

Amendment No. 2 to Agreement Dated May 14, 1992

This Amendment No. 2 to Agreement (“Amendment”) is entered into effective the 1st day of March, 2014, by and between the City Utility Commission of the City of Owensboro, Kentucky, also known as Owensboro Municipal Utilities (hereinafter “OMU”), of 2070 Tamarack Road, Owensboro, Kentucky 42301, and West Daviess County Water District of 3400 Bittel Road, Owensboro, Kentucky 42301, a water district organized under the provisions of KRS Chapter 74 by order of the Daviess County Fiscal Court (hereinafter “DISTRICT”):

WITNESSETH

WHEREAS, OMU and the DISTRICT entered into a Contract dated May 14, 1992 (hereinafter “Agreement”), under which the DISTRICT purchases treated water from OMU; and

WHEREAS, OMU and the DISTRICT extended the term of the Agreement by amendment dated December 1, 2008; and

WHEREAS, certain changes have occurred at the facilities of OMU used for the treatment and distribution of water; and

WHEREAS, the changed circumstances require that OMU issue additional revenue bonds, inter alia, to provide the funding to address the changes; and

WHEREAS, the additional debt service that will be incurred by OMU and the other changes that are necessary require that certain changes be made to the Parties’ Agreement by an amendment thereto;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, it is covenanted and agreed between the Parties hereto as follows:

1. Article 1, Section 1.3 is hereby amended to now read as follows:



“1.3 Debt Service Expense

With respect to the Original Treatment Facility and Transmission Facilities, the Debt Service Expense is the sum of:

- (a) The annual debt service (principal and interest payments) on all OMU water revenue bonds outstanding on December 31, 1991 allocated to these respective facilities on the basis of plant investment in these facilities as of the same date, and
- (b) that portion of any debt service on any additional revenue bonds used for:
 - (1) improvements to the Original Treatment Facility which do not increase its overall treatment capacity and
 - (2) additions to Transmission Facilities.

With respect to the New Treatment Facility, the Debt Service Expense is the sum of:

- (a) The annual principal and interest payment on the portion of OMU revenue bonds issued to finance construction of the New Treatment Facility, related reserve fund deposits and bond insurance costs, and
- (b) that portion of any debt service on any additional revenue bonds used for improvements and additions to the New Treatment Facility, related reserve fund deposits and bond issuance costs.

Debt Service Expense shall be reduced by the amount of interest income earned on investment of funds in the debt service reserve accounts of the respective revenue bond issues.

The assignment and allocation of Debt Service Expense to the Original Treatment Facility, New Treatment Facility, and the Transmission Facilities is shown in Exhibit “E.”

2. Article 2, Section 2.1 is hereby amended to now read as follows:

“2.1 Term

This Agreement shall continue in full force and effect until May 31, 2050, unless sooner terminated under the terms of this Agreement.”

3. Article 9, Section 9.2 is hereby amended to read as follows:



“9.2 Plant Expansion

In the event OMU proposes to expand the capacity of water supply, treatment or transmission facilities beyond the capacity provided by the existing Transmission Facilities and the Original and New Treatment Facilities, the DISTRICT shall share the cost of such additional facilities in proportion to the anticipated and actual utilization of such facilities by the DISTRICT in the manner described in Section 8.1 hereof. OMU may choose to expand the capacity of the water supply, treatment or transmission facilities at any time after the System Maximum Day Quantity reaches or exceeds 90% of the then-existing system capacity, or if OMU determines, after consultation with the DISTRICT, that prudent utility practice requires that the Original Treatment Facility, or any portion thereof, must be abandoned, or that production from the Original Treatment Facility must be reduced because of any risks associated with the settlement of, or other damage to, the facility, and that the lost capacity from the Original Treatment Facility should be replaced through the expansion of the New Treatment Facility. Notice of OMU’s intention to expand shall be given to the DISTRICT as provided in Section 13.1 hereof. The DISTRICT’s minimum share of the fixed costs of the additional treatment facility shall be the District Growth Quantity for the most recent Fiscal Year then available divided by the New Plant Usage, except that the DISTRICT’s minimum share of the Fixed Costs for any expansion of the New Treatment Facility, that is required by the need to replace capacity that was previously provided from the Original Treatment Facility, shall be the same as the minimum share that was established under Section 8.4 of the Agreement.

Any Fixed Costs associated with the Original Treatment Facility, including Debt Service Expense, that continue to be incurred by OMU after all or any portion of the Original Treatment



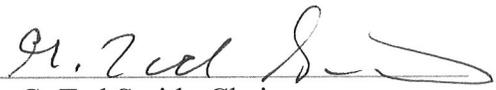
Facility becomes unusable shall continue to be allocated as provided under the terms of the Agreement.”

4. All other terms of the Agreement dated May 14, 1992 shall remain in full force and effect, except as expressly modified, replaced or eliminated herein.

5. This Amendment shall become effective upon proper execution by both of the Parties and approval of the Amendment by the City of Owensboro.

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

OMU:
OWENSBORO MUNICIPAL UTILITIES

BY: 
G. Ted Smith, Chairman

ATTEST:


Tony Cecil, Secretary

DISTRICT:
WEST DAVIESS COUNTY
WATER DISTRICT

BY: 
Janet Murphy, Chairman

ATTEST:


PAULA CRABTREE, Secretary

