

CONTRACT

This contract and agreement entered into this the 19 day of February, 2009, by and between the City of Livermore, Kentucky, a municipal corporation of the Commonwealth of Kentucky, of 105 W Third Street, Livermore, KY 42352-0279, hereinafter called "City", and North McLean Water District of 217 Hill Street, Livermore, KY 42352-0068, McLean County, Kentucky, hereinafter called "District".

Recitals

WHEREAS, the City is the owner and operator of its municipal water system; and,

WHEREAS, the District is organized under the laws of the Commonwealth of Kentucky and orders of the McLean County Fiscal Court to operate a water district in certain areas of McLean County, Kentucky, for purposes of supplying water within said district; and,

WHEREAS, the parties hereto have agreed upon the terms and conditions in which City shall sell and the District shall purchase water to be distributed by the District to its customers and the parties wish to evidence said agreement in writing,

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, it is hereby agreed by and between the parties hereto as follows:

1. The Agreement to Sell and Buy. The City shall sell and deliver to District and the District shall purchase and receive from City, water, to be of the same quality as is supplied by the City to its customers within the City of Livermore, Kentucky, in accordance with the terms, limitations and conditions set forth in this agreement.

2. Term. This agreement shall become effective on or before May 20, 2010, and shall continue for a term of two (2) years from the date of first delivery of water pursuant to this Agreement, which service shall commence on May 20, 2010. Thereafter, this agreement shall continue from year to year, unless terminated by either party at the end of the original term, or at the end of any renewal term thereafter, by giving the other at least sixty days prior written notice of such termination.

3. Water Delivery. Water delivered under this agreement shall be delivered for the purpose of resale primarily to rural homes and farm consumers who are members of the District and who are not located in any incorporated city or town. The water delivered under this agreement shall be sold or offered for sale by the District solely to ultimate users, and shall not be sold or offered for sale by the District to any person, firm, municipal, or other corporation, or association for resale.

City shall not be liable for any loss or damage occasioned by no water under this contract caused by acts of God, fire, flood, explosion,

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PUBLIC SERVICE COMMISSION  
JEFF R. DEROUEN  
EXECUTIVE DIRECTOR  
TARIFF BRANCH  
Brent Kirtley  
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PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

disturbance, civil or military authority, insurrection or riot, acts of the elements, failure of equipment, or for any cause whether similar or dissimilar, which is beyond the City's reasonable control. City will assert every effort to assure continuity of supply of water to the District and to remove any of said causes of non-delivery of water with diligence.

4. Meters. The District shall furnish and maintain the master metering devices at the point of delivery to District's lines at the District's expense. The District shall further furnish and maintain a spare master meter. District will also notify the City's Public Works Director of any defects in said metering system or any other apparatus, equipment, or facilities necessary to provide the water service described herein. The District shall pay all costs of making connection with the City's water line. District shall furnish, install, and maintain on its side of the delivery point, all reasonable devices for the protection of the City's facilities.

Said master meter shall be tested at least annually by a neutral third party at the expense of the District. Each party shall be afforded at least ten (10) days notice of said test so that a representative may be present and each party shall be provided copies of the results of all such tests.

The quantities of water reported by the aforesaid master meter shall be final and conclusive, except when the meter has failed to register, or when measurements made by such meter during a test provided for above varies by more than three percent (3%) from the measurement made by the standard meter used in such test, or if an error in meter reading occurs. In such cases, the quantity delivered during the period in question shall be estimated after due consideration of previous or subsequent properly measured deliveries.

5. Rates. District shall pay City a minimum charge of one hundred dollars (\$100) per month regardless of whether any water is used during said month. District shall pay two dollars and thirty cents (\$2.30) per one thousand (1,000) gallons actually delivered. Provided, however, that the net monthly bill of District shall be increased to two dollars and seventy (\$2.70) per one thousand (1,000) gallons for each thousand gallons used by District during the current billing month in excess of 1.5 million (1,500,000) gallons and for each thousand gallon used in excess of one hundred thousand (100,000) gallons for any one day.

Furthermore, District shall pay a fifty-dollar (\$50) fee each time the meter is required to be turned on after a period of nonuse by the District. District shall notify Water Supervisor prior to turning water on each time water is required.

This contract is subject to the rate schedules and rules and regulations of the City on file with the Public Service Commission of the Commonwealth of Kentucky, and as same may be lawfully changed or modified from time to time.

6. Maximum Demand. The maximum amount of water required under this agreement shall not exceed two hundred (200) gallons per month.

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*Brent Kirtley*

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thousand (100,000) gallons per day, or 1.5 million (1,500,000) gallons per month. Upon request by the District, the City may deliver water in excess of this maximum amount but all water delivered above and beyond one hundred thousand (100,000) gallons per day or 1.5 million (1,500,000) gallons per month shall be purchased at a rate of two dollars and seventy cents (\$2.70) per one thousand (1,000) gallons over and above said thresholds. If the District's demand for water requires an expansion of the City's existing water system then the District shall be responsible for paying for said improvements to the City's system to meet said demand.

7. Billing and Payment. District shall pay City monthly within ten (10) days after receipt of a bill for all the charges described in Paragraph (6) above for the preceding month. Such bill shall be payable at the office of the City at 105 W 3<sup>rd</sup> Street, P O Box 279, Livermore, McLean County, Kentucky.

8. Injury to Persons or Property. The City shall not be responsible for the delivery or use of water beyond the point of its delivery to District, and shall not be liable for damages or injury to persons or property resulting from the receiving, use, redistribution or sale by the District of the water.

District shall indemnify City against any loss or damage sustained, and against any liability to any person or property incurred by City by reason of any negligence or misconduct on the part of District, its officers, agents, or employees, in constructing, maintaining or operating its equipment or other property, or in the redistribution or sale of water beyond the delivery point.

9. Defects In Apparatus. District shall maintain in good order its waterlines and appurtenant structures and shall be prompt and diligent in making repairs. In case of defects existing in said waterlines and/or appurtenant structures that shall jeopardize service of the City, the City shall have the right, after giving notice of such defects to District, to discontinue the furnishing of water until such defects have been repaired.

10. Installation and Maintenance of Facilities for Redistribution. The District agrees that it will install and maintain all necessary and proper regulating and controlling devices in connection with its distribution and sale of water received from the City under this agreement.

District covenants that throughout the life of this contract it will install and maintain storage capacity adequate to meet all District's maximum hour requirements of water, if need should arise for such storage.

District further covenants to maintain and operate its system in accordance with the rules and regulations of the public health authorities of the Commonwealth of Kentucky, McLean County, Kentucky, and of any other regulatory agencies, and if District should fail to so maintain and operate its system, the City shall have the right to terminate service during any such period of default by the District.

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<i>Burt Kirtley</i>
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11. Access to Premises. The City shall at all reasonable hours have free access to District's premises for any purpose connected with the delivery of the water under this agreement or the exercise of any rights secured to, or the performance from the obligations imposed on it by the agreement.

12. Interruptions or Delays of Service. City shall use all reasonable diligence in providing a constant and uninterrupted supply of water to District. However, City reserves the right to temporarily interrupt or reduce the delivery of water under this agreement when the City determines that such interruption or reduction is necessary or desirable in case of system and/or City emergencies or in order to make inspections, perform maintenance work, make repairs, replacements, or changes in its equipment on or off the premises of the District.

Excepting cases of emergency, City shall give reasonable notice to District of any such interruption or reduction, stating the reason for, the probable duration of the interruption or reduction to the extent of the City's knowledge.

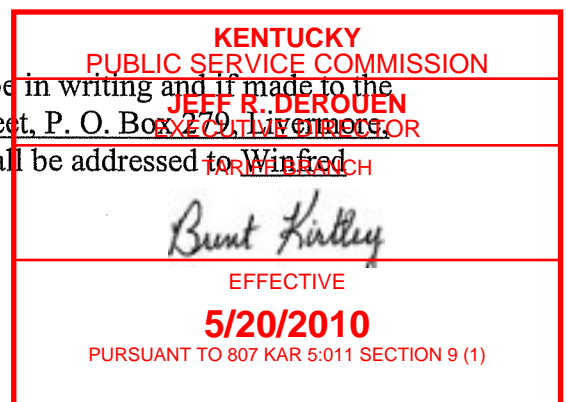
13. Water Violation. Should the City of Livermore receive notice of a water violation (i.e. Notice that the City is out of compliance with the Kentucky Division of Water or the Environmental Protection Agency) requiring notice to ultimate users of water sold to District, City shall be responsible for the cost of postage, at the bulk rate, required by District to notify customers. If City and another supplier or suppliers receive such notice contemporaneously while District is pulling from said suppliers, then postage, at the bulk rate, shall be split evenly between all suppliers. This paragraph and City's responsibilities set forth in this paragraph 13 are conditional upon all suppliers having the same responsibility for the cost of postage for violation mailings.

14. Remedies for Default. If the District fails to comply with or violates the provisions of this agreement and such failure and violation is not remedied by District within thirty (30) days of written notice of such failure or violation is given by the City, or if District fails to pay any charges or fee set forth herein to City within ten (10) days of the date such payment is due, City shall have the right at its option to terminate this agreement or to discontinue the delivery of water until such default has been completely remedied.

In the event of such default City shall have the right to remove any meter, apparatus, or other property of City and District's premises.

15. General Provisions.

a. All notices under this agreement shall be in writing and if made to the City shall be addressed to the Mayor at 105 W Third Street, P. O. Box 279, Livermore, KY 42352, and if made to the North McLean District shall be addressed to Winfred Williams, at P. O. Box 68, Livermore, KY 42352.



b. This contract contains the entire agreement of the parties hereto, and there are no covenants, representations, warranties, or other terms or conditions effecting the construction, performance, or effectiveness of this contract except as stated herein.

c. This contract shall extend to and bind the parties hereto and their respective successors and assigns; provided, however, that neither party shall assign this contract without the written consent of the other party hereto.

City: Livermore

BY: D. Penick

TITLE: Mayor

District: NORTH MCLEARN  
CO WATER DIS

BY: Timothy W. Williams

TITLE: CH. MAN

Clients/JS Misc/City of Livermore - CONTRACT.doc

Signed before me on this the 19th day  
of February 2010.

Andrea E. Ducker  
11-19-11  
Notary Public

