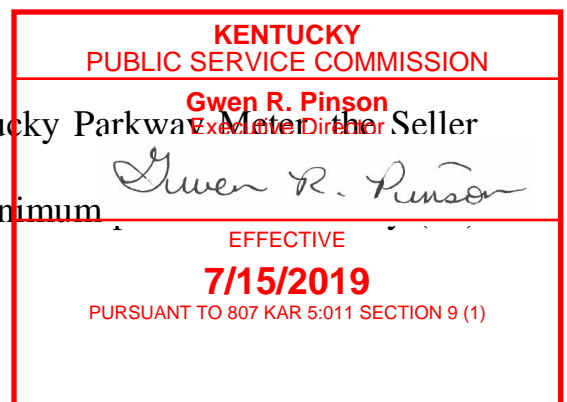
C. Charleston at Western Kentucky Parkway Meter, a 4-inch magnetic flow (MAG) meter, which is located behind the Ideal Market at Western Kentucky Parkway on Charleston Road;

D. Caldwell County (Highway 62 West) Meter, a 4-inch magnetic flow (MAG) meter, which is located behind 600 West Arcadia Avenue;

E. Ilsley at Airport Road Meter, a 6-inch Sensus meter, which is located past the Rosedale Lane railroad tracks; and

F. Walnut Grove Meter, a 1-inch turbine meter, which is located by Walnut Grove Church.


Except for the Charleston at Western Kentucky Parkway Meter, the Seller shall furnish water at the points of delivery at a minimum



pounds per square inch. The Seller shall use reasonable care and diligence in the operation and maintenance of its water system to prevent and avoid abnormal interruptions and fluctuations of supply and pressure. Should greater pressures than that available at a point of delivery be required by the Purchaser, it shall be the Purchaser's responsibility, at its own expense, to provide within its system such booster pumping, storage, or other facilities as may be required to develop and maintain additional pressures within the Purchaser's system.

Emergency failures of water supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake, or other catastrophe shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service.

6. Metering Equipment. The Seller shall furnish, install, own, operate, and maintain at its own expense the necessary metering equipment to reliably measure the quantity of water delivered to the Purchaser and shall test such metering equipment once every year. The Seller shall provide a 48-hour notice to Purchaser prior to conducting any meter tests, allow access to the metering site during testing, and submit the test results to the appropriate official designated by the Purchaser. A meter registering within the acceptable limits as identified by AWWA Standards shall be deemed to be accurate. Previous readings of any meter disclosed by test results to be inaccurate (registering outside

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AWWA Standards based upon type of meter) shall be adjusted for the six-month period prior to the test in accordance with the percentage of inaccuracy found by such test. Billings for the period shall be recalculated and the Purchaser's account credited or charged accordingly. If any meter fails to register usage for any period, the amount of water furnished during such period shall be estimated by any reasonable means agreeable to both the Purchaser and Seller. The metering equipment shall be read on or about the **26th** day of each month, or any other day mutually agreed upon. An appropriate official of the Purchaser shall have access to each master meter for the purpose of collecting usage data and verifying each master meter's readings.

7. Billing and Payment Procedure. The Seller shall furnish the Purchaser at the above address, not later than the **first** business day of each month, an itemized statement of the amount of water furnished the Purchaser at each delivery point during the preceding billing cycle and the cost thereof. The Purchaser shall pay those charges not later than the **16th** day of each month. Any amount unpaid after the due day shall be subject to a **10%** late payment fee.

8. Cost Based Rates. The Seller shall establish and adjust, from time to time, the wholesale rate based upon the Seller's actual cost of providing water service to the points of delivery described in paragraph 5 of this Agreement

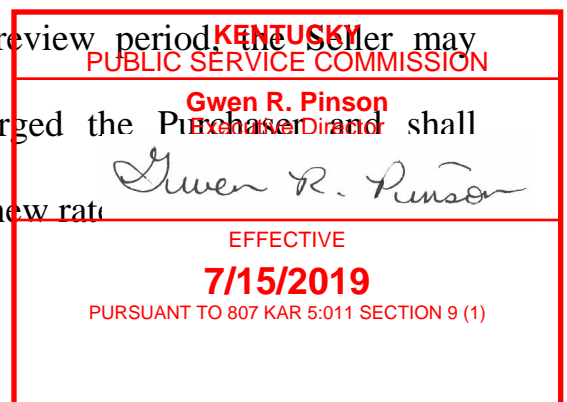
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9. Initial Rate. The initial wholesale rate shall be \$2.16 per 1,000 gallons. The Seller recently engaged the services of Kentucky Rural Water Association, Inc. (the “KRWA”) to perform a Cost of Service Study (the “COSS”) to determine the cost of providing water service to the Purchaser. The COSS determined that this cost is \$2.16 per 1,000 gallons.

10. Rate Modification. Commencing in January 2021, the Seller shall have the right to adjust or modify the wholesale rate set forth in paragraph 9 to reflect changes in the Seller’s cost of providing water service to the Purchaser. Thereafter, the Seller may adjust, from time to time, the wholesale rate, but not more frequently than once every two (2) years. Any increase or decrease in the wholesale rate shall be based on a demonstrable increase or decrease in the costs of performance hereunder.

11. Advance Notice of Rate Modification. The Seller shall notify the Purchaser in writing of any proposed rate adjustment or modification at least thirty (30) days before it is to be adopted as the actual rate. This will enable the Purchaser to review and comment on the proposed rate before it is actually adopted by the Seller.

At the expiration of the thirty (30) day review period, the Seller may establish and adopt the actual rate to be charged the Purchaser and shall immediately notify the Purchaser in writing of the new rate.



12. Effective Date of Rate Modification. The effective date of the new wholesale rate shall be at least 30 days after the Seller adopts the new rate. This will enable the Seller to file a revised tariff with the Kentucky Public Service Commission (the “PSC”) and obtain PSC approval of the new rate. This will also provide the Purchaser sufficient time to obtain a Purchased Water Adjustment from the PSC.

13. Financial and Operational Information. Commencing with the fiscal year ending June 30, 2019 and continuing annually thereafter during the term of this Agreement, the Seller shall provide the Purchaser with a copy of the Seller’s Independent Auditor’s Report within 30 days after it has been released. In addition, the Purchaser, its auditor, or other designated representative shall have the right, at its own expense, to examine, upon reasonable notice and during regular business hours, the Seller’s financial records and operating reports concerning water production, water sales, water expenditures, and line loss. Such examination shall be conducted in such a manner that it does not unduly disrupt the Seller’s normal office routine. The Seller reserves the right to limit such examination to one (1) examination per fiscal year. Seller’s breach of the provisions of this paragraph shall be deemed to be a material breach of this Agreement.

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14. Communications. Representatives of the Dawson Springs Municipal Waterworks and Sewer System and the Purchaser shall confer periodically for the following purposes:

- A. To facilitate communications;
- B. To monitor water quality;
- C. To ensure compliance with all applicable water quality standards;
- D. To review operating and financial reports concerning water production, water sales, and line loss;
- E. To discuss future wholesale rate adjustments;
- F. To discuss any future changes in the water treatment process;
- G. To plan future water treatment plant expansions or other water production or storage improvements;
- H. To consider other water production and water quality issues; and
- I. To discuss and help resolve any other issues that may arise concerning this Agreement.

15. Additional Wholesale Customers. Currently, the Purchaser provides wholesale water service on a daily basis to the City of Earlington, the City of Mortons Gap, and the Caldwell County Water District. In the event the Purchaser desires to commence providing wholesale water service, in an amount which is estimated to exceed 100,000 gallons per day, to a new

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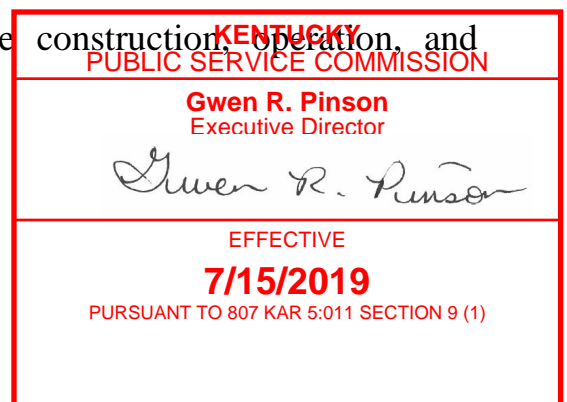
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Purchaser must give the Seller as much advance notice as reasonably possible. This will ensure that the Seller can adequately provide for the future needs of its retail customers and meet its contractual obligations to the Purchaser.

16. PSC Review. The Parties acknowledge that this Agreement cannot become effective until it has been reviewed and accepted for filing by the PSC. Seller shall file an executed copy of this Agreement with the PSC. Purchaser pledges its assistance to help expedite the PSC review process.

17. Effective Date. The Parties acknowledge that, in order for this Agreement to become effective, the PSC shall review this Agreement and accept it for filing. The Effective Date of this Agreement shall be the date upon which the PSC accepts the Agreement for filing. The Seller shall give written notice of the Effective Date to the Purchaser.

18. Indemnification. Each Party shall be solely responsible for the construction, operation, and maintenance of its respective water system. Each Party, to the extent permitted by law, expressly agrees to indemnify, save harmless and defend the other Party against all claims, demands, cost, or expense asserted by third parties and proximately caused by the negligence or willful misconduct of such indemnifying Party in connection with the construction, operation, and maintenance of its respective water system.



19. Notices. If at any time either Party desires or is required to give notice to the other Party pursuant to the terms of this Agreement, such notice shall be in writing and shall be hand delivered or mailed by certified mail, return receipt requested. Notice shall be effective upon receipt. Notices shall be given to the Parties at the following addresses or such other place or other person as each Party shall designate by similar notice:

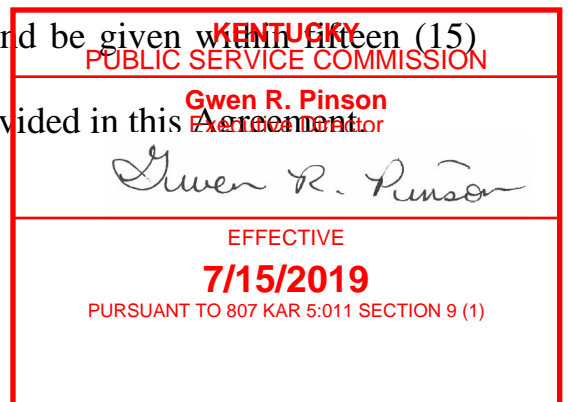
A. As to the Seller:

City of Dawson Springs
P.O. Box 345
200 West Arcadia Avenue
Dawson Springs, KY 42408
Attention: Mayor

B. As to the Purchaser:

South Hopkins Water District
P.O. Box 487
129 South Main Street
Dawson Springs, KY 42408
Attention: Chairman

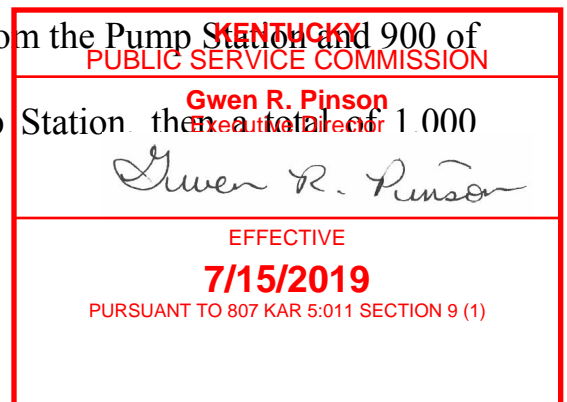
20. Response to Notices. At any time either Party desires or is required to respond to any notice given pursuant to paragraph 19, such response shall be made in the manner prescribed by paragraph 19 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement



21. Regulatory Agencies. This Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in the Commonwealth of Kentucky. The Seller and Purchaser shall collaborate in obtaining such permits, approvals, certificates, or the like as may be required to comply therewith.

22. Reimbursement for Electric Expense. The Parties acknowledge that the Purchaser owns, operates, and maintains a pump station located on Kentucky Highway 109 (Industrial Park Road). This pump station is known as the Highway 109 Pump Station (the “Pump Station”). The Pump Station primarily benefits the Purchaser’s customers, but some of the Seller’s customers also receive benefits from the Pump Station. Historically, the Seller has not contributed to the cost of operating or maintaining the Pump Station. Commencing on July 1, 2019, the Seller shall reimburse the Purchaser for a portion of the electric expense for operating the Pump Station.

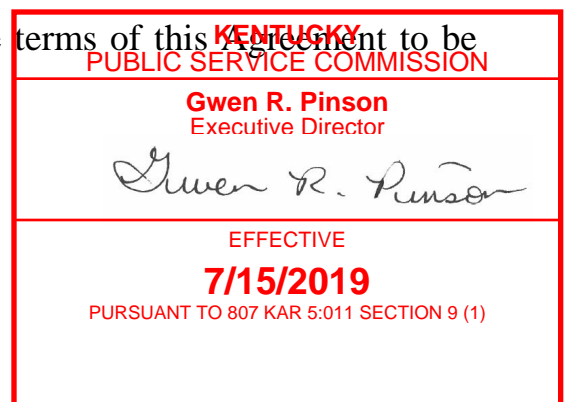
The Seller’s portion of the electric expense shall be determined by the ratio of the number of the Seller’s customers that derive benefit from the Pump Station to the number of total customers that derive benefit from the Pump Station. For example, if 100 of the Seller’s customers benefit from the Pump Station and 900 of the Purchaser’s customers benefit from the Pump Station, then a total of 1,000



customers benefit. In this example, the Seller shall reimburse the Purchaser for 10% of the electric expense (100 divided by 1,000 equals 0.10, which is 10%).

On an annual basis, the Purchaser shall provide the Seller with an itemized invoice evidencing the electric bills for the Pump Station for the past 12 months and the amount that the Seller owes to the Purchaser. The Seller shall pay the invoice within 30 days. The Parties pledge their full cooperation and assistance in providing each other the necessary customer information to enable the percentage of reimbursement to be calculated. This customer information shall be updated annually.

23. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. This Agreement shall not be assigned by either Party without the written consent of the other Party, which consent shall not be unreasonably withheld, unless such assignment or transfer is to a successor in the operation of its properties by reason of a merger, consolidation, sale, or foreclosure where substantially all such properties are acquired by such a successor empowered by law and financially able to effect the purposes of this Agreement which it must assume and, thereafter, be exclusively responsible for the performance of the terms of this Agreement to be performed by either Party hereunder.

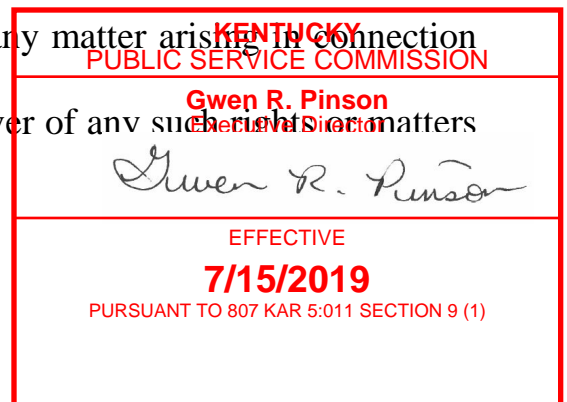


24. Paragraph Headings. The descriptive headings of the various paragraphs of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

25. Entire Agreement; Severability. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained herein. Except as otherwise provided herein, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon either Party unless and until it is reduced to writing and signed by both Parties. Should any provision of this Agreement be declared to be invalid or unenforceable by a Court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect unless such invalid or unenforceable provisions substantially alter the benefits of the Agreement for either Party.

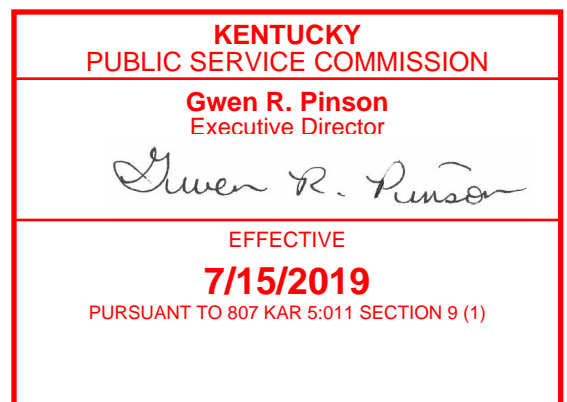
26. Interpretation. The Parties agree that both Parties have participated in the drafting and negotiation of this Agreement and this Agreement shall not be interpreted against either Party by virtue of having participated in such drafting and negotiation.

27. Non-Waiver. Any waiver at any time by any Party hereto of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver of any such rights or matters at any subsequent time.



28. Prior Contracts Superseded. As of the Effective Date of this Agreement, the Existing Contract, and all amendments or modifications thereto, shall be superseded by this Agreement.

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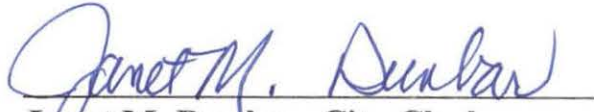
IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

SELLER:

CITY OF DAWSON SPRINGS, KENTUCKY



Chris Smiley, Mayor

ATTEST:



Janet M. Dunbar, City Clerk


PURCHASER:

SOUTH HOPKINS WATER DISTRICT


Robert J. Tucker, Chairman

ATTEST:


Roy McGregor, Secretary

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