

R 139 2019  
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R-139-2019  
Contract # 058-2019

## EXTENSION DEPOSIT AGREEMENT (3T)

This agreement, made and entered into this 21 day of March, 2019, by and between KENTUCKY AMERICAN WATER, hereinafter called the "WATER COMPANY", and LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, hereinafter called the "DEPOSITOR".

### WITNESSETH:

In consideration of the reciprocal covenants herein contained and of each act done or to be performed by the DEPOSITOR and the WATER COMPANY pursuant to this Agreement, the parties hereby agree as follows:

**FIRST:** The WATER COMPANY contracts and agrees to lay the water main(s) as shown on the drawing attached hereto and made a part hereof, hereinafter called the "Main Extension," described and located as follows:

<b>WBS No. D12-0201-P-1486</b>	The installation of approximately 275 feet of 4-inch ductile iron pipe to serve West Hickman Wet Weather Storage Facility @ 2401 Richmond Road.
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**SECOND:** The WATER COMPANY shall construct the Main Extension with reasonable diligence consistent with good business and sound construction practices and the availability of labor, equipment and materials, but the means of making such construction, the methods and materials used therein, and the scheduling thereof shall be matters within the exclusive control and determination of the WATER COMPANY.

**THIRD:** The DEPOSITOR hereby agrees to deposit with the WATER COMPANY, upon written notice that it is prepared and able to go forward with the work provided in paragraph FIRST hereof, an amount in cash, equal to the estimated cost of installing said Main Extension, less three (3) times the Company's estimate of immediate normal annual revenue for all customers whose service lines shall be connected directly to the extension between its original beginning and original terminus and who shall be served therefrom as soon as the said Main Extension is installed. Upon such written notice, a Supplemental Memorandum shall be signed by both parties showing the then estimated cost of this Main Extension, and also showing three (3) times the Company's most recent estimate of immediate normal annual revenue from the then original prospective customers, and the amount of deposit received from the DEPOSITOR, which Supplemental Memorandum shall be attached to and become a part of this Agreement.

**FOURTH:** Within a reasonable time after the Main Extension is placed in service, the WATER COMPANY shall furnish to the DEPOSITOR a statement giving the date of completion of the Main Extension and setting forth the total costs incurred in the construction of the Main Extension. In the event that the estimated cost exceeds the actual cost of the Main Extension as shown by such statement, the WATER COMPANY shall refund to the DEPOSITOR, at the time such statement is rendered, an amount equal to such excess of the estimated cost such actual cost. If the estimated cost shall have been less than the actual cost of the Main Extension, as shown by such statement, the DEPOSITOR shall deposit with the WATER COMPANY, within ten (10) days following receipt of such statement, the amount by which such actual costs exceed the estimated cost. The amount of such refund or additional deposit shall be credited or debited, as the case may be, by the WATER COMPANY, to the DEPOSITOR'S Refundable Extension Deposit Account.

**FIFTH:** The WATER COMPANY expressly reserves and shall have the right in the construction and installation of the Main Extension to use, lay and install pipe of a larger diameter than the size contemplated by this Agreement and as shown on the drawing attached hereto, provided, however, that any adjustment between the Deposit and the cost of such Main Extension as hereinabove provided in paragraph FOURTH of this Agreement, shall be based upon and adjusted to the pipe diameter specified in paragraph FIRST of this Agreement and shown on the drawing attached hereto, in the following manner: There shall be deducted from the total installment cost of the larger diameter main (1) the difference in material costs of the pipe and appurtenances installed and the pipe and appurtenances contracted for and (2) the difference in the unit prices for installing the two sizes of main.

**SIXTH:** The estimated cost of the extension is **twenty-two thousand eight hundred thirty-one and 00/100 dollars (\$22,831.00).**

**SEVENTH:** During the first ten (10) years after the date the initial deposit is received by the WATER COMPANY and after the stated number of original prospective customers are taking water from this Extension, the WATER COMPANY shall refund to the original Depositor or Depositors, for each additional bona fide new customer taking service through a service line directly connected to said Extension between its original beginning and original terminus under a regular yearly contract, an amount equal to three (3) times the WATER COMPANY's estimate of immediate normal annual revenue from such new customers; provided, however, that the total amount of the refunds to be made by the WATER COMPANY to the DEPOSITOR, under this or any other section of this Agreement, shall not exceed the original Deposit, without interest thereon, such Deposit being the limit or the WATER COMPANY'S obligation for such refunds hereunder, and that all or any part of the Deposit not refunded within said ten (10) year period shall become the property of the WATER COMPANY.

**EIGHTH:** The parties hereto agree that unless otherwise provided, no portion of the Deposit made hereunder will be subject to refund for further extensions of water mains from or beyond the Main Extension installed under this Agreement, or for customers taking service from such further extensions.

**NINTH:** The Main Extensions and all pipes, mains, fire hydrants, meters and other equipment, apparatus and facilities of which said Main Extension is composed shall be and remain the sole property of the WATER COMPANY, the WATER COMPANY having the responsibility for maintenance and repair of the same, and the DEPOSITOR shall have no right, title or interest in such Main Extension or any part thereof by reason of or on account of the DEPOSITOR having made the Deposit hereunder.

**TENTH:** It is expressly understood and agreed that if the WATER COMPANY shall be delayed or prevented from installing the Main Extension and other facilities, if any, hereinabove described because of its failure to secure pipe or other construction materials, or because of strikes, unusual delay in transportation, unavoidable casualties or for any other causes beyond its control, such failure or delay in performance shall be excused; provided, however, if such failure or delay in performance shall extend for a period of more than one (1) year from the date hereof, the DEPOSITOR shall have the right to cancel and terminate this Agreement on thirty (30) days written notice to the WATER COMPANY by registered mail and thereafter both parties shall be relieved of all duties and obligations arising hereunder.

**ELEVENTH:** The rights created by this Agreement shall inure to the benefit of, and the obligations created hereby shall be binding upon, the successors and assigns of the parties hereto.

**TWELFTH:** This Agreement shall be valid and binding on the WATER COMPANY only when executed by its Director of Engineering.

**THIRTEENTH:** That the DEPOSITOR or his agent is responsible for payment of the deposit for the estimated cost of construction to WATER COMPANY. To the extent there is any refund to be made at the end of the project after all costs are accrued, such refund will be paid to the DEPOSITOR by check made payable to the DEPOSITOR. To the extent that any amount is owed to WATER COMPANY at the end of the project after all costs are accrued, payment of such amounts is the responsibility of the DEPOSITOR. To the extent the DEPOSITOR owes any of the refunded amount to the contractors, DEPOSITOR agrees it is responsible for these amounts owed and that WATER COMPANY has no responsibility in that regard.

Executed by the parties hereto in duplicate this the day and year first above written.

**WITNESS:**

**KENTUCKY AMERICAN WATER**

\_\_\_\_\_  
By: \_\_\_\_\_  
*Director of Engineering*

**DEPOSITOR(S):**

Lexington-Fayette Urban County Government  
Accounts Payable  
200 E. Main Street  
Lexington, KY 40507

Phone #: 859-258-3320

Fax #: \_\_\_\_\_

Email: \_\_\_\_\_

**WITNESS:**

\_\_\_\_\_  
By: \_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Print or type name)*

\_\_\_\_\_  
*(Title/Position)*

**SUPPLEMENTAL MEMORANDUM**

THIS SUPPLEMENTAL MEMORANDUM is executed by the parties hereto under and pursuant to the provisions of paragraph THIRD of a certain agreement in writing between the parties entered into on the 17<sup>th</sup> day of April, 2019, for the installation by the KENTUCKY AMERICAN WATER of certain water mains therein described. It is therefore agreed and stipulated:

The estimated cost of the extension is **twenty-two thousand eight hundred thirty-one and 00/100 dollars (\$22,831.00).**

Three (3) times the estimated immediate normal revenue from \_\_\_\_\_ original prospective customers is \_\_\_\_\_ dollars.

The amount of Deposit received from DEPOSITOR is **twenty-two thousand eight hundred thirty-one and 00/100 dollars (\$22,831.00).**

This Supplemental Memorandum shall be attached to the original agreement in accordance with the provisions of paragraph THIRD hereof.

Dated \_\_\_\_\_  
*Date of Deposit*

**WITNESS:**

*Bethany Hungate*

**KENTUCKY AMERICAN WATER**

By: *[Signature]*  
*Director of Engineering*

**DEPOSITOR(S):**

Lexington-Fayette Urban County Government  
Accounts Payable  
200 E. Main Street  
Lexington, KY 40507

Phone #: 859-258-3320

Fax #: \_\_\_\_\_

Email: \_\_\_\_\_

**WITNESS:**

*[Signature]*  
*Deputy Council Clerk*

By: *Linda Gorton*  
*(Signature)*

*Linda Gorton*  
*(Print or type name)*

*Mayor*  
*(Title/Position)*



**CONSTRUCTION OPERATORS' COOPERATIVE AGREEMENT  
FOR STORMWATER POLLUTION PREVENTION**

This cooperative agreement, entered into this 21 day of March, 2019, by and between KENTUCKY AMERICAN WATER, a Kentucky Corporation, having its offices at 2300 Richmond Road, Lexington, Kentucky, hereinafter called "COMPANY" and **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, hereinafter called "DEVELOPER", owner of a certain tract of land located within the service area of COMPANY, which tract is now being developed by DEVELOPER as a new subdivision or unit thereof, described as West Hickman Wet Weather Storage Facility @ 2401 Richmond Road. hereinafter called "SUBDIVISION",

**WITNESSETH:**

This cooperative agreement describes stormwater responsibilities for COMPANY and DEVELOPER regarding the SUBDIVISION. The operators below agree to abide by the following conditions throughout the duration of the construction project, effective the date of signature.

This project is subject to the Kentucky Division of Water's Pollutant Discharge Elimination System (KPDES) General Permit for Construction Activities. The goal of this permit is to prevent the discharge of pollutants associated with construction activity from entering the storm drain system or surface waters. DEVELOPER has developed a Stormwater Pollution Prevention Plan (SWPP Plan) consisting of appropriate Best Management Practices (BMPs) for the SUBDIVISION. A copy of that SWPP Plan has been provided to and reviewed by COMPANY. The SWPP Plan is available for review on-site.

**COMPANY's Responsibilities:**

- COMPANY shall not begin construction activities until this Agreement has been fully executed, indicating COMPANY is covered under the DEVELOPER's existing KPDES permit.
- COMPANY shall be responsible for maintaining compliance with the DEVELOPER's SWPP Plan and, if necessary, installing erosion and sediment controls as outlined in the DEVELOPER's SWPP Plan within the areas disturbed by COMPANY's construction activities. If erosion and sediment controls must be installed, COMPANY shall notify DEVELOPER, who may 1) provide necessary materials within five (5) calendar days of that notice or 2) request that COMPANY proceed to acquire the materials and install them. In the absence of either communication, COMPANY shall proceed with the installation five (5) calendar days after notice to DEVELOPER.
- COMPANY shall maintain all BMPs within the limits of their construction for the duration of their construction activities.

- If requested by DEVELOPER, COMPANY shall provide self-inspection services for their construction area for the duration of their construction activities and shall provide a copy of inspection reports to DEVELOPER. COMPANY shall promptly communicate to DEVELOPER any BMP changes that would trigger the need for a SWPP Plan modification.
- COMPANY shall reimburse all reasonable costs incurred by DEVELOPER to address excess sediment discharges, debris or spills caused by COMPANY.
- COMPANY shall replace in kind or reimburse DEVELOPER for any existing BMP that COMPANY damages or removes.
- COMPANY shall not store erodible or hazardous materials on any roadway. Material resulting from trenching excavation may be temporarily side cast onto a roadway, provided the material is completely removed by the end of the work shift or sediment runoff prevention measures are installed.
- COMPANY shall maintain a clean site. Trash and debris shall be picked up and disposed of properly by the end of each day.
- COMPANY shall, if DEVELOPER deems necessary, participate in periodic meetings to discuss KPDES Permit compliance.
- COMPANY is responsible for advising employees and subcontractors working on this project of the requirements in the KPDES and the applicable SWPP Plan. COMPANY shall place particular emphasis on ensuring BMPs are not damaged and pollutants are not introduced into the storm drain system.
- COMPANY shall, upon construction completion, furnish to DEVELOPER a statement setting forth the total reasonable costs incurred in the installation of any erosion and sediment controls not already in place at commencement of construction activities.
- COMPANY shall, upon construction completion, schedule a time for DEVELOPER to conduct a final inspection of the site. Both COMPANY and DEVELOPER shall sign a Final Construction Report indicating COMPANY has completed all construction activities and left the site in an acceptable condition.



**DEVELOPER's Responsibilities:**

- Pursuant to this Agreement, DEVELOPER retains operational control and responsibility to address the impacts that COMPANY's construction activities may have on stormwater runoff.
- DEVELOPER shall, for all areas impacted by COMPANY's construction activities, ensure permit coverage by the KPDES General Permit for Construction and ensure permit coverage is maintained for the duration of COMPANY's construction activities.
- DEVELOPER shall provide COMPANY a copy of the applicable Notice of Intent (NOI) filed for permit coverage.
- DEVELOPER shall provide COMPANY a copy of the applicable SWPP Plan.



- DEVELOPER shall ensure the SWPP Plan incorporates BMPs adequate for COMPANY's construction activities.
- DEVELOPER shall be responsible for general oversight of the project, including review of the SWPP Plan and any amendments, inspection reports, and corrective actions.
- DEVELOPER shall maintain the SWPP Plan documentation and shall conduct and document self-inspections, as required under KPDES.
- DEVELOPER shall make available a copy of inspection reports to COMPANY.
- DEVELOPER shall maintain erosion and sediment control BMPs in all areas of the site under its control.
- DEVELOPER shall, upon notification by COMPANY of construction completion, at the agreed upon time, conduct a final inspection of the site. Both COMPANY and DEVELOPER shall sign a Final Construction Report indicating COMPANY has completed all construction activities and left the site in an acceptable condition.
- DEVELOPER shall, upon notification by COMPANY of construction completion, within ten (10) days of receipt of COMPANY statement, deposit said amount to reimburse COMPANY the total reasonable costs incurred by the COMPANY in the installation of any erosion and sediment controls not already in place at commencement of construction activities.

The undersigned agree to abide by the terms and conditions of this cooperative agreement.

<b>Lexington-Fayette Urban County Government</b>		<b>KENTUCKY AMERICAN WATER</b>	
Accounts Payable 200 E Mains St Lexington, KY 40507		2300 Richmond Road Lexington, KY 40502	
Signed:		Signed:	
Printed:	Linda Gorton	Printed:	Brent E. O'Neill, P.E.
Title:	Mayor	Title:	Director of Engineering
Date:	March 21, 2019	Date:	4-17-19



**PLEASE FORWARD A COPY OF YOUR W9  
(OR COMPLETE THIS FORM)  
RETURN COMPLETED W9 WITH YOUR DEPOSIT.**

Form **W-9**  
(Rev. October 2007)  
Department of the Treasury  
Internal Revenue Service

**Request for Taxpayer  
Identification Number and Certification**

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific instructions on page 2.

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
:        : :        :
or
Employer identification number
:        : :        :

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



REVISIONS :

