

for witness file

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JUN 24 1996

R.E.C. TATE & ASSOCIATES

WATER PURCHASE CONTRACT

This Contract for the sale and purchase of water is entered into as of the 4th day of MARCH, 1993, by and between The City of Augusta, Kentucky, hereinafter referred to as "First Party," and Bracken County Water District #1, Brooksville, Kentucky, hereinafter referred to as "Second Party,"

WITNESSETH: Whereas, The City of Augusta, Kentucky, is a duly incorporated City in the Commonwealth of Kentucky, and

Whereas Second Party, Bracken County Water District #1, is a duly organized Water District, pursuant to provisions of Chapter 74, Kentucky Revised Statutes, for the purpose of constructing and operating a water supply distribution system, serving water users within the area described in plans now on file in the office of the Commonwealth of Kentucky Utility Regulation Commission, and

Whereas, First Party now furnishes its own water via certain wells and

Whereas, Second Party in addition to operating its present water purification and treatment plant (hereinafter referred to as "plant"), also furnishes its own water via certain wells and supplies purified water to its own water customers and users, and to the City of Brooksville, Kentucky and Western Bracken County Water District, and

Whereas, all parties hereto agree that the present water supply and purification systems owned and operated by the parties is inadequate to supply present and future needs of the parties hereto, and

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Whereas, First Party intends to construct a water treatment and purification Plant (hereinafter referred to as "New Plant") to be financed by a loan made or insured by, and for the United States of America, acting through the Administration of The United States Department of Agriculture, for the purpose of supplying adequate amounts of purified water for use by the customers of the parties hereto, and

PURSUANT TO 807 KAR 5011.

FOR THE PUBLIC SERVICE COMMISSION

Whereas, it is the desire and intention of the parties to enter into a relationship as Seller and Purchaser and to share in the costs of constructing and operating said New Plant, and

Whereas, this can best be accomplished by the parties entering into this new Contract which shall supersede all previous contracts and agreements between the parties hereto;

Now, therefore, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto do hereby contract and agree as follows:

- 1.) First Party shall, subject to obtaining financing satisfactory to First Party, construct, own and operate said New Plant, the lines appurtenant thereto and the source of the water. Said New Plant, lines and water source shall be constructed pursuant to plans and specifications prepared by Mayes, Sudderath and Etherage Consulting Engineers, Inc., for First Party.
- 2.) First Party shall furnish to Second Party, at its existing clear well on the Augusta-Berlin Road, during the term of this Contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the PUBLIC SERVICE COMMISSION OF KENTUCKY Department of Health in such quantity as may be required by Second Party, not, however, to exceed the quota specified in Paragraph No. 6 hereof.
- 3.) First Party shall establish an accounting system, pursuant to generally accepted accounting procedures, which shall facilitate the identification of costs actually incurred in calculating the costs per One Thousand (1,000) gallons of producing and delivering water to Second Party and First Party shall be responsible for operation of said New Plant in accordance with all applicable laws and regulations and this contract.
- 4.) Second Party shall continue to own and operate, at said points of delivery, the necessary metering equipment, including meter houses or pits, and required devices of standard type for properly measuring the quantity of water furnished by First Party to Second Party. Said meters shall be checked and calibrated at the expenses of the owner of said meters, by a qualified agent, satisfactory to all parties hereto, at least once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test results shall be deemed to be accurate. The previous reading of any meter disclosed by the test to be inaccurate shall be corrected for the six (6) months previous to such test in accordance with the percentage of inaccuracy

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BY: *[Signature]*
FOR THE PUBLIC SERVICE COMMISSION

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 delivered in the corresponding period immediately prior to the failure, unless First Party and the owner of said meter shall agree upon a different amount. The metering equipment shall be read by First Party and the Second Party on or about the 15th day of each month.

5.) First Party shall furnish to Second Party not later than the 5th day of each month an itemized statement of the amount of water furnished during the preceding month. Second Party shall pay First Party, not later than the 15th day of each month for water delivered by First Party during the preceding month. The rate at which Second Party shall pay First Party for said water is to be determined pursuant to the Variable Rate Schedule, attached hereto and made a part hereof.

6.) First Party will, at all times, operate and maintain in an efficient manner and will take such action as may be necessary to furnish to Second Party the quantities of water required by it, not, however, to exceed 61.45 percent (61.45%) of the 1,440,000 gallon per day design capacity of said New Plant of the actual production capacity of said New Plant, whichever is less.

First Party shall be entitled to the remainder of the production of said New Plant.

Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of raw water available to said New Plant is diminished over an extended period of time or in the event that production capacity of said New Plant is substantially diminished or reduced over an extended period of time resulting in inability of said New Plant to produce the quantity of purified water required by the parties hereto, the supply of water to each party hereto shall be reduced or diminished in that same ratio or proportion as set out in this item, above. In the event said New Plant is operating at normal capacity and a sufficient supply of raw water is available to operate said New Plant at normal capacity, no party hereto shall exceed its allocated capacity or quota if such excess shall result in a reduction of supply of the actual

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SECTION 9 (1)

BY Jordan C. Neal
FOR THE PUBLIC SERVICE COMMISSION

amount of purified water set aside, above for the other party and at the time required by the other party hereto. Failure of pressure to the main supply, line breaks, power failure, flood, fire, earthquake, or other catastrophes shall excuse First Party from complying with those terms of this Agreement for supply of water or pressure until such time as the cause of the reduction of pressure or supply or water has been removed or remedied; provided, however, that such purified water, if any, as is produced and/or available for distribution during such emergencies or catastrophes shall be made available to each party hereto in the same percentage or proportion as water is normally supplied to each party. In the event that the customers of any party hereto require unusually large quantities of water for a period of time not to exceed Twenty-four (24) hours, for the purpose of extinguishing unusual and extreme fires, First Party shall have the right, but not the obligation, to supply said water to the party whose customers so require said water, even though the same may result in diminished or terminated service of water to all parties hereto.

7.) This Contract and Agreement shall become effective upon the date of delivery of the bonds financing the New Plant to the purchaser of said bonds, and shall continue for a term of Forty (40) years from said date or for the life of the New Plant, whichever is longer, and, thereafter, may be renewed or extended for such term or terms as may be agreed upon by the parties hereto.

8.) This Contract and Agreement is subject to such rules, regulations, or laws, as may be or become applicable to similar agreements in the Commonwealth of Kentucky, and the parties hereto will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

9.) The construction of the New Plant by First Party is being financed by a loan made or insured by, and/or a grant from The United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and this Contract and Agreement shall not be legally binding upon any party hereto until approved, in writing, by the appropriate officers or employees of the said Farmers Home Administration.

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PURSUANT TO 807 KAR 50.11,
SECTION 19.011
BY: Andrew C. Zittel
FOR THE PUBLIC SERVICE COMMISSION

10.) Beginning on the effective date of this Contract, Bracken County Water District #1, shall pay to First Party monthly capital costs of Three Thousand Six Hundred and Forty Eight per month, to be adjusted based on actual sale of the bonds of the New Plant and subsequently adjusted to reflect the retirement of the bonds, in addition to the "cash operation and maintenance expense", "the capital costs of replacement factor," and the "meter and billing charge," specified in the Variable Rate Schedule attached hereto and made a part hereof. Said monthly payments, as the same may be modified pursuant to the terms of the Variable Rate Schedule, shall continue throughout the term of this Contract.

11.) The "wholesale billing year rate" charges, included in the Variable Rate Schedule provides for variable charges based on demonstrable costs to First Party for providing purified treated water to Second Party, during First Party's "operating year," which should provide sufficient time to obtain the annual audit of First Party's financial records by a Certified Public Accountant. The "wholesale billing year rate" charges to Second Party will remain fixed during each "wholesale billing year" and until modified pursuant to the Variable Rate Schedule attached hereto.

12.) Any successor to any party hereto shall succeed to the obligations, rights and duties of its predecessor as set forth in this Contract or any amendments.

13.) In the event that any party hereto shall increase its requirements for purified water to the extent that its water requirements exceed its quotas established herein, or in the event that any party hereto requires or desires additional capacity for production of purified water, the party hereto requiring or desiring said additional capacity shall have the right to:

- A) Pay all costs of expansion of the capacity of said New Plant, in which case the party paying said expansion costs shall be entitled to the benefit of all increased production capacity resulting from said expansion; and/or
- B) Continue to purchase water under this Contract to its allocated capacity and obtain additional purified water from other sources.

14.) A.) In the event that said New Plant shall become inadequate

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PURSUANT TO 807 KAR 5011,
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BY: Jordan C. Neal
FOR THE PUBLIC SERVICE COMMISSION

to serve the needs of the parties hereto due to government regulations, technological or physical obsolescence, or because all parties hereto require purified water in excess of their allotted capacities established in Paragraph No. 6 hereof, the parties hereto agree that said Plant shall be improved, expanded or replaced, and that all parties hereto shall participate in the cost thereof and that this Contract shall then be renegotiated, so that all parties shall share in the capital costs involved in said improvement, expansion, or replacement in addition to continuing to pay their proportional parts of the capital costs of the said New Plant until the bonds sold to finance the same are paid in full.

B.) If any water quality problem is identified within any utility system purchasing from the plant and the Kentucky Division of Water determines that adjustments at the water plant are required to remedy the particular problem, then first party agrees to comply as required by the Kentucky Division of Water.

15.) Each party acknowledges that it currently owns and operates its own wells, with First Party having 2 such wells and Second Party having 5 such wells.

In addition, Second Party owns and operates a certain water main from its existing wells to the clear well on the Augusta Berlin Road.

First Party may lease from Second Party, for the sum of \$1.00 for the term hereof, its wells and main supply line and shall fully and completely maintain said wells and main line.

Additionally, those wells now owned by First Party may be connected to the New Plant and used exclusively for the production of water for the New Plant.

16.) First Party agrees that all books and records and bank accounts regarding the New Plant will be kept separate and apart from other business of First Party and further, that First Party will appoint a Water Supply Advisory Board (hereinafter referred to as Board) which Board shall consist of 1 person from the City of Augusta, one person from the City of Brookville, and one person from the area now served by Bracken County Water District #1, each member shall be appointed from a list submitted by the governing body of the applicable utility served.

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BY: Jordan C. Neal
FOR THE PUBLIC SERVICE COMMISSION

Said Board shall have full access to the records of the New Plant and shall recommend to the Mayor and City Council of First Party such changes as may, from time to time, be needed or required.

Said Board shall also submit a list of candidates for the Auditing Firm for the annual audit and personnel necessary to operate the New Plant, from which list said employees and/or auditors shall be selected except for good cause shown.

Terms of the members of the Board will be 3 years beginning July 1, 1993.

The first appointees will be appointed for staggered terms of 1 to 3 years as determined by lot so that all members of the Board are not reappointed at once.

Board members will not be paid a salary but will be reimbursed for reasonable expenses directly related to the operation of the New Plant.

Board members will be strongly encouraged to attend Division of Water training sessions regarding compliance with the Safe Drinking Water Act.

17.) In the event of the termination or revocation of this agreement due to any circumstances, equity in the New Plant shall be determined in the same percentage that debt service was paid, that is, if First Party has paid 37.5 percent of debt service, then First Party will be entitled to 37.5 percent of equity, etc. etc.

18.) The parties agree that Second Party will execute a contract for the sale of water to the City of Brooksville and said contract once executed, will guarantee the City a percentage of Second Party's allocation of production and of Second Party's equitable interest.

A copy of the executed contracts will be appended hereto and incorporated herein by reference as shall each and every amendment to said contract.

The parties hereto understand and agree that this contract will be pledged as security to Farmer's Home Administration for the repayment of the above mentioned loan.

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OF KENTUCKY
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PURSUANT TO 807 KAR 5.011.

BY: Arden C. Hill
FOR THE PUBLIC SERVICE COMMISSION

In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in ten (10) counterparts, each of which shall constitute an original.

CITY OF AUGUSTA, KENTUCKY
FIRST PARTY

BY: *Louis Habermehl Jr.*
LOUIS HABERMEHL JR., MAYOR

ATTEST:

Judy Bonar
JUDY BONAR
CITY CLERK

BRACKEN COUNTY WATER DISTRICT
SECOND PARTY

BY: *Michael H. Beam*
Chairman

ATTEST:

Dana Cunningham

This contract is approved on behalf of the Farmers Home Administration, this *2nd* day of *JUNE*, 1993.

BY: *Jimmy H. Hall*
TITLE: *COMMUNITY AND BUSINESS DEVELOPMENT SUPERVISOR*

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PURSUANT TO 807 KAR 5011,
SECTION 9(1)

BY: *Jordan C. Keel*
FOR THE PUBLIC SERVICE COMMISSION

VARIABLE RATE SCHEDULE

SECTION 1: GENERAL

This variable rate schedule attachment is a part of and incorporated into the Water Purchase Contract made and entered into as of the 4th day of March, 1993, by and between the City of Augusta, Kentucky as First Party and Bracken County Water District #1, as Second Party.

SECTION 2: DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of terms used in this rate schedule attachment (Section 4 (b)) shall be as follows:

- (a) "Seller" shall mean the City of Augusta.
- (b) "Purchaser" shall mean Bracken County Water District #1.
- (c) "Seller's operating year" shall mean the twelve months from July 1, through June 30.
- (d) "Wholesale billing rate year" shall mean a twelve month period commencing January 1 and ending the following December 31.
- (e) "Cash operation and maintenance expense" shall mean all operating expenses, excluding depreciation expenses, excluding capital costs of improvements, betterments, replacements, etc. and excluding debt service costs (principal and interest, paying agent's fees, sinking fund reserves, etc.) for the Seller's operating year as identified and recognized in the annual examination of the Seller's financial records, by the firm of Certified Public Accountants conducting the examination of the Seller's financial records for the most recent fiscal year. The rate shall be based on demonstrable costs to the Seller for providing treated water. The rate will be computed on the basis of the Seller's costs for the Seller's most recent fiscal year. The rate may vary from year to year depending upon demonstrable costs and an adjustment to the previous year's billings shall be made by the Seller to reflect actual costs within thirty (30) days of the receipt of the Audit report of the Seller's financial records.

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PURSUANT TO 207 KAR 5-011,
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BY: Jordan C. Neal
FOR THE PUBLIC SERVICE COMMISSION

- (f) "Monthly payment date" shall mean a date established by the Seller whereby the Purchaser agrees to pay not later than the established date the charges for water furnished during the preceding month.
- (g) "Capital cost replacement factor shall mean the actual cost of replacements, additions and betterments paid by the Seller for the portions of the water plant set forth in the rate schedule attachments (Section 4 (b)).
- (h) "Capital cost" shall mean the portion of the actual average annual principal and interest payments of the Seller as specified in the rate schedule attachment as well as the debt service payments specified in the rate schedule attachment (Section 4 (b)).
- (i) "Cost review formula for revising wholesale rate charges" shall mean the formula, which appears in Section 4 of this rate schedule attachment.
- (j) "Total billed gallons" shall mean the total billed water consumption for all users serviced by the Seller during the Seller's most recent fiscal year.

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SECTION 3:

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INITIAL WHOLESAL BILLING RATE FOR THE PURCHASERS. PURSUANT TO 807 KAR 5.011.

- (a) The initial calendar year billing rate or wholesale charge to Bracken County Water District #1, for treated water shall be \$3648.00 per month in capital costs, plus 65 cents per 1,000 gallons.

BY: *Jordan G. Smith*
FOR THE PUBLIC SERVICE COMMISSION

- (b) It is agreed by and between the parties hereto that after the close of the initial calendar year, the actual rate to be charged by the Seller to the Purchaser for water purchased by the Purchaser during the initial calendar year shall be determined pursuant to the terms of this Variable Rate Schedule and any differences between said actual rate and the initial calendar year billing rate shall be rebated by the Seller to the Purchaser or paid to the Seller by the Purchaser, as the case may be, without interest, within sixty (60) days of said determination.

SECTION 4:

MODIFICATION OF CONTRACT.

The provisions of this contract pertaining to the schedule of

rates to be paid by the Second Party for water delivered are subject to modification at the end of every 1 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. Other provisions of this contract may be modified or altered by mutual agreement.

SECTION 5:

COST REVIEW FORMULA FOR REVISING FISCAL YEAR WHOLESALE RATE CHARGES.

(a) Each wholesale billing rate year commencing on and after January 1, 19__ the Seller shall prior to October 1 of the prior year determine the rate or charges for wholesale water purchases for the next wholesale billing rate year based upon a calculation of the following demonstrable costs. Such costs shall be taken from the annual financial report of the Seller for the preceding operating year which has been examined by a firm of Certified Public Accountants.

(b) **COST REVIEW FORMULA FOR REVISING FISCAL YEAR WHOLESALE RATE CHARGES:**

1.) Cash operation and maintenance expense:

$$\frac{\text{Amount} \times \text{Percent} + \text{Total Billed Gals.}}{(\text{In thousands})} = \frac{\text{Rate}}{\text{per 1,000 Gals.}}$$

Water Utility operating exp. \$ _____ x _____ % + _____ = \$ _____ PUBLIC SERVICE COMMISSION OF KENTUCKY EFFECTIVE

General & adm. expenc \$ _____ x _____ % + _____ = \$ _____ JUL 2 - 1996

Total rate per 1,000 gallons to Bracken #1 & Augusta \$ _____ PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

*To be adjusted pursuant to annual audits

BY: Jordan C. Neal
FOR THE PUBLIC SERVICE COMMISSION

Plus,

2.) <u>Capital cost:</u>	<u>Bracken #1</u>	<u>Augusta</u>
Fixed capital charge per mon.*	\$ _____	\$ _____
Debt service reserve:		
Bond and Interest Account		
per month for _____ mos.	\$ _____	\$ _____
Depreciation Account		
per month for _____ mos.	\$ _____	\$ _____
TOTAL MONTHLY CHARGE	\$ _____	\$ _____

*To be adjusted based upon actual sale of the bonds.

Plus,

3.) Capital cost replacement factor: Bracken #1

Percent of actual expenditure by Augusta for capital asset replacements to the Raw Water Intake, Water Treatment Plant, Any Altitude Value Vault, Any Storage Reservoir, Raw water Transmission Main or the Sludge Line to Sewage Treatment Plant, assuming funds for said expenditures are not available in the Depreciation Account.

Augusta
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PURSUANT TO 807 KAR 5011,
SECTION 9(1)

BY: Jordan C. Neal
FOR THE PUBLIC SERVICE COMMISSION

SECTION 6:

PROVISION TO MODIFY FORMULA FOR DETERMINING WHOLESALE WATER RATE CHARGE.

- (a) At the end of every five (5) year period either party to this Agreement may request that a special study be conducted by a firm of consulting engineers, certified public accountants, or other independent utility rate consultants to review the continuing applicability and equity of fiscal year charges determined on the basis of the formula outlined in Section 5, above. Provided, that all parties shall agree upon a consultant for this purpose.
- (b) The cost of such special study authorized in Section 6 (a) above will be borne by the party requesting such study or as may be agreed to by all parties.

SECTION 7:

BILLING PERIOD, MONTHLY PAYMENT DATE AND NOTIFICATION OF CHANGE IN WHOLESALE BILLING RATE.

- (a) The billing period and monthly payment date shall be as established by the Seller in accordance with any applicable laws, rules, regulations or procedures governing normal service and billing charges.
- (b) The wholesale user shall be notified at least sixty (60) days in advance of the revised wholesale billing rate for each next succeeding fiscal year. The notification shall include a copy of the computation and cost review formula used for revising the fiscal year wholesale rate charges.

SECTION 8:

RIGHT TO INSPECT OR OTHERWISE REVIEW SELLER'S FINANCIAL REPORTS AND RECORDS.

- (a) Upon request the Purchaser shall have the right to inspect or review the books and records of the Seller.
- (b) If desired, the Purchaser may request an independent audit of the books of the Seller as they pertain to the cost of treating and supplying water, and the parties shall agree upon a Certified Public Accountant for this purpose. The cost of such audit shall be borne by the Purchaser.

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PURSUANT TO 807 KAR 5011,
SECTION 9(1)

BY: James B. Neal
FOR THE PUBLIC SERVICE COMMISSION

RESOLUTION OF BRACKEN
COUNTY WATER DISTRICT #1

A RESOLUTION APPROVING
WATER PURCHASE AND EQUITY
PURCHASE CONTRACT WITH THE
CITY OF AUGUSTA, KY.
RELATING TO THE WATER TREATMENT
PLANT PROJECT; TO SECURE
FMHA FINANCING

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PURSUANT TO 807 KAR 5011,
SECTION 9 (1)

BY: Jordan C. Neal
FOR THE PUBLIC SERVICE COMMISSION

WHEREAS, on February 2, 1993, FmHA issued a letter of condition regarding a loan of \$1,160,000, an FmHA grant of \$680,000 and a community development block grant of \$750,000; and

WHEREAS, in order to comply therewith, it is necessary to approve a Water Purchase and Equity Purchase Contract with The City of Augusta; and

WHEREAS, the Board of Bracken County Water District #1 has reviewed the attached Water Purchase Contract with the City of Augusta and finds same acceptable; and

WHEREAS, said Water Purchase and Equity Purchase Contract with the City of Augusta is believed to be in a form acceptable to FmHA;

NOW THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF BRACKEN COUNTY WATER DISTRICT #1 as follows:

The Water Purchase and Equity Purchase Contract with the City of Augusta, Kentucky, attached hereto and incorporated herein by reference is hereby approved and the Chairman of the Board of Bracken County Water District #1 is authorized to execute originals of same on behalf of Bracken County Water District #1 and same shall be forwarded to FmHA, Division of Water and The Public Service Commission, together with a certified copy of this ORDER.

Bracken County Water District Board

DATED: 3/4/93

Michael H. Branam
Michael Branam

Jacob Bauer, Jr.
Jacob Bauer, Jr.

E. B. Kern
E. B. Kern

MUNICIPAL ORDER
#93- 5

PUBLIC SERVICE COMMISSION
OF KENTUCKY
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AN ORDER APPROVING
WATER PURCHASE CONTRACT
WITH BRACKEN COUNTY WATER DISTRICT #1
RELATING TO THE WATER TREATMENT
PLANT PROJECT; TO SECURE
FmHA FINANCING.

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PURSUANT TO 807 KAR 5.011,
SECTION 9(1)

BY: Jordan C. Neal
FOR THE PUBLIC SERVICE COMMISSION

WHEREAS, on February 2, 1993, FmHA issued a letter of condition regarding a loan of \$1,160,000, an FmHA grant of \$680,000 and a community development block grant of \$750,000; and

WHEREAS, in order to comply therewith, it is necessary to approve the Water Purchase Contract with Bracken County Water District #1; and

WHEREAS, the City Council has reviewed the attached Water Purchase Contract with Bracken County Water District #1 and finds same acceptable; and

WHEREAS, said Water Purchase Contract with Bracken County Water District #1 is believed to be in a form acceptable to FmHA;

NOW THEREFORE; IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF AUGUSTA, KY as follows:

The Water Purchase Contract with Bracken County Water District #1 attached hereto and incorporated herein by reference is hereby approved and the Mayor is authorized to execute originals of same on behalf of the City of Augusta and same shall be forwarded to FmHA together with a certified copy of this order.

3/4/93
DATE

Jordan C. Neal
MAYOR, CITY OF AUGUSTA, KY.

Passed by Council Feb 17 1993

Attest: Mary J. Brown
City Clerk/Treasurer

ATTEST:

Michael H. Bean
Secretary

Dora Cunningham
Clerk

Michael A. Clark
ATTORNEY

DATED: 3-7-93

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OF KENTUCKY
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PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)

BY: Jordan C. Neel
FOR THE PUBLIC SERVICE COMMISSION