

AMENDED AGREEMENT

THIS AMENDED AGREEMENT is made and entered into by and between the City of Madisonville, P. O. Box 705, Madisonville, Kentucky 42431; and the Nebo Water District on this 20th day of August, 2001;

WITNESSETH: The City of Madisonville and the Nebo Water District entered into an agreement dated July 18, 1977, as amended by agreements dated July 10, 1979 and September 15, 1990, which provided that the City would sell treated water to the District upon the terms and conditions stated therein; and

WHEREAS, the parties hereto desire to amend the existing agreements between the parties as herein provided;

NOW, THEREFORE, for and in consideration of the mutual promises and obligations of the parties, and in consideration of the premises, the receipt and sufficiency of said consideration being hereby acknowledged, the parties do hereby amend their existing agreements as follows:

1. The City of Madisonville agrees to make available for delivery and use by the Nebo Water District potable treated water, meeting the applicable purity standards of the Kentucky State Board of Health, in such quantity as may be required by the District not to exceed 18 million gallons per month. The treated water supplied by the City to the District shall only be for the use of businesses and/or residences located in Hopkins County, Kentucky. The District does hereby covenant and agree that no portion of the treated water sold to it by the City of Madisonville will be offered for distribution and/or sold to any person, firm or corporation outside Hopkins County, Kentucky.

2. All other provisions of the previous agreements of the parties not inconsistent herewith are ratified and reaffirmed.

CITY OF MADISONVILLE

By: Karen L. Cunningham 8/16/01
Karen L. Cunningham, Mayor

Attest:

THIS AMENDED AGREEMENT, made and entered into on this the 15 day of September, 1990, by and between the CITY OF MADISONVILLE, Kentucky, hereinafter referred to as "CITY"; and the NEBO WATER DISTRICT, of Nebo, Kentucky, hereinafter referred to as "DISTRICT";

WITNESSETH:

WHEREAS, the CITY and the DISTRICT entered into an Agreement on July 18, 1977, and an Amended Agreement dated July 10, 1979, whereby the DISTRICT could purchase water under certain conditions from the CITY; and

WHEREAS, said original Agreement was for a primary term of forty (40) years; and

WHEREAS, the DISTRICT has applied for additional financing from the Farmers Home Administration for the expansion of its existing water lines; and

WHEREAS, the Farmers Home Administration requires the DISTRICT to have a water supply for forty (40) years from the date hereof; and

WHEREAS, the CITY agrees to the extension of the Agreement provided the CITY is not obligated to provide treated water beyond Hopkins County;

NOW, THEREFORE, in further consideration of the Agreement entered into between the parties on July 18, 1977, the parties further agree as follows:

1. The term of this Agreement shall be and hereby is extended for a term of forty (40) years from and after the date hereof.

2. The treated water supplied by the CITY to the DISTRICT shall only be for the use of businesses and/or residences located in Hopkins County, Kentucky. The DISTRICT does hereby covenant and agree that no portion of the treated water sold to it by the CITY OF MADISONVILLE will be offered for distribution and/or sold to any person, firm or corporation outside Hopkins County, Kentucky. Any violation by the DISTRICT of this covenant is and shall be just cause for the immediate termination of the entire agreement between the CITY and the DISTRICT. In the event the CITY should have cause to believe that the DISTRICT has violated this agreement, the CITY shall have the right to give to the DISTRICT sixty (60) days notice of its intention to discontinue the sale of treated water hereunder. At the expiration of the sixty (60) day period, the CITY shall be excused from any further obligation hereunder.

3. The Parties, for themselves, their respective successors and assigns do hereby ratify all of the terms and conditions of the prior agreements between the Parties and they accept the performance of each Party under said agreement including but not limited to user fees charged by the CITY or paid by the DISTRICT

for treated water. Each Party does hereby agree to release the other Party from any and all claims, demands or liabilities that may result from any prior conduct on the part of that Party under the agreement in its entirety.

4. Except as modified herein, the remaining terms and conditions of the original agreement, dated July 18, 1977 and as amended by the Agreement dated July 10, 1979, shall remain in full force and affect.

WITNESS the signature of the Parties by and through their respective officials on the day and date first above written.

CITY OF MADISONVILLE

BY: William M. Cox
William M. Cox, Mayor

ATTESTED:

[Signature]
City Clerk

NEBO WATER DISTRICT:

BY: [Signature]
Chairman

ATTESTED:

[Signature]
Secretary

AGREEMENT BETWEEN THE CITY OF MADISONVILLE
AND THE NEBO WATER DISTRICT FOR THE SALE
AND PURCHASE OF TREATED WATER

THIS AGREEMENT made and entered into this 18 day of July, 1977,
by and between the CITY OF MADISONVILLE, HOPKINS COUNTY, KENTUCKY,
hereinafter referred to as the "Seller", and the NEBO WATER DISTRICT,
HOPKINS COUNTY, KENTUCKY, its successors or assigns hereinafter
referred to as the "Purchaser",

WITNESSETH THAT:

WHEREAS, the Seller owns and operates a water treatment plant and
is constructing facilities to provide additional raw water which
combined with present water sources should provide capacity for
treated water in excess of the current requirements of the Seller and;
WHEREAS, the Purchaser proposes to construct a water supply dis-
tribution system and desires to purchase treated water in order
to provide water services to customers within its district, and;
said system is anticipated to be financed by Farmers Home Administration;

WHEREAS, by resolution enacted on the 18th day of July, 1977,
by the City Council of the City of Madisonville, Hopkins County,
Kentucky, the sale of treated water in accordance with the terms
or provisions of this Agreement was approved, and the execution
of this Agreement carrying out the said resolution by the City
Council of the City of Madisonville, Hopkins County, Kentucky
was duly authorized, and;

WHEREAS, by resolution of the Commissioners of the Nebo Water
District, Hopkins County, Kentucky on or about the 11 day of
July, 1977, the purchase of treated water in accordance with the
terms and conditions set forth in this Agreement 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
agreement herein set forth, it is agreed by the parties as follows:

1. The Purchaser shall construct a water transmission and distribution system as set forth in the Engineering Report of Florence & Hutchinson Inc., Consulting Engineers, and tap onto the Seller's water supply system at the location described in Appendix A attached hereto and incorporated herein by reference, said tap shall be done according to the plans and specifications and to the approval of the City Engineer of the City of Madisonville. All construction costs shall be borne by the Purchaser.

2. The Seller shall install a ten inch water meter at or near the location of the tap-on cited above. The Seller agrees to furnish, install, operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the Purchaser and to calibrate such 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 disclosing by test to be inaccurate shall be corrected for the three 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 first day of each month. An appropriate official of the Purchaser at all reasonable times shall have access to the meter for the purpose of verifying its readings.

3. The Purchaser shall pay the Seller a connection fee to connect the Seller's system with the system of the Purchaser. The connection fee shall be determined on the basis of actual cost (including labor, materials and equipment) for the connection, as reasonably determined by the Seller at the time of the connection.

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line*

4. The Seller agrees to make available for delivery and use of the Purchaser potable treated water, meeting the applicable purity standards of the Kentucky State Board of Health, at approximately 75-82 PSI, in such quantity as may be required by the purchaser, not to exceed twelve million five hundred thousand (12,500,000) gallons per month, which is equal to approximately five times the present estimated monthly requirements of the purchaser. That the Seller shall at all times, operate and maintain its system in an efficient manner and shall take such action as may be necessary to furnish the Purchaser with the quantity of water required by the Purchaser.

Provided, however, in the event of reduction of water supply available to the Seller, the amount of water that the Seller is required to furnish the Purchaser, under the terms of this agreement or its amendments, may be reduced or diminished in the same ratio or proportion as the water supply is reduced or diminished to other customers serviced by the Seller.

5. The Purchaser agrees to pay for water on a monthly basis in an amount equal to metered usage, times the current fiscal year charges, which charges are provided for in a separate Variable Rate Schedule attached hereto and made a part hereof; provided, however that the Purchaser shall pay a monthly minimum payment equal to one million (1,000,000) gallons, times the current fiscal year rate charge, in the event that monthly metered usage is equal to or less than the minimum monthly gallonage specified, above.

6. The fiscal year rate charges, included in a separate schedule attached hereto, provide for variable charges based on demonstrable costs to the Seller for providing treated water to the Purchaser, during the Seller's most recent calendar or operating year. These charges will be developed during a six (6) month period following the end of the Seller's operating year, which should provide sufficient time to obtain the annual Report of examination of the Seller's financial records by an independent firm of Certified Public Accountants. The fiscal year rate charges

to the Purchaser will remain fixed during the period from July 1 each year to June 30 of the next succeeding year. However, the rate charges for each fiscal year will vary in accordance with demonstrable costs, as defined in the Variable Rate Schedule attached, hereto.

7. The construction of the water transmission and distribution system by the Purchaser as referred to herein, which is proposed to be partially financed by a grant and a loan from the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provision hereof pertaining to the undertakings of the Purchaser are conditional upon the approval of this agreement, in writing, by the appropriate officers or employees of the said Farmers Home Administration, and the partial financing of said project by said Farmers Home Administration.

8. The Purchaser agrees to notify the Seller in writing at least ten (10) days prior to the estimated date of completion of construction of the Purchaser's water transmission and distribution system.

9. Any modification to this Agreement pertaining to the formula for determining variable fiscal year rate charges to be paid by the Purchaser, which formula is provided for in the Variable Rate Schedule attached hereto, is subject to the approval of the Farmers Home Administration. Other provisions of this Agreement may be modified or altered by mutual agreement.

10. The terms of this Agreement shall extend for a term of Forty (40) years from the date of the initial delivery of any water as shown by the first bill submitted by the Seller to the Purchaser and, thereafter may be renewed or extended for such term, or terms, as may be agreed upon by the Seller and the Purchaser. The delivery date shall be inserted and made a part of this contract on the back of the last page of this contract and shall be signed by the Mayor of the City of Madisonville, and the appropriate officials of the Nebo Water District.

11. That this Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in the Commonwealth of Kentucky, and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

12. Any successor to either the Seller or Purchaser shall succeed to the obligations, rights and duties of its predecessor as set forth in this Agreement or any amendments thereof.

13. Failure of pressure to the main supply, line breaks, power failure, flood, fire, earthquakes or other catastrophes shall excuse the Seller from complying with those terms of this Agreement for supply of water or pressure until the time as the cause of the reduction of pressure or supply of water has been removed or remedied. A reasonable effort will be made by the Seller to remedy or remove the reduction of pressure or loss of supply of water.

14. This contract is hereby pledged by the Nebo Water District to the United States of America acting through the Farmers Home Administration as part of the security for a loan from the United States of America.

15. Should the sale of this water cause an excessive use of the Seller's existing treatment plant resulting in any governmental regulatory agency refusing to permit the excessive use, the seller shall be relieved of his obligations hereunder until said agency removes said restrictions, or should it become physically impossible for the seller to furnish water to the purchasers, and sellers current wholesale and retail consumers with its present water treatment facilities, then sellers shall be relieved of its obligations hereunder until the seller's new water treatment plant is constructed and operational.

16. The Purchaser shall adopt a regulation providing that any subdivision of 5 or more lots by a subdivider or developer shall be required to comply with the subdivision regulations of the City of Madisonville provided said real estate is located within 3 miles of the City limits of Madisonville.

17. Seller shall have the option to purchase any facilities of Purchaser existing within any duly annexed territory of the Seller at a reasonable and fair price to be negotiated by the parties.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, cause this Agreement to be duly executed.

City of Madisonville, Hopkins County, Kentucky

BY: James L. Gill, Jr.
~~Mayor, Curtis McCoy, Jr.~~
Mayor Pro-tem, James L. Gill, Jr.

ATTESTED BY:

James L. Gill, Jr.
Clerk-Treasurer
City of Madisonville, Hopkins County, Kentucky

Nebo Water District, Hopkins County, Kentucky

BY: Water Commissioners

James W. Rust Chairman
William H. Foster
Clarence H. Brown

ATTESTED BY:

Stewart H. Foster
Secretary

Approved By:
Farmers Home Administration

Title

APPENDIX A

The water meter shall be located on the West property line of the General Electric property near the General Electric Manufacturing Plant in Madisonville, Kentucky.

AGREEMENT BETWEEN THE CITY OF MADISONVILLE
AND THE NEBO WATER DISTRICT FOR THE SALE
AND PURCHASE OF TREATED WATER

VARIABLE RATE SCHEDULE

Section 1, General.

This variable rate schedule attachment is a part of and incorporated into the Water Purchase Agreement made and entered into this ____ day of _____, 1977, by and between the City of Madisonville, Hopkins County, Kentucky ("Seller") and the Nebo Water District, Hopkins County, Kentucky ("Purchaser").

Section 2, Definitions.

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

- (a) "Seller" shall mean the City of Madisonville Municipal Water Utility.
- (b) "Purchaser" shall mean the Nebo Water District.
- (c) "Seller's operating year" shall mean a calendar year.
- (d) "Wholesale fiscal billing rate year" shall mean a twelve (12) month period commencing July 1 and ending the following June 30.
- (e) "Initial wholesale fiscal year billing rate for the Nebo Water District" shall mean the initial rate or charges for purchased water during a period commencing on the date of this agreement and extending through June 30, 1978.
- (f) "Capital costs of plant" shall mean the recorded un-depreciated costs of the Seller's property, plant and equipment at December 31 each calendar year, net of governmental grants, 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 calendar year.
- (g) "Operation and maintenance expense" shall mean all operating expenses, excluding depreciation expenses, capital costs of improvements, betterments, replacements, etc., and debt service costs (including interest) 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 calendar year.
- (h) "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.
- (i) "Capital cost replacement factor" shall mean two (2) percent of total capital costs assigned to the Purchaser as a charge to partially recover the cost of replacing plant equipment dedicated to the use of the Purchaser.
- (j) "Capital cost recovery factor" shall mean six (6) percent of total capital costs assigned to the Purchaser as a charge to partially recover the capital costs of constructing plant facilities dedicated to the use of the Purchaser.
- (k) "Fiscal year wholesale charge rate" shall mean a rate 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 operating year. The fiscal year wholesale charge rate may vary from year to year depending upon demonstrable costs.

- (l) "Cost review formula for revising fiscal year wholesale rate charges" shall mean the formula, which appears in Section 4 of this rate schedule attachment. The formula was developed on the basis of a special accounting study dated June 17, 1977 by H.J. Umbaugh & Associates, Certified Public Accountants, Indianapolis, Indiana, which study is by reference made a part of this Water Purchase Agreement the same as if the study were incorporated herein.
- (m) "Total billed gallons" shall mean the total billed water consumption for all users serviced by the Seller during the Seller's most recent operating year.
- (n) "Wholesale user's percent of total billed gallons" shall mean the percent of total usage billed to the wholesale purchaser during the same period identified in subsection (m), above.
- (o) "Cost function" shall mean a cost that is identified by the nature of the service provided and is included in the cost review formula in Section 4 (b) of this attachment.

Section 3, Initial wholesale fiscal year billing rate for the Nebo Water District.

- (a) The initial fiscal year billing rate or wholesale charge to the Purchaser for treated water shall be fifty-nine (\$.59) cents per 1,000 gallons.
- (b) Computation of the initial rate is included in an Accounting Report identified in Section 2 (1) above.

Section 4, Cost review formula for revising fiscal year wholesale rate charges.

- (a) Each calendar year commencing on and after January 1, 1978, the Seller shall prior to July 1 of that year determine the rate or charges for wholesale water purchases for the next wholesale fiscal 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- Capital cost:

<u>Cost Function</u>	<u>Amount</u>	<u>Percent</u>	<u>Wholesale User's % Of Total Billed Gallons</u>	<u>Cost</u>
Source of supply	\$	100.0% X		\$
Treatment plant		100.0% X		
Storage		65.0% X		
Transmission & distribution		43.0% X		
General		10.0% X		
Customer		.1% X		
Hydrants		0.0% X		
Total	<u>\$</u>			<u>\$</u>

-2- Replacement cost:

Allocated capital cost x 2% + wholesale users most recent annual billed gals. User Charge Per 1,000 Gallons
\$

-3- Capital cost recovery:

Allocated capital cost x 6% + wholesale users most recent annual billed gals.

-4- Cash operation and maintenance expenses:

<u>Cost Function</u>	<u>Amount</u>	<u>Percent</u>	<u>Total Billed Gallons =</u>
Treatment	\$	90%	\$
Transmission & dist. (1)		45%	
General		45%	
Commercial		0	
Hydrant maint.		0	
Total	<u>\$</u>		<u>\$</u>

-5- Customer costs \$144.00 divided by wholesale user's most recent annual billed gallons.

Total \$

-6- The user charge or rate determined above shall be increased or decreased to the nearest one cent. An amount of five (\$.005) mills or more shall be increased to the next highest cent, whereas, an amount of four (\$.004) mills or less shall be decreased to the next lower cent.

Section 5, Provision to modify formula for determining variable fiscal year wholesale water rate charges.

- (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 outside utility rate consultants to review the continuing applicability and equity of fiscal year charges determined on the basis of the formula outlined in Section 4, above. Provided, that both parties shall agree upon a consultant for this purpose.
- (b) The cost of such special study authorized in Section 5 (a) above will be borne by the party requesting such study or as may be agreed to by both parties.

Section 6, Billing period, monthly date and notification of fiscal year 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 7, 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.