

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

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PUBLIC SERVICE
COMMISSION

WATER PURCHASE AGREEMENT

THIS WATER PURCHASE AGREEMENT (herein after referred to as "Agreement"), made and entered into this 15th day of JULY, 1999, 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 20, 1995 (which replaced a contract dated March 25, 1982), ECCWD has heretofore purchased water for the purpose of supplying its customers in eastern Clark County, and

WHEREAS, the parties hereto have determined that, because ECCWD's water requirements are now and will exceed those contracted for under the ~~1995 Agreement~~ **PUBLIC SERVICE COMMISSION OF KENTUCKY EFFECTIVE** and

JAN 20 2000

PURSUANT TO 807 KAR 5011,
SECTION 9(1)
BY: Stephan D. Bell
SECRETARY OF THE COMMISSION

WHEREAS, for territorial considerations arising out of **WMU's** providing of service in certain areas now included in the areas currently served by ECCWD, the said Agreement should now be terminated and replaced by this new Agreement;

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 certain Water Purchase Agreement heretofore entered into by and between the parties hereto dated July 20, 1995, 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.

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 Clark County as marked on the map attached hereto as Exhibit "A" and identified as "ECCWD" and the engineer's description attached hereto as Exhibit "B". Should there be any discrepancy between the map and the engineer's description, the engineer's description (Exhibit "B") shall control.

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 "C" and identified as "WMU Sanitary Sewer Service Area 1, Area 2, Area 3, and Area 4" and the

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PURSUANT TO 307 KAR 5:011,
SECTION 9(1)
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engineer's description attached hereto as Exhibit "D", 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 to WMU to become part of WMU's service territory. Should there be any discrepancy between the map and the engineer's description, the map (Exhibit "C") shall control.

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 Little Stoner Creek is mandated by the approved Facilities Planning Boundary. Extension of 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 such area, 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

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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 **certain** areas outside the territory assigned by this agreement to ECCWD are now served by ECCWD and that WMU shall have the right, at its option, to commence supplying any customers or territory not included in the ECCWD territory identified by the attached engineer's description Exhibit "B" 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 twenty (20) 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

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it so desires, upon written notice to WMU at least two (2) years prior the expiration of the first twenty-year term.

6. Quantity of Water to be Supplied. WMU hereby agrees to sell and deliver to ECCWD up to 400,000 gallons per day as a peak day capacity allocation. Said quantity of water is exclusive of water repurchased by WMU from ECCWD and that quantity sold through bulk water loading stations previously the property of WMU.

Water necessary for flushing of ECCWD's water system 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 water system in order that proper billing procedures can be initiated.

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 and the present available capacity of the WMU water system. Both parties agree that if in the future 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 first five years, the compensation which ECCWD shall pay to WMU for water furnished under this Agreement shall be ~~ninety-six cents~~

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(\$0.96) per hundred cubic feet, excluding surcharges as defined in Paragraph 8 and System Development Charges as defined in Paragraph 15 of this Agreement. The said rate shall be subject to increase or decrease at any time the City, in its sole discretion, changes the water rates for other customers of WMU. The amount of the increase or decrease of the rate hereinabove fixed shall be directly proportional to the increase or decrease produced by such rate change in WMU's gross revenues received for water from its other customers. Any revised rate shall be rounded to the nearest cent. "Other customers" as used herein shall mean regular customers subject to the general water rate schedule fixed by the City from time to time and shall not include water districts or other customers subject to special contractual rates. After five years, the rate will be adjusted to the then current cost of service volumetric rate and adjusted biannually according to cost of service methodology.

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 five (5) master meters to be placed at locations agreed upon between the parties. The meters shall be purchased and installed at the cost of ECCWD, but the meter shall be owned and maintained by WMU. Each meter shall be examined and tested at least once every five (5) years. In the event it is ascertained that any meter is not accurate, it shall be replaced by WMU so as to render it accurate, and an adjustment shall be

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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.

For billing purposes related to surcharges, each master meter will be read each day by WMU. WMU will **notify** 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 the understanding that WMU shall only be required to use reasonable attention, care and diligence in the 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**

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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 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

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PURSUANT TO 607 KAR 5.011,
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BY: Stephan Bess
SECRETARY OF THE COMMISSION

ECCWD may sell water to water haulers upon the written consent of WMU at such location or locations as may be approved by WMU.

14. Repurchase of Water by WMU. It is recognized by the parties hereto that WMU has been repurchasing water from ECCWD for the purpose of improving pressures in portions of WMU's water system. Water being so repurchased is now metered to WMU at two locations: Ky. Highway **89** near the property of William Shearer, and Ky. Highway **15** at the Napier property.

It is specifically understood and agreed that WMU shall have the right to increase or decrease repurchases and to increase, decrease, or change the locations of repurchase metering points; provided, however, that the actual costs of installing, removing, or changing the location of any repurchase meter shall be borne by WMU, with all such meters to be supplied at the cost of ECCWD, which shall remain the owner thereof. WMU shall be responsible for the maintenance and accuracy of such meters. Each meter shall be examined and tested at least once every five (5) years. In the event it is ascertained that any meter is not accurate, an adjustment shall be made to the charges imposed upon WMU based upon such examination and test and upon the average monthly charges to WMU during the preceding three (3) month period.

It is further agreed that should WMU's repurchase requirements create an overload of ECCWD's pumping and pipeline capacity, and should WMU, in its sole discretion, desire to continue repurchase of water from ECCWD, WMU shall pay its share of the capital expenditures required to increase pumping and pipeline capacities necessary to serve WMU's repurchase requirements.

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The price to be paid for water repurchased by WMU pursuant to this paragraph shall initially be one and ~~24/100~~ dollars (\$1.24) per hundred cubic feet, and shall be increased or decreased at the same time and in the same proportion that the price paid by ECCWD to WMU for water under Paragraph 6 of this Agreement is increased or decreased.

15. 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.

WMU acknowledges and agrees that the Phase VI project does not qualify for assessment of SDCs under the terms and conditions as established by WMU; therefore there will be no assessment of SDCs on ECCWD for growth and increased demand caused by construction of ECCWD's Phase VI and the associated demand caused by the connection of up to 260 additional customers to ECCWD in the defined territory of Phase VI (hereinafter "Phase VI Territory"). There will be a three (3) year period for connection of up to 260 additional residential customer equivalents, in the Phase VI Territory, without payment of SDCs. ECCWD acknowledges and agrees that the capacity limitation defined in Paragraph 6 provides for the eventual connection, within a three (3) year period, of up to 260 additional residential customer equivalents in the Phase VI Territory.

ECCWD acknowledges and agrees to the assessment and payment of SDCs at an initial rate of \$1,000 per 400 gallons per day for additional capacity, as may be

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MEMBER OF THE COMMISSION

requested in the future by ECCWD, for additional capacity over and above the 400,000 gallons per day allocated in this Agreement. The said rate of \$1,000 per **400** gallons per day shall be subject to modification at any time the City, in its sole discretion, changes by ordinance the SDC rate for **5/8"** meter to be assessed and paid by other customers of WMU. Payment of said SDCs by ECCWD to WMU shall be within 365 calendar days of the time of WMU approval of additional contractual capacity allocation.

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.

Should the Kentucky Public Service Commission (PSC) issue an order resulting from Administrative Case No. 375, or any other current or future case, which conflicts with the provisions contained herein with regard to the permissibility, assessment, or payment of SDCs, paragraph 15 of this Agreement will be subject to negotiated amendment by the parties to bring the provisions of the Agreement into compliance with said PSC order.

16. 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 assets of the ECCWD.

17. Parties Bound. This Agreement shall inure to the benefit of the 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,~~

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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.

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JAN 20 2000

PURSUANT TO 507 KAR 5:011,
SECTION 9 (1)
BY: Stephan D. Bell
SECRETARY OF THE COMMISSION

P

ATTEST:

Philip T. Rowe
City Clerk

ATTEST:

Marianne Watts
Secretary

ATTEST

Fred J. Jarvis
Secretary

[Signature]
CITY OF WINCHESTER, KENTUCKY
Mayor

WINCHESTER MUNICIPAL
UTILITIES COMMISSION

Frank A. Ronelle
Chairman

EAST CLARK COUNTY
WATER DISTRICT

Harold Rogan
Chairman

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OF KENTUCKY
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JAN 20 2000

PURSUANT TO 807 KAR 5011,
SECTION 9(1)

BY: Stephan B. [Signature]
SECRETARY OF THE COMMISSION

CITY OF WINCHESTER, KENTUCKY
BY: Alan J. Kincaid
MAYOR

WINCHESTER MUNICIPAL UTILITIES
COMMISSION
BY: [Signature]
CHAIRMAN

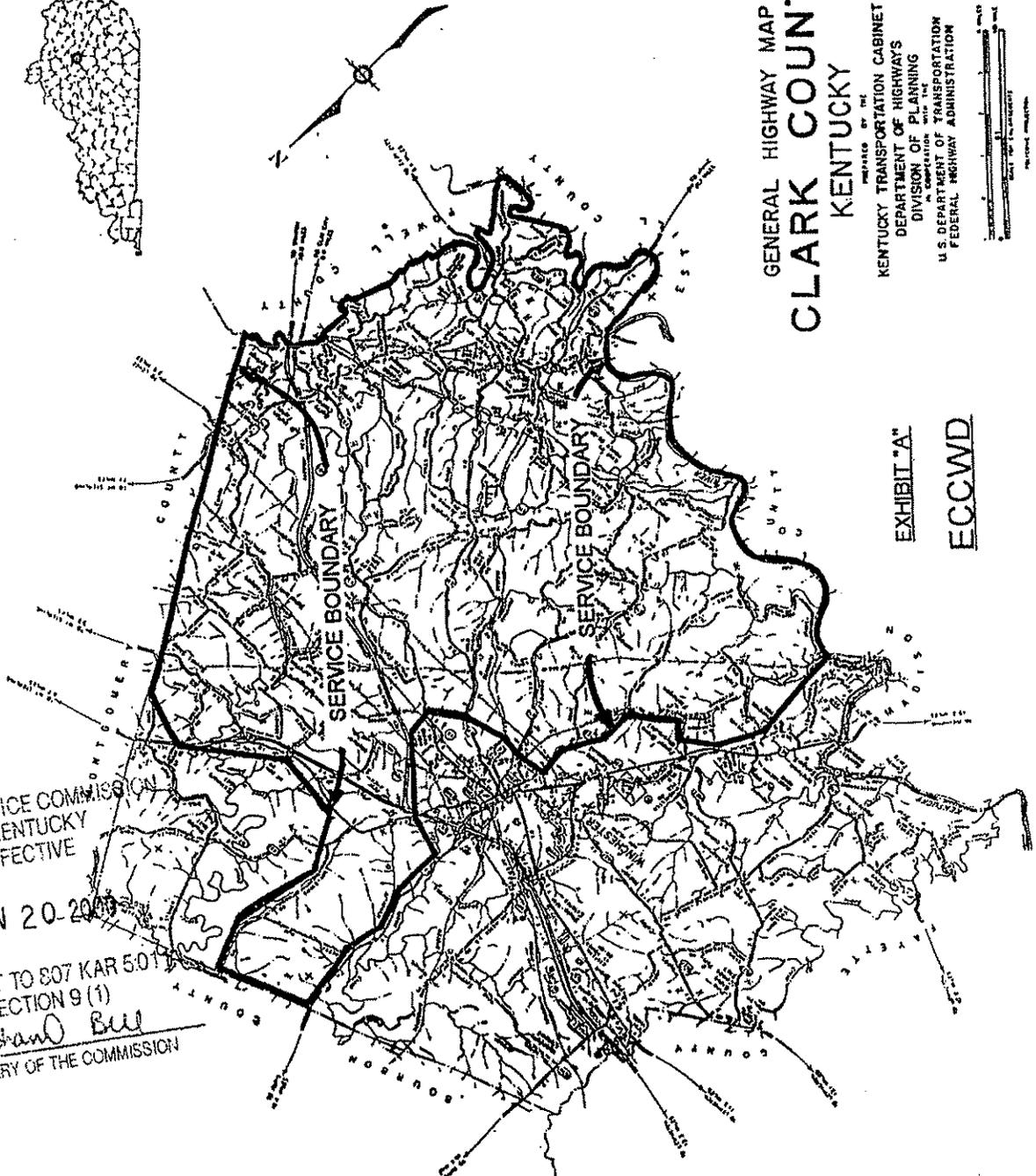
EAST CLARK COUNTY WATER
DISTRICT
BY: [Signature]
CHAIRMAN

ATTEST:
[Signature]
CITY CLERK

ATTEST:
[Signature]
SECRETARY

ATTEST:
[Signature]
SECRETARY

DATE: _____



GENERAL HIGHWAY MAP
CLARK COUNTY
KENTUCKY

PREPARED BY THE
KENTUCKY TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
DIVISION OF PLANNING
IN COOPERATION WITH THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION



EXHIBIT "A"

ECCWD

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JAN 20 2009

PURSUANT TO 807 KAR 5.01
SECTION 9(1)

BY: Stephen Bui
SECRETARY OF THE COMMISSION

Beginning at a point of intersection with the Kentucky River and Two Mile Creek;
thence a straight line to proposed purchase point **on Elkin** Station Road;
thence following a straight line to the proposed purchase point **on Flanagan** Station Road;
thence to the intersection of the centerline of Twomile Road and **12"** gas lines(owned by ?????) ,
thence to purchase point on Hughes Avenue;
thence to southeastern most point of the **Winchester** city limits;
thence to resale point **on** Kentucky highway 89 (**Irvine** Road) ;
thence to resale point on Kentucky highway **15**;
thence due north to centerline of **Mountain Parkway**;
thence to purchase point on Kentucky highway 1960 (**Ecton** Road);
thence to intersection of U.S. highway 60 and Interstate **64**;
thence following Interstate **64** centerline westwardly to its intersection with U.S. highway 60;
thence northwardly **on** Kentucky highway **627** to the countyline.

This shall be the boundary line for ~~East~~ Clark County Water District. **All** properties east of boundary linewithin Clark county shall be within **ECCWD** service area. Area to be excluded is the W Miller property

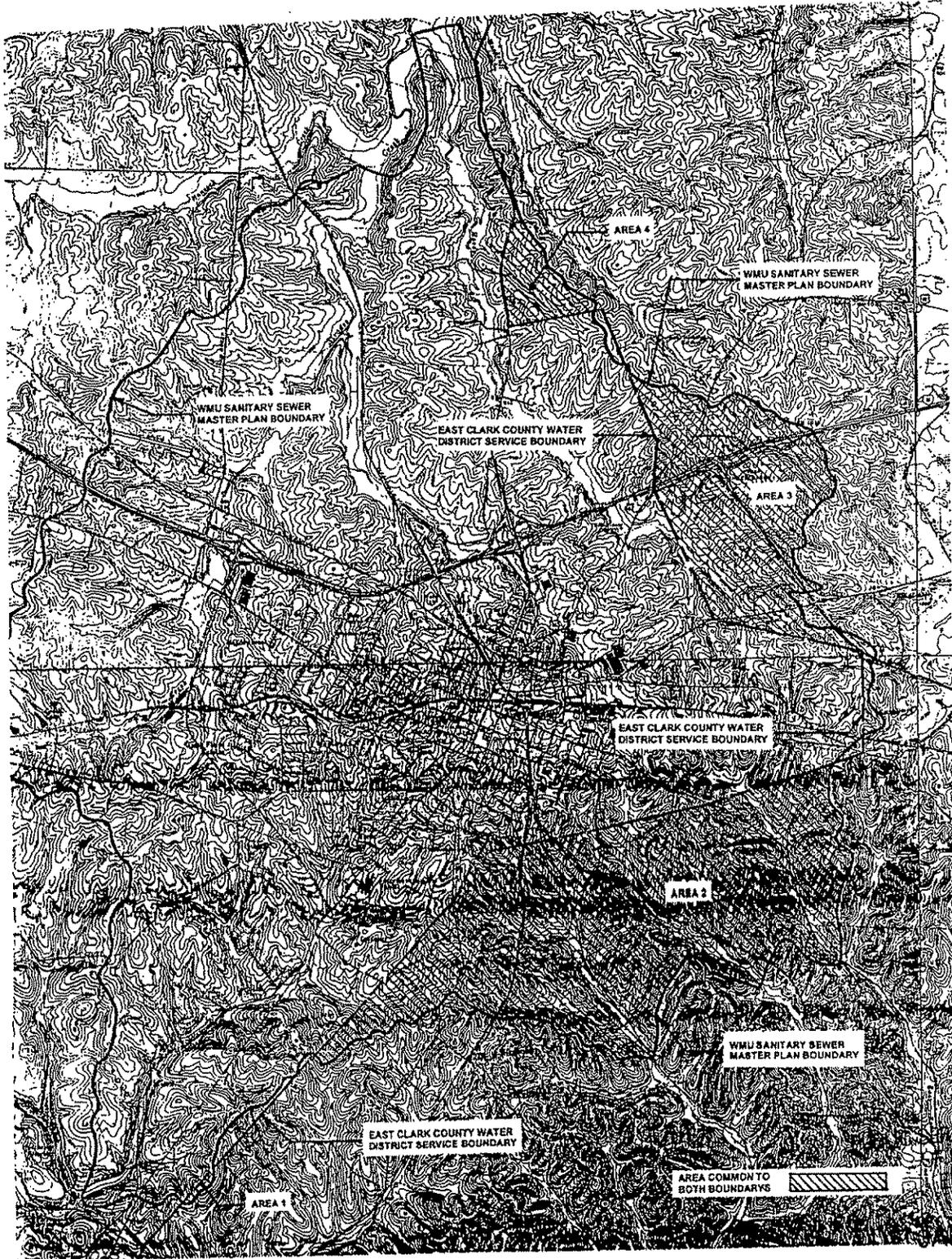
(also Judy Water District area)

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OF KENTUCKY
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JAN 20 2000

EXHIBIT "B"

PURSUANT TO 807 KAR 5.011.
SECTION 9(1)
BY: Stephan Bue
SECRETARY OF THE COMMISSION



PLANNING COMMISSION
KENTUCKY
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20 2000

PURSUANT TO 807 KAR 5011,
SECTION 9(1)
BY: Stephan Bue
SECRETARY OF THE COMMISSION

Sanitary Sewer Master Plan Boundary

Area 1

Beginning at a point in the East Clark County Water District Service Boundary ± 2100 feet northeast of Flanagan Station Road;
Thence curving around and intersecting the East Clark County Water District Service Boundary ± 3800 feet northeast of Flanagan Station Road.

Area 2

Beginning at a point in the East Clark County Water District Service Boundary ± 9300 feet northeast of Flanagan Station Road;
Thence southeast to a point ± 400 feet;
Thence running in a northeasterly direction ± 5500 feet to a point on Twomile Road ± 1800 feet northeast of the intersection of Twomile Road and Cole Road;
Thence running in a southeasterly direction ± 7600 feet to a point on Muddy Creek Road ± 1700 feet southeast of the intersection of Muddy Creek Road and Browning Lane;
Thence running in a northeasterly direction ± 400 feet to a point ± 3200 feet northeast of the intersection of Muddy Creek Road and Browning Lane;
Thence running in a southeasterly direction ± 2800 feet to a point ± 4300 feet west of the intersection of Highway 89 and Old Ruckerville Road;
Thence northeast ± 2000 feet to a point ± 3800 feet northwest of the intersection of Highway 89 and Old Ruckerville Road
Thence running in a southeasterly direction ± 2300 feet to a point on Highway 89 ± 1600 feet northwest of the intersection of Highway 89 and Old Ruckerville Road;
Thence running in a northerly direction ± 7100 feet to a point in the East Clark County Water District Service Boundary ± 32100 feet west of the intersection of Highway 15 and Moms Road.

Area 3

Beginning at a point in the East Clark County Water District Service Boundary 11400 feet northwest of the intersection of Highway 15 and Moms Road;
Thence running in a northerly direction ± 2800 feet to a point on the Mountain Parkway ± 2900 feet southeast of the intersection of the Mountain Parkway and Ecton Road;
Thence running in a northwesterly direction ± 4800 feet to a point ± 1000 feet northwest of the intersection of the Mountain Parkway and Ecton Road;
Thence east to a point ± 500 feet northeast of the intersection of the Mountain Parkway and Ecton Road;
Thence running in a northerly direction ± 5600 feet to a point on Interstate 64 ± 16000 feet northeast of the intersection of Interstate 64 and US 60;
Thence running in a northeasterly direction ± 7100 feet to a point in the East Clark County Water District Service Boundary ± 4500 feet northwest of the intersection of Interstate 64 and US 60.

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PURSUANT TO 807 KAR 50
SECTION 9 (1)

BY: Stephan B. Bell
SECRETARY OF THE COMMISSION

F- *Area 4*

**Beginning at a point in the East Clark County Water District Service Boundary ±3100 feet north east of US 627;
Thence running in a northwesterly direction ±6800 feet to a point on US 627 ±13800 feet north of the intersection of Interstate 64 and US 627.**

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PURSUANT TO 207 KAR 5.011,
SECTION 9 (1)

By: Stephan D. Bell
SECRETARY OF THE COMMISSION