

WATER PURCHASE CONTRACT

This contract and agreement for the sale and purchase of water is entered into as of the 26th day of February, 2011, between the City of Somerset, Kentucky, hereinafter referred to as the "Seller", and the Western Pulaski County Water District (WPCWD), hereinafter referred to as the "Purchaser".

WITNESSETH:

Whereas, the Purchaser is organized and established under the provision of Chapter 24 of the Kentucky Revised Statutes, for purpose of construction and/or operation a water supply distribution system serving water users within the area described in plans now on file in the office of the Purchaser and, to accomplish this purpose, the Purchaser will require a service of treated water by the Seller, and

Whereas, the Seller owns and operates a water supply distribution system organized and established under the provisions of the Kentucky Revised Statutes, having a capacity currently capable of serving the present customers of the Seller's system and with additional capacity capable of supplying the required volume of the Purchaser per this agreement and the Seller does seek and consent of the sale of water, and

Whereas, by Resolution of the Somerset City Council on the 23rd day of Aug, 2010 (see Exhibit "A") regarding the sale of water to the Purchaser in accordance with the provisions of said Resolution was approved, and the execution of this contract carrying out the Resolution by the Mayor, and attested by the Clerk, was duly authorized, and

Whereas by Resolution of the Board of Directors of the Purchaser on the 23rd day of Feb, 2011, regarding the purchase of water from the Seller in accordance with the provisions of said Resolution was approved, and the execution of this contract by the Chairman, and attested by the Secretary, was duly authorized;

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

A. The Seller Agrees:

1. (Quality and Quantity) To furnish the Purchaser at the point of delivery hereinafter specified, during the terms of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the State of Kentucky in such quantity as may be required by the Purchaser up to and not to exceed 2,754,200 Gallons per day for ordinary demand periods with allowance for drought and short-term high demands up to 3,029,600 Gallons per day if the additional amount of water is determined available by the City of

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Somerset and is not needed for the customers on the City's own distribution line or for operation of necessary services.

2. **(Point of Delivery and Pressure)** That said water is to be delivered to the Purchaser's existing connection points and master meters at the following locations: 1) Pleasant Hill (Clifty); 2) Pulaski Co #2 (Hail Knob); 3) Oak Hill; and 4) Pleasant Hill (Waitsboro). The delivery pressure will be nominally within 10 PSI of the Seller's full tank static pressure but shall be maintained to be at least 40 PSI to avoid pump cavitation due to low suction pressure. Emergency failures of supply due to main supply 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 (see "Failure to Deliver" below).
3. **(Metering Equipment)** To furnish, install, operate, and maintain at its own expense at the points of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type of properly measuring the quantity of water delivered to the Purchaser and to calibrate such metering equipment whenever requested by the Purchaser and to furnish the Purchaser with results from regular quarterly calibrations. A meter registering not more than two percent (2%) 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 6 months previous to such test in accordance with the percentage of inaccuracy found by such test. 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 Seller and Purchaser shall agree upon a different amount in writing. The metering equipment shall be read on a regular monthly basis. An appropriate official of the Purchaser shall have access to the meter at all reasonable times for the purpose of verifying its readings.
4. **(Billing Procedure)** To furnish the Purchaser at the above address not later than the 1st day of each month, with an itemized statement of the amount of water acquired on behalf of the Purchaser during the preceding month, including details of wholesale water acquisition rates.

B. The Purchaser Agrees:

1. **(Rates and Payment Date)** To pay the Seller, not later than the 10th day of each month, for water acquired on the Purchaser's behalf, in accordance with the following schedule of rates:



- A) \$2.50 per 1,000 gallons, or portion thereof rounded to the nearest cent, which is a \$.50 increase from the previous rate of \$2.00 per 1,000 gallons. Said rate increase has been approved by the United States Department of Agriculture Rural Development. Upon agreement and execution by all parties to this contract, this rate increase shall become effective as of the date of execution of this document. All other modifications to this contract, including rate changes other than that stated herein, shall follow Section C., Part 4. "Modification of Contract", set forth in full below, and all other terms of this agreement and applicable law/regulations.
- B) **WAIVER:** the City herein agrees that a Waiver in regards to the \$.50 rate increase, specifically to the party/purchaser herein, is hereby granted, and that such Waiver shall remain in effect until July 1, 2011 at which time the Waiver shall be terminated and the referred to increase in rates shall be enforced.

The purpose of this Waiver is to allow the water purchaser additional time to implement the approved rate changes within their own entities and among customers. Therefore, so long as the waiver remains in place, a rate of \$2.00 per 1,000 gallons, or portion thereof rounded to the nearest cent, shall be the prevailing rate.

2. **(Connection Fee)** That there is no connection fee in this contract but, should a new meter connection be required, the fee shall be the actual cost of the metering equipment vault, and tie-in.
3. **(Source of Water)** That the Seller shall be the exclusive source of water.

C. It is further mutually agreed between the Seller and the Purchaser as follows:

1. **(Term of Contract)** That this contract shall extend for a term of 40 (Forty) years from the date of execution of this agreement by all parties. Thereafter, this contract may be renewed or extended for such term, or terms, as may be mutually agreed upon by the Seller and Purchaser in writing.
2. **(Delivery of Water)** That 30 days prior to any estimated date of completion of construction of any addition to the Purchaser's water supply distribution system, and the Purchaser's need for water for said



additions, the Purchaser will notify the Seller in writing prior to the requested delivery of water.

3. **(Failure to Deliver)** That the Seller will, at all time, operate and maintain its system in an efficient manner, will make all practical effort to provide continuous service at a reasonably constant pressure and flow, and will take such action as may be necessary to acquire on behalf of the Purchaser. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In event of a prolonged water shortage of any kind (acts of God, water quality problems, maintenance shut-downs, etc) the Seller shall assure that all customers, including the Seller and the Purchaser, will share in such shortages equally on a pro-rated basis, I.e., the supply of water to the Purchaser's meter shall be reduced or diminished in the same ratio or proportion as the supply to the Seller's consumers is reduced or diminished.

4. **(Modification of Contract)** The provisions of this contract pertaining to the schedule of rates to be paid by the Purchaser for water delivered are subject to modification by the seller at the end of every one (1) year period. Any increase or decrease in rates shall be based on a demonstrable increase, or decrease, in the costs of performance hereunder, and the Seller shall notify the Purchaser of decreases, as well as increases, 90 days prior to said rate(s) changes. Such costs shall not include increased capitalization of the Seller's system, unless such capital improvements and additional costs are jointly used to provide water to the Purchaser. The Seller shall demonstrate such costs and joint usage as may be required by applicable law and/or regulations of the Kentucky Public Service Commission and/or the U.S. Department for Rural Development, or other authoritative local, state, or federal agency which has jurisdiction over such matters. Should any such capitalization be determined to be required to meet minimum standards of service to all customers, the equivalent 40 year financing cost (or the lesser amount of the seller's actual cost) for such facilities shall be proportionately allocated according to joint use and may be included in the Purchaser's rate.

All other provisions of this contract may only be modified or altered by written mutual agreement and proper amendment.

5. **(Regulatory Agencies)** That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

6. **(Miscellaneous)** That if any modification/construction of the Purchaser's water supply/distribution system by the Purchaser is being financed



directly, indirectly, and/or in part by a loan made or insured by, and/or a grant from, the United States of America, acting through the Rural Development Administration of the United States Department of Agriculture, the provisions hereof pertaining to such undertakings of the Purchaser shall comply with any and all requirements of the State Director of Rural Development, or other funding authoritative body as described above.

7. **(Successor to the Purchase)** That in the event the Purchaser as listed herein, whether the result of legal process, assignment, or otherwise, no longer has authority or the ability to carry out the rights, responsibilities, and terms contained herein, said authority shall succeed to the Successor upon a written assignment signed by both the City of Somerset and said Successor.
8. **(Sole Agreement)** That this document is the sole agreement in force between the Parties and that it replaces any and all prior contracts, agreements, and/or amendments for this purpose.
9. **(Severability)** That the invalidation of any provision of this contract by a Court of competent jurisdiction does not invalidate the remaining provisions.

In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in 4 counterparts, each of which shall constitute an original.

Seller:

City of Somerset

By: 
Title: Mayor of City of Somerset

Attest:


City Clerk

Purchaser:

By: 
Title: Chairman, WPCWD Board

Attest:


Secretary of Board

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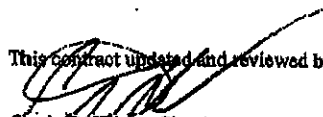
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This contract is approved on behalf of Rural Development this ____ day of _____, 20____.

By: _____

Title: _____

This contract updated and reviewed by:


Carrie D. Wiese, City Attorney
City of Somerset
400 East Mt. Vernon Street
Somerset, KY 42501
(606) 678-7001

Rev. 8/20/10
CDW

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Exhibit "A"

RESOLUTION

A RESOLUTION OF THE CITY OF SOMERSET, KENTUCKY, AUTHORIZING THE CITY, BY AND THROUGH THE MAYOR, TO EXECUTE CONTRACTS WITH ALL CITY WHOLESALE WATER PURCHASERS PURSUANT TO THE APPROVAL OF RATE CHANGES TO SAID CUSTOMERS BY THE UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)-RURAL DEVELOPMENT (RD), AND THE KENTUCKY PUBLIC SERVICE COMMISSION (PSC);

WHEREAS, the City of Somerset, Kentucky wishes to enter into contracts with all wholesale customers of the City's Water Department; and

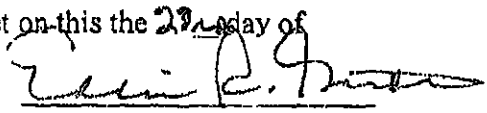
WHEREAS, the City wishes that all wholesale water purchasers enter into substantially the same contract to simplify the relationship between the City and said purchasers; and

WHEREAS, the City is implementing a rate change as approved by USDA-RD, and the Kentucky PSC, and all parties having agreed to said rate change;

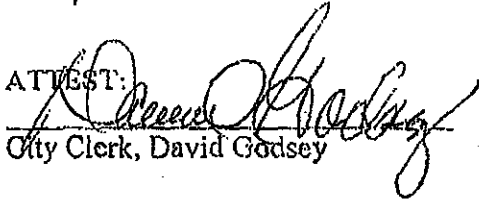
NOW THEREFORE, be it resolved by the Common Council of the City of Somerset, Kentucky this 23rd day of Aug, 2010, that:

- I. The Mayor is hereby authorized to review and sign the necessary updated documents/contracts as stated above.
- II. This resolution shall be in full force and effect upon passage by the common council and according to law.

Approved by the Common Council of the City of Somerset on this the 23rd day of August, 2010.


Mayor, Eddie Girdler

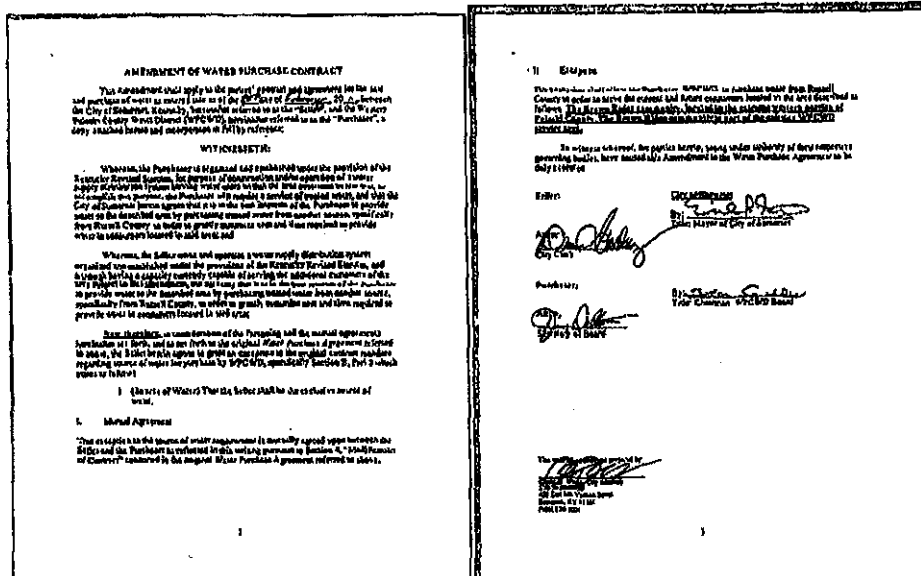
ATTEST:


City Clerk, David Godsey

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Mr. Wheelon moved to approve the above Water Purchase Contract Amendment between City of Somerset and Western Pulaski County Water District (WPCWD). Mr. Rutherford seconded the motion. Upon roll call the following Council Members voted "Aye": Mrs. Stringer, Mr. Wheelon, Mr. Beasley, Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Mr. Mitchell, Mr. Bourne, Mr. Burnett, Mr. Eastham, and Mr. Rutherford.

There being no further business the meeting adjourned.

APPROVED 
MAYOR

ATTEST: 
CITY CLERK

