

WATER PURCHASE AGREEMENT
BETWEEN
PAINTSVILLE UTILITIES COMMISSION
AND
MARTIN COUNTY WATER DISTRICT

THIS WATER PURCHASE AGREEMENT is made and entered into this the 3RD day of DECEMBER, 2012, by and between **PAINTSVILLE UTILITIES COMMISSION**, a governmental agency of the City of Paintsville, Kentucky, hereinafter referred to as "Seller" and the **MARTIN COUNTY WATER DISTRICT**, a water district created and existing under the Laws of the Commonwealth of Kentucky, hereinafter referred to as "Purchaser";


WITNESSETH:

WHEREAS, the Seller is a governmental agency of the City of Paintsville and provides water and sewer service to the citizens of Johnson County and other areas;

WHEREAS, the Purchaser is a water district which was organized and established under the provisions of Chapter 273 of the Kentucky Revised Statutes;

WHEREAS, the Purchaser is in need of a water supply to serves families located on Spicy Ridge in Martin County;

WHEREAS, the Seller has water lines in the vicinity of Martin County and is willing to provide Purchaser with a water supply subject to the provisions below;

KENTUCKY PUBLIC SERVICE COMMISSION
JEFF R. DEROUEN EXECUTIVE DIRECTOR
TARIFF BRANCH 
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WHEREAS, by resolution duly adopted on DECEMBER 3, 2012 by the Seller's Commission, this Agreement was approved and the Seller's General Manager was authorized to execute this Agreement for and on behalf of the Seller; and

WHEREAS, by resolution adopted on FEBRUARY 25, 201~~2~~¹³ by the Purchaser's Board of Directors, this Agreement was approved and the Purchaser's Superintendent was authorized to execute this Agreement for and on behalf of the Purchaser;

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

1. **QUALITY OF WATER**

Seller agrees to furnish the Purchaser at the point of delivery hereinafter specified, during the term of this Agreement, potable, treated water meeting applicable purity standards of all appropriate state and federal regulatory agencies.

2. **RESTRICTION ON RESALE OF WATER**

The water made available under this Agreement is only for use by retail customers (i.e. consumers) of the Purchaser and may not be sold on a wholesale basis to any other utility.

3. **TERM**

The term of this Agreement shall be for a period of one (1) year and shall automatically renew each year thereafter for a successive one-year term.

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4. **TERMINATION**

Either party may terminate this Agreement at any time by giving written notice to the other party. Termination of this Agreement shall not prejudice the rights, nor relieve the obligations, accrued to the date of termination.

5. **POINT OF DELIVERY**

The water will be furnished to the Purchaser through one (1) 1 inch Sensus meter located on Spicy Ridge, KY Route 40 near the Johnson County/Martin County line. Purchaser shall be solely responsible for the financing, procurement and installation of all necessary water lines from its existing system to the Johnson County/Martin County line where Purchaser shall make connection with the Seller's water system in accordance with the Seller's system specifications. It shall also be the obligation and responsibility of Purchaser to purchase and install a water meter, at a location to be determined by Seller, to measure the water flow to Purchaser. Upon installation of said water line, Purchaser agrees to convey ownership of said line to Seller from the termination point of the Seller's existing line to and including the meter, and Seller shall adopt said lines into its existing system. All water lines and appurtenances beyond the water meter are the sole responsibility of the Purchaser to maintain. Seller also reserves the right to install, at its own cost, a water meter on the Johnson County side of the county line, to measure water flow in addition to the meter Purchaser installs.

6. **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

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water is available in excess of the quantities necessary to serve Seller's other customers, shall be remedied with all possible dispatch upon discovery of any unknown breaks or unintentional disruptions of service lines. If and when discovered, the Seller shall inform the Purchaser, by telephone, or by facsimile transmission, of the nature and extent of such temporary or partial failure to deliver water.

7. INITIAL BILLING RATE

The initial billing rate shall be based on the Current Outside Rate per thousand gallons. See Exhibit A for Rate Structure. It is expressly understood that Seller is in the process of designing and constructing a new water treatment plant and the rate given herein shall lapse upon completion of said water treatment plant and the completion of a new cost of service rate study.

8. RATE MODIFICATIONS

The wholesale rate to be charged by the Seller to the Purchaser may be increased if the Seller's cost of providing water service to the Purchaser increases, including, but not limited to the completion of the new water treatment plant described in Paragraph 7.

9. EFFECTIVE DATE OF RATE MODIFICATIONS

The effective date of any rate modification shall be at least thirty (30) days after the Seller proposes to adopt the new rate.

10. NO LEAK ADJUSTMENT

Because the Purchaser is a wholesale customer and not a retail customer, the Purchaser shall not be entitled to any leak adjustments.

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11. **BILLING AND PAYMENT PROCEDURE**

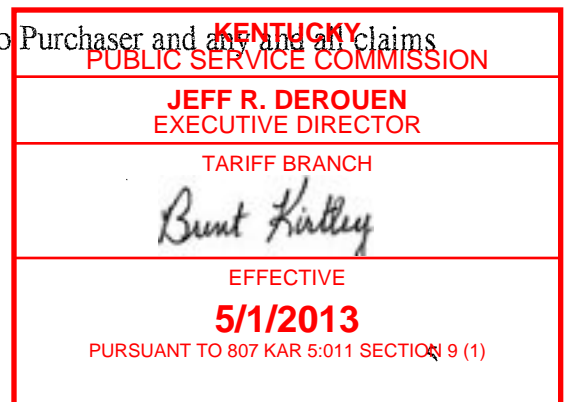
The Seller shall furnish the Purchaser, not later than the 4th day of each month, with an itemized statement of the amount of water furnished the Purchaser at the point of delivery during the preceding month and the cost thereof. The Purchaser shall pay those charges not later than the 15th day of each month. A ten percent (10%) late payment penalty shall be assessed if any portion of the bill remains unpaid after the due date. In addition, any amount remaining unpaid after the 25th day of the month shall be deemed delinquent and shall bear interest at the rate of twelve percent (12%) per annum until paid.

12. **DISPUTED BILL**

If a portion of any bill is in a bona fide dispute, the undisputed amount shall be paid when due. In the event either party is entitled to all or any portion of the disputed amount, such party shall also be entitled to interest on such amount at twelve percent (12%) per annum. In any dispute relating to the payment of money, the prevailing party shall be reimbursed by the non-prevailing party for the reasonable costs of resolving such disputes, including reasonable attorney and consulting fees. Use of the above procedure shall not be deemed an event of default under this Agreement.

13. **INDEMNIFICATION**

It is agreed and understood that Purchaser shall fully and completely and unconditionally indemnify and hold harmless Seller for any claims or causes of action asserted against Seller for providing emergency water to Purchaser and any and all claims or causes of action arising out of this Agreement.



14. **EFFECTIVE DATE AND CONTINGENCIES**

The parties acknowledge that this Agreement shall not become effective until it has been reviewed by the PSC. The Effective Date of this Agreement shall be the date the Agreement is approved by PSC. The term of this Agreement shall be measured from the Effective Date.

15. **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 as each party shall designate by similar notice:

(A) As to the Seller:

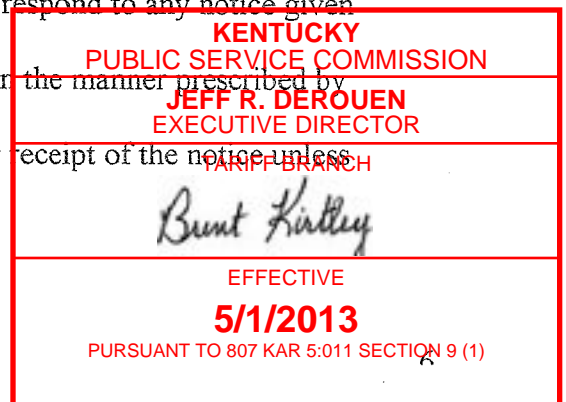
Paintsville Utilities Commission
137 Main Street
Post Office Box 630
Paintsville, Kentucky 41240
Attention: General Manager

(B) As to the Purchaser:

Martin County Water District
387 E. Main Street, Suite 140
Inez, Kentucky 41224
Attention: Superintendent

16. **RESPONSE TO NOTICES**

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



17. **PARAGRAPH HEADINGS**

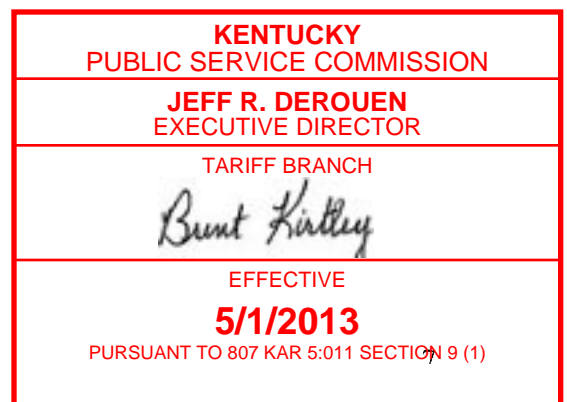
The descriptive headings of the various paragraphs of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof.

18. **FORCE MAJEURE**

Seller's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, drought, acts of God, governmental restrictions, power failures, or damage or destruction of any waterlines, or component equipment, or other machinery, shall not be deemed a breach of this Agreement.

19. **ENTIRE AGREEMENT; SEVERABILITY**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained therein. Any prior agreements concerning this subject matter are hereby revoked and rescinded. 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 provision substantially alters the benefits of the Agreement for either party.



20. **NON-WAIVER**

Any waiver at any time by either party hereto of its rights with respect to the other party or with respect to any matter arising under in connection with this Agreement shall not be considered a waiver of any such rights or matters at any subsequent time.

21. **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.

22. **PURCHASER'S SUCCESSOR**

In the event of any occurrence rendering the Purchaser incapable of performing under this Agreement, any successor of Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights and obligations of the Purchaser and the terms of this Agreement shall be binding upon the successor in interest.

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

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EFFECTIVE 5/1/2013 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

PAINTSVILLE UTILITIES COMMISSION

BY: [Signature]

ITS: General Manager

MARTIN COUNTY WATER DISTRICT

BY: [Signature]

ITS: Treasurer

COMMONWEALTH OF KENTUCKY
COUNTY OF JOHNSON

I, Belva J. Jones, Notary Public for the County aforesaid, do certify that the foregoing Emergency Water Purchase Agreement was this day produced to me in said County and duly acknowledged before me by Eric Ratliff, as General Manager of the Paintsville Utilities Commission, on behalf of the Paintsville Utilities Commission, on this the 4th day of Dec., 2012.

Belva J. Jones
NOTARY PUBLIC

MY COMMISSION EXPIRES: July 23, 2013

COMMONWEALTH OF KENTUCKY
COUNTY OF MARTIN

I, Raymond E. Summers Notary Public for the County aforesaid, do certify that the foregoing Water Purchase Agreement was this day produced to me in said County and duly acknowledged before me by Gregory Cornett, as Superintendent of the Martin County Water District, on behalf of the Martin County Water District, on this the 25th day of February, 2012.

Raymond E. Summers
NOTARY PUBLIC

MY COMMISSION EXPIRES: 2/1/2014 Brent Kirkley

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WATER PURCHASE CONTRACT

EXHIBIT A

Current Outside Rate
(per thousand gallons)

First	2,000 gallons	\$17.16
Next	3,000 gallons	\$ 7.22
Next	5,000 gallons	\$ 7.22
Next	15,000 gallons	\$ 6.89
Next	25,000 gallons	\$ 6.18
Next	50,000 gallons	\$ 6.18
Over	100,000 gallons	\$ 5.69

KENTUCKY
PUBLIC SERVICE COMMISSION

JEFF R. DEROUEN
EXECUTIVE DIRECTOR

TARIFF BRANCH

Brent Kirtley

EFFECTIVE

5/1/2013

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