

WATER PURCHASE CONTRACT

This Water Purchase Contract for the sale and purchase of potable water is entered into as of the 4th day of December, 2012, between the CITY OF CAMPTON, KENTUCKY, hereinafter referred to as the "Seller" and the BREATHITT COUNTY WATER DISTRICT, a governmental entity formed pursuant to Kentucky Statute, hereinafter referred to as the "Buyer".

WITNESSETH:

Whereas, the Buyer is organized and established under the provisions of the Kentucky Revised Statutes, Chapter 74, et. Seq., for the purpose of constructing and operating a water supply and distribution system serving water users within the area described in plans now on file in the office of the Buyer and to accomplish this purpose, the Buyer will require a supply of treated water, and

Whereas, the Seller owns and operates a water supply and distribution system with a capacity currently capable of serving the present customers of the Seller's system and the estimated number of water users to be served by the said Buyer during project "Phase 1" as shown in the plans of the system now on file in the office of the Buyer, and

Whereas, by vote of the Campton City Counsel, enacted on the 21st day of May, 2012, by the Seller, the sale of water to the Buyer in accordance with the provisions of the said Ordinance was approved, and the execution of this Contract carrying out the said Ordinance by the Campton City Council, and attested by the City Clerk, was duly authorized, and,

Whereas, by vote of the majority of the Board of the Buyer, enacted on the 20th day of June, 2012, the purchase of water from the Seller in accordance with the terms set forth in the said was approved, and the execution of this Contract by the Breathitt County Water District, and attested by the Chairman was duly authorized;

Now therefore, in consideration of the foregoing and the mutual agreements hereinafter set forth,



THE SELLER AGREES:

1. Maximum Volumes Allowed to Buyer

The Seller agrees to furnish the Buyer at the point of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable, treated water meeting the purity standards of the United States Environmental Protection Agency, and the Kentucky Division of Water in such quantity as may be required by the Buyer, not to exceed a volume of 500,000 gallons per month and a rate not to exceed 118 gallons per minute. The treated water shall be conveyed and measured through the Point(s) of Delivery identified in Section 5, below.

2. Minimum Pressure Provided by Seller

The Seller shall provide the contracted volume of water to the Buyer at a reasonably constant pressure at approximately 60-70 pounds per square inch from the Point(s) of Delivery identified in Section 5. If a greater pressure than that normally available is at the point of delivery is required by the Buyer, the cost of providing such greater pressure shall be borne by the Buyer. Emergency failures of pressure or supply due to main line breaks, power failure, flood, fire, and the use of water to fight fire, earthquake, or other catastrophe shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service.

3. Seller to Provide Three-Days Notice of Work to Main

In the event the Seller wishes to conduct pre-planned or scheduled maintenance or other work to the transmission main or distribution lines that convey treated water to the Buyer, the Seller shall provide three (3) days notice of such work to the Buyer. The three (3) days shall be weekdays, i.e., Monday through Friday, in addition to any Saturdays or Sundays that fall within the notice period. The Buyer may be asked to curtail or limit the purchase of treated water from the Seller during the scheduled maintenance.

4. Procedures to Notify of Unscheduled/Emergency Work

In the event the Seller must make emergency or unscheduled repairs to the transmission main or distribution lines that convey treated water to the Buyer, the Seller will endeavor to



notify the Buyer immediately upon becoming aware of the necessary repairs. The Buyer may be asked to curtail or discontinue the purchase of treated water while repairs are undertaken. The Seller will promptly notify the Buyer when repairs are complete and purchase of water through the master meter(s) may resume. The contact shall be made to the following:

Person: ESTILL McINTOSH, Superintendent

Office: (606) 666-3800, ext. 250

Mobile: (606) 568-5188

Email: breathittwater@yahoo.com

5. Point(s) of Connection (Delivery)

The Seller shall furnish the Buyer potable water at the point(s) of delivery described below:

- a. Point of Delivery: Bethany near the Breathitt and Wolfe county line.

6. Responsibility for Water Quality

The Seller's responsibility for water quality ends at the discharge side of the master meter. The Seller will adhere to the Kentucky Division of Water's regulations as they relate to the sale of water to wholesale customers.

THE BUYER AGREES:

7. Rates

The Buyer agrees to pay the Seller for water delivered in accordance with the following schedule or rates:

Water is to be purchased at the price of \$3.32 per thousand gallons of water.

IT IS FURTHER MUTUALLY AGREED BETWEEN THE SELLER AND THE BUYER:

8. Fire Flow Pressure



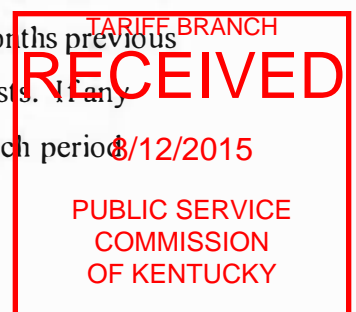
The Seller and the Buyer acknowledge and agree that the Seller is not providing water for fire flow service and therefore guarantees no fire flow volume or residual pressures during fire flows to the Buyer. Any fire hydrants or other fire facilities installed by the Buyer shall be serviced by the Buyer and at the Buyer's risk as no fire flows or residual pressure conditions are assured herein.

9. Responsibility of Purchase and Installation of Master Meters

The Buyer will construct master meter station(s) in accordance with the Engineer's requirements and the Buyer will pay the full costs of such master meter stations. Prior to construction or authorization of construction of any master meter station, the Buyer must pay the estimated cost of the station. Any difference is the estimated cost and the actual cost of the station shall also be paid by the Buyer. At the Seller's option, the Buyer may construct and pay all costs associated with installing a master meter station provided the station is constructed in accordance with the Engineer's requirements or specifications. No delivery of water will commence without pre-construction approval of the master meter station by Buyer's Engineer. Further, prior to the sale of water through the point of delivery, the Buyer's Engineer will inspect the finished station to ensure requirements and specifications were met. Should the construction not, in the Seller's opinion, adhere to the requirements and specifications, the Seller may refuse to deliver or sell water through that point of delivery until such time the discrepancy is remedied.

10. Calibration of Master Meters

The Buyer will calibrate the master meter on a frequency of not less than one (1) time every five (5) years and bear the costs of said calibration. The Buyer will furnish certified, written, results of the calibration to the Seller at no cost. The Buyer may at any time request calibration of the master meter. All costs associated with the Buyer-requested calibration will be paid by the Buyer. A meter registering not more than two (2) percent above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test in accordance with the percentage in inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period



shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the Seller and Buyer shall agree upon a different amount. The metering equipment shall be read by the Buyer on or around the 1st of each month or the last day of the month if the 1st falls on a Saturday, or the 2nd of the month if the first falls on a Sunday. An appropriate official of the Buyer at all reasonable times shall have access to the meter for purposes of verifying its readings.

11. Altering or Amending the Contract

The alteration or Amendment of the rates for purchase of water under this contract is addressed in Section 18 below. Other provisions of this Contract may be altered or modified by mutual agreement with any such modifications or alterations being manifested in writing, signed and witnessed by the parties to this Contract.

12. Term of Contract

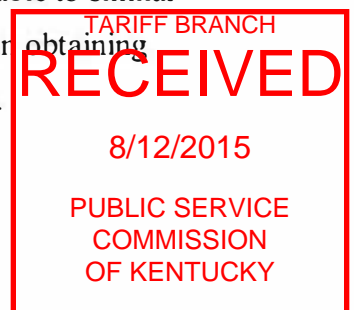
This Contract shall extend for a term of Fifty (50) years from the date of initial delivery of any water as shown by the first bill submitted by the Seller to the Buyer and, thereafter may be renewed or extended for such term, or terms, as may be agreed upon by the Seller and Buyer. Further, if the Buyer's waterline project (Bethany Road) fails to be completed or is delayed more than five (5) years from the date of the Contract, the Contract shall expire and no longer be valid or binding unless extended in writing by the Seller.

13. Assignment of Contract

In the event of any occurrence rendering the Buyer incapable of performing under this Contract, any successor of the Buyer, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Buyer hereunder.

14. Contract Subject to Regulatory Approval

This Contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this Commonwealth and the Seller and Buyer will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.



15. Water for Testing and Initial Delivery

Fifteen (15) days prior to the estimated date of completion of construction of the Buyer's water supply distribution system, the Buyer will notify the Seller in writing the date for the initial delivery of water. When requested by the Buyer, the Seller will make available to the Buyer's contractor at the point of delivery, or other point reasonably close thereto, water sufficient for testing and flushing equipment has been installed at that time, at a flat charge of \$3.32 per thousand gallons of water which will be paid by the contractor or, on the contractor's failure to pay, by the Buyer.

16. Payment Dates And Due Dates

Water bills are typically mailed by the Campton Water Works on the 26th or 27th of each month. This schedule was developed to result in delivery of the bills to the customers on or before the 1st of each month. Payment of water bills by wholesale and retail customers is due by the 10th of each month.

17. Adjustments to Water Bills

Leaks which may develop on the Buyer's side of the master meter are the sole responsibility of the Buyer. Section 3 of this Contract allows for adjustments due to inaccurate or malfunctioning master meters. No adjustment will be made for leaks on the Buyer's side of the master meter. The Seller, being unquestionably aware of a significant leak on the Buyer's side of the master meter, can, after written notice is given, interrupt water service to the Buyer until such leak is repaired. A significant leak, for purposes of this Contract, is defined as water lost at 1.2 times the maximum allowable rate as defined in Section 1 of this Contract, or 142 gallons per minute.

18. Rate Adjustments

The rate of \$3.32 per 1,000 gallons of water will not be increased or decreased for a period of Three (3) years from the date of this Contract, or the date of initial delivery of water, whichever is later. The rate charges is subject to review and modification at the end of the initial Three (3) year period and at the end of each successive Three (3) year period during the term or any extended term of this Contract. Any increase or decrease in rates



shall be based on a demonstrable increase or decrease in the costs of performance hereunder, but such costs shall not include increased capitalization of the Seller's system.

19. Arbitration

If differences arise between the Buyer and the Seller, the parties hereby agree to resolve their differences using a third-party neutral to assist in the negotiations. If, after thirty (30) days, the parties are unable to resolve their disputes, the parties agree to use a mediator experienced in conflict resolution and certified by the Mediation Center of Kentucky, Inc. Finally, disputes lingering after attempts at third-party neutrals and mediators, the parties will submit their case to an arbitrator. If the dispute is less than \$100,000, one arbitrator will be used. For amounts in dispute over \$100,000, three (3) arbitrators will be used. Arbitrators chosen must be listed with the American Arbitration Association. The method of choosing arbitrators shall be by mutual acceptance if only one arbitrator is used, or, if three are used, each party chooses one arbitrator and the chosen arbitrators choose a third.

20. Seller Unable to Sell

The Seller will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the Buyer with quantities of water required by the Buyer. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to the Buyer's consumers shall be reduced or diminished in the same ratio or proportion as the supply to the Seller's consumers is reduced or diminished.

21. Failure of Buyer to Pay

As stated in Section 9 of this Contract, payment for water purchased is due at Campton Water Works on or before the 10th of each month. If not paid by the 10th of the month following the date rendered, the bill shall be delinquent, and a delay penalty to ten (10) percent of the face amount of the bill shall become due and payable; provided however, that if the 10th day should fall upon a Sunday or legal holiday, then the face amount of the bill may be paid on the next sequential day that is not a holiday. If the entire bill for water



and penalty shall remain unpaid for a period of 60 days after, with the date the penalty is added, then pursuant to authority of KRS 96.934, the water service connection to the Buyer is subject to be disconnected. Whether or not the Buyer's service is disconnected because of such delinquency, the Seller may exercise all rights under law to enforce and collect the amount of any bills remaining delinquent for sixty (60) days.

22. Cost of Rate Filing

The Buyer understands that costs will be incurred by the Seller as a result of filing the wholesale rates with the Kentucky Public Service Commission. The Buyer agrees to reimburse the Seller for only the costs incurred in the actual filing of the rates. Any further costs associated with matters other than the actual filing of the rates (hearings, etc.) shall be borne by each party in proportion to involvement therein.

23. Other Costs Incurred by the Seller

The Seller will continue to incur costs directly associated with the administrative and legal tasks of supplying water to the Buyer. Such costs include, but are not limited to, preparation of this Contract and amendments hereto, evaluations regarding the effects of the Buyer's proposals on the Seller's distribution system, and costs of rate filings mentioned in Section 22 of this Contract. Such costs shall be evenly divided between the Buyer and the Seller and payment by the Buyer shall be made timely and in accordance to the timeframe detailed in Section 21 of this Contract.

24. Change of Circumstances

Since the term for this Contract is fifty (50) years, a legitimate cause for renegotiation might come to exist if the parties are subject to drastically changed conditions. The Buyer and Seller agree, however, that the presence or identification of an additional supplier of treated water for the Buyer is not cause for a renegotiation under a Change of Circumstance clause.

In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in three (3) counterparts, each of which shall constitute an original.



Buyer:

CITY OF CAMPTON, KENTUCKY

By: 

GAY CAMPBELL, Mayor

Attest:

By: 

CITY CLERK

Seller:

BREATHITT COUNTY WATER DISTRICT

By: 

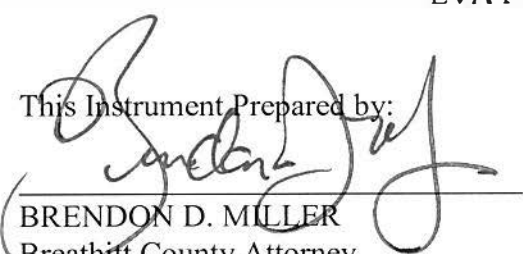
BOBBY THORPE, Chairman

Attest:

By: 

EVA FUGATE, Board Secretary

This Instrument Prepared by:


BRENDON D. MILLER
Breathitt County Attorney
1149 Main Street
Jackson, Kentucky 41339
(606) 666-3809

