

# WATER PURCHASE CONTRACT

This Water Purchase Contract for the sale and purchase of potable water is entered into as of the 23<sup>rd</sup> day of October, 2003, between the CITY OF JACKSON, KENTUCKY (JACKSON WATER WORKS), of Broadway, Jackson, Kentucky 41339, 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 Jackson City Counsel, enacted on the 23<sup>rd</sup> day of October, 2003, 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 Jackson 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 15<sup>th</sup> day of October, 2003, 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,**

**A. 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 2,500,000 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 A-5.

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 herein described as the "Point of Connection No. 1." If a greater pressure than that normally available 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 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-days notice of such work to the Buyer. The three 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.



5. **Points Of Connection (Delivery)**

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

- a. Point of Delivery No. 1 EOL Jackson Distribution System on KY 30, immediately south of Belcher Fork
- b. Point of Delivery No. 2 ..... 12-Inch Flange in WTP Yard Armory Rd (EOL = end of line; WTP = water treatment plant)

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.

**B. THE BUYER AGREES:**

1. **Minimum Volume To Be Purchased By Buyer**

The Buyer shall purchase a minimum of 400,000 gallons of treated water per month from the Seller. The Buyer shall pay the Seller for the minimum volume of treated water at the contracted price per gallon whether or not the water was conveyed to the Buyer.

2. **Rates**

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

- a. \$1.90 per 1,000 gallons for the first 400,000 gallons, which amount shall also be the minimum rate per month.
- b. \$1.90 per 1,000 gallons for water in excess of 400,000 but less than 2,500,000 gallons per month.
- c. \$3.80 per 1,000 gallons for water in excess of 2,500,000 gallons per month.

3. **Future Requirement Forecast**

On or before the 15<sup>th</sup> day of January of each year, the Buyer will provide the Seller with a three-year forecast of the Buyer's anticipated water volume requirement. If the forecast includes more than modest growth (greater than three (3) percent annually), the Buyer will include a topographic map clearly indicating the area(s) from which the anticipated additional demand will come.

**C. IT IS FURTHER MUTUALLY AGREED BETWEEN THE SELLER AND THE BUYER:**



1. **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.

2. **Responsibility Of Purchase And Installation Of Master Meters**

The Seller will construct master meter station(s) in accordance with the Seller'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 in the estimated cost and the actual cost of the station shall also be paid by the Buyer. Conversely, differences in the estimated cost and the actual cost which result in an overpayment by the Buyer shall be reimbursed to 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 Seller's requirements or specifications. No delivery of water will commence without pre-construction approval of the master meter station by Seller's Engineer. Further, prior to the sale of water through the point of sale, the Seller'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.

3. **Calibration Of Master Meters**

The Seller 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 Seller will furnish certified, written, results of the calibration to the Buyer at no cost. The Buyer may, at any time, request calibration of the master meter. Should the Buyer request, the calibration shall be performed by the Seller. All costs associated with the Buyer-requested calibration will be paid by the Buyer if the meter is found to be accurate or the Seller if the meter is found not to be accurate. 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 Seller on the 15<sup>th</sup> of each month, or the 14<sup>th</sup> if the 15<sup>th</sup> falls on a Saturday, or the 16<sup>th</sup> if the 15<sup>th</sup> 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.

4. **Altering The Contract**

The provisions of this Contract pertaining to the schedule of rates to be paid by the Buyer for water delivered are subject to modification at the end of every one-year period. 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. Section 52.16 of the Jackson Code of Ordinances allows for the automatic adjustment of water rates annually, based on the Consumer Price Index as published by the Federal Reserve Bank of Cleveland, Ohio. The auto adjustment is capped at three (3) percent. Changes in the Consumer Price Index as published by the Federal Reserve Bank shall constitute a demonstrable increase or decrease in costs of performance, in lieu of more rigorous analysis of actual costs by a qualified auditor. Results of such an analysis by a qualified auditor shall have precedence over the Consumer Price Index method. 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.

5. **Term Of Contract**

This Contract shall extend for a term of fifty (50) years from the date of the 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 initial waterline project (KY 30) 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.

6. **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.

7. **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.

8. **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 the Buyer's system during construction, regardless of whether the metering equipment has been installed at that time, at a flat charge of \$1.50 per thousand gallons of water which will be paid by the contractor or, on the contractor's failure to pay, by the Buyer.

9. **Payment Dates And Due Dates**

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

10. **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 C-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 A-1 of this Contract, or 142 gallons per minute.

11. **Rate Adjustments**

The initial, temporary rate per 1,000 gallons of treated water charged to the Buyer will be as stated in Section B-2 of this Contract. The Seller has initiated a Cost of Service Study to determine a fair and equitable rate to be charged to the Buyer. Upon completion of the Cost of Service Study, this Contract will be modified to reflect the wholesale rate to be charged to the Buyer. By entering into this Contract, the Buyer understands the initial rate will be altered, increased or decreased, to reflect the results of the Cost of Service Study. The rate identified in section B.2 above, (\$1.90 per 1,000 gallons) will not be increased for a period of three (3) years from the date of this Contract. If the Cost of Service study is completed prior to the end of the three-year period, the rate may be decreased in accordance with the results of the study. If the study is completed before the end of the three-year period, and the results indicate and increase in the wholesale rate charged to the Buyer is warranted, the rate will nevertheless remain unchanged until the three-year period has ended.

12. **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.

13. **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. Further, Sections 52.30 through 52.99 of the Jackson City Ordinance, and subsequent amendments thereto, establishes water restrictions that may be levied on the customers of the Seller's municipal water utility in the event of a drought or water shortage emergency. The restrictions and requirements imposed upon the Seller's direct customers in water emergencies shall also apply to wholesale customers, in this case, the Buyer.

14. **Buyer Fails To Pay**

As stated in Section C-9 of this Contract, payment for water purchased is due at Jackson Water Works on or before the 10<sup>th</sup> of each month. If not paid by the 10<sup>th</sup> of the month following the date rendered, the bill shall be delinquent, and a delay penalty equal to ten (10) percent of the face amount of the bill shall become due and payable; provided however, that if the 10<sup>th</sup> 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.

15. **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.





16. **Other Costs Incurred by the Seller**

The Seller has and 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 C.15 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 C.14 of this Contract.

17. **Change Of Circumstance**

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.

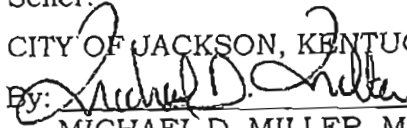
18. **Seller's Service Area**

The Seller's service area will consist of incorporated areas of the City of Jackson and those areas of Breathitt County currently with water service by the City of Jackson, as of the date of execution of this Agreement

19. **Miscellaneous**

The construction of the water supply distribution system by the Buyer is being financed by a loan made or insured by, and/or a grant from, the United States of America, acting through Rural Development of the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the Buyer are conditioned upon the approval, in writing, of the State Director of Rural Development.

In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in six (6) counterparts, each of which shall constitute an original.

Seller:  
CITY OF JACKSON, KENTUCKY  
By:   
MICHAEL D. MILLER, Mayor



Attest:

By: Angie Combs  
ANGIE COMBS, City Clerk

Buyer:

BREATHITT COUNTY WATER DISTRICT

By: John Lester Smith  
JOHN LESTER SMITH, Chairman

Attest:

By: Alma Noble  
ALMA NOBLE, Secretary

This instrument prepared by:

Brendon D. Miller  
BRENDON D. MILLER  
Breathitt County Attorney  
1137 Main Street, Room 209  
Jackson, Kentucky 41339

USDA APPROVAL

This Contract is approved on behalf of United States Department of Agriculture,  
Rural Development this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

By: \_\_\_\_\_

RONNIE BROOKS,  
Rural Development Specialist

