

WATER PURCHASE CONTRACT

THIS CONTRACT, made and entered into this 31 day of January, 1985, by and between the CRITTENDEN-LIVINGSTON COUNTY WATER DISTRICT, a municipal corporation organized as a water district under Chapter 74 of the Kentucky Revised Statutes, party of the first part, hereinafter referred to as the "Seller", and the CITY OF MARION, Kentucky, a municipal corporation of the fourth class, under the laws of the Commonwealth of Kentucky, party of the second part, hereinafter referred to as the "Purchaser",

W I T N E S S E T H :

WHEREAS, the Seller is in the process of arranging the construction of a new waterworks system, including a water treatment plant and distribution system, to serve the residents of the territory embraced by the Seller, and to finance the costs (not otherwise provided) of such construction through the issuance of its Waterworks Revenue Bonds of 1984, and

WHEREAS, the Purchaser contemplates the need, in the foreseeable future, of an additional source of water to serve the citizens and residents of its service area, and

WHEREAS, upon completion of the aforesaid construction the Seller will have a water plant or plants of sufficient capacity to provide for the currently anticipated needs and requirements of the initial customers of the Seller and further to serve the Purchaser all of the necessary water needed by the Purchaser, and

WHEREAS, the Seller is willing to sell the Purchaser a supply of available water/which is reasonably expected to be available to the Seller, after providing for the reasonably anticipated water service obligations of the Seller to its own residents, and

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SECTION 9(1)

BY: B. Jones

WHEREAS, the governing bodies of the Purchaser and of the Seller have duly authorized the execution of this Contract,

NOW, THEREFORE, in consideration of the premises, of the mutual covenants and agreements herein contained, of the prompt payment of the rates as herein agreed to and set out, and of the prompt delivery of the water supply as herein agreed to and set out, the parties hereto have agreed as follows:

1. The Purchaser will pay to the Seller an annual fee of Five Thousand Dollars (\$5,000) during each fiscal year for the duration of this Contract, the first five (5) such annual payments in the amount of \$5,000, totaling the sum of Twenty-Five Thousand Dollars (\$25,000), to be considered as a tap-on fee; provided that if the Seller makes water available to the Purchaser in the respective fiscal years, 1986-87 and 1987-88, the Purchaser will pay to the Seller an additional \$5,000 in each of such two fiscal years, as set out in paragraph 13 below. The Seller acknowledges that the first such \$5,000 payment was made by the Purchaser to the Seller during fiscal year 1983-84.

2. This Contract shall become effective immediately upon its execution and the Purchaser shall be entitled to receive water hereunder, at the option of the Purchaser, upon the completion of the construction of the waterworks system of the Seller to the extent sufficient to enable the Seller to begin serving water to its customers, and this Contract shall continue for a period of forty (40) years certain thereafter; provided, that in the event any court of competent jurisdiction shall ever hold that the duration of this Contract is illegal by reason of being in excess of twenty (20) years, then it is agreed by the parties that this Contract shall be effective for a period of twenty (20) years or for such shorter period as shall be determined to be valid by a final decision of such court; provided further, however, this clause is not to be construed as indicating any intention as to the validity or effectiveness of said forty (40) years' provision or of any other provisions of this Contract.

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3. The effectiveness of this Contract is subject to the award by the Seller of contracts for the construction of its waterworks system after approval by the Public Service Commission of Kentucky, and the effectiveness of this Contract is also subject to the approval of said Public Service Commission.

4. The quality of water delivered by the Seller to the Purchaser hereunder shall meet the standards of the United States Public Health Service Requirements Limitations for Drinking Water.

5. The Seller shall install an eight (8) inch water line from its water treatment facilities to be located at Pinckneyville, Kentucky, to a point (the "Connection Point") near the clearwell facilities of the Purchaser.

6. The Seller shall maintain water pressure of not less than 50 ^{PSI} ^{square gauge} pounds per inch[^] at the Connection Point at all times, except in cases of unavoidable casualty, acts of God, strikes, or other instances beyond the control of the Seller.

7. The Seller shall use reasonable diligence and care to provide a regular and uninterrupted supply of water to the Purchaser and to avoid any shortage or interruption of service thereof. The maximum amount which the Seller must furnish during any twenty-four (24) hour period shall be an amount not to exceed a total of 100,000 ^{PSI} gallons of water for such twenty-four (24) hour period or not to exceed a rate of 100 ^{PSI} gallons per minute during any twenty-four (24) hour period. The Seller shall not be liable for any failure, interruption, or shortage of water or any loss or damage resulting therefrom, occasioned in whole or in part by any cause beyond the reasonable control of the Seller.

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8. That the Seller will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the Purchaser with quantities of water required by the Purchaser. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser's consumers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's consumers is reduced or diminished.

9. A master meter or meters (the "Master Meter") shall be furnished and installed at the expense of the Seller and shall be located within the boundaries of the Purchaser at the Connection Point. Such Master Meter shall be equipped (also at the expense of the Seller) with a check valve or valves which shall be located at a reasonable place or places at or near the Connection Point, as shall be mutually agreed upon by the parties. Such Master Meter and check valve(s) shall measure the quantity of water furnished by the Seller and used by the Purchaser, on a monthly basis, and will determine the monthly amounts to be paid by the Purchaser to the Seller for such water, subject to all applicable conditions and limitations specified herein.

10. The Master Meter shall be checked by both the Seller and the Purchaser through their authorized agent(s) or employee(s), and said Master Meter shall be maintained and tested according to any applicable rules and regulations of the Public Service Commission of Kentucky, and if found to be inaccurate, shall be corrected as soon as practicable (and adjustments based on such meter testings shall be made in previous payments to conform to the results of such tests).

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11. The Master Meter shall measure the water furnished by the Seller and used by the Purchaser on a daily basis, and will determine the monthly amounts to be paid by the Purchaser to the Seller for such water. Said Master Meter shall be read periodically, at least once each ten days, by an officially designated employee of the Seller and such Master Meter shall be accessible at all reasonable times to an officially designated employee of the Purchaser for the purpose of reading and checking same. The official readings, which will determine the basis of the charges rendered to the Purchaser, will be the readings made by the Seller.

12. The Seller agrees that at its own expense, it will procure, furnish, install, operate, and maintain the necessary facilities, rights-of-way, and easements required to furnish the water service necessary to serve the Connection Point.

13. The Seller agrees that if the waterworks system is in operation and if the Seller has water available in each of the fiscal years, 1986-87 and 1987-88, the Seller will sell water to the Purchaser and will deliver same to the Connection Point, and the Purchaser agrees to purchase a minimum of \$5,000 of water in each of such fiscal years, 1986-87 and 1987-88, and pay for such water at the rate of \$1.25 per 1,000 gallons; provided, however, that in each fiscal year after fiscal year 1987-88, for the extent of this Contract, such rate may be adjusted by the Seller, upon 90 days' written notice from the Seller to the Purchaser, as follows:

Upon written request of either party, made at least ninety (90) days in advance of the proposed effective date of such adjustment, which requests shall not be made more frequently than once per year, such rates shall be adjusted based on any increase or decrease in the costs borne by the Seller since the beginning of the initial effective period of such rates, or since the last adjustment

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in rates between the parties, whichever is later, the cost increases so taken into account being the costs of producing and delivering water to the Master Meter of the Purchaser, such costs to be determined based upon the ^{METHOD OUTLINED IN} certified ~~audit of the records of the Seller~~ ^{ATTACHMENT "A" TO THIS CONTRACT.} by a certified public accountant, a copy of which ~~audit shall be furnished to the Purchaser.~~ Any adjustment in rates shall be subject to review and final approval by the Public Service Commission of Kentucky. ^{THE} Such costs per 1,000 gallons of producing water shall be based on the total number of gallons of water produced by the Seller, regardless of the amount of water sold by the Seller to the Purchaser.

As set out above, 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 (being defined as "increased valuation without capital expenditure") of the Seller's system. Other provisions of this Contract may be modified or altered by mutual agreement.

The annual payment of ^{ESSP} a minimum of \$5,000 to be made by the Purchaser to the Seller in each fiscal year after fiscal year 1988-89 for the duration of this Contract shall be applied to the purchase of water.

14. The Purchaser agrees to maintain and repair, and keep all of its mains, pipes, services, and facilities in reasonably good condition to enable it to continue purchasing water from the Seller.

15. The Purchaser assumes all responsibility for its own billing and for maintenance of its own system, the responsibility of the Seller being solely to deliver water to the Purchaser at the Connection Point. The Purchaser will assume the burden and cost of distribution of the water to its customers from the point of the Master Meter, including the cost of all electric power, insurance, pumping, storage, and related expense. If ^{PUBLIC SERVICE COMMISSION OF KENTUCKY} ~~any~~ ^{EFFECTIVE} ~~is~~ required by the Purchaser in order to effect the distribution of water purchased

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from the Seller from the point of the Master Meter to the customers of the Purchaser, the entire cost of such booster pumping station will be borne by the Purchaser, provided, however, that if and to the extent that any such booster pumping station shall be required in order to enable the Seller to deliver water at the Connection Point, the cost thereof will be borne by the Seller.

16. In the event that the population of the territory of the Seller should increase to such an extent that the existing facilities of the Seller cannot adequately serve said population, and if same should occur before existing facilities can be expanded by the Seller to meet such contingency, the quantity of water supplied to the Purchaser may then be reduced by the same percentage as such quantity is reduced to all other customers of the Seller, for a period of time sufficient to allow the Seller to expand.

17. The construction of the water supply distribution system by the Seller 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 the provisions hereof pertaining to the undertakings of the Seller are conditioned upon the approval, in writing, of the State Director of the Farmers Home Administration. All rights of the Seller herein are hereby assigned to the Farmers Home Administration so long as it is the owner of all of the outstanding Bonds of the Seller; provided that if and whenever any or all of such Bonds shall be sold to a different owner or owners, such rights shall vest in such other owners in proportion to the amount of Bonds owned by such other owners. The Seller further agrees to transfer to any bona fide Receiver or other subsequent operator of the Seller's system, pursuant to any valid Court order in a proceeding brought to enforce collection or payment of the Seller's obligations under any Bonds outstanding against the Seller's system, all rights of the Seller under this Contract, conditionally, for such time only as such Receiver or operator shall operate by authority of the Court.

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18. Nothing contained in this Contract is to be construed or intended by the parties as divesting the Public Service Commission of Kentucky of any of its authority, jurisdiction, control, or prerogatives in connection with either of the parties.

19. In the event of any occurrence rendering the Purchaser incapable of performing under this Contract, any successor of the Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Purchaser hereunder.

20. If any section, paragraph, or clause of this Contract be held invalid, the invalidity of such section, paragraph, or clause shall not affect any of the remaining provisions of this Contract.

IN WITNESS WHEREOF, the Seller, by resolution duly adopted by its Board of Commissioners, authorizing its Chairman and its Secretary, and the Purchaser, by Ordinance duly enacted by its City Council, authorizing its Mayor and its City Clerk to affix their respective signatures, together with the seals of said respective parties, have hereunto executed this Contract, as of the date first hereinabove written.

CRITTENDEN-LIVINGSTON COUNTY WATER DISTRICT

(Seal of District)

By George J. Putman
Chairman

Attest:

W. B. Green
Secretary

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CITY OF MARION, KENTUCKY

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(Seal of City)

By [Signature]
PURSUANT TO 807 KAR 5:011,
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Mayor [Signature]

Attest:

Ann R. Dill
City Clerk

Franklin Conover
David M. King
Community & Business Program Assoc

The Board of Commissioners in the regular meeting on March 5, 1985 do hereby pass the following order:

That the Mayor and Clerk are ordered to sign the contract with the Crittenden-Livingston Water District as it was read in the meeting.

Mr. LaRue so moved. Mr. Simpkins seconded.

Yes	No
Mr. Lasher	None
Mr. Simpkins	
Mr. DeBoe	
Mr. LaRue	
Mrs. Hensley	

I, Fern Kirk, Clerk of the City of Salem, Kentucky, do hereby certify that the above resolution was approved by the City Commission of the City of Salem, Kentucky, at a regular meeting held on March 5, 1985 effective on said date and I further certify that the above is a true copy of the excerpt of the minutes of said meeting.

March 6, 1985

M. Fern Kirk
M. Fern Kirk, City Clerk

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BY: B. G. [Signature]