

CITY OF WINCHESTER, KENTUCKY
by and through its
WINCHESTER MUNICIPAL UTILITIES COMMISSION
and
EAST CLARK COUNTY WATER DISTRICT

WATER PURCHASE AGREEMENT

THIS WATER PURCHASE AGREEMENT (herein after referred to as "Agreement"), made and entered into this 17th day of September, 2019, by and between the **CITY OF WINCHESTER, KENTUCKY**, a municipal corporation of the third class located in Clark County, Kentucky (hereinafter referred to as "City"), by and through its **WINCHESTER MUNICIPAL UTILITIES COMMISSION** (hereinafter referred to as "WMU"), and **EAST CLARK COUNTY WATER DISTRICT** (hereinafter referred to as "ECCWD"), of Winchester, Clark County, Kentucky;


WITNESSETH:

WHEREAS, WMU has in operation a water treatment plant and delivery system supplying water to customers both within and without the corporate limits of the City, and

WHEREAS, by contract dated July 15, 1999 (which replaced a contract dated July 20, 1995), being amended December 12, 2002 and June 6, 2006, (collectively called "Existing WPA") ECCWD has heretofore purchased water from WMU for the purpose of supplying its customers in portions of eastern and southern Clark County , and

WHEREAS, the parties hereto have determined that, because the Existing WPA will expire July 15, 2019, and

WHEREAS, the parties have agreed that the Existing WPA should now be terminated and replaced by a new Water Purchase Agreement

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NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinbelow contained, the parties agree and bind themselves as follows:

1. Termination of Prior Agreement. That Existing WPA is by mutual consent of the parties hereby canceled and held for naught.

2. WMU to be Exclusive Supplier. ECCWD herewith agrees to purchase all of its water requirements from WMU during the term of this Agreement, subject to the maximum provided for in Paragraph 6 below, and WMU shall be ECCWD's exclusive supplier unless WMU is unable or unwilling to supply a sufficient supply of water to ECCWD to meet its reasonable needs. With the exception that seven (7) current customers being served via connection to the Kentucky American Water Company (KAWC) system along Ford Road in southeastern Clark County will be permitted.

3. ECCWD Territory. Except as hereinbelow provided, ECCWD has and shall retain, exclusive of the rights of WMU, the right to provide water service to all of those areas of eastern and southeastern Clark County as marked on the map attached hereto as Exhibit "A".

ECCWD further agrees that should it become practical for WMU to provide sewer service in the area marked on the map attached hereto as Exhibit "B" and identified as "WMU Sanitary Sewer Service Area 1, Area 2, Area 3, and Area 4, or should such an area be annexed into the City of Winchester, then ECCWD shall, within sixty (60) days of receipt of notice by WMU, cede such area and the present and future customers within that area to WMU to become part of WMU's service territory.

WMU and ECCWD agree and acknowledge that the need for sanitary sewer expansion in the watersheds of Four Mile Creek, East Four Mile Creek, and Stoner Creek is mandated by the approved Facilities Planning


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sanitary sewers in these watersheds shall only occur as required to accommodate growth that requires connection to a centralized sewer system or as directed by governmental or regulatory agencies other than WMU.

When such an area is ceded to WMU by ECCWD and ECCWD has previously provided service to an area in Exhibit B or an area annexed by the city of Winchester then WMU shall compensate ECCWD for facilities constructed by ECCWD in such area. The amount of compensation shall be determined from the books and records of ECCWD and shall consist of the undepreciated book value of ECCWD's facilities located in such area plus the present worth of the net revenues from the customers being served by ECCWD at the time such area is ceded to WMU calculated over 10 years. "Net revenues" is defined as the gross revenues from such customers reduced by the cost of goods sold, the actual operating costs and the proportion of debt service applicable to such facilities. Should the parties hereto not be able to agree on such compensation, then each party shall select a CPA other than those serving either of the parties and the two CPAs shall select a third CPA who does not serve either party. The third CPA shall determine the amount of compensation to be paid by WMU to ECCWD and such determination shall be binding on the parties. Such reduction in territory and the compensation therefor shall be subject to approval of the creditors of ECCWD as may be required in various loan agreements.

The purpose of this provision of this Agreement is to allow the public health and welfare to be protected by the provision of sanitary sewer service, to avoid WMU providing sanitary sewer service to customers who are not WMU water customers, and to avoid the anomaly of having water customers located within the city limits of the City of Winchester who are not customers of WMU.

4. Territorial Encroachments. The parties agree that territory assigned by this agreement to ECCWD are now served

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WMU shall have the right, at its option, to commence supplying any customers or territory not included in the ECCWD territory identified by Exhibit "A" at any time, upon sixty (60) days written notice to ECCWD. Any master meter required to be moved by the acquisition of customers or territory by WMU as herein provided shall be moved at the expense of WMU.

5. Effective Date and Term of Agreement. This Agreement shall become effective immediately upon its execution and shall remain in force and effect for a period of forty (40) years thereafter; provided, however, that ECCWD shall have the right to renew and extend this Agreement for an additional period of twenty (20) years if it so desires, upon written notice to WMU at least two (2) years prior the expiration of this forty-year term.

6. Quantity and Quality of Water to be Supplied. WMU hereby agrees to sell and deliver to ECCWD up to **550,000** gallons per day as a peak day capacity allocation.

During the term of this agreement or any renewal or extension thereof, WMU shall furnish water to ECCWD at the point of delivery specified in Section 9, which shall meet quality standards of State, Federal, and other regulatory agencies.


Water necessary for flushing of ECCWD's water system in accordance with and subject to the requirements of 401 KAR Chapter 8 shall be exempt from any surcharge. ECCWD shall provide WMU a one business day notice of ECCWD's intent to flush all or portions of their water system in order that proper billing procedures can be initiated. Failure to do so will result in surcharges being implemented at the rates established in Section 8 of this Agreement.

7. Request for Additional Capacity. WMU and ECCWD hereby acknowledge and agree that the quantity of water allocated in Paragraph 6 of this Agreement was determined on the present projected peak day demand of ECCWD as a percentage of the available capacity of the WMU water system. Both parties agree that if in the future

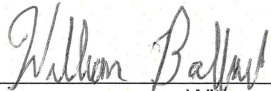
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should ECCWD require an additional quantity of water to serve growth, that such a request will be made in writing to WMU and that WMU will consider the request through the normal business routine as WMU would consider for approval a request for capacity from any developer. Increases in the quantity of water to be supplied to ECCWD, upon approval by WMU in the normal course of business, will be noted in the meeting minutes of the WMU Commission and will be appended to this Agreement.


8. Compensation. For the duration of this Agreement, the compensation which ECCWD shall pay to WMU for water furnished under this Agreement shall at the current cost of service volumetric rate as approved by the city of Winchester and the Public Service Commission (PSC) which is currently \$1.72 per hundred cubic feet, excluding surcharges as defined in Paragraph 8 and System Development Charges as defined in Paragraph 14 of this Agreement. The said rate shall be subject to increase or decrease at any time the City, in its sole discretion, obtains a cost of service rate study which indicates a different rate is justified. ~~Furthermore, the rate may be adjusted annually according to current Consumer Price Index (CPI) increases as approved by the WMU Commission as authorized by city of Winchester Code of Ordinances, Chapter 14, Section 81 (Rates) or to include increased Kentucky River Authority (KRA) fees.~~




Chairman, ECCWD



Witness



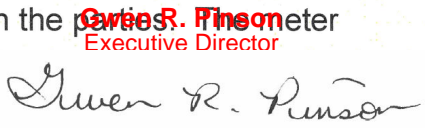
Chairman, WMU



Witness

ECCWD hereby agrees that should the peak day capacity allocated in Paragraph 6 of this Agreement be exceeded on any singular day, ECCWD will pay WMU a surcharge of 25% of the rate then in effect for the entire quantity above the peak day capacity allocation payable with the regular monthly bill.

9. Metering. Water delivered to ECCWD by WMU shall be measured by up to six (6) master meters placed at locations agreed upon between the parties. Each meter shall be owned and maintained by WMU. Each meter shall be least once every year if 4-inch in size or above and at least on any meter less than 4-inch. In the event it is ascertained that any meter is not operating

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within manufacture's specifications it shall be replaced by WMU so as to render it accurate, and an adjustment shall be made to the charges imposed upon ECCWD based upon such examination and test and upon the average monthly charges to ECCWD during the preceding three (3) month period.

If a greater pressure than that normally available at the point of delivery is required by the ECCWD, the cost of providing such greater pressure shall be borne by the ECCWD. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse WMU from this provision for such reasonable period of time as may be necessary to restore service.

For billing purposes related to surcharges, each master meter will be read each day by WMU via the electronic meter reading system (Gateway) or visual if required. Those readings can be supplied to ECCWD upon request. WMU will not be responsible for notifying ECCWD each time that the peak day capacity allocation has been exceeded. Billing will be based on a monthly charge including all surcharges for exceeding peak day capacity.

10. Terms and Conditions of Service. Subject to the provisions of this Agreement, ECCWD hereby agrees and binds itself to abide by all ordinances, rules and regulations of the City and WMU applicable to other customers; to pay all charges and delinquent penalties, if any; to be subject to termination for nonpayment of charges; and otherwise to receive the water service in the same manner and under the same terms and conditions as other customers of WMU.

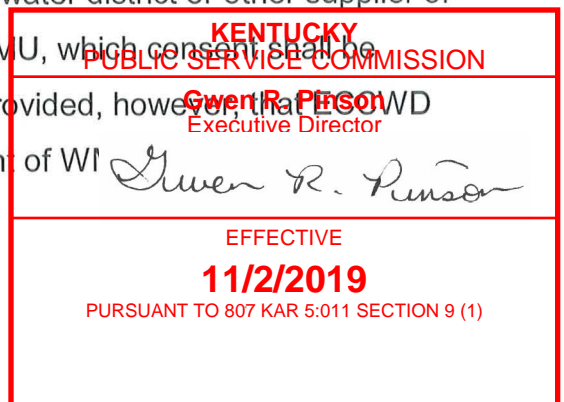
11. Limits of Obligations and Liabilities of WMU. WMU hereby agrees to supply and deliver the quantity of water to ECCWD as herein set forth, and WMU expressly limits and restricts the providing of such service with WMU shall only be required to use reasonable attention, care

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operation and maintenance of its system to prevent and avoid any unnecessary interruptions and fluctuations in the supply of water. WMU does not represent or guarantee that interruptions or fluctuations will not happen or occur, and due to conditions which may be brought about or emergencies which may be caused by breaks, leaks, defects, repairs, extensions, enlargements, or demands upon the system, or by fire, floods, strikes, acts of God, or other unforeseen causes, there may be times and occasions when the quantity or supply of water may be diminished or interrupted, and there shall be no obligation or requirement upon WMU to deliver or provide the water to be supplied at any specific pressure or flow. WMU shall provide water to ECCWD at its various meters according to applicable laws and regulations of the Kentucky Division of Water. The pressure and quantity of water resulting from normal operation of WMU's system shall be available to ECCWD at its various meters.

12. Water Shortages. It is agreed, that in cases of shortage of supply, all customers and users of both WMU and ECCWD shall share the shortage proportionately and WMU will not discriminate against ECCWD under such circumstances. In such cases of shortage, ECCWD agrees to implement the terms and conditions of the WMU Emergency Water Conservation Program in addition to any other curtailment or restriction that ECCWD may desire to implement. ECCWD hereby agrees to hold WMU harmless from any and all liability incurred as a result of WMU's furnishing, or its reasonable failure to furnish, any particular quantity or pressure of water under the Agreement.

13. Restriction Against Resale of Water by ECCWD. ECCWD shall not sell any water provided it under this Agreement outside the limits of its territory as described herein, nor shall it sell or deliver any water to any other water district or other supplier of water to individual customers without the consent of WMU, which consent shall be obtained through proper legislative action of the City; provided, however, that ECCWD may sell water to water haulers upon the written consent of WMU at the following locations as may be approved by WMU.



14. System Development Charges. ECCWD acknowledges that WMU, through City, has adopted a schedule of System Development Charges (SDCs) to recover certain costs associated with serving growth and to protect the ratepayers of both WMU and ECCWD from rate increases necessary to serve growth.

ECCWD acknowledges and agrees to the assessment and payment of SDCs at the rates as established in current WMU Policy and Procedures and ordained by the city of Winchester Code of Ordinances, Chapter 14, Section 14-90 upon execution of this Contract; provided that any SDC imposed shall be enacted in accord with 807 KAR 5:090 and shall be subject to approval by the Public Service Commission. Payment of said SDCs by ECCWD to WMU shall be within 365 calendar days of the time of connection to the ECCWD water system. Upon receipt of payment of SDCs by ECCWD an adjustment to the 550,000 gallons daily peak day capacity will be made increasing the allocation based upon the meter size as follows:

1. 5/8" meter – 150 gallons per day
2. 1" meter – 375 gallons per day
3. 1-1/2 meter – 750 gallons per day
4. 2" meter – 1,200 gallons per day
5. >2" meter – based on projected flow demands

ECCWD shall retain the right to collect SDCs from developers, property owners, customers or other parties within its retail water service territory in a manner of its choice.

15. Sale of ECCWD Assets. In the event that ECCWD shall during the term hereof desire to dissolve, or otherwise dispose of a substantial portion of its assets, ECCWD hereby grants to WMU an option to purchase all of the


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16. Parties Bound. This Agreement shall inure to the benefit 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; provided, however, in all events, each and every provision of this Agreement shall be binding upon a successor-in-interest who shall be exclusively responsible for the performance of the terms of this Agreement to be performed by either party hereunder.

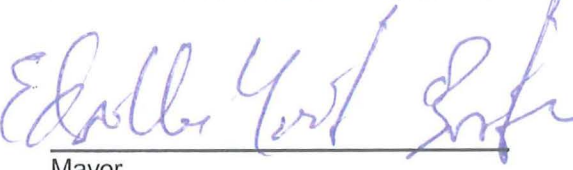
IN TESTIMONY WHEREOF, this Agreement has been executed by the Mayor of the City of Winchester, Kentucky, the Chairman of the Winchester Municipal Utilities Commission, and the Chairman of the East Clark County Water District, to take effect on the day and year first above written.

ATTEST:



City Clerk

CITY OF WINCHESTER, KENTUCKY



Mayor

ATTEST:



Secretary

**WINCHESTER MUNICIPAL
UTILITIES COMMISSION**




Chairman

ATTEST:




Secretary

**EAST CLARK COUNTY
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Chairman



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