

WATER PURCHASE AGREEMENT

BETWEEN

HARDIN COUNTY WATER DISTRICT NO. 2 PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

AND

APR 24 1999

CITY OF ELIZABETHTOWN

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)
BY: Sharon Bell
SECRETARY OF THE COMMISSION

THIS WATER PURCHASE AGREEMENT, is made and entered into this
5th day of Dec., 1996, by and between the **HARDIN COUNTY WATER**
DISTRICT NO. 2, P. O. Box 66, Elizabethtown, Kentucky, 42702, (hereinafter
referred to as the "SELLER"), and the **CITY OF ELIZABETHTOWN**, P. O.
Box 550, Elizabethtown, Kentucky 42702, (hereinafter referred to as the
"PURCHASER"):

W I T N E S S E T H:

WHEREAS, the SELLER owns and operates a water treatment plant on
the Nolin River at White Mills; and

WHEREAS, the PURCHASER desires to obtain a supplemental supply of
treated water; and

WHEREAS, the SELLER has made plans to expand the size of its White
Mills Water Treatment Plant; and

WHEREAS, the SELLER anticipates having an excess supply of treated water upon completion of its water plant expansion project; and

WHEREAS, the SELLER desires to sell a portion of its excess supply of treated water; and

WHEREAS, the SELLER desires to establish a minimum monthly amount of water to be purchased from the SELLER by the PURCHASER; and

NOW THEREFORE, in consideration of all the foregoing and the mutual terms and conditions expressed herein, the SELLER and the PURCHASER agree as follows:

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PURCHASER
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1. TERM:

PURSUANT TO 807 KAR 5:011,
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The term of this Agreement shall extend for a period of ~~six (6) years from~~

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and after the Effective Date hereof as provided for in paragraph 17 of this Agreement, unless otherwise extended or modified by written agreement between the parties. Should SELLER decide not to extend this Agreement beyond the original six (6) year term, SELLER shall give such notice to PURCHASER at least two (2) years before the expiration of the term.

2. QUANTITY OF WATER:

The SELLER shall furnish to the PURCHASER, at the points of delivery hereinafter specified, such quantities of water as the PURCHASER may require in order to supplement water service to the PURCHASER'S customers, not to

exceed, however, two (2.0) million gallons per day (MGD) or sixty (60) million gallons per month for a thirty (30) day month.

3. **MINIMUM PURCHASES:**

The PURCHASER agrees to purchase from the SELLER a minimum of one and one-half (1.5) MGD, or forty-five (45) million gallons per month for a thirty (30) day month. The PURCHASER shall pay for the minimum monthly quantity of water even if not used by PURCHASER. Any surplus amount used by the PURCHASER during a particular month shall not be carried over to the next month. In the event the SELLER commences providing water service to one or more new businesses or industries located within the Hughes Industrial Park, the quantity of water sold to such businesses or industries shall be subtracted from the minimum monthly quantity required to be purchased by the PURCHASER.

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4. **ADDITIONAL PURCHASES:**

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In the event the PURCHASER desires to purchase more than an average of 2.0 MGD of 2.0 MGD, then the SELLER agrees to attempt to supply the additional water in excess of 2.0 MGD, to the extent water is available, if it is able to do so. The PURCHASER shall pay a twenty-five percent (25%) surcharge on all usage above an average of 2.0 MGD (e.g. sixty (60) million gallons for a thirty (30) day month). In the event the SELLER determines that it is experiencing, or

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likely to experience, a shortage of water available for its retail customers, then first priority shall be given to its retail customers and second priority shall be given to the PURCHASER.

5. QUALITY OF WATER:

All water furnished to the PURCHASER by the SELLER during the term of this Agreement, or any renewal or extension thereof, shall be potable, treated water meeting applicable purity standards of all appropriate state and federal regulatory agencies. The water shall also be of the same quality furnished to the SELLER'S other retail and wholesale customers.

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6. DELIVERY POINTS:

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The SELLER shall deliver the water to the PURCHASER at the points of delivery shown below and at such additional or substitute points of delivery which may be agreed upon in writing by both parties.

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The water shall be furnished at the points of delivery at a minimum pressure of thirty (30) pounds per square inch. The sum of the flow rates at all delivery points shall not exceed 2,100 GPM (3.0 MGD). The SELLER shall use reasonable care and diligence in the operation and maintenance of its water system to prevent and avoid abnormal interruptions and fluctuations of supply and pressure. Should greater pressures than that available at a point of delivery be required by the PURCHASER, it shall be the PURCHASER'S responsibility,

at its own expense, to provide within its system such booster pumping, storage or other facilities as may be required to develop and maintain additional pressures within the PURCHASER'S system.

Emergency failures of water 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.

The points of delivery, water main sizes, meter sizes, and maximum flow rates are as follows:

POINT OF DELIVERY	SIZE MAIN	METER SIZE	MAXIMUM FLOW RATE (GPM)
1. Ring Road at Black Branch Road	24"	8" or 12"	2,100
2. Pear Orchard Road Northwest	24"	8" or 12"	2,100

The Combined flow rate of all points of delivery which are open and delivering water at any given time shall not exceed 2,100 GPM.

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7. OPERATION OF SYSTEM:

The SELLER shall, at all times, operate and maintain its water system in

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an efficient manner and shall take such action as may be reasonably necessary to perform its obligations under this Agreement. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. The SELLER shall immediately inform the PURCHASER, by telephone, or by facsimile transmission, of the nature and extent of such temporary or partial failure to deliver water.

8. POINT OF DELIVERY EQUIPMENT:

The PURCHASER shall furnish and install, at its own expense, at each of the points of delivery, in a building or pit, the following equipment: (the "Equipment"):

- A. Flow control valve;
- B. Metering equipment (with telemetry connected to existing systems);
- C. Double check valve back flow prevention device; and
- D. Bypass line and valving.

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The plans and specifications for the Equipment to be installed at each point of delivery shall be approved by the SELLER, and shall be installed under the supervision of the SELLER. Each point of delivery shall be equipped with telemetry compatible with the SELLER'S existing telemetry system.

Title and ownership of the Equipment, except for the meter and telemetry equipment, shall vest in the PURCHASER. Title to the meter and the telemetry equipment shall vest in the SELLER. The PURCHASER shall be responsible for the cost of operating and maintaining the Equipment, except for the meter and telemetry equipment, which shall be operated and maintained by the SELLER. The SELLER shall calibrate the metering equipment whenever requested by the PURCHASER, but not more frequently than once every twelve (12) months. 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 twelve (12) months previous to such test in accordance with the percentage of 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 SELLER and PURCHASER shall agree upon a different amount. The metering equipment shall be read on or about the 25th day of each month. The SELLER shall have access to the meter(s) and telemetry equipment for the purpose of meter reading, operation, and maintenance.

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9. BILLING AND PAYMENT PROCEDURE:

PURSUANT TO 807 KAR 6.011
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The SELLER shall furnish the PURCHASER not later than the first (1st)

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day of each month with an itemized statement of the amount of water furnished the PURCHASER at each of the points of delivery during the preceding month and the cost thereof. The PURCHASER shall pay those charges not later than the tenth (10th) day of each month. A ten percent (10%) late payment penalty shall be assessed if any portion of the bill remains unpaid after the due date. In addition, any amount remaining unpaid after the last day of the month shall be deemed delinquent and shall bear interest at the rate of twelve percent (12%) per annum until paid.

10. RATE AND RATE CALCULATION:

The PURCHASER shall pay the SELLER the rate which is calculated by using the Methodology attached hereto as Exhibit A. The Methodology includes a technique for calculating the rate for the first year as well as subsequent years.

It is contemplated that the rate will be calculated by the SELLER on an annual basis as soon as practicable after the year end financial data is available.

11. ADVANCE NOTICE OF RATE MODIFICATION:

The SELLER shall notify the PURCHASER in writing of the proposed rate at least thirty (30) days before it is to be adopted as the actual rate. This will enable the PURCHASER to review and comment on the proposed rate before it is actually adopted by the SELLER.

At the expiration of the thirty (30) day review period, the PURCHASER

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may establish and adopt the actual rate to be charged the SELLER and shall immediately notify the PURCHASER in writing of the new rate.

12. EFFECTIVE DATE OF RATE MODIFICATION:

The effective date of the new rate shall be at least thirty (30) days after the SELLER adopts the new rate. This will enable the SELLER to file a revised Tariff with the Public Service Commission of Kentucky (the "PSC") and obtain PSC approval of the new rate.

13. INCREASED CAPITALIZATION:

The Methodology attached as Exhibit A is based upon a cost of Service Study performed by the SELLER'S consulting engineer. It provides a method of determining the actual cost of providing water service to the PURCHASER. The Debt Service and Depreciation Costs utilized in the Methodology may be increased to reflect any increases in capitalization of the SELLER'S system if such increased capitalization is necessary to enable the SELLER to continue providing water service to the PURCHASER; PROVIDED, HOWEVER, that such costs shall not include any increase in capitalization associated with increasing the capacity of the White Mills Water Treatment Plant beyond 8.1 MGD.

14. INDEMNIFICATION:

Each Party shall be solely responsible for the construction, operation, and

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maintenance of its respective water system. Each Party, to the extent permitted by law, expressly agrees to indemnify, save harmless and defend the other Party against all claims, demands, cost, or expense asserted by third parties and proximately caused by the negligence or willful misconduct of such indemnifying Party in connection with the construction, operation, and maintenance of its respective water system. Each Party shall maintain a liability insurance policy acceptable to both Parties with limits of at least one (1) million dollars in an insurance company doing business in Hardin County, Kentucky.

15. **DISPUTED BILL:**

If a portion of any bill is in a bona fide dispute, the undisputed amount shall be paid when due.

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16. **PLEDGE:**

It is understood by the Parties that the SELLER intends to, and does by the execution of this Agreement, pledge this Agreement to the United States of America, acting by and through the U. S. Department of Agriculture (hereinafter referred to as the "USDA" as part of the security for the repayment of all indebtedness currently owed by the SELLER to USDA, and/or any additional loans hereinafter obtained from USDA. The PURCHASER, however, is not incurring any liability to USDA because of the SELLER'S pledge of this Agreement to USDA; and the PURCHASER is not incurring any independent

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obligation to USDA because of this pledge by the SELLER.

17. EFFECTIVE DATE AND CONTINGENCIES:

The Parties acknowledge that, in order for this Agreement to be made effective, it must be reviewed by the Public Service Commission of Kentucky (the "PSC"). In addition, the SELLER must obtain the necessary financing and regulatory approval from the PSC and the Division of Water to expand its White Mills Water Treatment Plant from 2.7 MGD to 8.1 MGD. The Effective Date of this Agreement shall be thirty (30) days after the expanded water treatment plant has commenced operating. The SELLER shall give written notice of the Effective Date to the PURCHASER. The term of this Agreement shall be measured from the Effective Date. In the event the White Mills Water Treatment Plant is not expanded to at least 8.1 MGD, then this Agreement shall not become effective.

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18. NOTICES:

If at any time either Party desires or is required to give notice to the other Party pursuant to the terms of this Agreement, such notice shall be in writing and shall be hand delivered or mailed by certified mail, return receipt requested. Notice shall be effective upon receipt. Notices shall be given to the Parties at the following addresses or such other place or other person as each Party shall designate by similar notice:

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(A) As to the SELLER

Hardin County Water District No. 2
P.O. Box 66
Elizabethtown, Kentucky 42702
Attention: Manager

(B) As to the PURCHASER

City of Elizabethtown
P. O. Box 550
Elizabethtown, KY 42702
Attention: Mayor

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19. RESPONSE TO NOTICES:

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BY: Stephan O. Bell
PUBLIC SERVICE COMMISSION

At any time either Party desires or is required to respond to any notice given pursuant to paragraph 19, such response shall be made in the manner prescribed by paragraph 19 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement.

20. PARAGRAPH HEADINGS:

The descriptive headings of the various paragraphs of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof.

21. ENTIRE AGREEMENT; SEVERABILITY:

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained herein. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this

Agreement shall be binding upon either Party unless and until it is reduced to writing and signed by both Parties. Should any provision of this Agreement be declared to be invalid or unenforceable by a Court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect unless such invalid or unenforceable provision substantially alters the benefits of the Agreement for either Party.

22. NON-WAIVER:

Any waiver at any time by any Party hereto of its rights with respect to the other Party or with respect to any matter arising in connection with this Contract shall not be considered a waiver of any such rights or matters at any subsequent time.

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23. SUCCESSORS AND ASSIGNS:

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This Agreement shall inure to the benefit of and 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, unless such assignment or transfer is to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure where substantially all such properties are acquired by such a successor empowered by law and financially able to effect the purposes of this Agreement which it must assume and, thereafter, be

BY Stephen O. Bell
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exclusively responsible for the performance of the terms of this Agreement to be performed by either Party hereunder.

24. PURCHASER'S SUCCESSOR:

In the event of any occurrence rendering the PURCHASER incapable of performing under this Agreement, any successor of the PURCHASER, whether the result of legal process, assignment, or otherwise, shall succeed to the rights and obligations of the PURCHASER and the terms of this Agreement shall be binding upon the successor in interest.

IN WITNESS WHEREOF, the Parties hereto, acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

**HARDIN COUNTY WATER
DISTRICT NO. 2**

DATE: 12/3/96

BY: Earl B. Goodman
EARL B. GOODMAN, CHAIRMAN

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ATTEST:
Michael L. Bell
**MICHAEL L. BELL,
SECRETARY**

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BY: Michael L. Bell
SECRETARY OF THE COMMISSION

CITY OF ELIZABETHTOWN

DATE: 12-5-'96

BY: Patricia V. Durbin
PATRICIA V. DURBIN, MAYOR

ATTEST:

Wanda Young
CITY CLERK

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BY: Stephan D. Bell
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**Methodology of Calculating
Wholesale Water Rate to Elizabethtown**

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BY: Stephan B. Bell
MEMBER OF THE COMMISSION

I. General Philosophy

- A. Elizabethtown shall share a pro-rata portion of the Districts' Operation and Maintenance Costs as follows:
1. Water Treatment Plant Costs shall be shared on a pro-rata usage basis with adjustment for Line Loss and Plant use.
 2. Transmission and Distribution Costs shall be shared on a pro-rated usage basis with adjustment based on inch-mile proportion, i.e. inch miles of pipe line utilized by E-town versus total inch-miles of District system.
 3. Administrative General Costs shall be shared on a pro-rata usage basis with a 33.33% multiplier.
 4. Electrical pumping Costs at Cecilia Pump Station based on pro-rata usage basis.
- B. Elizabethtown shall share a pro-rata portion of the Districts' Debt Service (including coverage) and Depreciation based on portion of system reserved for Elizabethtown as compared to total capacity.
- C. Elizabethtown does not share any of the Districts' customer service costs such as meter reading, billing & customer service representatives.
- D. Elizabethtown does not share any of the Districts Debt Service (plus coverage) or Depreciation for Capital projects not utilized by Elizabethtown.

II. Definitions, Factors, Ratios & Techniques

- A. The District Annual Report submitted to the Public Service Commission delineates (or shall be modified to delineate) the following:
1. Water Treatment Expenses - Includes payroll & benefit cost of staff working only on water treatment plus chemicals, electricity, and various expenses at water treatment plant (T&P).
 2. Transmission and Distribution Expenses - Includes cost of staff and various expenses specifically related to T& D.

3. Administrative and General Expenses - Includes staff and miscellaneous expenses specifically related to overall management, accounting, purchasing, personnel & computer services and excludes customer service.
4. Total Water Produced and Purchased.
5. Total Water Sold
6. Percent of Line Loss relative to water produced and purchased. Typically \pm 14%.

B. Debt Service and Depreciation Costs are as follows:

1. Debt Service (including 20% Coverage)

Water Treatment Plant (existing)	\$331,058/year
24" Pipe	\$556,148/year
Cecilia & Pear Orchard Tanks (including Telemetry)	\$200,152/year
Cecilia Pump Station	\$ 18,968/year
Water Treatment Plant (expansion)*	\$529,552/year

*Estimate based on \$5.8 million construction cost and interest rate of 6%. This number would be adjusted 1.) Upon incurring debt to actual interest rate and final design cost estimate and 2.) Upon completion of project to reflect actual construction cost.

2. Depreciation

Water Treatment Plant (existing)	\$ 75,291
24" Pipe	\$108,849
Cecilia & Pear Orchard Tanks (includes telemetry)	\$ 36,314
Cecilia Pump Station	\$ 7,846
Water Treatment Plant (expansion)	* \$107,550

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*Estimate based on \$5.8 million construction cost.

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C. Pro-rata Usage Factor = $\frac{\text{Amount of Water Sold to E-town}}{\text{Total Water Sold (Includes E-town)}}$
(PRUF)

D. Water Treatment Plant Capacity Factor (WTP CF) = $\frac{\text{Capacity reserve of E-town}}{8.1 \text{ mgd}}$
Note: 8.1 mgd equals capacity of plant

E. Tank and Telemetry Capacity Factor (T & T CF) = $\frac{\text{Tank Capacity Reserve to E-town}}{2.0 \text{ mg}}$
Note: 2.0 mg equals capacity of Cecilia & Pear Orchard Tanks

F. 24" Line Capacity Factor (24" Line CF) = $\frac{\text{Capacity Reserve of E-town}}{8.1 \text{ mgd}}$
Note: Assume 24" Capacity equals 8.1 mgd

M. Cecilia PS Cost Allocation Factor (PSCAF) is determined as follows:

$$\text{PSCAF} = \frac{\text{Amount of Water Sold to E-town}}{\text{Total Water Pumped at PS}}$$

The PSCAF is to allocate electrical costs at Cecilia pump station. No multipliers are used since they would be the same.

IV. Rate Calculation Technique

Elizabethtown Cost of Service is the summation of the following:

Water Treatment Plant Cost x TCAF	_____
Transmission & Distribution Cost x T&D CAF	_____
Administrative & General Cost x A & G CAF	_____
Electrical Cost Cecilia PS x PS CAF	_____
Total WTP Debt Service x WTP CF	_____
Tank & Telemetry Debt Service x T&D CF	_____
24" Line Debt Service x 24" Line CF	_____
Cecilia PS Debt Service x PS CF	_____
Total WTP Funded Depreciation x WTP CF	_____
Tank & Telemetry Funded Depreciation x T&D CF	_____
24" Line Funded Depreciation x 24" Line CF	_____
Cecilia PS Funded Depreciation x PS CF	_____
Total Elizabethtown Cost of Service	_____

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The Elizabethtown Rate is : $\frac{\text{Elizabethtown Cost of Service}}{\text{Elizabethtown Purchase Amount}}$

V: Implementation

- A. The rate for the first year is determined by utilizing the most current information including most recent Annual Report & actual debt service requirements (reflecting actual construction costs and interest rates). The first year would assume Elizabethtown usage and additional treatment plant cost based on current costs for labor, chemicals, and electricity. Any costs incurred by the District in rehabilitation of the existing plant (during the first year after expanded plant is placed in service) shall be excluded from the Water Treatment Plant Costs.
- B. The rate for second and subsequent years will be based on actual costs and usage during the preceding year.

VI. Special Conditions

- A. Elizabethtown minimum usage is 1.5 mgd based on a monthly bill, i.e 45 mg for a 30 day month.
- B. Elizabethtown reserve for normal system usage variation is 2.0 mgd. based on a monthly bill. i.e 60 mg for a 30 day month.
- C. The total peak flow rate from all points of delivery shall be limited to 3.0 mgd (2100 gpm).
- D. During the first year, the Capacity Factors are calculated as follows:
 - 1. $WTP\ CF = 1.75\ mgd + 8.1\ mgd = 0.2469$
 - 2. $T \& T\ CF = 0.5\ mg + 2.0\ mg$. This factor is based on reserving 0.5 mg of storage of the total of 2.0 mg in order to assure a safe delivery of 2100 gpm.
 - 3. $24''\ Line\ CF = 1.75\ mgd + 8.1\ mgd = 0.2469$
 - 4. $PS\ CF = 2.0 + 4.0\ mgd = 0.500$ This factor is based on reserving 2 mgd of pumping capacity for E-town.
- E. For the second and subsequent years, the WTP CF and 24" Line CF shall be based on the average daily flow rate in mgd of the three maximum months of the preceding year times the Elizabethtown WPM. For first year this number is assumed to be 1.75 mgd.
- F. Should the bill for a month exceed 2.0 mgd daily average, that amount above 2.0 mgd shall be subject to surcharge equal to 1.25 times the E-town rate.

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